

**FILE****FAX**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review of )  
 Chapters 4901:1-9, 4901:1-10, 4901:1-21, )  
 4901:1-22, 4901:1-23, 4901:1-24, and ) Case No. 06-653-EL-ORD  
 4901:1-25 of the Ohio Administrative Code. )

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**COMMENTS OF THE  
INTERSTATE RENEWABLE ENERGY COUNCIL**

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The Interstate Renewable Energy Council ("IREC") respectfully submits the following comments regarding the proposed rules ("Proposed Rules") issued by the Public Utilities Commission of Ohio ("Commission") on July 23, 2008 in the case captioned above. IREC is a 501(c)(3) organization that receives funding from the United States Department of Energy to participate in state utility commission rulemakings related to net metering and interconnection of distributed generation, and the following comments relate entirely to these issues.

**I. INTRODUCTION**

The Proposed Rules only slightly modify Ohio's existing net metering and interconnection procedures and IREC suggests that those procedures should be more significantly adjusted. Senate Bill 221 ("SB 221") added an important provision to the state policy declarations of O.R.C. 4928.02, making it state policy to: "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" (O.R.C. 4928.02(K)). As a preliminary matter,

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IREC believes that this new policy necessitates substantive changes to Ohio's net metering and interconnection procedures.

SB 221's requirements related to demand response programs support substantive changes to Ohio's net metering and interconnection procedures as well (O.R.C. 4928.66(A)(1)(b)).

Demand response programs are often tied to curtailment of air conditioning load, which customers are loath to accept on the hottest days. However, customers with solar facilities could much more easily be persuaded to either show a certain level of generation during peak loads or accept curtailment of air conditioning load. Progressive net metering and interconnection procedures would be a key component of such a program. There is little point in having a demand response program on one hand and barriers to implementation on the other hand; the policies should work together.

The renewable energy resource requirements in newly enacted O.R.C. 4928.64(B) also support substantive improvement to Ohio's net metering and interconnection procedures. The legislature has established specific levels of renewable energy resources and solar resources to utilized. It would be incongruous for other provisions to needlessly add cost to the acquisition of these resources and thereby make them impractical due to cost.

In IREC's opinion, the following substantive changes would streamline and facilitate the widespread installation of distributed renewable resources in Ohio:

- credit excess generation at the end of a billing period on a one-for-one kWh credit
- remove insurance provisions and the naming of utilities as additional insureds
- remove option for standby charges for solar and wind facilities
- allow third party ownership of generating facilities

Specific recommendations for alterations to interconnection procedures are not provided here, though IREC suggests a review of the timelines and charges in Ohio's interconnection procedures. As well, IREC recommends that the requirement for an external disconnect switch on inverter-based systems be dropped. The requirement has been shown to be unnecessary and has been drop in many areas without incident.

## II. PROPOSED REVISIONS

### a. Credit excess generation at the end of a billing period on a one-for-one kWh credit

One of the most significant changes that Ohio could make to its net metering provisions is to follow the lead of over thirty states and allow rollover of excess generation in any one month to the following month on a kWh basis.<sup>1</sup> Such a move is complicated by the decision in *FirstEnergy Corp. v. Pub. Util. Comm.*, 95 Ohio St.3d 401 (2002), but not prohibited by that case in IREC's opinion. That case based its decision on an interpretation of language essentially unchanged by SB 221 (now renumbered as O.R.C. 4928.67(B)(4)). However, the Ohio Supreme Court based its decision on a cost-causation analysis, finding that all costs besides generation would still be incurred by utilities when distributed generating facilities export energy, and therefore the customer should only be credited for the generation costs.

SB 221 changes that foundational argument of *FirstEnergy* by making encouragement of implementation of distributed generation through net metering a state policy and by instituting required solar energy targets (O.R.C. 4928.02(K) & 4938.64(B)). If implementation of distributed generation is state policy, then that policy falls on ratepayers generally, not just

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<sup>1</sup> See *Freeing the Grid* (2007) available at [www.newenergychoice.org](http://www.newenergychoice.org). States scoring 0 or greater in the "rollover" column on the state summary table on p. 72 have full rollover of kWh for at least a year. The 2008 edition of *Freeing the Grid*, due out in October, will include several more states that have implemented rollover.

customer generators. If solar energy resources must be acquired, that responsibility is borne by utilities and ultimately, utility customers.

IREC supports indefinite rollover of excess generation, but does not support any cash refund for excess generation at the end of the year for several reasons. First, cash payments could lead to treatment as a FERC-jurisdictional sale for resale. Second, cash payments are likely to be treated as taxable income, requiring excessive utility and customer paperwork to track relatively trivial sums. And third, cash payments to homeowners may invalidate homeowner insurance that would otherwise still be effective.

To implement this perpetual rollover, IREC suggests that Proposed Rule 4928:1-10-28(A)((6)(c) be changed to read: "If the customer generator feeds more electricity back to the system than the electric utility supplies to the customer generator, a credit for that excess electricity shall carry forward to the next billing period on a one-for-one kilowatt hour basis."

**b. Remove insurance provisions and the naming of utilities as additional insureds**

The Proposed Rules imply that insurance could be required in 4928:1-10-28(A)(3)(c), reflecting language from SB 221. That provision states that no additional insurance shall be required beyond requirements provided in part (a) of that section. However, none of the provisions of the codes listed in 4928:1-10-28(A)(3)(a) require insurance. Thus, it would be clearer to simply state that no insurance is required.

In addition, IREC recommends an additional subsection to clarify that utilities may not require that customers name the utility as an additional insured. Allowing utilities to set this requirement effectively curtails all small installations. Homeowners simply cannot acquire such a policy rider. In effect such a requirement is a form of additional insurance, which is prohibited.

**c. Remove standby charges for solar and wind facilities**

It appears that utilities are permitted to implement standby charges for distributed generation, but this is not appropriate for intermittent generating facilities. There is a strong likelihood that an individual facility will not be generating during at least one near-peak during a billing period, and thus the customer will face the same demand charge that she would have faced without the generating facility. Implementing a standby charge essentially says that the facility is operates at full capacity during peak periods unless it is broken, and if utilities contend this, then these generators should receive capacity credit for their output. Provisions to this effect should be added to 4928:1-10-28(A)(2).

**d. Allow third party ownership of generating facilities**

Third party ownership of solar facilities has enabled full utilization of available federal tax credits and depreciation, typically unavailable to residential and many commercial customers. This form of ownership is so effective that roughly two thirds of solar energy facility capacity installed in 2008 in the United States will be done using this model. In effect, there are federal subsidies available and it would be inappropriate to deny Ohio citizens access these subsidies enjoyed by citizens of many other states. It seems that recognition of the importance of third party owners was recognized in SB 221 in the definition of "self-generator" in O.R.C. 4928.02, which says that a self-generator may simply host a facility. However, the term is not used elsewhere in SB 221. Hosting should be incorporated into the definition of a customer generator to effectuate this important concept.

### III. CONCLUSION

IREC respectfully requests that the Commission consider implementation of the provisions recommended here. IREC looks forward to further involvement in this rulemaking and welcomes discussion of the issues raised herein.

Respectfully submitted,

  
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