

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke	)	
Energy Ohio, Inc. for Approval of its 2009	)	
Advanced and Renewable Energy	)	Case No. 10-511-EL-ACP
Baseline and Benchmarks Pursuant to	)	
Section 4928.64(B) of the Ohio Revised	)	
Code.	)	

**STIPULATION AND RECOMMENDATION**

Ohio Administrative Code (OAC) Section 4901-1-30 provides that any two or more parties to a proceeding before the Public Utilities Commission of Ohio (Commission) may enter into a written stipulation covering the issues presented in that proceeding. This Stipulation and Recommendation (Stipulation) sets forth the understanding of Duke Energy Ohio, Inc. (Duke Energy Ohio or the Company), the Office of the Ohio Consumers' Counsel (OCC), the Commission Staff (Staff),<sup>1</sup> the Ohio Environmental Council (OEC), and the Environmental Law and Policy Center (ELPC), (each of whom is a Signatory Party, and together constitute the Signatory Parties). The Signatory Parties recommend that the Commission approve and adopt, as part of its Opinion and Order, this Stipulation, which will resolve all of the issues in the above-captioned proceeding.

This Stipulation is a product of lengthy, serious, arm's-length bargaining among the Signatory Parties, who are all capable, knowledgeable parties, which negotiations were undertaken by the Signatory Parties to settle this proceeding and is not intended to reflect the views or proposals that any individual Party may have advanced acting unilaterally. This

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<sup>1</sup> The Commission Staff will be considered a party for the purpose of entering into this Stipulation. OAC Sections 4901-1-10(C) and 4901-1-30.

Stipulation was negotiated among all parties to the proceeding. The Signatory Parties agree that this Stipulation is in the best interest of the public, and urge the Commission to adopt it.

This Stipulation is supported by adequate data and information. As a package, the Stipulation benefits customers and the public interest, represents a reasonable resolution of all issues in this proceeding, violates no regulatory principle or practice, and complies with and promotes the policies and requirements of Ohio Revised Code Chapter 4928. While this Stipulation is not binding on the Commission, it is entitled to careful consideration by the Commission, where, as here, it is sponsored by parties representing a wide range of interests.

Except for purposes of enforcement of the terms of this Stipulation, this Stipulation, the information and data contained therein or attached, and any Commission rulings adopting it, shall not be cited as precedent in any future proceeding for or against any Party or the Commission itself. The Signatory Parties' agreement to this Stipulation, in its entirety, shall not be interpreted in a future proceeding before this Commission as their agreement to only an isolated provision of this Stipulation. More specifically, no specific element or item contained in or supporting this Stipulation shall be construed or applied to attribute the results set forth in this Stipulation as the results that any Party might support or seek, but for this Stipulation in these proceedings or in any other proceeding. This Stipulation is a reasonable compromise involving a balancing of competing positions and it does not necessarily reflect the position that one or more of the Signatory Parties would have taken if these issues had been fully litigated.

This Stipulation is expressly conditioned upon its adoption by the Commission in its entirety and without material modification. If the Commission rejects or materially modifies all or any part of this Stipulation,<sup>2</sup> each and every Signatory Party shall have the right, within thirty

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<sup>2</sup> Any Signatory Party has the right, at its sole discretion, to determine what constitutes a "material" change for the purposes of that Party withdrawing from the Stipulation.

days of issuance of the Commission's Order, to file an application for rehearing or to terminate and withdraw the Stipulation by filing a notice with the Commission. The Signatory Parties agree they will not oppose or argue against any other Party's notice of termination or application for rehearing that seeks to uphold the original, unmodified Stipulation. If, upon any rehearing ruling, the Commission does not adopt the Stipulation in its entirety and without material modification, any Party may terminate and withdraw from the Stipulation. Termination and withdrawal from the Stipulation shall be accomplished by filing a notice with the Commission, including service to all Signatory Parties, in this proceeding within thirty days of the Commission's Order or ruling on rehearing that does not adopt the Stipulation in its entirety and without material modification. Other Signatory Parties to this Stipulation agree to not oppose the termination and withdrawal of the Stipulation by any other Party. Upon the filing of a notice of termination and withdrawal, the Stipulation shall immediately become null and void.

Prior to the filing of such a notice, the Party wishing to terminate agrees to work in good faith with the other Signatory Parties to achieve an outcome that substantially satisfies the intent of the Stipulation and, if a new agreement is reached that includes the Party wishing to terminate, then the new agreement shall be filed for Commission review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful in reaching a new agreement that includes all Signatory Parties to the present Stipulation, the Commission will convene an evidentiary hearing such that the Signatory Parties will be afforded the opportunity to present evidence through witnesses and cross-examination, present rebuttal testimony, and brief all issues that the Commission shall decide based upon the record and briefs as if this Stipulation had never been executed.

WHEREAS, this Stipulation represents a serious compromise of complex issues and involves substantial benefits that would not otherwise have been achievable; and

WHEREAS, the Signatory Parties believe that the agreements herein represent a fair and reasonable solution to the issues raised in the case set forth above concerning Duke Energy Ohio's Application for approval of its 2009 advanced and renewable energy baseline and benchmarks pursuant to 4928.64(B) of the Ohio Revised Code, and

WHEREAS, OCC, OEC and ELPC filed timely interventions in this proceeding that were granted by the Commission;

THEREFORE, it is agreed that:

1. The baseline for purposes of calculating Duke Energy Ohio's annual compliance obligation regarding alternative energy sources for 2009 under Ohio law will be computed based upon the Company's unadjusted baseline of 20,713,297 megawatt hours (MWHs) as set forth in its initial filing.
2. The Company's 2009 compliance obligations, using the statutory benchmarks and the Company's unadjusted baseline are as follows:  
  
Ohio Solar – 415 MWHs  
  
Non-Ohio Solar – 414 MWHs  
  
Ohio Renewables – 25,478 MWHs  
  
Non-Ohio Renewables – 25,477 MWHs.
3. Duke Energy Ohio shall transfer the following quantities of renewable energy certificates (RECs) to its Generation Attributes Tracking System (GATS) reserve subaccount for 2009 Ohio compliance purposes:

- a. Ohio Solar – 323 RECs
- b. Non-Ohio Solar – 414 RECs
- c. Ohio Renewables – 25,478 RECs
- d. Non-Ohio Renewables – 25,477 RECs

Such transfer shall occur within 45 days of the Commission's final order in this proceeding.<sup>3</sup> The Company shall provide information sufficient to permit Staff to review the details of the transfer for confirmation and to ensure consistency with the data previously provided to Staff.

- 4. After Duke Energy Ohio retires the RECs set forth in Paragraph 3 above, Duke Energy Ohio will have a shortfall of 92 RECS in the Ohio Solar category. This shortfall in REC compliance for 2009 shall be rolled forward into 2010 and shall then be added to the Company's 2010 compliance obligations.
- 5. The Company shall not be assessed a compliance penalty for the shortfall set forth in Paragraph 4 above related to 2009 compliance only.
- 6. Duke Energy Ohio shall be permitted to transfer 70 of the additional 80 Ohio-certified Pennsylvania solar RECS to its 2009 Ohio GATS reserve subaccount in order to cover its non-Ohio solar shortfall as shown on Exhibit 1 of the Company's application in this proceeding. These 70 RECs are included in the total of 414 Non-Ohio Solar RECs addressed in Paragraph 3 above.

This Stipulation is submitted for purposes of this proceeding only and is not deemed binding with respect to related issues that may arise in any other proceeding, except that the agreed terms set forth in this Stipulation, if the Commission approves the Stipulation without

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<sup>3</sup> All RECs were generated by Public Utilities Commission of Ohio certified facilities. Eighty-two of these RECs were generated in 2008 and the remainder were generated in 2009.

material modification, are not to be disputed or re-litigated by any Signatory Party in any subsequent proceeding. Nothing herein shall preclude a Party from actively participating in any other case involving Duke Energy Ohio before the Commission. As with such stipulations reviewed by the Commission, the willingness of Signatory Parties to sponsor this document currently is predicated on the reasonableness of the Stipulation taken as a whole.

IN WITNESS THEREOF, the undersigned parties agree to this Stipulation and Recommendation as of this 13<sup>th</sup> day of January, 2012. The undersigned parties respectfully request the Commission to issue its Opinion and Order approving and adopting this Stipulation.

On Behalf of Staff of the Public Utilities Commission of Ohio

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On Behalf of Duke Energy Ohio, Inc.

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## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered via U.S. mail (postage prepaid), personal, or electronic mail delivery on this the 13th day of January, 2012, to the following:

  
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Summary: Stipulation In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of its 2009 Advanced and Renewable Energy Baseline and Benchmarks Pursuant to Section 4928.64(B), of the Ohio Revised Code. electronically filed by Carys Cochern on behalf of Watts, Elizabeth H. Ms.