

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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

FINDING AND ORDER

The Commission finds:

- (1) Ohio Power Company (OP) and Columbus Southern Power Company (CSP) (jointly, AEP-Ohio or Companies) are public utilities as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission.
- (2) Section 4928.64, Revised Code, requires AEP-Ohio to meet certain renewable energy resource benchmarks that may include the use of renewable energy credits (RECs).
- (3) On November 30, 2009, OP and CSP filed applications for approval of a REC purchase program to assist the Companies in meeting the alternative energy resource standards pursuant to Section 4928.64, Revised Code. In accordance with the requirements of Section 4928.65, Revised Code, electric distribution utilities may use RECs to comply with the renewable energy resource standards. In the applications, the Companies state that they have undertaken efforts to comply with the alternative energy resource (AER) portfolio standards, including the purchase of RECs as permitted by Section 4928.65, Revised Code, and the Commission's rules at Chapter 4901:1-40, Ohio Administrative Code. AEP-Ohio notes that the Stipulation in *In the Matter of the Application of Columbus Southern Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration*, Case No. 09-1089-EL-POR, and *In the Matter of the Application of Ohio Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration*, Case No. 09-1090-EL-POR (portfolio plan cases) permits prudently incurred costs of the REC purchase program to be recovered through each company's respective fuel

adjustment clause (FAC) mechanism.<sup>1</sup> The Companies further assert that the proposed REC purchase program is consistent with the Companies' electric security plan as modified and adopted by the Commission in *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO and *In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan; and an Amendment to its Corporate Separation Plan*, Case No. 08-918-EL-SSO (AEP-Ohio 2008 ESP cases).<sup>2</sup> AEP-Ohio notes that the Companies have secured means to meet the applicable in-state renewable benchmarks for 2010 and 2011. The key components of the REC purchase program, as proposed, include:

- (a) The solar photovoltaic or small wind electric generating facility must be in the state of Ohio and interconnected with AEP-Ohio's electric grid. Only systems placed into service on or after January 1, 1998 qualify as REC resources.
- (b) Only energy generated since July 31, 2008 may qualify for REC calculation.
- (c) An agreement will be executed for the sale of RECs to AEP-Ohio.
- (d) The owner of each solar photovoltaic or small wind facility must apply and receive approval from the Commission as a certified Ohio renewable energy resource generating facility. Each facility must be registered with a REC tracking system where it is assigned a generation identification number. AEP-Ohio can take care of this registration on the owner's behalf.

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<sup>1</sup> *In re Columbus Southern Power Company*, Case No. 09-1089-EL-POR, et al., Application at 5 (November 12, 2009). OCC reserved the right to file in opposition to certain elements of the Companies' proposed REC purchase plan. The Commission modified and approved the Stipulation by Order issued May 13, 2010, as clarified by Entries on Rehearing issued July 14, 2010 and March 23, 2011 and in the Entry issued January 27, 2011.

<sup>2</sup> *In re AEP-Ohio*, Case No. 08-917-EL-SSO, et al., Opinion and Order (March 18, 2009); Entries on Rehearing (July 23, 2009, November 4, 2009).

- (e) The system requires a utility grade meter to measure the output, if equal to or greater than 6 kilowatt (kW). If the system is less than 6 kW, the current method for metering the energy produced must be approved by the Commission; otherwise, it does not qualify for the program.
  - (f) A REC Purchase Agreement must provide a minimum of 1,000 kilowatt hours (kWh) which equals 1 REC per year. For example, a 3 kilowatt-dc PV system may produce approximately 3,510 kWh per year, which equals 3 solar RECs per year.
  - (g) Only whole RECs will be purchased at the end of each calendar year with any fractional part reserved for the next calendar year's REC calculation.
  - (h) The REC Purchase Agreement term is two calendar years 2010 and 2011.
  - (i) The REC purchase program would pay \$260 per solar REC and \$29 per small wind REC generated between August 1, 2008 and December 31, 2011. To qualify for the pricing, a REC Purchase Agreement must be secured.
- (4) By entry issued September 24, 2010, Industrial Energy Users-Ohio (IEU-Ohio) and the Office of the Ohio Consumers' Counsel (OCC) were granted intervention in these matters. Pursuant to the September 24, 2010 entry, as revised by the entry issued on October 4, 2010, comments were due by October 8, 2010, and reply comments were due by October 15, 2010.
- (5) Comments were filed by OCC<sup>3</sup> and IEU-Ohio. Reply comments were filed by OCC, IEU-Ohio, Staff and the Companies.<sup>4</sup>

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<sup>3</sup> We recognize that OCC filed comments with the motion to intervene on January 14, 2010, and on October 8, 2010, with additional initial comments filed pursuant to the procedural schedule. The Commission will consider both filings OCC's initial comments.

- (6) In its initial comments, IEU-Ohio argues that the Commission should reject the application since AEP-Ohio admits that it has secured a means to meet applicable in-state solar photovoltaic benchmarks for 2010 and 2011. Further, IEU-Ohio alleges that the application fails to demonstrate that the REC program is necessary for AEP-Ohio to meet its non-solar renewable energy mandates. IEU-Ohio notes that under the approved ESP, CSP and OP defer FAC cost above the established rate caps and argues that approval of this application would result in additional deferrals, with interest, to be collected via a non-bypassable rider from customers commencing in 2012. In the alternative, IEU-Ohio proposes that the Commission instruct AEP-Ohio to address this issue with interested parties in the context of its next SSO.<sup>5</sup>

OCC retorts that IEU-Ohio's comments are short-sighted and inconsistent with the Commission's interpretation of Sections 4928.65 and 4928.66, Revised Code. OCC reasons that, although AEP-Ohio does not need customer generated RECs for meeting its benchmarks in the immediate future, that is not justification to oppose the program. OCC notes that the Commission has previously held that similar programs should not be discouraged as a result of potential overcompliance with electric utility mandatory benchmarks. Similarly, on this point, Staff, in its reply comments, notes that RECs can be banked for a period of time and, therefore, the RECs from AEP-Ohio's Wyandot Solar facility and RECs obtained through this program need not be used immediately.

Nor does OCC believe that it is necessary to delay the implementation of the REC program, as IEU-Ohio suggests, until the next SSO application. OCC claims that IEU-Ohio, who is not a signatory party to the portfolio plan cases Stipulation, mischaracterizes the intent of the signatory parties. The cost of the REC program is to be recovered, according to OCC, as part of the FAC, which will be discussed in the Companies next SSO proceeding.

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<sup>4</sup> AEP-Ohio filed reply comments to OCC's January 14, 2010 comments and also filed reply comments pursuant to the procedural schedule. The Commission will consider both filings AEP-Ohio's reply comments.

<sup>5</sup> On January 27, 2011, AEP-Ohio filed an application for a standard service offer pursuant to Section 4928.141, Revised Code. The application is for an electric security plan in accordance with Section 4928.143, Revised Code.

- (7) Included as part of the motion to intervene, OCC raises two objections to AEP-Ohio's application. OCC opposes the solar REC price and small wind REC price proposed by AEP-Ohio. Rather than the solar REC price of \$260.00 proposed by the Companies, OCC recommends that the price should be \$307.00 and the small wind REC price proposed by the Companies increased from \$29.00 to \$36.00. According to OCC, the proposed REC prices are only 65 percent of the Companies alternative compliance payment (ACP). OCC recommends the higher REC prices as a more equitable incentive for customers on the basis that higher REC prices put the REC value closer to 75 percent of the ACP. OCC reasons that using 80 percent of the ACP is consistent with the default level adopted by the Commission in the FirstEnergy Companies REC purchase program.<sup>6</sup> According to OCC, a payment of at least 75 percent of the ACP is necessary to encourage customers to invest in renewable distributed generation.

OCC also recommends that the Commission clarify that the REC program is available to customers who receive service via AEP-Ohio's standard service offer or its open access distribution schedules by way of an alternate supplier. Otherwise, OCC contends the proposed REC purchase program becomes a barrier to competition. OCC points to the Duke REC program in support of its position.

OCC advocates that the Commission permit residential customers who lease the distributed generation facilities from the installer to participate in the REC purchase program. OCC asserts that renewable distributed generation installation companies have indicated that they will not enter the Ohio market unless leasing facilities is accepted by the Commission. Thus, OCC reasons the customer need not be the owner of the system but merely the owner of the RECs and recommends that the program be changed accordingly.

- (8) Consistent with the REC programs approved for Duke Energy-Ohio and the FirstEnergy Companies, OCC recommends that AEP-Ohio's program be extended to a period of 15 years. In OCC's opinion, extending the program to 15 years reduces the risk of a solar project for residential customers, thus

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<sup>6</sup> *In re First Energy Companies*, Case No. 09-551-EL-UNC, Second Amended Application, Ex. 1 at 2-3 (September 11, 2009); Order at 4 (September 23, 2009).

encouraging the development of renewable projects as recognized in paragraphs (J) and (K) of Section 4928.02, Revised Code. OCC also requests that AEP-Ohio be required to implement the REC program no later than 30 days from the date the Commission issues its decision in these cases and that the program be offered until December 31, 2011 or until the amount allocated towards this program per utility is expended, whichever comes later. OCC further proposes that AEP-Ohio be directed to implement a follow-up program, with input from interested stakeholders, to avoid any potential breaks in this program and any subsequent program or to offer this program for at least two full years to residential and non-residential customers in accordance with the Stipulation in 09-1089.<sup>7</sup>

Further, OCC argues that the Companies have failed to propose an "incentive-based REC program," in conjunction with a RET purchase program, to facilitate the development of a residential REC market.

In reply, Staff argues that there is merit in the REC purchase program given that it establishes a reasonable mechanism for customer utilizing distributed renewable generation to contribute to the Companies' alternative energy portfolio compliance efforts.

- (9) On October 8, 2010, Staff and the Companies filed a Stipulation and Recommendation (REC Stipulation) addressing the issues raised in these proceedings. In the REC Stipulation, the signatory parties agree:
- (a) The REC Stipulation is the product of an open process in which all parties were represented by able counsel and technical experts. The REC Stipulation represents a comprehensive compromise of issues raised by parties with diverse interests. AEP-Ohio and the Commission Staff (signatory parties) have signed the REC Stipulation and offer it as a reasonable resolution of all issues. The signatory parties believe that the REC Stipulation they are recommending for

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<sup>7</sup> Stipulation at Section V. paragraph 3.

Commission adoption presents a fair and reasonable result.

- (b) The settlement and resulting REC Stipulation are a product of serious bargaining among capable, knowledgeable parties with diverse interests and the settlement, as a package, benefits ratepayers and is in the public interest. The signatory parties agree that the settlement package does not violate any important regulatory principle or practice.
- (c) Signatory parties agree that this service is available to customers taking electric service under the Companies' standard service or open access distribution schedules that own or lease solar photovoltaic or small wind energy systems.
- (d) Signatory parties agree that the rider shall remain in effect until December 31, 2011. The Companies agree to work with Commission Staff to propose a similar program with cost recovery to be filed with the Commission no later than August 31, 2011.
- (e) Signatory parties agree to define the "solar photovoltaic" and "small wind energy" at issue in this program as generating or having a total nameplate capacity of 100 kW or less.
- (f) Signatory parties agree that pursuant to the REC Purchase Agreement, the Companies will purchase qualifying RECs that are created from a solar photovoltaic or small wind energy system during the period August 1, 2008 through December 31, 2011. For each REC, the Company will pay the customer as follows:

Facility Type	\$/REC
Solar Photovoltaic	\$300.00
Small Wind	\$ 34.00

- (g) Signatory parties agree that the Companies shall recover the cost of purchased RECs from this program through the FACs and that the

Companies shall recover the weighted average inventory cost of its total RECs retired as part of its compliance with the renewable portfolio standard in Senate Bill 221 for that year as part of the FAC.

- (h) Signatory parties agree that Attachment 1 of the REC Stipulation properly reflects the REC purchase offer rider that should be approved by the Commission.
- (i) Signatory parties agree to define the program as outlined in the Companies' November 30, 2009 filing including:
  - i. The solar photovoltaic or small wind electric generating facility must be in the state of Ohio and interconnected with AEP-Ohio's electric grid.
  - ii. Each solar photovoltaic or small wind facility must be approved by the Commission as a certified Ohio renewable energy resource generating facility.
  - iii. Each facility must be registered with a REC tracking system where it is assigned a generation identification number.
  - iv. A qualifying system requires a utility grade meter to measure the output, if it is greater than 6 kW. If the system is 6 kW or below, the current method for metering the energy produced must be approved by the Commission; otherwise it does not qualify for the REC purchase program.
  - v. A REC purchase agreement must provide a minimum of 1,000 kWh (1 REC) per year.

- vi. Only whole RECs will be purchased at the end of each calendar year with any fractional part reserved for the next calendar year's REC calculation.
- (10) In its reply comments IEU-Ohio opposes the Commission's approval of the REC Stipulation and the recommendations made by OCC in initial comments, reiterating the points asserted in its initial comments.
- (11) In its reply comments, OCC supports most of the elements of the REC Stipulation, with four specific exceptions. First, OCC requests that the Commission also approve the Companies' renewable energy technology (RET) program pending before the Commission in Case Nos. 09-1871-EL-ACP and 09-1872-EL-ACP, *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Approval of Their Renewable Energy Technology Programs*. Second, OCC notes that all interested parties were offered an opportunity to participate in the development of the instant REC plan and requests that the Commission modify the Stipulation to allow all interested parties to participate in future discussions regarding similar programs rather than only the Companies and Staff as proposed in the REC Stipulation. Third, OCC requests that the REC program continue for two full years, as originally planned. OCC notes that the end date in the Stipulation, December 31, 2011, gives AEP-Ohio customers less than a year to participate and will not provide for a meaningful program. Finally, OCC argues that irrespective of the approval of the RET program, the Commission should order that the REC purchase period be extended to 15 years, especially if the RET program is not also approved, to allow customers to offset a portion of their investment.

#### DISCUSSION OF THE STIPULATION

- (12) Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into stipulations. Although it is not binding on the Commission, the terms of such agreements are accorded substantial weight. See *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 125, citing *Akron v. Pub. Util. Comm.* (1978), 55 Ohio St.2d 155. This concept is particularly valid where the stipulation is supported or

unopposed by the vast majority of parties in the proceeding in which it is offered.

- (13) The standard of review for considering the reasonableness of a stipulation has been discussed in numerous Commission proceedings. See, e.g., *Ohio-American Water Co.*, Case No. 99-1038-WW-AIR, Order (June 29, 2000); *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR, Order (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Order (March 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Order (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR, Order (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC, Order (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which is the product of considerable time and effort by the Signatory Parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:
- (a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
  - (b) Does the settlement, as a package, benefit ratepayers and the public interest?
  - (c) Does the settlement package violate any important regulatory principle or practice?
- (14) The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* (1994), 68 Ohio St.3d 559 (citing *Consumers' Counsel*, *supra*, at 126). The Court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. (*Id.*)
- (15) The Commission finds that the REC Stipulation involved serious bargaining by knowledgeable, capable parties. We note, as OCC acknowledges, AEP-Ohio discussed the REC purchase program with a broad spectrum of AEP-Ohio customer representatives and all interested parties were invited to participate in the development of the proposed REC purchase program. The Commission further acknowledges that

representatives of residential, including low-income residential customers, commercial customers, and industrial customers entered into the portfolio plan Stipulation which included the cost recovery mechanism for the proposed REC purchase program. AEP-Ohio and Staff, signatory parties to the REC Stipulation, state that the Stipulation is the product of serious bargaining and negotiations between capable and knowledgeable parties who have participated in numerous regulatory proceedings and been a party to numerous negotiated and litigated Commission proceedings. We note that although IEU-Ohio opposes the REC Stipulation, IEU-Ohio raises no specific issue on this aspect of the reasonableness of the REC Stipulation. Accordingly, we find that the REC Stipulation is the product of serious bargaining among capable, knowledgeable parties.

- (16) The settlement, as a package, benefits ratepayers and is in the public interest. IEU-Ohio argues that the REC purchase program needlessly increases costs to customers, via OP's and CSP's FAC rate, without any demonstration of cost-effectiveness. It is important that the Commission evaluate the benefits of a stipulation to ratepayers on a variety of factors, not just rates. The Commission interprets Sections 4928.64 and 4928.65, Revised Code, as requiring a role for distributed generation in the state's alternative energy portfolio standard.<sup>8</sup> We believe that the REC Stipulation, as modified, will encourage customer-sited distributed generation from renewable resources. The REC prices reflected in the REC Stipulation are more aligned with the ACP, as recommended by OCC, and more likely to encourage AEP-Ohio customers to participate in the REC purchase program. Key to the Commission's consideration of this aspect of the REC Stipulation is whether the REC prices reflected in the REC Stipulation are likely to result in customer participation while also maintaining electric service to all AEP-Ohio customers at a reasonable cost. The REC price reflected in the REC Stipulation is a reasonable compromise on the issue. The purpose of the REC purchase program, as set forth in the REC Stipulation and modified herein, will increase the use of renewable energy resources which is beneficial to REC program participating customers as well as all other ratepayers.

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<sup>8</sup> *In re FirstEnergy Companies*, Case No. 09-551-EL-UNC (September 23, 2009); *In re Duke Energy Ohio, Inc.*, Case No. 09-834-EL-ACP (July 29, 2010).

- (17) The REC Stipulation provides that the REC purchase program be effective through December 31, 2011, to coincide with the FAC provision approved as part of AEP-Ohio's current ESP. Thus, at best, the program would be in effect six months. It is important to the Commission that AEP-Ohio's REC purchase program is designed to be meaningful for the Companies, customers and program participants. For this reason, the Commission directs that AEP-Ohio's REC purchase program continue for two years from the program start date and that in addition to purchasing whole RECs at the end of each calendar year, the Companies purchase whole RECs at the end of the REC program. These modifications will encourage participation and ensure participants a market for their whole RECs at the conclusion of the program.
- (18) Additionally, the REC Stipulation provides for fixed REC purchase prices for the term of the REC purchase program. As noted by Staff in its reply comments, the proposed purchase price for each REC generated from solar photovoltaic facilities is equivalent to 75 percent of the solar ACP for 2011. Staff also states that, for RECs generated from small wind facilities, the proposed purchase price per REC is approximately 75 percent of the current applicable ACP. Recognizing that the solar ACP will change in 2012 consistent with the requirements of Section 4928.64(C)(2)(a), Revised Code, the Commission finds that an extension of the REC purchase program beyond 2011 necessitates a modification to the solar REC purchase prices for 2012 and 2013. In those years, the REC purchase prices should be adjusted to 75 percent of the then applicable ACP for solar photovoltaic resources. Because there is less certainty at this date regarding potential annual changes to the non-solar ACP, the purchase price for RECs under this program from small wind facilities shall remain unchanged.
- (19) We further note that AEP-Ohio proposes in its pending SSO filing an alternative energy rider to recover REC expense.<sup>9</sup> Thus, if approved, there is an available provision for REC program cost recovery during the next SSO. For administrative purposes, the Commission directs AEP-Ohio to separately account for the REC program components in the FAC during the remainder of the current ESP term. Following the current ESP, prudently incurred REC costs should be recovered

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<sup>9</sup> In re AEP-Ohio, Case No. 11-346 et al., Testimony of Phillip J. Nelson p. 11-16 (January 27, 2011).

through mechanisms approved by the Commission in the next SSO. With these modifications, the Commission is convinced that the REC Stipulation, as a package, benefits ratepayers and the public interest.

- (20) AEP-Ohio and Staff advocate that the REC Stipulation does not violate any important regulatory principle or practice. Upon review of the REC Stipulation, its various provisions and the regulatory principles and practices implicated by the agreement, the Commission finds that the REC Stipulation, as modified herein, does not violate any important regulatory principle or practice. Thus, the modified REC Stipulation meets the third criterion for considering the reasonableness of a stipulation and should be approved as modified herein.
- (21) Accordingly, the Commission directs the Companies to file revised REC purchase program tariffs and REC purchase offer agreement documents, as appropriate, consistent with this Order. The tariffs shall be effective on a date not earlier than both the commencement of the Companies' June 2011 billing cycle, and the date upon which final tariffs are filed with the Commission, contingent upon Commission approval.

ORDER:

It is, therefore,

ORDERED, That the REC Stipulation, as modified herein, be approved. It is, further,

ORDERED, That the Companies file tariffs consistent with this finding and order, to be effective on a bills rendered basis, on a date not earlier than both the commencement of the Companies' June 2011 billing cycle, and the date upon which final tariffs are filed with the Commission, contingent upon final review and approval by the Commission. It is, further,

ORDERED, That CSP and OP are authorized to file in final form four complete, printed copies of its tariffs consistent with this finding and order. The Companies shall file one copy in this case docket and one copy in each Company's TRF docket (or may make such filing electronically, as directed in Case No. 06-900-AU-WVR). The remaining two copies shall be designated for distribution to Staff. It is, further,

ORDERED, That the Companies notify all affected customers of the changes to the tariff via bill message or bill insert within 30 days of the effective date of the tariffs. A

copy of this customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division at least 10 days prior to its distribution to customers. It is, further,

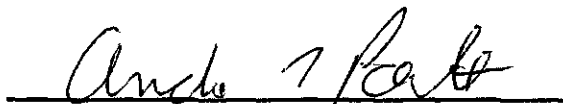
ORDERED, That a copy of this finding and order be served upon all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Paul A. Centolella

  
Steven D. Lesser

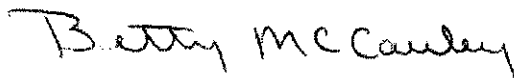
  
Andre T. Porter

  
Cheryl L. Roberto

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JUN 01 2011

  
Betty McCauley  
Secretary