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In the Matter of the Application of Ohio Power Company for Approval of its Renewable Energy Credit Purchase Program.	) ) ) )	Case No. 09-1873-EL-ACP
In the Matter of the Application of Columbus Southern Power Company for Approval of its Renewable Energy Credit Purchase Program.	) ) ) )	Case No. 09-1874-EL-ACP

## I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential utility consumers of the Columbus Southern Power Company ("CSP") and the Ohio Power Company ("OP") (together "AEP" or "Companies"), submits these comments after having reviewed AEP's Application for its Renewable Energy Credit ("REC") Purchase Program filed on November 30, 2009. These comments are being filed in response to the Public Utilities Commission of Ohio's ("PUCO" or "Commission") Entry issued on September 24, 2010. OCC file these comments to reflect its view as to how AEP should revise the REC purchase program as filed in order to benefit its residential utility consumers.

The framework of a satisfactory REC 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, was developed from discussions between the Companies and the parties. In accordance with Section V., paragraph 2 of the Stipulation and Recommendation (“Stipulation”) pending in Case Nos. 09-1089-EL-POR and 09-1090-EL-POR,<sup>1</sup> OCC presents their recommendations to improve specific components of AEP’s proposed REC purchase program contract that, as presented by the Companies, diminish the value of customer-generated RECs. The Stipulation reserved to parties the right to file opposition to any of the aspects of the Companies’ proposal that were not consistent with their position.<sup>2</sup>

OCC and AEP (along with other parties) have engaged in substantive and productive discussions to construct a REC purchase program and an incentive program that would appropriately encourage residential and small business customers to install distributed generation equipment. Our comments reflect the outcomes of these dialogues. Most of the proposed elements in the REC program further Ohio’s goal of encouraging distributed generation renewable energy facilities.<sup>3</sup> Furthermore, the program creates opportunities for the Companies to purchase RECs that may be applied towards the required statutory benchmarks presented in R.C. 4928.64. However, the PUCO should make some modifications, as presented in the comments below, to ensure the residential renewable distributed generation programs are successful.

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<sup>1</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>2</sup> Id.

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

## II. COMMENTS

### A. **The REC Purchase Program Without An Incentive Based REC Payment Will Not Provide Sufficient Encouragement to Develop the Residential Renewable Distributed Generation Market in the AEP Service Territory.**

As part of the Stipulation filed in AEP's portfolio plan case, AEP agreed to file this REC purchase program application along with a "Renewable Energy Technology Program" that would be an "incentive-based REC program for solar photovoltaic and small wind resources to encourage residential and non-residential customers to install renewable energy resource facilities on the customer premises, subject to Commission approval of design and cost recovery."<sup>4</sup> This REC program provided for in the Stipulation and approved by the Commission, is a separate and distinct program from the Renewable Energy Technology Program ("RET") program.<sup>5</sup> Simply allowing for a REC purchase program will not provide for an "incentive-based REC program." An incentive-based REC program clearly implies the offering of incentives prior to the installation of a renewable generation system.

If the Commission does not provide for the "incentive-based REC program" addressed in the Stipulation, along with a REC purchase program, this REC purchase program must be modified. Otherwise, the REC purchase program will not facilitate the development of a residential REC market.

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<sup>4</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, Stipulation and Recommendation at Section V., paragraph 2 (November 12, 2009).

<sup>5</sup> The RET program is provided for under Section V., paragraph 2, while the REC program is provided for under Section V., paragraph 3.

**B. The REC Purchase Price Should Be 75% of The Alternative Compliance Payment.**

The proposed REC purchase payment amount listed in the Application is only 65% of the Alternative Compliance Penalty (“ACP”). This purchase amount will not be sufficient to encourage residential customers to participate. Rather, a payment of 75% of the ACP would be necessary to encourage participation. Accordingly, the Commission should adjust the payment amount.

AEP will not be able to persuade customers to invest in renewable distributed generation or to assist customers in obtaining the financing they need to make that investment unless it pays for RECs at an amount of 75% of the ACP. In case number 09-551-EL-UNC, a case establishing REC purchase prices to be paid to FirstEnergy Ohio distributed generation customers for RECs, the Commission approved this value to be employed when no market price could be established through an RFP.<sup>6</sup> The utilities’ application noted that the default purchase price would be “an established alternative payment.”<sup>7</sup> This alternative payment value, presented in the Application, was 80% of the ACP.<sup>8</sup> The Commission approved the Application, including the alternative payment schedule, noting that the schedule, coupled with the utilization of a market-based price when available, “should generally be reflective of existing market conditions.”<sup>9</sup> In

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<sup>6</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 Purchase Program Agreement*, Case No. 09-551-EL-REN, Second Amended Application at 3 (Sept. 14, 2009).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at Attachment B. Using the price stated in the attachment for 2009 (\$36) and dividing by the 2009 value of the ACP (\$45), the value of the RECs is 80% of the current ACP.

<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 Purchase Program Agreement*, Case No. 09-551-EL-UNC, Finding and Order at 4 (Sept. 23, 2009).

addition, the Commission stated that the program as a whole, which included the default REC schedule, is “reasonable and consistent with Sections 4928.64 and 4928.65, Revised Code.”<sup>10</sup>

In another similar case, the utility proposed, and the Commission Staff recommended the use of 75% of the ACP value for solar REC purchases.<sup>11</sup> In the Finding and Order, the PUCO noted that the Utility agreed to purchase customer-generated RECs “at a price equal to 75 percent of the penalty set forth in Section 4928.64(C)(1)(a), Revised Code....”<sup>12</sup> Thus, using 75% of the ACP is a practice which has been employed by the Commission in recent cases, and should be employed here. These modified incentive amounts will provide a more equitable reimbursement for customer-generated RECs.

**C. The Program Should be Lengthened to Provide Payments Over A Period of 15 Years.**

In order to develop a meaningful, effective REC purchase program AEP should commit to purchase RECs from the customers for a period of at least 15 years as provided for in Duke Energy-Ohio’s and the First Energy Companies’ REC programs.<sup>13</sup> This is an important element as it provides the incentive for customers to participate because implementing a solar project for an individual residential customer is much more risky

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<sup>10</sup> Id., Finding and Order at 4.

<sup>11</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of a Residential Solar Renewable Energy Credit Purchase Program Agreement and Tariff*, Case No. 09-834-EL-ACP, Finding and Order at 3 (July 29, 2010). and *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, Finding and Order at 2 (Sept. 23, 2009).

<sup>12</sup> Id., Finding and Order at 1.

<sup>13</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its Renewable Energy Credit Purchase Offer Program*, Case No. 09-834-EL-ACP, Finding and Order at §10 ¶(b) (July 29, 2010).

than for a business. Yet, the residential customers should be encouraged to implement solar projects because there is an urgent social need to develop all available renewable generation sources in order to reduce society's dependence on the nonrenewable fuels as recognized under R.C. 4928.02(J):

It is the policy of this state to do the following throughout this state:

(J) Provide coherent, transparent means of giving **appropriate incentives** to technologies that can adapt successfully to potential environmental mandates. (Emphasis added.)

The General Assembly also promoted distributed generation resources to reduce society's dependence on constrained transmission resources under R.C. 4928.02(K):

It is the policy of this state to do the following throughout this state:

(K) Encourage implementation of distributed generation **across customer classes** through regular review and updating of administrative rules governing critical issues such as, but not limited to, interconnection standards, standby charges, and net metering. (Emphasis added.)

Moreover, the Commission should require AEP to provide the same incentive to residential customers in its residential REC program that Duke is under R.C. 4928.64(D)(1):

The commission annually shall submit to the general assembly in accordance with section 101.68 of the Revised Code a report describing the compliance of electric distribution utilities and electric services companies with division (B) of this section any strategy for utility and company compliance or for encouraging the use of alternative energy resources in supplying this state's electricity needs in a manner that considers available technology, costs, job creation, and economic impacts. The commission shall allow and consider public comments on the report prior to its submission to the general assembly. Nothing in the report shall be binding on any person,



including any utility or company for the purpose of its compliance with any benchmark under division (B) of this section, or the enforcement of that provision under division (C) of this section.

A residential REC program that gives meaningful incentives to residential customers to participate is one of the best ways to encourage “the use of alternative energy resources in supplying this state’s electricity needs in a manner that considers available technology, costs, job creation and economic impacts.” A robust response to AEP’s residential REC program is necessary to increase the use of alternative energy resources in the AEP service territory, to develop the market for distributed generation in the AEP service territory, and to increase employment in the AEP service territory. Few residential customers will respond to the program AEP proposes because it provides no meaningful incentive for them to incur the substantial expense. Accordingly, the Commission should revise AEP’s program to better encourage participation as intended under S.B. 221.

#### **D. Eligibility Requirements**

##### **1. Shopping Customers Should be Eligible.**

The Commission should provide clarification that the Program is open to customers who take service from AEP either under its standard service offer or under its open access distribution schedules who 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 acts 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. This clarification would be consistent with the Commission's order in a similar program filed by Duke Energy Ohio.<sup>14</sup>

## **2. Customers Who Lease the Renewable Distributed Generation Facilities From Installers Should Be Eligible.**

In order to adequately jump-start the renewable distributed generation facilities in the residential sector and to expand renewable distributed generation related employment in Ohio, the Commission should permit residential customers who lease the facilities from installers to participate in the program. OCC have had communications with renewable distributed generation installation companies that have indicated that they will not enter the Ohio market to install facilities unless such a leasing provision is accepted by the Commission.

OCC understand that, in the event of a system failure, AEP would need to have a contractual obligation with the immediate customer to recover any incentive paid for which the RECs were not received. This contractual obligation could be created between the customer and AEP if the customer retains ownership for the RECs produced, while the installer would retain ownership of the facilities. Therefore, we recommend a change from the requirement that the customer must be owner of that the system to the customer must be the owner of the RECs.

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<sup>14</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of a Residential Solar Renewable Energy Credit Purchase Program Agreement and Tariff*, Case No. 09-934-EL-ACP, Finding and Order (July 29, 2010).

### **E. Program Length And Reporting Requirements**

Because AEP has not been able to implement this program as early as originally proposed, on January 1, 2010, AEP should be required to implement the initial program no later than 30 days from the Commission's decision in this case. The initial program should be offered until December 31, 2011 or until the total \$2.5 million allocated towards this program per utility is expended, whichever comes later.

During the initial period of the program, AEP should be required to file quarterly updates regarding the success of the program with the Commission. The Commission should order AEP to implement a follow-up program with input from other interested parties no later than August 31, 2011 so as to avoid any potential stoppage of the program.

If the Commission is reluctant to order AEP to implement a follow-up program at this time, the Commission should, at a minimum, order AEP to maintain the initial program for at least a period of two years after the starting date as it was originally stipulated to implement a full two year REC purchase program for residential and non-residential customers in the Stipulation.<sup>15</sup>

### **III. CONCLUSION**

OCC file these comments as provided for by the Commission's Entry in this case on September 24, 2010. OCC approves of the general structure of the AEP REC program. However, the Commission should adjust the proposed REC purchase payment

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<sup>15</sup> Stipulation at Section V., paragraph 3.

amounts for the Program as recommended in order to provide customer generators sufficient encouragement to produce RECs through distributed generation. Additionally, the Commission should require that AEP guarantee payments to participants over a period of 15 years. The Commission should also clarify that shopping and non-shopping customers of the AEP service territory should be permitted to participate, along with 3<sup>rd</sup> party leasing customers as described above, and that the REC purchase program is available to residential and small business customers for a full two years.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

/s/ Ann M. Hotz

Christopher J. Allwein, Counsel of Record

Ann M. Hotz

Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

(614) 466-8574 – Telephone

[allwein@occ.state.oh.us](mailto:allwein@occ.state.oh.us)

[hotz@occ.state.oh.us](mailto:hotz@occ.state.oh.us)

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of these *Comments by the Office of the Ohio Consumers' Counsel*, was served on the persons stated below *via* regular U.S. Mail Service; postage prepaid this 8th day of October 2010.

/s/ Ann M. Hotz

Ann M. Hotz  
Assistant Consumers' Counsel

### **SERVICE LIST**

Selwyn J. Dias  
Ohio Power Company  
88 East Broad Street, Suite 800  
Columbus, Ohio 43215

Samuel C. Randazzo  
McNees Wallace & Nurick, LLC  
21 East State Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43215

Steven T. Nourse  
American Electric Power Service Corp.  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, Ohio 43215

William Wright  
Assistant Attorney General  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, Ohio 43215

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Summary: Comments Comments by the Office of the Ohio Consumers' Counsel electronically filed by Mrs. Mary V. Edwards on behalf of Hotz, Ann M. Ms. and The Office of the Ohio Consumers' Counsel