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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of Duke)
Energy Ohio, Inc. for Approval of a) Case No. 09-834-EL-UNC
Residential Solar Renewable Energy Credit)
Purchase Program Agreement and Tariff)

**DUKE ENERGY OHIO, INC. MEMORANDUM CONTRA
MOTION BY THE OHIO CONSUMERS' COUNSEL AND THE NATURAL
RESOURCES DEFENSE COUNCIL FOR RULING ON AND REVISION
OF DUKE ENERGY OHIO'S RESIDENTIAL SOLAR
RENEWABLE ENERGY CREDIT PURCHASE PROGRAM**

I. Introduction

On September 21, 2009, after engaging in lengthy and protracted negotiations with the Ohio Consumers' Counsel (OCC) and the Natural Resources Defense Council (NRDC), together with various other parties, Duke Energy Ohio, Inc. (Duke Energy Ohio or Company) filed an application for approval of a proposed, residential, solar renewable energy credit (REC) purchase program. On October 2, 2009, the OCC and the NRDC filed a motion to intervene in that application process. Duke Energy Ohio did not contest those interventions. However, on January 15, 2010, the OCC and the NRDC filed another motion (Motion for Ruling), this time requesting that the Commission compel Duke Energy Ohio to revise and extend its proposed program and that the Commission rule on the application "quickly." For the reasons set forth below, Duke Energy Ohio submits that the Commission should deny the OCC and the NRDC's motion and grant Duke Energy Ohio's application for approval of its proposed, residential, solar REC purchase program.

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II. Argument

Pursuant to provisions of Amended Substitute Senate Bill 221 (SB 221), Duke Energy Ohio submitted an application for approval of an electric security plan (ESP) on July 31, 2008. *In the Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO *et al.*. Parties intervened and successfully negotiated a settlement of the issues. The resultant stipulation was submitted to the Commission and was approved by an Opinion and Order issued on December 17, 2008. Among the provisions agreed to in the stipulation is one, correctly cited by the OCC and the NRDC, that states, at Paragraph 31:

“DE-Ohio shall work with any interested parties to revise the current REC tariff price to a price that is commensurate with the current market price and to include a R.C. 4928.64 residential REC purchase program by June 30, 2009.”

Following the Commission’s approval of Duke Energy Ohio’s ESP, the Company immediately initiated meetings with the OCC and the NRDC to discuss the elements of such a program. Thereafter, throughout the months between February 2009 and September 2009, representatives of Duke Energy Ohio, the OCC, and the NRDC met and discussed various iterations of a residential REC purchase program, but were unable to resolve their differences. Although the Parties extended those discussions through September 2009 which exceeded the time frame established in the Stipulation, this was only because of exhaustive attempts to come to an agreeable proposal with the OCC and the NRDC.

Notably, although the quoted provision in the stipulation specifically calls for a tariff price that is commensurate with current market price, the OCC and the NRDC apparently had something quite different in mind. In particular, the OCC and the NRDC were looking for an up-front payment to customers in addition to a commitment to purchase renewable energy credits for fifteen years that would incentivize customers to build solar installations. Such an incentive

payment would essentially result in the design of a tariff that socializes the cost of solar installations regardless of the economics of the project. Additionally, the OCC and the NRDC continue to argue that the program should be made available to all customers of Duke Energy Ohio, whether or not an individual customer has chosen a competitive supplier. When the parties were unable to reach agreement on these issues, Duke Energy Ohio submitted the tariff that it had proposed to the OCC and the NRDC for approval by the Commission. In every respect, Duke Energy Ohio has honored its commitment in the stipulation. Although the OCC and the NRDC apparently had expectations beyond what Duke Energy Ohio agreed to, they have obtained the benefit of their bargain. Indeed, Duke Energy Ohio continues to support the concept of a solar renewable energy credit for residential customers. However, the details which were never addressed in the Stipulation are critically important to the viability of the program.

The OCC and the NRDC assert, in their motion, that "the Commission should extend the eligibility requirements of the program to include shopping customers and provide meaningful incentives to participants in order to make it more effective. This includes making the term of the REC contract with customers extend for 15 years to provide customers with a stream of revenue to help them cover the cost of their investment." Motion for Ruling at 4. The OCC and the NRDC attempt to justify these recommendations on the basis that "such revisions are necessary so that Duke will be accountable to the customers that must pay for the REC program and so that Duke will be better able to meet its renewable compliance requirements under R.C. 4928.64." Duke Energy Ohio has made and will continue to make every effort to be in compliance with its obligations under the law. In doing so, the Company must be cognizant of the ultimate costs to all of its customers.

The proposed mechanism to recover the of the costs of the residential REC program is, as set forth in Paragraph 5 of the application in this proceeding, to flow the costs through Duke

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Energy Ohio's fuel and purchased power rider, Rider PTC-FPP. This rider is by-passable by shopping customers, as Rider PTC-FPP recovers costs related to the Company's generation function, which cost are generally incurred for the benefit of non-shopping customers. Duke Energy Ohio chose to structure its proposal in this manner due to the fact that competitive retail electric suppliers are also required to comply with renewable energy mandates. Therefore, shopping customers will pay for the cost of compliance with these mandates through their charges from their suppliers. Duke Energy Ohio submits that this is a reasonable approach, as it collects the costs from those customers for whom the renewable energy is generated.

On the other hand, the OCC's and the NRDC's proposal would allow shopping customers to take advantage of the Duke Energy Ohio solar REC program, while also allowing them to avoid their share of the program's costs. The OCC and the NRDC do not dispute the suggestion that shopping customers avoid bearing the cost by bypassing the rider that recovers those costs. Duke Energy Ohio has consistently recognized that fairness alone requires that the program be made available only to its non-shopping customers, contrary to the OCC and the NRDC's demands for a subsidization of shopping customers. Providing this benefit to shopping customers would result in a cross-subsidy to shopping customers contrary to policy set forth in R.C. 4828.02(H).

In recognition, however, of the need to allow customers to switch freely from the Duke Energy Ohio standard service offer to a competitive offer, Duke Energy Ohio's proposal allows customers who have already become a part of the program to switch to a competitive supplier without incurring any penalty.

The OCC and the NRDC also suggest that, because Duke Energy Ohio must advise customers of the existence of a net metering tariff and interconnection along with information about a solar renewable energy credit, the Company is therefore obligated to provide this tariff to

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all customers. This is an implausible reading of the stipulation from the ESP case and one that goes far beyond the plain meaning of the words. The OCC and the NRDC's ability to glean unwritten meaning from plainly worded text is at best creative, but in this case, it is just unrealistic.

The OCC and the NRDC also argue that residential customers should have the benefit of a fifteen-year revenue stream to offset the cost of installing solar projects on their properties. While this may be a desirable outcome for those few residential consumers who install such projects, it is not a reasonable business decision for Duke Energy Ohio and would not be an appropriate cost to pass on to other Duke Energy Ohio customers. Compliance with the renewable mandates that are set forth in Section 4928.64, Revised Code, is clearly not cost-free to Duke Energy Ohio's customers. Consequently, Duke Energy Ohio is diligently seeking to attain compliance with the mandates in the most cost-efficient way possible. The market for renewable energy credits is, at this time, still a nascent one, as evidenced by numerous filings for certification of renewable projects. In this newly emerging market, it is unreasonable to expect, and it would be imprudent for Duke Energy Ohio to agree to, a renewable energy credit price that is set for a period of fifteen years. Since deregulation began almost ten years ago, the Commission has seen a number of novel ratemaking concepts. The OCC's and the NRDC's desire to create a prepayment for fifteen years' worth of RECs makes no more sense than if the Company asked its customers to prepay for fifteen years' worth of their expected fuel costs. Also, since electric security plans begin and end in much shorter increments than fifteen years, and since it is unclear how Duke Energy Ohio would obtain cost recovery for such a program beyond 2011, it is irrational to insist that the Company enter into such a commitment.

III. Conclusion

Duke Energy Ohio is enthusiastic about the development of solar energy in Ohio and is engaged in a number of initiatives and projects to facilitate solar growth. However, financing solar projects that would be installed on a select group of residential customers' homes while seeking cost recovery from the larger population of customers for a fifteen-year commitment is unreasonable. It is also manifestly unfair to Duke Energy Ohio's customer population to require the population to subsidize the construction of solar energy facilities for a small population of customers that are able to afford the investment, while charging the balance of the customers at unreasonable levels. Such a policy would also be contrary to policy set forth in R.C. 4928.02 (L).

In conclusion, the OCC and the NRDC's motion to revise Duke Energy Ohio's proposed, residential, solar REC purchase program and to move swiftly on the revised version of the program should be denied.

Respectfully submitted,



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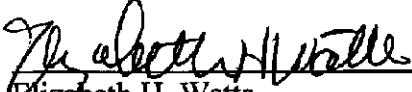
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served via personal delivery or ordinary mail, postage prepaid, on the all parties of record this 29th day of January, 2010.


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