

**FILE**

12

RECEIVED-DOCKETING DIV

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

2010 APR 14 PM 4:09

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.	)	

**PUCO**

**REPLY COMMENTS  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL AND  
THE NATURAL RESOURCES DEFENSE COUNCIL AND THE OHIO  
ENVIRONMENTAL COUNCIL**

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

Ann M. Hotz, Counsel of Record  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
 10 West Broad Street, Suite 1800  
 Columbus, Ohio 43215-3485  
 (614) 466-8574 (Telephone)  
[hotz@occ.state.oh.us](mailto:hotz@occ.state.oh.us)

April 14, 2010

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.

Technician SM Date Processed APR 14 2010

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. INTRODUCTION .....	1
II. COMMENTS.....	2
A. In Order To Allow Residential Customers To Obtain Financing For Participation In The Residential REC Program The Commission Should Provide Participants Sufficient Assurance That They Will Receive A Sufficient And Reliable Stream Of REC Payments.....	2
B. The PUCO Staff's Recommendation That All Distribution Customers Should Be Permitted To Participate In Duke's REC Program Is The Only Fair And Reasonable Approach.....	4
III. CONCLUSION.....	6

**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. )

---

**REPLY COMMENTS  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL AND  
THE NATURAL RESOURCES DEFENSE COUNCIL AND THE OHIO  
ENVIRONMENTAL COUNCIL**

---

**I. INTRODUCTION**

The Office of the Ohio Consumers' Counsel ("OCC"), the Natural Resources Defense Council ("NRDC"), and the Ohio Environmental Council ("OEC") file the following reply comments with regard to Duke Energy Ohio, Inc.'s ("Duke" or "Company") proposed residential solar renewable energy credit purchase program. The program proposed by Duke for approval of a residential renewable energy credit ("REC") program is insufficient in that it fails to conform with the settlement terms negotiated by Duke and members of OCEA in the electric security plan ("ESP") case.<sup>1</sup> The expectation that parties negotiated in good faith to obtain was a workable program filed no later than June 30, 2009 and in place shortly thereafter. This proposal simply does not work.

On September 21, 2009, Duke filed its Application for the approval of a residential REC program as provided for under the ESP Stipulation. On October 2, 2009,

---

<sup>1</sup> *In the Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO, Stipulation (October 27, 2008). OCC has discussed this issue at length in previous filings in this case.

the OCC moved to intervene and on October 8, 2009, Duke filed an amended application and OCEA filed Comments on Duke's application. On January 15, 2010, the OCC and the NRDC filed a Motion for Ruling and Revision of the application and on January 29, Duke filed a Memorandum Contra the motion. On February 8, 2010, OCC and NRDC filed a Reply to Duke's Memorandum Contra. On February 19, 2010, Duke filed a Second Amended Application. On March 15, 2010, OCC filed a Motion for Ruling and Revisions of Duke's second amended application. On March 22, 2010, the Commission issued an Entry establishing a procedural schedule and revising the docket number. On April 5, 2010, the Staff ("Staff") of the Public Utilities Commission of Ohio ("Commission" or "PUCO") filed Comments. The OCC, NRDC and OEC file these Reply Comments in response to the Staff's Comments.

## II. COMMENTS

### A. **In Order To Allow Residential Customers To Obtain Financing For Participation In The Residential REC Program The Commission Should Provide Participants Sufficient Assurance That They Will Receive A Sufficient And Reliable Stream Of REC Payments.**

The Staff recommends that the purchase price for 2010 REC acquisitions shall be set at a price equal to the percentage of the penalty set forth in R.C. 4928.64(C)(1)(a).<sup>2</sup> For subsequent years the Staff recommends that the REC payments should be based on current market prices.<sup>3</sup> It is axiomatic that the more certainty that can be interjected into the price residential customers will receive for the sale of their RECs, the more likely they are to obtain financing for their investment in a solar project. OCC has heard from solar and renewable

---

<sup>2</sup> Staff Comments at 2¶b.

<sup>3</sup> Id. at 3¶c.

contractors who are concerned that without a guaranteed revenue stream residential customers will not receive sufficient financing to participate. This problem has become particularly salient since the recession and banking crisis that has made loans very difficult to obtain.

In order to try to overcome the obstacle of a lack of financing, the Commission should require Duke to make a full upfront payment to residential customer participants for all the RECs it will receive from the solar projects. The Ohio Power Company and the Columbus Southern Power Company (“AEP Companies”) have agreed to do so in their residential REC programs.<sup>4</sup> The AEP Companies set up this “up-front incentive” because of what it found in a 2008 survey:

The Companies learned from a 2008 survey of existing solar PV and small wind generators that a large majority indicated the offering of up-front incentives to off-set the initial costs was preferred over other arrangements. The availability of the 30% federal tax credit and Ohio Energy Office’s grant program (those OEO incentives are reflected in Attachment A) presented an opportunity that could be leveraged. Although a customer would receive further savings under the Companies’ net Energy Metering Service Schedule, a simple break-even analysis would take approximately 35 years. Given the life of the equipment is typically projected to be 20 years, the proposed Renewable Energy Technology Programs is designed to fill the gap over that period.<sup>5</sup>

A second best way to address the development is to ensure a guaranteed stream of payments throughout the 15 years of the program. The annual payment amount should be calculated at 80% of the penalty of R.C. 4928.64(C)(1)(a). This

---

<sup>4</sup> *In the Matter of the Application of Columbus Southern Power Company for Approval of its Renewable Energy Technology Program*, Case No. 09-1872-EL-ACP, Application and Request for Expedited Consideration (November 30, 2009) at 4, ¶9.

<sup>5</sup> *Id.*

would be a lawful alternative to the 2010 percentage of the R.C. 4928.64(C)(1)(a) penalty and the market price of RECs for the following years.

According to the contractors, banks are not willing to give residential customers loans unless the stream of revenue that the customer will get is a steady amount. A stream of revenue based upon the market price of RECs would not provide a sufficiently steady stream of revenues because the amount of revenues each year is speculative and cannot be known with any certainty. Rather, the banks are insisting upon a guaranteed stream of revenue for the 15-year life of the program that can be quantified.

In addition, the appropriate more effective payment for a REC should be based upon 80% of the penalty for the length of the contract, rather than a lower percentage, to further ensure that residential customers will be able to get loans for the projects.

**B. The PUCO Staff's Recommendation That All Distribution Customers Should Be Permitted To Participate In Duke's REC Program Is The Only Fair And Reasonable Approach.**

In its Comments the Staff stated:

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.<sup>6</sup>

The Staff's position in this matter is most practical and most consistent with the State policies articulated under R.C. 4928.02.

In particular, the Staff's recommendation for allowing all distribution customers

---

<sup>6</sup> Staff Comments at 3-4.

to participate is consistent with R.C. 4928.02(F) which states that it is the policy of the state to encourage distributed generation sources throughout 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 fulfill the requirement of R.C. 4928.02(F) to facilitate those customers' marketing and delivering of the electricity that they produce. For this reason, the Commission should adopt the approach recommended by the Staff.

Requiring a distribution customer to also be a generation customer of Duke in order to take advantage of the REC purchase program is anti-competitive. It means that any customer that installs a solar panel cannot participate in a government aggregation program or purchase individually from a retail supplier if it can get a lower generation price for fear of losing the REC payments. It is unjust and unreasonable for Duke to exercise its monopoly position to constrain its customers from participating in the market. Whether the customer purchases generation from Duke or not, Duke will still need to acquire RECs. The purpose of this program is to foster the development of renewable energy and to provide tools for customers to manage their electric costs. By requiring the purchase of generation from Duke as a condition precedent to obtaining a REC contract, Duke will discourage the very thing this program is designed to do. Moreover, any customer who has a contract with a supplier will be precluded in participating in the program which also is anti-competitive. Duke should not be permitted to discriminate

among its distribution customers in terms of who can access a program or not. To do so, would violate ORC 4905.35.

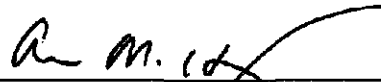
### III. CONCLUSION

In order for the Commission to most effectively encourage residential customers to participate in the Duke REC program and to most effectively encourage distributed generation under R.C. 4928.02(F), the Commission should order Duke to provide residential customers with an up-front incentive payment that would be calculated to be 80% of the penalty under R.C. 4928.64(C)(1)(a) for 15 years. The second most effective means of ensuring that residential customers are able to obtain loans to participate in Duke's residential REC program is to require Duke to provide residential customers guaranteed annual payments of 80% of the penalty under R.C. 4928.64(C)(1)(a), rather than a percentage of the penalty the first year and then the market rate of RECs for the subsequent years.

Additionally, the only fair and reasonable eligibility requirements for residential customers are those recommended by the Staff—that all of Duke's distribution customers with certified projects be eligible to participate.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



---

Ann M. Hotz, Counsel of Record  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
(614) 466-8574 (Telephone)  
[hotz@occ.state.oh.us](mailto:hotz@occ.state.oh.us)



*Henry W. Eckhart*

---

Henry Eckhart  
Attorney at Law  
NATURAL DEFENSE RESOURCE  
COUNSEL  
50 W. Broad Street, # 2117  
Columbus, Ohio 43215  
[henryeckhart@aol.com](mailto:henryeckhart@aol.com)

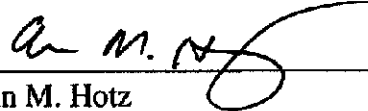
*Nolan Moser AMH.*

---

Nolan Moser  
OHIO ENVIRONMENTAL COUNCIL  
1207 Grandview Avenue, Suite 201  
Columbus, Ohio 43212-3449  
[nmoser@theoec.org](mailto:nmoser@theoec.org)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of these *Reply Comments* was served on the persons stated below, via First Class U.S. Mail, postage prepaid, this 14th day of April, 2010.



Ann M. Hotz  
Assistant Consumers' Counsel

**SERVICE LIST**

Amy B. Spiller  
Duke Energy Ohio, Inc.  
2500 Atrium II, P.O. Box 961  
Cincinnati, OH 45201  
[amy.spiller@duke-energy.com](mailto:amy.spiller@duke-energy.com)

Duane W. Luckey  
Attorney General's Office  
Public Utilities Section  
180 East Broad Street, 9<sup>th</sup> Floor  
Columbus, OH 43215  
[Duane.luckey@puc.state.oh.us](mailto:Duane.luckey@puc.state.oh.us)

Elizabeth H. Watts  
Duke Energy Ohio, Inc.  
155 East Broad St., Ste. 2100  
Columbus, OH 43215  
[elizabeth.watts@duke-energy.com](mailto:elizabeth.watts@duke-energy.com)

Craig G. Goodman  
National Energy Marketers Association  
3333 K. Street, NW, Suite 110  
Washington, DC 20007  
[cgoodman@energymarketers.com](mailto:cgoodman@energymarketers.com)

David F. Boehm  
Michael L. Kurtz  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, OH 45202  
[dboehm@bkllawfirm.com](mailto:dboehm@bkllawfirm.com)  
[mkurtz@bkllawfirm.com](mailto:mkurtz@bkllawfirm.com)

Dave Rinebolt  
Colleen Mooney  
Ohio Partners for Affordable Energy  
231 West Lima Street, P.O. 1793  
Findlay, OH 45839-1793  
[drinebolt@aol.com](mailto:drinebolt@aol.com)  
[cmooney@columbus.rr.com](mailto:cmooney@columbus.rr.com)

Thomas J. O'Brien  
Sally W. Bloomfield  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215-4291  
[tobrien@bricker.com](mailto:tobrien@bricker.com)  
[sbloomfield@bricker.com](mailto:sbloomfield@bricker.com)

Sam Randazzo  
Lisa McAlister  
McNees, Wallace & Nurick LLC  
21 East State Street, 17<sup>th</sup> Fl.  
Columbus, OH 43215  
[srandazzo@mwncmh.com](mailto:srandazzo@mwncmh.com)  
[lmcalister@mwncmh.com](mailto:lmcalister@mwncmh.com)

Barth E. Royer  
Bell & Royer Co. LPA  
33 South Grant Avenue  
Columbus, OH 43215-3927  
[barthroyer@aol.com](mailto:barthroyer@aol.com)

M. Howard Petricoff  
Stephen M. Howard  
Vorys, Sater, Seymour And Pease LLP  
52 East Gay S., P. O. Box 1008  
Columbus, OH 43216-1008  
[mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)  
[smhoward@vorys.com](mailto:smhoward@vorys.com)

Noel M. Morgan  
215 East Ninth Street, Suite 500  
Cincinnati, OH 45202  
[nmorgan@lascinti.org](mailto:nmorgan@lascinti.org)

Gary A. Jeffries  
Dominion Resources Services, Inc.  
501 Martindale Street, Suite 400  
Pittsburg, PA 15212-5817  
[gary.a.jeffries@dom.com](mailto:gary.a.jeffries@dom.com)

Douglas E. Hart  
Greater Cincinnati Health Council  
441 Vine Street, Suite 4192  
Cincinnati, OH 45202  
[dhart@douglasshart.com](mailto:dhart@douglasshart.com)

Langdon D. Bell  
Bell & Royer Company, LPA  
33 South Grant Avenue  
Columbus, OH 43215-3927  
[Lbell33@aol.com](mailto:Lbell33@aol.com)

*Attorney for Ohio Manufacturer's  
Association*

John Bentine  
Mark Yurick  
Chester, Willcox & Saxbe LLP  
65 E. State Street, Suite 1000  
Columbus, OH 43215-4213  
[jbentine@cwslaw.com](mailto:jbentine@cwslaw.com)  
[myurick@cwslaw.com](mailto:myurick@cwslaw.com)

Cynthia A. Fonner  
Senior Counsel  
Constellation Energy Group, Inc.  
550 W. Washington Street, Suite 300  
Chicago, IL 60661  
[cynthia.a.fonner@constellation.com](mailto:cynthia.a.fonner@constellation.com)

Nolan Moser  
The Ohio Environmental Council  
1207 Grandview Avenue, Suite 201  
Columbus, OH 43212-3449  
[nmoser@theOEC.org](mailto:nmoser@theOEC.org)

Bobby Singh  
Integrays Energy Services, Inc.  
300 West Wilson Bridge Road, Suite 350  
Worthington, OH 43085  
[bsingh@integraysenergy.com](mailto:bsingh@integraysenergy.com)

Robert P. Malloy  
The Village of Terrace Park  
Wood & Lamping, LLP  
600 Vine Street, Suite 2500  
Cincinnati, OH 45202  
[rpmalloy@woodlamping.com](mailto:rpmalloy@woodlamping.com)

Terrance O'Donnell  
Bricker & Eckler, LLP  
100 South Third Street  
Columbus, OH 43215-4236  
[todonnell@bricker.com](mailto:todonnell@bricker.com)

*Attorney for American Wind Energy  
Association, Ohio Advanced Energy*

Larry Gearhardt  
Ohio Farm Bureau Federation  
280 North High Street  
P.O. Box 182383  
Columbus, OH 43218-2383  
[lgearhardt@ofbf.org](mailto:lgearhardt@ofbf.org)

Mary W. Christensen  
Christensen, Christensen, Donchatz  
Kettlewell & Owens, Inc.  
100 East Campus View Blvd., Suite 360  
Columbus, OH 43235-4679  
[mchristensen@columbuslaw.org](mailto:mchristensen@columbuslaw.org)

Joseph Meissner  
Legal Aid Society of Cleveland  
1223 West Sixth Street  
Cleveland, OH 44113  
[JPMeissn@lasclv.org](mailto:JPMeissn@lasclv.org)

Henry W. Eckhart  
The Natural Resources Defense Council  
and The Sierra Club of Ohio  
50 West Broad Street, Suite 2117  
Columbus, OH 43215  
[henryeckhart@aol.com](mailto:henryeckhart@aol.com)

Douglas M. Mancino  
McDermott Will & Emery, LLP  
2049 Century Park East, Suite 3800  
Los Angeles, CA 90067-3218  
[dmancion@mwe.com](mailto:dmancion@mwe.com)