

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke
Energy Ohio, Inc. for Approval of a
Residential Solar Renewable Energy
credit Purchase Program Agreement and
Tariff.

Case No. 09-834-EL-ACP

PUCO

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COMMENTS

**SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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April 5, 2010

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In the March 22, 2010, entry in this proceeding, the Attorney Examiner established a comment schedule in which initial comments are to be filed by April 5, 2010, with reply comments due by April 14, 2010. The Attorney Examiner further indicated that the case, originally filed as 09-834-EL-UNC, should be designated as Case No. 09-834-EL-ACP.

Consistent with the schedule prescribed by the Examiner in this proceeding, the Commission Staff timely offers the following comments in regards to the Duke Second Amended Application submitted on February 19, 2010. These comments are reflective of Staff positions, and they should not be attributed to the PUCO.

- (1) Duke Energy Ohio, Inc. (Duke) initially filed its residential solar renewable energy credit (REC) purchase program agreement and tariff on September 21,

2009. Duke filed an amended application on October 8, 2009, and subsequently filed a second amended application on February 19, 2010.

- (2) The Ohio Consumers' Counsel (OCC) and the Environmental Advocates (EA) have submitted several sets of comments during this proceeding.
- (3) Staff has reviewed the applications submitted by Duke, as well as all of the comments in this record. As a result of its review, Staff offers the following comments:

- (a) The Application (paragraph 4, p. 2) makes reference to both solar photovoltaic and solar thermal resources. However, paragraph 1 of the Agreement lists only solar photovoltaic energy projects. This appears to reflect an inconsistency. However, because both the Application and the Agreement require Commission-certification of the resource, Staff believes that the solar resources ultimately included within this program would be consistent with the Commission rules on the topic of resource eligibility.

- (b) The Application (paragraph 5, p. 2) indicates that the purchase price for 2010 REC acquisitions shall be set at a price equal to seventy-five percent of the penalty set forth in Ohio Revised Code 4928.64(C)(1)(a). Further, paragraph 3 of the Agreement (p. 2) indicates that 2010 vintage REC acquisitions would be paid at \$337.50 per solar REC.

Staff notes that the solar compliance payment for 2010, according to 4928.64 (C)(2)(a), Ohio Revised Code, is \$400 per megawatt-hour. There-

fore, if payment of vintage 2010 RECs is set at 75% of the compliance payment, then Staff believes that the figure would in fact be \$300.

- (c) The Agreement indicates that purchase prices in subsequent years would be based on current market prices. Staff believes that this approach is reasonable and assures that REC costs under this program, for which recovery will be sought, should generally be consistent with market conditions.
- (d) The Agreement (p. 2) appears to include references to two separate documents referred to as "Attachment A" (*i.e.*, "Ohio Renewable Energy Resource Generation Facility certification and an Affidavit of Performance"). Staff believes that, for clarity, one of these documents should be reflected at Attachment B.
- (e) The primary remaining item of disagreement between Duke and OCC/EA appears to center around the question of what constitutes an eligible customer. Duke's program, as currently designed, would be offered to customers taking electric generation service from the Company (p. 1 of Agreement, paragraph 8 on p. 3 of Agreement). OCC and EA have argued throughout their comments in this proceeding that it is inappropriate to limit the program to only the Company's generation customers.

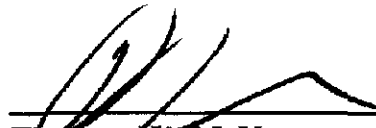
Staff is not offering an interpretation of the Duke ESP stipulation, which OCC/EA references in support of their position on this topic. However, Staff would note that RECs generated by customers who have exercised choice of generation provider would still be viewed as viable compliance tools for Duke, provided the facility from which the

RECs originated has been certified by the PUCO. As such, the Staff agrees that Duke should offer this program to all of its Ohio residential distribution customers.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Comments** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, and/or electronic mail, upon the following parties of record, this 5th day of April, 2010.



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