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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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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.)

**REPLY COMMENTS OF THE
INTERSTATE RENEWABLE ENERGY COUNCIL**

The Interstate Renewable Energy Council ("IREC") respectfully submits the following reply comments respecting comments filed by interested parties on August 12, 2008 to the Public Utilities Commission of Ohio ("Commission") in the case captioned above. IREC and others submitted comments on August 12 in response to the Commission's July 23rd request for comments on draft rules developed by Commission staff ("Proposed Rules"). 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; the following reply comments relate entirely to comments of other parties regarding net metering and interconnection provisions of the Proposed Rules.

I. INTRODUCTION

IREC's reply comments are arranged in Part II by Proposed Rule section for ease of reference, addressing each point raised by any party regarding the net metering provisions of Proposed Rules 4901:1-10-28 and 4901:1-21-13. This ordering is not indicative of IREC's

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perception of relative importance. As indicated in its comments filed on August 12, IREC considers the following steps to be necessary to facilitate functional net metering 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

The first, second and fourth points were raised by other parties in some fashion and are addressed herein. The third point, regarding standby charges, was not addressed by other parties and is not addressed here, though IREC continues to encourage the Commission to adopt that recommendation.

II. REPLY BY SECTION TO REVISIONS PROPOSED BY VARIOUS PARTIES

a. Proposed Rule 4901:1-10-28(A)(1) regarding tariff requirement

The Ohio Consumer and Environmental Advocates made the useful suggestion that the opening provision of the net metering section clarify what the tariff filed by the electric utility should contain. In particular, it is important to clarify that an electric utility may not impose additional requirements beyond what is provided in the Commission's rule. For flow, IREC suggests that the proposed language could be rephrased as "Each electric utility shall FILE a tariff for net metering IN CONFORMANCE WITH THE PROVISIONS OF THIS RULE AND WITH NO ADDITIONAL SUBSTANTIVE REQUIREMENTS."

b. Proposed Rule 4901:1-10-28(A)(1)(a)(i) regarding proposals to add combined heat and power systems to the list of generating facility types which may be net metered

Several parties¹ propose to add combined heat and power systems to the list of generating facility types that may be net metered and IREC has no comment on whether this should be done, but can offer its interpretation of Senate Bill 221 (“SB 221”) on this point and some background from other states.

Slightly more than half of the existing state net metering standards are limited to renewable energy technologies.² The Proposed Rules follow the provisions of SB 221 and include microturbines and fuel cells, both of which typically utilize non-renewable resources. While IREC generally favors restriction of net metering to renewable technologies, the Commission obviously has to comply with the provisions of SB 221.³

Ohio Advanced Energy advances a solid argument that “microturbine” is not a defined term and looks to the definition in the Internal Revenue Code, which appears to encompass gas-fired combined heat and power systems. IREC supports use of that definition, which tends to alleviate most of the concerns about addition of “combined heat and power systems” to the list in Proposed Rule 4901:1-10-28(A)(1)(a)(i).

IREC understands the sentiment in favor of including combined heat and power systems to the list based on the typical efficiencies of such systems, but combined heat and power is not on the list in SB 221 and is used elsewhere.⁴ Use of the federal definition of microturbine noted above would leave out combined heat and power systems fired with oil, diesel or coal, which would seem to be within the spirit of net metering to facilitate clean energy generation.

¹ Parties advocating for inclusion of combined heat and power systems are the Ohio Consumer and Environmental Advocates (p. 105), Ohio Advanced Energy (p. 4), and the Ohio Environmental Council (p. 3, regarding inclusion in the same list in Proposed Rule 4901:1-21-13(A)(1)(a)). The Ohio Farm Bureau more generally advocates for inclusion of any new technology that could provide on-site generation capabilities.

² See *Freeing the Grid* (2007) available at www.newenergychoice.org. States scoring 1 in the “Eligible Tech” column on the state summary table on p. 72 restrict net metering to all renewable and zero-emission technologies. Those with a score of 0.5 typically allow some non-renewable technology such as combined heat and power.

³ SB 221 defines “net metering system” as including microturbines and fuel cells at ORC 4928.01(A)(31).

⁴ The definition of “alternative energy systems” includes cogeneration systems at ORC 4928.01(A)(34(b)).

c. Proposed Rule 4901:1-10-28(A)(1), proposal to add a part (c) regarding system ownership

IREC supports proposed language by the Ohio Consumer and Environmental Advocates to add a new section to Proposed Rule 4901:1-10-28(A)(1) clarifying that the customer-generator is not required to own the generating facility. IREC concurs with the assessment that an estimated two thirds of new solar capacity added in the United States in 2008 will be owned by third parties to take advantage of federal tax credits, as discussed in IREC's initial comments. This is a critical provision; uncertainty regarding third party ownership has stalled development in Oregon, Nevada and Arizona in the past year, with all appearing likely to allow third party ownership at this point. It would be far better to resolve the issue in the rule rather than leave any doubt.

d. Proposed Rule 4901:1-10-28(A)(2) regarding minimum demand calculation

Ohio Advanced Energy states that the provision calling for net metered customers to face rates and fees identical to those they would otherwise face needs clarification to allow recalculation of minimum demand each month. Presumably, demand charges are based on a customer's recent history, including any lower demand caused by operation of a net metered system. If this is the case, it is not clear that the provision needs to be revised as Ohio Advanced Energy suggests. However, this is closely related to the argument put forth by IREC that standby charges should be expressly disallowed for intermittent resources. To effectuate that, Proposed Rule 4901:1-10-28(A)(2) should be modified to add a sentence in the middle stating that: "No standby charges shall be applicable to intermittent resources such as generating facilities powered by solar and wind energy."

e. Proposed Rule 4901:1-10-28(A)(3)(c) regarding insurance provisions

IREC supports proposed language by the Ohio Consumer and Environmental Advocates removing reference to insurance requirements in an earlier section because none exist in the earlier section. IREC also supports the subsequent language providing that an electric utility may not require a customer to name the electric utility as an additional insured because this is not possible on existing homeowner policies. IREC made similar points in its initial comments and references those comments for further detail.

f. Proposed Rule 4901:1-10-28(A)(4), regarding relation to advanced metering initiative

The Ohio Farm Bureau notes that if a meter change is required, the switch should be to an advanced meter, presumably because a switch to less advanced two-way meter would need to be replaced in a few years as the advanced meters are rolled out. IREC agrees with that premise, and agrees that there should only be a one-time charge as the Ohio Farm Bureau proposes, but IREC is concerned that this still entails a charge that the customer would not otherwise face. A reasonable solution would be to charge the customer only the cost of a simple two way meter, as required by SB 221. AMI is still in the pilot stage presumably, and deployment to net metering customers is a good opportunity for electric utilities.

g. Proposed Rule 4901:1-10-28(A)(4), regarding notice of net metering capability

IREC supports proposed language by the Ohio Consumer and Environmental Advocates to clarify that an electric utility should notify a customer if the customer's meter will not be capable of metering electricity being delivered to the electric utility.

h. Proposed Rule 4901:1-10-28(A)(6)(c) regarding payment for excess generation

Ohio Advanced Energy and the Ohio Consumer and Environmental Advocates propose to include generation riders and surcharges to the “excess generation component” referenced in Proposed Rule 4901:1-10-28(A)(6)(c). IREC agrees with those comments as far as they go, but continues to support its interpretation allowing traditional net metering. Ohio Advanced Energy echoes IREC’s argument that the new policy provision of SB 221 supporting net metering can be used to question the continuing validity of *FirstEnergy Corp. v. Pub. Util. Comm.*, 95 Ohio St.3d 401 (2002). In most states, and virtually all states with net metering provisions that are actually used, rollover of excess generation from one month to the next on a one-for-one kWh basis is the norm. *FirstEnergy* is dated; numerous studies since then have concluded that there is a strong correlation between peak demand and solar irradiance, justifying capacity credit.

The policy provision of SB 221 provides the Commission an opportunity to reassess the appropriate value of distributed generation. While that value varies based on customer location, facility type, and other factors, solar energy generation in particular appears to deserve credit for far more than the generation component. In practice, the electric utility essentially delivers any excess generation to the next door neighbor and sells it at retail, so the only supporting infrastructure is a few dozen feet of distribution line.

IREC contends that in the early stages of distribute generation deployment, the cost of determining the appropriate credit exceeds any subsidy that could exist, and there may well be no subsidy in effect at all. Certainly, for larger customers with demand meters, only the energy component of their excess generation is being credited under net metering, which is effectively be a subsidization of ratepayers by customer generators.

i. Proposed Rule 4901:1-10-28(B)(6)(b) regarding market rates for hospitals

As with the valuation of excess generation, several parties commented on the meaning of “market rates” payable to hospitals for excess generation. In general, use of the PJM or MISO locational rate as suggested by the Ohio Consumers Council makes sense because that is the available cost of electricity at the location. However, the argument that excess generation is simply sold to the business next door to the hospital is even more powerful. Hospitals are large customers enjoying lower rates, and their neighbors are often smaller, paying higher rates.

No party commented on the fact that hospitals have been singled out by SB 221 to be the only customer generators that pay for all excess generation over an incremental time period. All other customer generators net outflows and inflows over the billing period (typically a month). Thus, the PJM or MISO locational market rate may not be as advantageous as the standard net metering available to others.

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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