

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Ohio Power Company for Approval)	
of its Renewable Energy Credit)	Case No. 09-1873-EL-ACP
Purchase Offer Program)	

In the Matter of the Application of)	
Columbus Southern Power Company)	Case No. 09-1874-EL-ACP
for Approval of its Renewable Energy)	
Credit Purchase Offer Program)	

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in these cases where the value of Renewable Energy Credits ("RECs") generated by residential customers will be affected by the proposed utility purchase agreement.¹ 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 purchase program that will place a specific value on RECs generated by existing customer-sited solar photovoltaic and small wind facilities, presented in these cases, developed from discussions between the Companies and OCC. But in accordance with Paragraph V.3 of the Stipulation and Recommendation

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

(“Stipulation”) pending in Case Nos. 09-1089-EL-POR and 09-1090-EL-POR,² OCC presents its opposition to specific components of AEP’s proposed Renewable Energy Credit Purchase Program contract that will diminish the value of customer-generated RECs. 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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² *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

I. INTRODUCTION

These cases involve the review of the reasonableness and lawfulness of AEP's proposed Renewable Energy Credit Purchase 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 a purchase program that would appropriately reimburse customers for RECs generated by existing customer-sited residential solar and wind facilities. Most of the proposed elements in the Program further Ohio's goal of encouraging small renewable energy facilities,³ and creating opportunities for the Companies to purchase RECs that may be applied towards the required statutory benchmarks presented in Ohio Revised Code 4928.64. But the PUCO should make some modifications, presented in the comments

³ R.C. 4928.02(C)

below, to ensure the reimbursement received by customers for generated RECs is adequate.

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 reimbursement to residential customers for renewable energy generation. 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 adequately reimburse customers for the RECs produced by customer-

sited generation facilities. 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.

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 the case 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 residential customers will be offered compensation for RECs created by their existing wind and solar systems.

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.⁴

III. COMMENTS

OCC and the Applicants engaged in productive discussions stemming from certain provisions in the AEP Portfolio Plan stipulation.⁵ Reserved to OCC pursuant to the stipulated agreement was the right to file opposition to any aspects of the Companies' proposal that are unreflective of OCC's position.⁶ 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 customers participating in the Program.

The proposed REC purchase prices listed in the Application must be adjusted by the PUCO in order for residential customers to be adequately compensated. The proposed price for solar RECs is \$260.00.⁷ The proposed small wind REC price is \$29.00.⁸ Both prices would extend through 2011. The Commission should adjust these

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

⁵ *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).

⁶ *Id.*

⁷ *In the Matter of the Application of Ohio Power Company for Approval of its Renewable Energy Credit Purchase Offer Program*, Case No. 09-1873-EL-ACP, et al, Application at 3 (November 30, 2009).

⁸ *Id.*, Application at 3.

amounts upward. The price for each solar REC should be changed to \$307.00. The price for each small wind REC should be \$36.00.

These prices provide a more equitable incentive for customers, because they bring the REC value closer to 80% of the 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.⁹ This default pricing was approved by the PUCO as an equitable payment by the FirstEnergy to potential participants in its program.¹⁰ These modified prices will provide a more equitable reimbursement for customer-generated RECs.

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

⁹ *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).

¹⁰ *Id.*, Finding and Order at 4 (September 23, 2009).

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. The Commission should adjust the proposed REC prices for the Program as recommended in order to provide customer generators adequate reimbursement for RECs produced by their facilities.

Respectfully submitted,

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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.

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Summary: Motion Motion to Intervene and Opposition to Certain Elements of the Applicants' 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