BEFORE

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Commission's Review of Chapter 4901:1-10, Ohio Administrative Code, Regarding Electric Companies | )  )  ) | Case No. 12-2050-EL-ORD |

**MEMORANDUM CONTRA OF**

**INTERSTATE GAS SUPPLY, INC. APPLICATION FOR REHEARING AND MEMORANDUM IN SUPPORT OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND TOLEDO EDISON COMPANY**

1. **INTRODUCTION**

On June 27, 2014, Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively “FirstEnergy”) filed an application for rehearing of the Second Entry on Rehearing (“Entry”) issued by the Public Utilities Commission of Ohio (“Commission”) on May 28, 2014. FirstEnergy claims that the Commission’s Entry is unlawful because it requires it to issue a monetary credit for excess generation—including capacity and energy—in violation of the Revised Code and *FirstEnergy Corp. v. Pub. Util. Comm.*, 95 Ohio St. 3d 401 (2002).[[1]](#footnote-1) Furthermore, FirstEnergy claims that the Entry is unlawful and unreasonable because it failed to authorize utilities to recover the cost of providing customer-generators a credit for excess generation.[[2]](#footnote-2) As discussed below, FirstEnergy’s application for rehearing is untimely, presents duplicative arguments that have already been rejected by the Commission, and is otherwise without merit. With that said, standard service offer (“SSO”) customers are receiving the entire benefit of the net metered electricity being delivered back into the distribution system; thus, while the electric utilities should be required to provide credits that equal the SSO price to customer-generators, it would be appropriate to establish a bypassable rider to allow the electric utility to recover those costs from SSO customers.

1. **ARGUMENT**

**A.** **FirstEnergy’s Application for Rehearing is Untimely**

On January 15, 2014, the Commission issued a Finding and Order (“January Order”) approving a rule to require utilities to provide a credit to net metered customers providing generation back to the grid at the otherwise applicable SSO price, stating:

[T]he Commission notes that net metering is a noncompetitive retail electric service of the distribution utilities and R.C. 4928.67(A)(1) directs that it is the responsibility of the electric utilities to provide the contracts or tariffs for net metering. The Commission believes that this contract or tariff shall be provided to customer-generators regardless of whether they are shopping for competitive retail electric generation service. Accordingly, the Commission believes that the EDU's should be responsible for crediting customer-generators for generation, and for issuing the refund for net excess generation. The Commission believes that the EDU's should provide this refund regardless of whether the customer-generator is shopping, yet the rate of the refund should be the utility's standard service offer rate for generation. The Commission believes that this will provide greater efficiency and accuracy in calculating the refund to be paid by the electric utilities, as indicated by FirstEnergy. Additionally, the Commission adopts DP&L's proposal to add language indicating that the credit for excess generation is a monetary credit.[[3]](#footnote-3)

Although FirstEnergy filed an application for rehearing from the January Order, it failed to address the net metering rules discussed above.[[4]](#footnote-4) Rather, FirstEnergy waited until June 27, 2014—over five months later—to challenge the Commission’s net metering rules. An Application for Rehearing must be filed within thirty days from the date of an order.[[5]](#footnote-5) Because FirstEnergy failed to challenge the January Order within thirty days, it is statutorily precluded from doing so now.

**B. The Commission has Already Considered and Rejected FirstEnergy’s Assignments of Error**

The Commission should reject FirstEnergy’s application for rehearing because the Commission has already addressed and rejected FirstEnergy’s arguments. Although FirstEnergy failed to challenge the net metering rules approved in the January Order, Ohio Power Company filed a timely application for rehearing, which claimed, among other things, that:

* Requiring an electric utility to provide customer-generator a credit for capacity in addition to energy is unlawful and would violate *FirstEnergy Corp. v. Pub. Util. Comm.*, 95 Ohio St. 3d 401 (2002); and
* Requiring a utility to provide a customer-generator a credit without establishing an explicit mechanism for cost recovery would be an unlawful confiscation of utility property.[[6]](#footnote-6)

On May 28, 2014, the Commission issued an Entry rejecting Ohio Power Company’s application for rehearing. The Commission rejected Ohio Power Company’s claim that it is unlawful to provide a credit for energy and capacity for several different reasons, stating:

Pursuant to the Supreme Court's holding in *FirstEnergy Corp.* and R.C. 4928.67(B)(1) and (2), *the refund for net excess generation must be for the electricity supplied and may not include distribution, transmission, ancillary services, transition, universal service fund, or energy efficiency fund costs*. *FirstEnergy Corp. v. Pub. Util. Comm.*, 95 Ohio St.3d 401 (2002) at 405. *The Court pointed out that R.C, 4928.67 speaks in terms of electricity generated and supplied, which is generation service*. Included in generation service and the generation service rate are energy, demand, and capacity. The Commission has carefully considered its amendments and finds that using the SSO generation rate for calculating the monetary refund for customer-generators is consistent with the Revised Code and the Supreme Court's holding in *FirstEnergy Corp.*

Further, *the Commission notes that energy, demand, and capacity are the components of electricity, which is indicated on customer bills as generation*. Consistent with the Supreme Court's holding, the adopted rule for Ohio Adm.Code 4901:l-10-28(B)(9)(c) appropriately establishes a refund for net excess generation that compensates customer-generators for electricity generated and supplied to the EDU's distribution system, not just for the energy component of the generation. *While Ohio Power may contend that it does not receive capacity from the customer-generator, this is an oversimplification of the issue. In reality, the net metering customer-generator has offset their demand, which requires less capacity to be procured by the EDU for the area*. While Ohio Power may not receive a supply of capacity from the customer-generator, it has in actuality received a demand-side reduction in the amount of capacity that it must procure.

Additionally, the Commission believes that it would be impractical, if not impossible, for each EDU to accurately isolate just the energy price component from its full requirements SSO products and attribute it to the electricity generated by a customer-generator. Ohio Power has not demonstrated to us that it would be practical, or even possible, to attribute an energy price to the electricity generated by a customer-generator. Further, Ohio Power has not demonstrated that it is not being adequately compensated for its capacity obligation, as it receives capacity revenues from SSO customers through an established state compensation mechanism. See *In re Commission Review of the Capacity Charges of Ohio Power*, 10-2929-EL-UNC Opinion and Order July 2, 2012) at 33. Accordingly, rehearing on the assignment of error raised by Ohio Power Company is denied.[[7]](#footnote-7)

Despite the Commission’s well-reasoned Entry, FirstEnergy has *again* asked the Commission to reverse its determination that a customer-generator receives a credit for capacity and energy.[[8]](#footnote-8)

Like Ohio Power Company’s application for rehearing, FirstEnergy’s application for rehearing claims that the Entry violates precedent established in *FirstEnergy v. Pub. Util. Comm.[[9]](#footnote-9)* The Commission addressed this argument at length; thus, the Commission should not entertain FirstEnergy’s request to plough the same ground.

Like Ohio Power Company’s application for rehearing, FirstEnergy’s application for rehearing claims that it would be easy to separate the energy and capacity portion.[[10]](#footnote-10) Thus, the Commission fully addressed FirstEnergy’s argument. Regardless, FirstEnergy’s and Ohio Power’s claim that capacity and energy can be separated is irrelevant to whether they *should* be separated, with compensation for one and not another component. And, as the Commission noted, customer-generators provide substantial capacity and demand-related benefits that merit compensation:

While Ohio Power may contend that it does not receive capacity from the customer-generator, this is an oversimplification of the issue. In reality, the net metering customer-generator has offset their demand, which requires less capacity to be procured by the EDU for the area. While Ohio Power may not receive a supply of capacity from the customer-generator, it has in actuality received a demand-side reduction in the amount of capacity that it must procure.[[11]](#footnote-11)

Thus, FirstEnergy’s argument ignores the fact that customer-generators are entitled to a capacity-related credit.

**C. FirstEnergy’s Claim that the Commission Ignored the Plain Definition of Electricity is Incorrect**

FirstEnergy submits a convoluted and difficult to follow argument, which claims that the Commission has ignored the plain definition of electricity by providing a credit for capacity and energy.[[12]](#footnote-12) FirstEnergy claims that a net metering system is limited to a facility that produces electrical energy. Because this definition mentions only electrical energy (and not capacity), FirstEnergy claims that net metering is only recognized by statute as producing energy.[[13]](#footnote-13) Thus, FirstEnergy claims that a customer-generator using a net metering system cannot receive a credit for capacity.[[14]](#footnote-14)

Initially, as stated above, FirstEnergy’s argument is untimely. Regardless, FirstEnergy’s argument lacks merit for several reasons.

The statutory definition does not limit the Commission’s authority. It merely describes the function of a net metering system—to allow a customer-generator to produce electricity and provide it back to the grid. Moreover, the definition of net metering does not control the provision of credits to customer-generators. And, R.C. 4928.67—the controlling statute—provides that credits may include compensation for capacity and demand components:

(1) Except as provided in division (A)(2) of this section, an electric utility shall develop a standard contract or tariff providing for net metering. **That contract or tariff shall be identical in rate structure, *all retail rate components,* and any monthly charges to the contract or tariff to which the same customer would be assigned if that customer were not a customer-generator**. (emphasis added).

The otherwise applicable SSO tariff contains capacity, demand and energy components. Because credits must be calculated based upon these rate components, it is clear that customer-generators are entitled to compensation for capacity, demand, and energy.

**D. The Entry is Internally Consistent**

FirstEnergy claims that the Commission interpreted the meaning of electricity inconsistently throughout the Entry, defining it as energy and capacity in some parts and as just energy in others. FirstEnergy is wrong.

FirstEnergy claims that the Commission used an inconsistent definition by not including demand and energy components in the definition of an “excess generator” that does not qualify for a net metering tariff. To qualify for a net metering tariff, a customer must intend to offset “part or all the customer-generator’s requirements for electricity.”[[15]](#footnote-15) The Commission crafted rules for determining when a customer clearly intends to offset their own electricity requirements, as opposed to producing electricity in excess of their requirements. The Commission determined that a customer’s intention can be determined based upon total consumption in kilowatt hours compared to total production in kilowatt hours. The Commission’s rule did not reference capacity in any way, it merely determined that the metric for determining an excess generator is total consumption compared to production. In so doing, the Commission made a policy decision regarding the manner of determining a customer’s intention. The Commission’s rule is designed for ease of implementation and to prevent unintended consequences. Moreover, the Commission’s rule for qualification for the net metering tariff has nothing to do with the manner in which a customer-generator is compensated for power supplied to the grid.

FirstEnergy also incorrectly claims that the Commission applied the rule inconsistently to hospitals by requiring hospitals to receive compensation for energy at the market price as opposed to the SSO price. Specifically, FirstEnergy relies upon the following rule approved by the Commission:

The tariff shall be based both upon the **rate structure, rate components, and any charges to which the hospital would otherwise be assigned if the hospital were not taking service under this rule *and upon the market value of the customer-generated electricity* at the time it is generated.** For purposes of this rule, market value means the locational marginal price of energy determined by a regional transmission organization's operational market at the time the customer-generated electricity is generated. (emphasis added).

While this rule has not yet been fully implemented, it may be interpreted as requiring a credit based upon combination of otherwise applicable tariff rates (capacity or demand) but with energy compensation based upon the locational marginal price. That interpretation would nullify any potential inconsistency identified by FirstEnergy. Moreover, this interpretation would represent a policy determination by the Commission to provide compensation to regular customer-generators at the otherwise applicable SSO price for all components while providing a credit to hospitals at the otherwise applicable SSO price for demand and capacity but the locational marginal price for energy.

**E. Since Net Metered Electricity Displaces the SSO Supply Obligation, Net Metering Credits Should be Recovered from SSO Customers**

While the Commission has already considered and implicitly (by not addressing it) rejected FirstEnergy’s request for cost recovery, there is merit, in part, to FirstEnergy’s claim. Net metering service creates excess generation that displaces energy requirements that would otherwise be supplied by the utility or SSO auction suppliers. Thus, each electric utility is required to provide a monetary credit for the generation that goes to reducing the cost of service of the SSO. It would be unfair and unjust and unreasonable to require FirstEnergy to provide a credit to customer-generators without approving cost recovery.

To correct this inequity, a bypassable rider should be put in place to recover the cost of customer-generator credits. A bypassable rider is appropriate because SSO customers are the beneficiary of excess generation produced by customer-generators. Thus, it would be just and reasonable to authorize each utility to establish a bypassable rider to recover the cost of these credits.

1. **CONCLUSION**

For the reasons stated herein, and the reasons the Commission previously stated in its January Order and May 28, 2014 Entry, IGS respectfully requests that the Commission reject FirstEnergy’s application for rehearing.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the foregoing *Memorandum Contra of Interstate Gas Supply, Inc. Application for Rehearing and Memorandum in Support of Ohio Edison Company, The Cleveland Electric Illuminating Company, and Toledo Edison Company* upon the following parties via electric transmission, this 7th day of July, 2014.

***/s/ Joseph Oliker***

Joseph Oliker

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1. Application for Rehearing of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company at 1-12 (Jun. 27, 2014). [↑](#footnote-ref-1)
2. *Id.* at 13. [↑](#footnote-ref-2)
3. January Order at 40 (Jan. 15, 2014). [↑](#footnote-ref-3)
4. *See generally* Application for Rehearing of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company (Feb. 14, 2014). [↑](#footnote-ref-4)
5. R.C. 4903.10. [↑](#footnote-ref-5)
6. Application for Rehearing of Ohio Power Company at 1 (Feb. 14, 2014). [↑](#footnote-ref-6)
7. Entry at 20-21 (May 28, 2014) (emphasis added). [↑](#footnote-ref-7)
8. Application for Rehearing of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company at 1-12 (Jun. 27, 2014). [↑](#footnote-ref-8)
9. Application for Rehearing of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company at 10-11 (Jun. 27, 2014). [↑](#footnote-ref-9)
10. *Id.* at 11-12. [↑](#footnote-ref-10)
11. Entryat 21 (May 28, 2014). [↑](#footnote-ref-11)
12. Application for Rehearing of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company at 6-7 (Jun. 27, 2014). [↑](#footnote-ref-12)
13. *Id.*  [↑](#footnote-ref-13)
14. *Id.*  [↑](#footnote-ref-14)
15. Entry at 16-17 (May 28, 2014); Entry, Attachment A at p. 13 of 20 (May 28, 2014) (containing modified Rule 4901:1-10-28(B)(6), OAC). [↑](#footnote-ref-15)