

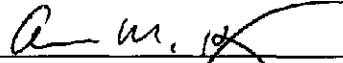
residential distribution customers. OCC appreciates that Duke has revised its program to provide a better economic incentive to customers to defray some of the overall investment costs in renewable energy. However, Duke continues to refuse to allow shopping customers to participate for no rationale reason except to discourage shopping. The Commission should require Duke to provide a REC program that is available to all of its customers in its distribution service territory. Using the already approved Ohio Edison Company's, The Toledo Edison Company's and The Cleveland Electric Illuminating Company's (together "FirstEnergy") REC programs³ would be acceptable to accomplish the objectives for which OCC negotiated in the ESP case.⁴ Given Duke's unwillingness to provide a lawful and reasonably workable renewable energy credit program, the Commission should also order Duke to file the new program within one week of the date of its ruling in this matter. Finally, in order not to penalize the public for Duke's failure to comply with the terms of the Stipulation, Duke should be required to extend the program for three years from the date of the Commission's approval of its revised program. The reasons for granting OCC's Motions are set forth in greater detail in the attached Memorandum in Support.

³ *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 Purchase Program Agreement*, Case No. 09-551-EL-UNC, Application for Approval of Residential Renewable Energy Credit Purchase Program Agreement (June 30, 2009) at 2, ¶ 3. Approved, Finding and Order (September 23, 2009).

⁴ Although OCC has heard recently from renewable resource contractor that a fixed payment over the life of the contract may be necessary to obtain sufficient financing to truly incent residential customers to participate.

Respectfully submitted,

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc. For Approval of a) Case No. 08-920-EL-SSO
Residential Solar Renewable Energy) Case No. 09-834-EL-REN
Credit Purchase Program Agreement and)
Tariff.)

MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Commission should quickly move to rule on Duke's residential REC program because it is currently eight months past the time Duke indicated it would provide a residential REC program. In addition, the Commission should require the Company to revise the program because the program as designed will be anticompetitive and discriminatory.

The Commission should extend the eligibility requirements of the program to include shopping customers. As currently proposed, Duke's REC program is only available to customers who purchase generation service from Duke and do not switch. This is discriminatory. The program needs to be available to all Duke customers so that Duke will be accountable to the customers that must pay for the REC program. This will also enable Duke to better meet its renewable compliance requirements under R.C.

4928.64.

II. THE COMMISSION SHOULD RULE QUICKLY ON DUKE'S APPLICATION BECAUSE THE TARIFF IS OVERDUE BY EIGHT MONTHS

Under the ESP Stipulation,⁵ the Company agreed to include a residential REC program in its REC tariff by June 2009.⁶ Contrary to these requirements, Duke did not file its application for approval until September 21, 2009 and filed an amended application on October 8, 2009. On the same day, OCEA filed comments requesting the Commission to revise the program to make the program more effective, especially since Duke will recover all of the program's costs from customers. Duke then filed a second amended REC application on February 19, 2009.

In addition, Duke must meet significant renewable benchmarks - including for solar - throughout the next 15 years under R.C. 4928.64(B)(2) and the residential REC purchasing program is one way in which Duke can meet those requirements under R.C. 4928.65. Because the residential REC program is already overdue by more than eight months, the Commission should move quickly to rule on the application and in order to compensate customers for the lateness of its filing, the Commission require that the program be effective for three years from the date of removal.

III. THE COMMISSION SHOULD REQUIRE DUKE TO PURCHASE RECS FROM RESIDENTIAL CUSTOMERS WHO PURCHASE GENERATION FROM OTHER SUPPLIERS BASED UPON DUKE'S COMMITMENT IN THE ESP STIPULATION

Under the Stipulation Duke agreed to:

Include a R.C. 4928.64 residential REC purchase program by June

⁵ *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., Stipulation and Recommendation (October 27, 2008).

⁶ *Id.* at 37, ¶31.

30, 2009. Upon inquiry by a consumer considering the installation of renewable energy generation at the consumer's site, DE-Ohio shall make information available to the consumer on net metering, interconnection and the REC purchase program.⁷

Accordingly, under the Stipulation Duke has a responsibility to make information available to all consumers on the REC purchase program and to allow all consumers to participate.

Duke's application will not permit residential customers who switch to a supplier of generation other than Duke to participate in the REC program.⁸ This provision is contrary to Duke's commitment in the Stipulation to make information about the REC purchase program information available to "a consumer considering the installation of renewable energy generation at the consumer's site."⁹ Nowhere in the Stipulation did it limit—as Duke has done—the customers who would be eligible for the REC purchase program to non-shopping customers.

Duke attempts to argue that they are only required to inform shopping customers about the REC purchase program and that Duke is not required to offer the program to shopping customers.¹⁰ This is nonsensical if the shopping customer is not able to avail himself of the program. The only purpose for informing shopping customers about the REC purchase program when they are not permitted to participate is anticompetitive. Informing shopping customers about the REC program and informing shopping customers that they are only able to participate if they return to Duke's standard service offer will discourage shopping customers from purchasing generation from alternative

⁷ ESP Stipulation at 37, ¶31.

⁸ Application at 1 and Exhibit 1 at 5.

⁹ Stipulation at 37.

¹⁰ Memo Contra at 4-5.

suppliers. Moreover, any customer who relies on the REC program to help cover the costs of a renewable energy project will be unable to later switch to another generation provider if doing so will result in the payment of RECs. Duke should not be allowed to engage in this kind of anti-competitive behavior.

The FirstEnergy programs,¹¹ approved by the Commission, allows all customers to participate. The Commission should also require Duke's program to allow all customers to participate, especially because the Duke ESP Stipulation requires Duke to make the residential REC program available to all consumers.

Additionally, the program that Duke has designed is unlawful and inconsistent with several state policies articulated under S.B. 221. R.C. 4928.02(F) states that it is the policy of the state to do the following through this state:

Ensure that an electric utility's transmission and distribution systems are available to a customer-generator or owner of distributed generation, so that the customer-generator or owner can market and deliver the electricity it produces.

If Duke is unwilling to allow shopping customers to participate in its residential REC purchasing program, it is unwilling to facilitate those customers' marketing and delivering of the electricity that they produce. This provision of the program interferes with the state policy expressed in R.C. 4928.02(F).

¹¹ *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 Purchase Program Agreement*, Case No. 09-551-EL-UNC, Application for Approval of Residential Renewable Energy Credit Purchase Program Agreement (June 30, 2009) at 2, ¶ 3. Approved, Finding and Order (September 23, 2009).

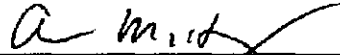
IV. CONCLUSION

In the ESP process, OCC negotiated in good faith with the objective of having a reasonable, workable and certainly lawful REC program put in place. Instead of complying with what ought to have been an easy assignment for a company that touts its ideological support for renewable energy, this has turned into a battle marked by delay and unwillingness to fulfill the obligations of the settlement. When OCC entered into the settlement, OCC assumed that the resulting REC agreement would be lawful and workable. These were reasonable expectations that Duke failed to meet. Duke should not be rewarded for its actions and customers should not be penalized. The Commission should rule on Duke's residential REC program quickly because it is eight months overdue. Moreover the program was intended to extend for at least three of the ESP period

The Commission should require Duke to allow all residential customers, including shopping customers, to participate in the residential REC program as is the case in the FirstEnergy companies' program, approved by the Commission. These revisions to the Duke residential REC program will provide for an effective program that will better address the state's need for renewable energy resources and distributed generation as stated under R.C. 4928.02(J) and (K).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion for a Ruling and Revision of Duke's Second Amended Application*, was served on the persons stated below, via First Class U.S. Mail, postage prepaid, this 15th day of March 2010.



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