BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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

JOINT COMMENTS OF THE ENVIRONMENTAL LAW & POLICY CENTER, THE SIERRA CLUB, THE OHIO ENVIRONMENTAL COUNCIL, THE SOLAR ENERGY INDUSTRIES ASSOCIATION, AND THE VOTE SOLAR INITIATIVE

INTRODUCTION

In a November 7, 2012 Entry, the Public Utilities Commission of Ohio ("Commission" or "PUCO") requested comments on proposed revisions to Chapter 4901:1-10 of the Ohio Administrative Code ("OAC"), including Commission rules regarding net metering. These revisions include attempts to clarify the definition of customer-generator, the process for crediting excess generation, and the scope of a customer-generator's premises. The Commission also sought comments on whether virtual net metering ("VNM") and aggregate net metering ("ANM") should be implemented in Ohio.

As explained below, the Environmental Law & Policy Center ("ELPC"), the Sierra Club, the Ohio Environmental Council ("OEC"), the Solar Energy Industries Association ("SEIA"), and the Vote Solar Initiative, collectively "Solar Advocates," generally support the Commission's proposed revisions as a positive step toward a successful net metering framework in Ohio. The Solar Advocates have two main concerns or comments on the Commission's approach, however:

1. The monthly excess generation credit should be a kWh credit that rolls over month to month indefinitely or, alternatively, until the end of the year. A true kWh credit, as opposed to a monetary credit, is consistent with the statutory definition of "net metering" at Ohio Revised Code ("ORC") § 4928.01(A)(30) and could be implemented consistent with Ohio statutes and caselaw.
2. ANM and VNM are entirely consistent with ORC §§ 4928.01 and 4928.67 and would promote the public policy of Ohio. The Commission should adopt rules providing for the implementation of ANM and VNM programs.

These concerns, as well as responses to the Commission's specific requests for comments, are addressed below.

COMMENTS

I. Paragraphs (8) and (9) – Safeguards for customer energy use data and improved environmental disclosure

The Solar Advocates have no comments on these proposed revisions.

II. Paragraph (10)(a) – Revised definition of "customer-generator"

The Solar Advocates support the revised definition of "customer-generator" as a simple and common-sense definition. The Commission's proposed rule would clarify that "[a] customer that hosts or leases generation equipment on its premises is considered a customer-generator." Case No. 12-2050, Entry Att. A at 69 (Nov. 7, 2012). The proposed change simplifies the definition and makes clear that a customer can enter into a third-party power purchase agreement ("PPA") or leasing arrangement to finance a generation system. Under this arrangement, a third party owns the generating system, but the customer-generator "host[s]" the system on its premises. A PPA or leasing arrangement is often a viable and popular option for customers seeking to avoid the higher upfront costs of a direct purchase. According to SEIA's Third

Quarter 2012 U.S. Solar Market Insight Report, "[t]hird-party-owned residential PV systems continue to far outnumber direct purchases by homeowners in mature [solar] markets."[1] The proposed rule's inclusion of the word "host" in the Commission's revisions clarifies that these important arrangements are permitted.

Although the Solar Advocates support this revision, we recommend that the Commission additionally clarify that a PPA is not a regulated activity and that a third-party owner of a generating system should not be considered a provider of retail electric service. As the Commission explained in the previous rulemaking, Senate Bill ("SB") 221 allows for net metering so long as the "generating facility [is] located on the customer-generator's premises" and the "equipment [is] installed behind the customer's electric meter." *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, 4901:1-25 of the Ohio Administrative Code*, Case No. 06-653-EL-ORD, Finding and Order at 22-23 (Nov. 5, 2008). Therefore, under a PPA, the third-party owner of the system would be a participant in the net metering arrangement but not a regulated entity. The Commission should memorialize this understanding in its order to provide clarity in the area of PPAs, which are a common and effective arrangement for customer-generators to install generating systems and implement net metering.

III. Paragraph (10)(b) – Presumption if customer-generator generates less than 120% of electricity requirements

The Solar Advocates support the proposed revision and believe it creates a fair and workable presumption to be applied to customer-generators. The Commission's proposed rule seeks to clarify the statutory requirement that a net metering system "is intended primarily to

[1] Solar Energy Industries Association's Third Quarter 2012 U.S. Solar Market Insight Report, Executive Summary, p. 7, available at http://www.greentechmedia.com/research/ussmi (last visited Jan. 7, 2013).

offset part or all of the customer-generator's requirements for electricity." ORC § 4928.01(A)(31). The rule would state that "[a] customer-generator that annually generates less than one hundred and twenty percent of its requirements for electricity is presumed to be primarily intending to offset part or all of its requirements for electricity." Case No. 12-2050, Entry Att. A at 71. As the Commission recognizes, a customer-generator's year-to-year electricity consumption may vary, and a customer could "generate in excess of the customer-generator's consumption while actually intending only to offset all of the customer-generator's requirements for electricity." Case No. 12-2050, Entry at 4. One hundred twenty percent is a reasonable level that recognizes the potential for excess generation and would "allow customer-generators to engage in energy efficiency measures without becoming excessive-generators." *Id.* Moreover, the 120% level would only create a presumption and would not be an absolute limit. The proposed rule recognizes that there may be situations where a customer-generator generates in excess of 120% of its electricity requirements but would still qualify as a customer-generator even though the presumption would not apply.

IV. Paragraph (10)(c) – Measurement of "requirements for electricity"

The Solar Advocates support the Commission's proposal for measuring a customer-generator's requirements for electricity and have no specific comments.

V. Paragraph (10)(d) – Credits for monthly excess generation and net excess generation

The Solar Advocates appreciate the Commission's efforts to clarify the calculation of excess generation credits to customer-generators, which can be inconsistently applied by utilities, but the proposed rules should explicitly provide for a straight kWh credit rather than a monetary credit. Allowing indefinite rollover of a customer-generator's monthly excess generation on a kWh basis would remove the need for an annual refund. However, if the Commission is

interested in implementing this annual true-up process, the Solar Advocates would not oppose limiting this monetary refund to only the generation component.

A. Monthly Net Excess Generation

The Commission's proposed rule would state that "[i]f the customer-generator has excess generation during a monthly billing period, the electric utility shall issue a credit in the amount of the excess generation to the customer-generator for the next monthly billing period." Case No. 12-2050, Entry Att. A at 72. The Commission rules should explain that this monthly credit is a straight kWh credit equal to the kWh of excess generation in a given month, which can be applied to future months when generation is less than the kWh of electricity consumed by the customer-generator. A kWh credit, in addition to being simpler than a monetary credit, would be consistent with the vast majority of states that have adopted net metering and consistent with Ohio statutes and caselaw.

Of the forty-four states that have a statewide net metering policy, thirty-six allow either a straight kWh rollover credit or a monetary credit equal to the full retail rate of the excess generation.[2] Of Ohio's closest neighbors, Pennsylvania, Kentucky, West Virginia, and Indiana all allow a credit at full retail rate, while Michigan provides for a full retail rate credit for all systems 20 kW or less. Adopting a straight kWh credit in Ohio would best represent a true net metering system and promote distributed generation in the state.

The Commission could provide for a straight kWh credit for excess generation consistent with Ohio law. ORC § 4928.01(A)(30) provides that "net metering" means "measuring the

[2] The thirty-six states are: Maine, New Hampshire, Vermont, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, Delaware, West Virginia, North Carolina, South Carolina, Florida, Kentucky, Indiana, Michigan, Illinois, Arkansas, Louisiana, Iowa, Wisconsin, Minnesota, Kansas, New Mexico, Colorado, Wyoming, Montana, Utah, Arizona, Nevada, California, Oregon, Washington, and Hawaii. *See* http://www.freeingthegrid.org (last visited Jan. 7, 2013).

difference in an applicable billing period between the electricity supplied by an electric service provider and the electricity generated by a customer-generator that is fed back to the electric service provider." ORC § 4928.67(B)(3)(b) states that "[i]f [excess] electricity is provided to the utility, the credits for that electricity shall appear in the next billing cycle." Section 4928.67 does not mandate that these "credits" be monetary credits. A straight kWh credit, equal to the amount of excess generation, would be consistent with this language.

The PUCO could implement a straight kWh credit in a manner consistent with *FirstEnergy Corp. v. Pub. Utils. Comm'n of Ohio*, 95 Ohio St. 3d 401 (Ohio 2002). In that case, the Ohio Supreme Court disallowed the Commission's requirement that FirstEnergy issue a monetary credit or refund to a customer-generator in an amount equal to the generation, transmission, distribution, and other nonbypassable rate charges associated with the excess electricity. A kWh rollover credit would not conflict with *FirstEnergy* for two reasons. First, the court in *FirstEnergy* was addressing a monetary credit, rather than a straight kWh credit, which the Commission could implement in this rulemaking.[3] Second, the court in *FirstEnergy* was concerned about customer-generators receiving a refund or, in other words, being paid in amounts equal to the total of the underlying electricity charges. Under a kWh rollover system, the excess electricity generation would simply rollover month-to-month. No refund would ever have to be paid to the customer-generator. In fact, an indefinite rollover of excess kWh credits will fairly credit customer-generators for potential excess generation while providing an incentive for those customers to rightly size their generation systems. If customers can receive a

[3] The Solar Advocates recognize that Ohio law and *FirstEnergy* have been interpreted to hold that certain rate components, like transition charges, may be nonbypassable. If the Commission believes that certain rate components cannot be credited to customer-generators, the Commission could carve out those nonbypassable rate components from the customer-generator's credit under a kWh credit system. The Solar Advocates contend that *FirstEnergy* did not hold as a matter of law that a customer-generator's credit must be limited to only the generation component.

kWh credit but will never receive a check for the excess generation, the customer will not have an incentive to install a generation system that exceeds electricity needs. Providing for indefinite rollover of kWh credits and eliminating the refund would also simplify the credit process and avoid any potential tax or jurisdictional complications associated with that refund.

For these reasons, the Commission should clarify that the monthly excess generation credit is in the form of a straight kWh credit that rolls over indefinitely from month to month.

B. Yearly Net Excess Generation

As explained above, the best system for dealing with excess generation would be a kWh credit that rolls over month to month indefinitely, with no refund check ever being paid to the customer-generator. If the Commission is interested in implementing a refund at the end of a twelve-month period, however, the Solar Advocates do not oppose the Commission's proposed approach. The proposed rules explain that any credit not used in the next monthly billing period would be credited to a net excess generation account in the customer-generator's name. Case No. 12-2050 Entry Att. A at 72. At the end of the twelve month period of June 1 to May 31, the utility would be required to "issue a refund to the customer-generator for the amount of the credit remaining in the net excess generation account . . . calculated at the rate the customer-generator pays for generation." *Id.* Again, an indefinite kWh rollover would eliminate the need for this refund system. But for purposes of issuing an actual refund to customer-generators, the Solar Advocates believe it would be adequate to limit that refund to the generation component. Importantly, however, the refund should include all costs associated with generation and should be consistently applied by the utilities.

VI. Paragraph (10)(e) – Revised definition of a customer-generator's "premises"

The Solar Advocates support the proposed revisions. The Commission's proposed rules would explain that "[a] customer-generator's premises includes areas owned, operated, leased, or otherwise controlled by the customer-generator, including contiguous lots or areas that are owned, operated, leased, or otherwise controlled by the customer-generator." Case No. 12-2050, Entry Att. A. at 71. This is a common-sense definition that would provide clarity for customer-generators.

VII. Paragraph (10)(f) – Possible specific definitions of acceptable net metering technologies

The Solar Advocates have no comments on these potential revisions.

VIII. Paragraph (10)(g) – Virtual Net Metering and Aggregate Net Metering

In its November 7 Entry, the Commission specifically sought comments on the consistency of ANM and VNM with ORC §§ 4928.01 and 4928.67. The Solar Advocates believe that ANM and VNM are entirely consistent with Ohio law and should be implemented by the Commission.

Section 4928.01 is a definitions section that defines "net metering" as "measuring the difference in an applicable billing period between the electricity supplied by an electric service provider and the electricity generated by a customer-generator that is fed back to the electric service provider." A "net metering system" is

> a facility for the production of electrical energy that does all of the following:
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> (a) Uses as its fuel either solar, wind, biomass, landfill gas, or hydropower, or uses a microturbine or a fuel cell;
> (b) Is located on a customer-generator's premises;
> (c) Operates in parallel with the electric utility's transmission and distribution facilities;
> (d) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.

Lastly, a "customer-generator" is simply a "user of a net metering system."

ANM and VNM are not inconsistent with any of these definitions. A net metering system, even under ANM and VNM, would still be located on a customer-generator's premises. The system's generation, however, would simply be credited to any facility owned by the customer-generator.

ANM and VNM are also consistent with ORC § 4928.67, which establishes requirements for utilities to implement net metering. Section 4928.67's requirement that "[n]et metering . . . be accomplished using a single meter capable of registering the flow of electricity in each direction" is not inconsistent with ANM and VNM. Under aggregate or virtual net metering, a single meter would be used for each generating system, which would measure the excess generation and compare it to the customer-generator's total consumption.

ANM and VNM would promote the public policy of the state of Ohio. These programs take advantage of economies of scale and allow flexibility that may make it possible for customers to implement distributed generation systems that would not otherwise be feasible. For example, a school district or city or county library with several locations may not be able to install a generation system at each of its locations because of a lack of resources, including the time and money necessary for these undertakings. However, under an aggregate or virtual net metering system, the school district or library could install a generation system at one of its locations and measure its total energy use against the electricity generated by the system. ANM is also an important tool for farms or other large properties with multiple buildings. The building or area that is the best fit for a generating system may not necessarily align with the buildings consuming the most electricity. ANM is a common-sense way to improve flexibility in

situations like these and promote investment in beneficial generation projects that align with the total electricity needs of a customer-generator.

CONCLUSION

Overall, the Commission's proposed revisions represent a positive step forward in implementing successful net metering and distributed generation in the state. However, as explained above, the rules should clarify that the monthly credit for excess generation is a kWh credit. Additionally, the Commission should pursue aggregate and virtual net metering in Ohio. The Solar Advocates appreciate Commission's efforts and the opportunity to comment on the revisions and clarifications in the proposed rules. We look forward to participating further in the Commission's rulemaking process.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Comments submitted on behalf of the Environmental Law & Policy Center, Sierra Club, Ohio Environmental Council, Solar Energy Industries Association, and Vote Solar Initiative was served by electronic mail, upon the following Parties of Record, this 7th day of January, 2013.

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Summary: Comments of the Environmental Law & Policy Center, Sierra Club, Ohio Environmental Council, Solar Energy Industries Association, and Vote Solar Initiative electronically filed by Mr. Nicholas A. McDaniel on behalf of Environmental Law and Policy Center and Ohio Environmental Council and Sierra Club and Vote Solar Initiative and Solar Energy Industries Association