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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO AUG 12 AM 10:37

In the Matter of the Complaint of)
)
The Office of the Ohio Consumers')
Counsel)
10 West Broad Street, Suite 1800) Case No. 10-1128-EL-CSS
Columbus, Ohio 43215)
)
Complainant,)
)
v.)
)
The Toledo Edison Company, the Ohio)
Edison Company, and the Cleveland)
Electric Illuminating Company)
76 South Main Street)
Akron, Ohio 44308)
)
Respondents.)

PUCO

COMPLAINT
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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August 12, 2010

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**COMPLAINT
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") respectfully submits this Complaint pursuant to R.C. Sections 4905.26 and 4928.16. The OCC submits that the Toledo Edison Company, the Ohio Edison Company, and the Cleveland Electric Illuminating Company, electric distribution utilities, engaged in and continue to engage in practices, policies, and procedures that violate Ohio statutes, Ohio Administrative Code net-metering rules, and interconnection rules by enforcing interconnection standards that are unduly burdensome and expensive for customer-generators. The

violations require correction and relief by the Public Utilities Commission of Ohio (“PUCO” or “Commission”).

In support of this Complaint, the OCC avers as follows:

PARTIES

1. Complainant, OCC, is a state agency that has the authority under Ohio law to represent the interests of Ohio’s residential utility customers in proceedings before the PUCO, pursuant to R.C. Chapter 4911. As such, the OCC is the statutory representative of the residential utility customers of The Toledo Edison Company, the Ohio Edison Company, and the Cleveland Electric Illuminating Company (collectively, “Companies” or “FirstEnergy”), all of which are electric distribution utilities operated by FirstEnergy Corporation. OCC has the authority to sue and to carry out the duties granted under R.C. Chapter 4911.
2. In addition, R.C. 4928.16(C)(1) permits the OCC to file a complaint on behalf of residential consumers for violation of “any provision of sections 4928.01 to 4928.15 . . . or any rule or order adopted or issued under those sections”
3. Respondents, Toledo Edison Company, Ohio Edison Company, and Cleveland Electric Illuminating Company, are Ohio Corporations with headquarters located at 76 South Main Street, Akron, Ohio. The Companies are in the business of distributing and selling electricity to Ohio residential, commercial and industrial customers.

JURISDICTION

4. The PUCO has jurisdiction over this action pursuant to Ohio Revised Code 4905.26.
5. The PUCO is also conferred jurisdiction by R.C. 4928.16(A)(2):

The commission also has jurisdiction under section 4905.26 of the Revised Code, upon complaint of any person or upon complaint or initiative of the commission on or after the starting date of competitive retail electric service, to determine whether an electric utility has violated or failed to comply with any provision of sections 4928.01 to 4928.15 ... or any rule or order adopted or issued under those sections

Thus, the Commission has jurisdiction to hear the complaint as described herein.

6. The Companies are “electric distribution utilities” (“EDUs”) as defined in R.C. 4928.01(A) and Ohio Adm. Code 4901:1-22-01(I).

BACKGROUND

7. In 1999, Ohio enacted Am. Sub. S.B. No. 3 (“SB 3”) that, *inter alia*, encouraged the development of distributed generation.¹ SB 3 charged the PUCO with ensuring that this development was accomplished.²
8. Distributed generation is described in the PUCO’s rules as “a general term for all or part of a system of a distributed electrical generator...of twenty megawatts or less in size...installed at a point of common coupling on the EDU’s distribution system in close proximity to the customer’s load.”³

¹ R.C. 4928.02(C) states: “It is the policy of this state to...encourage[e] the development of distributed and small generation facilities.”

² R.C. 4928.06(A) states that “[T]he public utilities commission shall ensure that the policy specified in section 4928.02 is effectuated.”

³ Ohio Adm. Code 4901:1-22-01(H).

9. SB 3 also provided that the Commission would promulgate rules regarding the interconnection of distributed generation sources which were uniform and would “prevent barriers to new technology.”⁴ Further, the statute required that the interconnection rules “shall not make compliance unduly burdensome or expensive.”⁵
10. In 2008, Ohio enacted Am. Sub. S.B. No. 221 (“SB 221”) that, in addition to maintaining the above provisions of SB 3, furthered Ohio’s policy of encouraging distributed generation by declaring that it would “ensure that an electric utility’s transmission and distribution systems are available to a customer-generator or owner of distributed generation, so that the customer-generator or owner can market and deliver the electricity it produces.”⁶
11. A “customer-generator” is defined by statute as “a user of a net metering system.”⁷
12. Following the passage of SB 221, in Case No. 06-653-EL-ORD, the Commission promulgated net-metering rules.⁸ Ohio Adm. Code 4901:1-10-28(A)(1)(b) states: “Net metering arrangements shall be made available regardless of the date the customer’s generating facility was installed.”

⁴ R.C.4928.11(A).

⁵ Id.

⁶ R.C. 4928.02(F).

⁷ R.C. 4928.01(A)(29). “Net metering system,” as described in 4928.01(A)(31), is “a facility for the production of electrical energy that . . . [u]ses as its fuel either solar, wind, biomass, landfill gas, or hydropower, or uses a microturbine or a fuel cell; . . . [i]s located on the customer-generator’s premises; . . . [o]perates in parallel with the electric utility’s transmission and distribution facilities; [and i]s intended primarily to offset part or all of the customer-generator’s requirements for electricity.”

⁸ *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 4901:1-25 of the Ohio Administrative Code*, Case No. 06-653-EL-ORD, Entry on Rehearing (May 6, 2009).

13. Also in Case No. 06-653-EL-ORD, the Commission subsequently enacted interconnection rules. These rules “establish uniform requirements for offering nondiscriminatory technology-neutral interconnection to customers who generate electricity, on the customer’s side of the meter, to any electric distribution system that is owned and operated by a commission-regulated EDU.”⁹
14. Further, the interconnection rules mirror the above statute by stating the rules are intended to “make compliance with this chapter *not unduly burdensome or expensive for any applicant* in accordance with division (A) of 4928.11 of the Revised Code.”¹⁰
15. R.C. 4928.16 states that R.C. 4905.22 is applicable to an electric utility for any violation or failure to comply with any provision related to noncompetitive retail electric service.¹¹ R.C. 4905.22 states, *inter alia*, that “[e]very public utility shall furnish necessary and adequate service.” In addition, R.C. 4905.61 “applies to a violation by an electric utility of, or to a failure of an electric utility to comply with, any provision of sections 4928.01 to 4928.15, any provision of divisions (A) to (D) of section 4928.35 of the Revised Code, or any rule or order adopted or issued under those sections.”¹²

GENERAL ALLEGATIONS

16. Complainant incorporates by reference the above paragraphs 1-15 as if fully set forth herein.

⁹ Ohio Adm. Code 4901:1-22-02(A)(2).

¹⁰ Ohio Adm. Code 4901:1-22-02(A)(1) (*emphasis added*).

¹¹ R.C. 4928.16(B)(2).

¹² R.C. 4928.16(D).

17. Since 2007, at least five residential customer-generators in the Companies' territories, attempting to interconnect or maintain interconnection of their wind turbine generators to the Companies' distribution system, filed formal complaints against FirstEnergy in order to resolve interconnection and net-metering issues.¹³
18. Each complaint alleged practices by FirstEnergy that violate Ohio law, interconnection and net-metering rules, and the Companies' own net-metering and interconnection tariffs.¹⁴
19. All of the complaints became or have become protracted and complicated, and have been characterized by FirstEnergy marshalling its resources to discourage interconnection and net-metering (and a resolution to interconnection issues) as well as to convince customer-generators into accepting agreements or circumstances that fall outside of statutory mandates or the uniform rules established by the Commission and which have delayed the interconnection of the customer-generator to Toledo Edison's and Ohio Edison's distribution systems.
20. On April 27, 2007, Mr. Gerald Giesler filed a complaint which alleged that the Toledo Edison Company ("Toledo Edison"):
 - a. Did not properly credit Mr. Giesler's account, reducing the per kWh amount produced by his wind generator, and violating the terms of the net-metering agreement;

¹³ See *In the Matter of the Complaint of Gerald Giesler v. Toledo Edison*, Case No. 07-498-EL-CSS (April 27, 2007); *In the Matter of the Complaint of Lester L. Lemke v. Toledo Edison*, Case No. 07-514-EL-CSS (April 30, 2007); *In the Matter of the Complaint of Christopher Lemke v. Toledo Edison*, Case No. 10-194-EL-CSS (February 16, 2010); and *In the Matter of Complaint of Toby J. Eichman v. Toledo Edison*, Case No. 10-198-EL-CSS (February 16, 2010).

¹⁴ See the paragraphs in this Complaint that describe the actions taken by customer-generators before the Commission.

- b. Mandated a suspension of the net-metering and interconnection agreement by Toledo Edison.¹⁵
- 21. On April 30, 2007, Mr. Lester L. Lemke filed a similar complaint which alleged that Toledo Edison:
 - a. Did not properly credit Mr. Lemke's account, reducing the per kWh amount produced by his wind generator, and violating the terms of the net-metering agreement;
 - b. Threatened disconnection of his wind generator from Toledo Edison's distribution system.¹⁶
- 22. On May 1, 2007, Mr. Brian A. Malott and Ms. Christy G. Malott filed a complaint that stated the Ohio Edison Company ("Ohio Edison"):
 - a. Employed a process that made it difficult for the customers to become connected to Ohio Edison's distribution system;
 - b. Required the Malott's wind generator to be disconnected from Ohio Edison's distribution system;
 - c. Claimed the Malott's system did not meet IEEE electrical standards.¹⁷
- 23. Each of the above complaints was pending for approximately three years, before a private settlement was reached.¹⁸
- 24. The customer-generators in each of the above complaints merely attempted to exercise their rights under the Ohio Administrative Code in *propria persona* and

¹⁵ *In the Matter of the Complaint of Gerald Giesler v. Toledo Edison*, Case No. 07-498-EL-CSS, Complaint at 1 (April 27, 2007).

¹⁶ *In the Matter of the Complaint of Lester L. Lemke v. Toledo Edison*, Case No. 07-514-EL-CSS, Complaint at 1 (April 30, 2007).

¹⁷ *In the Matter of the Complaint of Brian A. Malott and Christy G. Malott v. Ohio Edison*, Case No. 07-525-EL-CSS, Complaint at 1-2 (May 1, 2007).

¹⁸ *Id.*, Joint Motion to Dismiss at 1 (April 19, 2010).

to deploy their distributed generation as intended by Ohio law and policy, which subjected them to discovery through interrogatories and depositions by FirstEnergy.

25. In the complaints against Toledo Edison, the EDU admitted that the customer-generators' wind turbines posed no threat to Toledo Edison's system and could be operated.¹⁹
26. On February 16, 2010, Toby J. Eichman and Christopher E. Lemke filed complaints with the PUCO regarding their efforts to obtain interconnection agreements for their wind generators with Toledo Edison.²⁰ The complaints identified two violations:
 - a. Toledo Edison was requiring unnecessary testing of each system.
 - b. Toledo Edison was requiring each individual to purchase an additional, unnecessary meter.²¹
27. On March 8, 2010, Toledo Edison filed an answer to the complaint in the 10-194-EL-CSS docket,²² but not in the 10-198-EL-CSS docket.
28. In the answer filed in 10-194-EL-ESS, Toledo Edison asserted, *inter alia*, that Mr. Eichman and Mr. Lemke installed relay protection on their wind generators, but that testing of the equipment was required.²³

¹⁹ See, e.g., *In the Matter of the Complaint of Gerald Giesler v. Toledo Edison*, Case No. 07-498-EL-CSS, Answer at page 2, ¶7 (May 17, 2007).

²⁰ *In the Matter of the Complaint of Christopher Lemke v. The Toledo Edison Company*, Case No. 10-194-EL-CSS, Complaint (February 16, 2010); and *In the Matter of the Complaint of Toby J. Eichman v. The Toledo Edison Company*, Case No. 10-198-EL-CSS, Complaint (February 16, 2010). The general averments in the two complaints are identical.

²¹ *Id.*

²² *In the Matter of the Complaint of Christopher Lemke v. The Toledo Edison Company*, Case No. 10-194-EL-CSS, Answer at 1 (March 8, 2010).

²³ *Id.*

29. In the answer filed in Case No. 10-194-EL-ESS, Toledo Edison also stated that the meters had to be changed, and that this would cost each customer \$295.00.²⁴
30. Discovery has been served by Toledo Edison on both of the customer-generators.
31. FirstEnergy has exhibited a pattern of discouraging customer-generators attempting to take service under the Companies' net-metering and interconnection tariffs. Contrary to Ohio law and PUCO rules, all three Companies, through their identical net-metering applications and interconnection tariffs, employ procedures that create a process that is "unduly burdensome and expensive"²⁵ for their interconnection and net-metering customers.

FIRST CLAIM

FirstEnergy's Application Requirements for Customers Seeking to Interconnect²⁶ Net-Metering Systems are Unlawfully Burdensome and Expensive.

32. Complainant incorporates by reference the above paragraphs 1-31 as if fully set forth herein.
33. In 06-653-EL-ORD, the PUCO adopted *Simplified Review Procedures* and *Level 2 Expedited Review Process* for customer-generators seeking interconnection with the Companies' distribution system, as presented in Ohio Adm. Code 4901:1-22-06.
34. Under these application and review procedures, system compliance with the PUCO rules also includes the requirement that each installation is either: 1. Certified to pass an applicable non-islanding test, or; 2. Uses reverse power relays or other means to meet IEEE 1547 standard unintentional islanding

²⁴ Id. at 2.

²⁵ R.C.4928.11.

²⁶ Ohio Adm. Code 4901:1-22-01(L): "'Interconnection' means the physical connection of the applicant's facilities to the EDU's system for the purpose of electrical power transfers."

requirements.²⁷ The Companies require both a relay and a test, which exceeds the rule requirements.²⁸

35. The requirement for customers to purchase both a relay and functional testing makes interconnection unduly burdensome and expensive for customers and violates Ohio Adm. Code 4901:1-22-02(A)(1).²⁹
36. In addition, the requirement for additional testing violates Ohio Administrative Code net-metering rules, which state that no utility tariff may require additional testing:

No electric utility's tariff for net metering shall require customer generators to:

(a) Comply with any additional safety or performance standards beyond those established by rules in Chapter 4901:1-22 of the Administrative Code, and the "National Electrical Code," the "Institute of Electrical and Electronics Engineers," and "Underwriters Laboratories," in effect as set forth in rule 4901:1-22-03 of the Administrative Code. (b) Perform or pay for additional tests beyond those required by paragraph (A)(3)(a) of this rule.³⁰

FirstEnergy requires both the relay and the additional testing in violation of the net-metering rules above, in addition to violating Ohio Adm. Code 4901:1-22-02(A)(1).

37. FirstEnergy's burdensome requirement is also a violation of the Companies' net-metering tariffs that are identical to R.C. 4928.11(A). The tariffs state that their

²⁷ See, e.g., Ohio Adm. Code 4901:1-22-06(C)(2)(b).

²⁸ For example, as stated in their complaint, Mr. Lemke and Mr. Eichman, per the Company's recommendation, installed SEL-547 relays as part of their generating unit systems. These relays meet IEEE 1547 standard unintentional islanding requirements. Therefore, each generating unit complies with the Interconnection rules, and any additional testing is unnecessary for compliance.

²⁹ On January 4, 2010, Mr. Eichman and Mr. Lemke each received an email which stated that "functional testing of the SEL-547 relay is required" prior to the approval of the system by the Company. The cost of the test as presented in each email is \$1,350.00. This amount is in addition to the cost of the relay, which, by itself, satisfies the requirements.

³⁰ Ohio Adm. Code 4901:1-10-28(A)(3).

- purpose is to implement Ohio Revised Code 4928.11 “which calls for uniform connection standards that are not unduly burdensome and expensive.”³¹ By requiring additional testing, the Companies violate an additional part of the tariff which states that any conflict between the PUCO’s rules and the Companies’ tariff will be controlled by the rules.³²
38. FirstEnergy’s burdensome requirement for a relay *and* additional testing is a failure by the utility to furnish necessary and adequate service and facilities to the customer-generators.³³

SECOND CLAIM

FirstEnergy’s Meter Requirements for Customers Seeking to Use Net-Metering are Unlawful.

39. Complainant incorporates by reference the above paragraphs 1-38 as if fully set forth herein.
40. FirstEnergy has insisted that all customer-generators replace their meters, even though the customers’ meters adequately satisfy the net-metering rules by being bi-directional.³⁴ In addition, and again contrary to the rules, the Companies have insisted that the meters be changed at the customer-generator’s expense.³⁵

³¹ Toledo Edison Company, *Interconnection Tariff*, P.U.C.O. No. 8, Original Sheet No. 76, 1st revised page 1 of 2.

³² *Id.*, 1st revised page 2 of 2.

³³ R.C. 4905.22.

³⁴ Ohio Adm. Code 4901:1-10-28(A)(4): Bi-directional is satisfied if the “customer’s existing, single-register meter . . . is capable of registering the flow of electricity in both directions.”

³⁵ For example, on April 11, 2008, Christopher Lemke received a letter from Toledo Edison representative Rich Reineck. The letter stated that once Mr. Lemke’s application was approved, a new bi-directional meter would “need to be installed.” The letter further stated the cost of the meter was \$295.00, and this cost would be “applied to [Mr. Lemke’s] electric bill after [installation].”

41. The customer-generator's existing, single-register meters, as required by the net-metering rules, are capable of "registering the flow of electricity in both directions...."³⁶ This capability is all that is required to satisfy the rule.
42. By requiring customer-generators to unnecessarily replace their electric meter, at the customer generator's own expense, FirstEnergy violates the net-metering rules in Ohio Adm. Code 4901:1-10-28(A)(4) and (5).
43. In addition, the requirement is a violation of the Companies' identical net-metering tariffs, each of which restates, as a requirement, the rules listed in paragraphs 41-42 above.³⁷
44. The requirement for a different meter is a failure by the utility to furnish necessary and adequate service and facilities to the customer-generators.³⁸

THIRD CLAIM

FirstEnergy's Application Requirements for Customers Seeking to Take Service Under the Companies' Net-Metering Tariffs, Used by All of the FirstEnergy Electric Distribution Utilities in Ohio, Violates Net-Metering Rules.

45. Complainant incorporates by reference the above paragraphs 1-44 as if fully set forth herein.
46. The FirstEnergy Net Energy Metering Rider application, accessible through all of the Companies' websites and employed by all three Companies as part of their application process, contains language that violates the state policy regarding net-metering.³⁹

³⁶ Ohio Adm. Code 4901:1-10-28(A)(4).

³⁷ The Toledo Edison Company, *Rider No. 14 Net Energy Metering Rider*, P.U.C.O. No. 8, Original Sheet No. 93, 2nd Revised page 1 of 2.

³⁸ R.C. 4905.22.

³⁹ https://www.firstenergycorp.com/corporate/files/Interconnection/Net-metering_Rider_-_OH_Application_for_Service_-_060910.doc.

47. FirstEnergy's current *Net Energy Metering Rider - Application for Service* states that "excessive generation by the Customer's generation facility, as determined solely by the Company, is cause for disqualification for service under the Net Energy Metering Rider."⁴⁰
48. The rules regarding net-metering simply state that a qualifying customer generator for net-metering is "one whose generating facilities are intended primarily to offset part or all of the customer generator's electricity requirements."⁴¹ The rules further state that any excess generation generated by the customer shall be allowed to accumulate as a credit or that the customer may request a refund.⁴²
49. FirstEnergy has no authority under Commission rules or other Ohio law to add this clause to its service agreement with the customer (for disqualifying a customer who otherwise wants service), and has no authority to enforce this clause. There is also no provision for this language in any of the Companies' tariffs. This clause purports to provide FirstEnergy with the unilateral ability to terminate net-metering agreements at its sole discretion. The presence of the clause in its agreement form and its use may have the effect of chilling customer interest in distributed generation projects, many of which require a significant financial investment on the part of the customer-generator.

⁴⁰ Id.

⁴¹ Ohio Adm. Code 4901:1-28-10(A)(iv).

⁴² Ohio Adm. Code 4901:1-10-28(A)(6)(c) states: "If the customer generator feeds more electricity back to the system than the electric utility supplies to the customer generator, only the excess generation component shall be allowed to accumulate as a credit until netted against the customer generator's bill, or until the customer generator requests in writing a refund that amounts to, but is no greater than, an annual true-up of accumulated credits over a twelve-month period."

50. The clause in FirstEnergy's Net Energy Metering Rider is contrary to Ohio law that mandates the encouragement of customer-generated electricity.⁴³
51. The clause in FirstEnergy's Net Energy Metering Rider is a failure by the utility to furnish necessary and adequate service and facilities to the customer-generators.⁴⁴

RELIEF REQUESTED

52. The Toledo Edison Company, the Ohio Edison Company, and the Cleveland Electric Illuminating Company violated the statutes and rules listed above. These actions discourage distributed generation, customer interconnection and net-metering, and are contrary to Ohio's advanced and renewable energy policies as originally presented in SB 3, and as maintained and emphasized in SB 221. The Companies are arbitrarily promulgating and enforcing their own policies that are contrary to Ohio statutes, the Commission's rules, and the Companies' own tariffs.

WHEREFORE, Complainant asks the Commission for the following relief:

- a. An Order finding that FirstEnergy provided inadequate service and facilities to its customers and thus violated R.C. 4905.22.
- b. An Order requiring FirstEnergy to cease and desist from imposing additional requirements beyond those stated in the PUCO's rules, prior to the interconnection and net-metering application approval and thereafter,

⁴³ R.C. 4928.02(C).

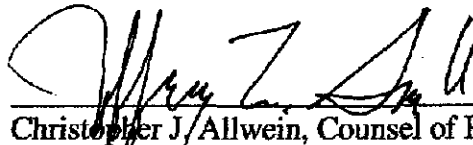
⁴⁴ R.C. 4905.22.

- on customers seeking to own or operate a distributed generation system that meets the applicable requirements stated in the PUCO's rules;
- c. An Order requiring FirstEnergy to cease and desist from imposing costs or charges in addition to those that would be required under the PUCO's rules, prior to interconnection and net-metering application approval and thereafter, on customers seeking to own or operate a distributed generation system that meets the applicable requirements stated in the PUCO's rules and that have the effect of making interconnection unduly burdensome or expensive for applicants;
 - d. An Order requiring FirstEnergy to cease and desist from requiring customers to replace meters that meet the PUCO's net-metering requirement of being capable of registering the flow of electricity in both directions with another meter.
 - e. An Order requiring FirstEnergy to remove from its *Net Energy Metering Rider – Application for Service* the clause purporting to give it the right to disqualify customers from service (described in paragraph 47 of this Complaint).
 - f. An Order directing FirstEnergy to revise and present clear and uniform standards for customer interconnection and net-metering, both in its tariffs and in the application and review process, that comply with Ohio law, the PUCO's rules, and Commission orders, and encourage the policies of the State of Ohio as stated in R.C. Chapter 4928.

- g. An Order directing FirstEnergy to refund all amounts collected from customer-generators due to unnecessary requirements and/or costs imposed by the Companies above those stated in the PUCO's rules and other Ohio law.
- h. An Order assessing a forfeiture of not more than ten thousand dollars per day for each violation or failure by each FirstEnergy Electric Distribution Utility in Ohio to comply with Ohio Statutes, the PUCO's interconnection and net- metering rules, and Commission orders (with each day a separate offense), pursuant to Ohio Adm. Code 4901:1-10-30.
- i. Such other relief to which the Commission determines is appropriate.

Respectfully Submitted,

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