

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Ohio Power Company for Approval	)	
of its Renewable Energy Technology	)	Case No. 09-1871-EL-ACP
Program	)	

In the Matter of the Application of	)	
Columbus Southern Power Company	)	Case No. 09-1872-EL-ACP
for Approval of its Renewable Energy	)	
Technology Program	)	

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**MOTION TO INTERVENE AND OPPOSITION TO CERTAIN ELEMENTS OF  
THE APPLICANTS' PROPOSAL  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in these cases where there is an opportunity to encourage residential customers, through the use of incentives, to install small wind and solar renewable energy facilities on their premises.<sup>1</sup> OCC is filing on behalf of all the approximately 1.2 million residential utility consumers of Columbus Southern Power Company and Ohio Power Company ("AEP," "Companies" or "Applicants").

The framework of a satisfactory incentive program that will encourage customer-sited solar photovoltaic and small wind facilities developed from discussions between the Companies and OCC. But in accordance with Paragraph V.2 of the Stipulation and Recommendation ("Stipulation") pending in Case Nos. 09-1089-EL-POR and 09-1090-

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<sup>1</sup> See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

EL-POR,<sup>2</sup> OCC presents its opposition to specific components of AEP's proposed renewable energy technology contract that will govern the agreement between the Companies and participating customers.

The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant OCC's Motion and adopt OCC's recommendations are further set forth in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

/s/ Christopher J. Allwein

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<sup>2</sup> *In the Matter of the Application of Columbus Southern Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration*, Case Nos. 09-1089-EL-POR, et al, Application at 5 (November 12, 2009).

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

These cases involve the review of the reasonableness and lawfulness of incentives proposed in AEP’s Renewable Energy Technology Program (“Program”). OCC has authority under law to represent the interests of all the approximately 1.2 million residential utility customers of AEP, pursuant to R.C. Chapter 4911.

OCC and AEP engaged in substantive and productive discussions to construct an incentive program that would foster the development of residential solar and wind facilities. Most of the proposed elements in the Program are congruent with the goal of increasing customer-sited wind and solar installations. But the PUCO should make some modifications, presented in the comments below, to ensure adequate customer participation in the Program.

R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio’s residential consumers may be “adversely affected” by these cases, especially if the

consumers were unrepresented in a proceeding evaluating residential renewable energy program incentives. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

## **II. INTERVENTION**

R.C. 4903.221(B) requires the Commission to consider the following criteria in ruling on motions to intervene:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest is representing all residential consumers of AEP. This interest is different than that of any other party and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for consumers will include advancing the position that the Program should contain incentives that will encourage the development and installation of distributed and small generation facilities.<sup>3</sup> OCC's position is therefore directly related to the merits of these cases that are pending before the PUCO, the authority with regulatory control of public utilities' rates and service quality in Ohio.

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<sup>3</sup> R.C. 4928.02(C)

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of these cases with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding these cases in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a very real and substantial interest in these cases where incentives for residential renewable energy programs for customers served by the Companies are at stake.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the "extent to which the person's interest is represented by existing parties." While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio's residential utility consumers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio confirmed OCC's right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC's intervention and that OCC should have been granted intervention.<sup>4</sup>

### III. COMMENTS

OCC and the Applicants engaged in productive discussions stemming from certain provisions in the AEP Portfolio Plan stipulation.<sup>5</sup> Reserved to OCC pursuant to the stipulated agreement was the right to file opposition to any aspect of the Companies' proposal unreflective of OCC's position.<sup>6</sup> Objections to certain elements of the plan are presented below, along with recommendations to maximize the potential of the Program for both the Applicants and participating customers.

As part of the incentive Program, the amount listed by the Companies for solar RECs generated is \$1.50 per watt,<sup>7</sup> meaning that under the agreement, a participating customer will be paid this amount for each watt generated for the duration of the agreement, subject to the caps presented. AEP stated that the reason for this price is because "[T]he amount of incentive should be based on the lowest anticipated energy generation."<sup>8</sup>

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<sup>4</sup> See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

<sup>5</sup> *In the Matter of the Application of Columbus Southern Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration*, Case Nos. 09-1089-EL-POR, et al, Application at 5 (November 12, 2009).

<sup>6</sup> *Id.*

<sup>7</sup> *In the Matter of the Application of Columbus Southern Power Company for Approval of its Renewable Energy Technology Plan*, Case No. 09-1871-EL-ACP, et al, Application at 4 (November 30, 2009).

<sup>8</sup> *Id.*, Application at 5.

The Commission should adjust the solar incentive amount to approximately \$2.10 per watt. This provides a more equitable incentive for the customer, because it has the effect of bringing the REC price more within 80% of the discounted alternative compliance payment (“ACP”). This percentage of ACP was used to determine the default REC price in the FirstEnergy REC purchase agreement for instances where no responses were received to FirstEnergy’s request for proposals, resulting in no market price.<sup>9</sup> This default pricing was approved by the PUCO as an equitable payment by the FirstEnergy to potential participants in its program.<sup>10</sup> These higher prices will render residential solar projects more economically feasible for participating customers.

The incentive amount for wind-generated RECs proposed by the Companies is \$0.275 per kWh. AEP bases this price on a discount rate extended over twenty years. The Commission should adjust the price per kWh for customer wind generation to \$0.55 per kWh. Again, this brings the REC price for wind to within 80% of the discounted alternative compliance payment. As noted, the adjusted price provides a more equitable and attractive return to Program participants.

Another feature of the proposed Program is that the Companies retain the title to the RECs generated by customers for a 20-year period.<sup>11</sup> This means that Program participants agree to sell generated RECs exclusively to the Companies for this time period. OCC recommends that the PUCO should shorten this time frame to 15 years, in order to align the value of the RECs that AEP will receive with the amount the customer

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<sup>9</sup> *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of Residential Renewable Energy Credit Program Agreement*, Case No. 09-551-EL-UNC, Second Amended Application, Exhibit 1 at pp. 2-3 (September 11, 2009).

<sup>10</sup> *Id.*, Finding and Order at 4 (September 23, 2009).

<sup>11</sup> *Id.*, Application at 3.

receives as an incentive. This change, coupled with the increase in the incentive payment, will provide a comfort level that would encourage additional customer participation.

OCC also recommends a change in the ownership requirement. The Companies' proposal currently requires that the customer must own the system in order to participate.<sup>12</sup> The Commission should eliminate this requirement and allow third-party ownership of a system. Third-party ownership agreements, such as leasing a system, provide customers with more options to finance renewable energy projects. Limiting these REC purchases to systems owned by the customer will hinder the development of new solar businesses in Ohio. For this reason, third party ownership was recently instituted in the State Energy Grant Fund,<sup>13</sup> and it is also a feature of other REC agreements.<sup>14</sup>

In addition, the PUCO should provide clarification that the Program is open to customers who may purchase their generation from an alternative supplier. Any customer participating in the Program should still be able to shop for an alternative generation supplier as that option becomes available in the Companies' service territories. Otherwise, this requirement appears to act as a barrier to competition. Whether or not the customer takes service under a Standard Service schedule, in which the Applicants supply generation, or under one of the Companies' Open Access Distribution schedules

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<sup>12</sup> Id., Application at 3.

<sup>13</sup> State of Ohio, Department of Development, Residential Grant Fund Sample Agreement, [http://www.development.ohio.gov/cms/uploadedfiles/CDD/OEE/NOFA\\_09-04\\_\\_Appendix%20D%20brand%20lite%20-%20take%202.pdf](http://www.development.ohio.gov/cms/uploadedfiles/CDD/OEE/NOFA_09-04__Appendix%20D%20brand%20lite%20-%20take%202.pdf)

<sup>14</sup> *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of Residential Renewable Energy Credit Program Agreement*, Case No. 09-551-EL-UNC, Second Amended Application, Exhibit 1 at page 1 (September 11, 2009).



that permit shopping, the PUCO must ensure that all AEP distribution customers are eligible to participate in the Program.

Finally, the PUCO should encourage AEP to eliminate the proposed maximum incentive limit and annual funding caps proposed in the Table on page five of the Application. The current proposal may limit customer development of a larger system, because the caps as presented provide incentives only for systems up to 8000 watts (\$12,000.00 maximum / \$1.50 per watt = 8000 watts). Removing these limits and caps will encourage greater residential renewable energy development and business in Ohio.

#### **IV. CONCLUSION**

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio residential consumers, the Commission should grant OCC's Motion to Intervene. In order to maximize the potential of AEP's Renewable Energy Technology Program, the Commission should institute the changes as recommended above.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

*/s/ Christopher J. Allwein*

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this *Motion to Intervene and Opposition to Certain Elements of the Applicants' Proposal by the Office of the Ohio Consumers' Counsel*, was served on the persons stated below *via* regular U.S. Mail Service; postage prepaid this 14th day of January 2010.

/s/ Christopher J. Allwein  
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Summary: Motion Motion to Intervene and Opposition to Certain Elements of The Applicants's Proposal by the Office of the Ohio Consumers' Counsel electronically filed by Mrs. Mary V. Edwards on behalf of Allwein, Christopher J. Mr. and The Office of the Ohio Consumers' Counsel