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

REPLY COMMENTS OF THE DAYTON POWER AND LIGHT COMPANY

The Dayton Power and Light Company ("DP&L" or "Company") submits the following comments in reply to initial comments previously filed by interested participants in this proceeding.[1] DP&L's comments are generally grouped within subject categories and not by party. The lack of a reply comment with respect to some or any aspect of another participant's comments should not be construed as agreement with the comments. DP&L's reply comments with respect to changes to the Electric Service Safety Standards are set forth in part I below and DP&L's reply comments to proposed rule changes in connection with Net metering and PURPA are set forth in parts II through VI.

I. Electric Service Safety Standards

4901:1-10-01 Definitions

DP&L disagrees with the Ohio Consumer's Counsel (OCC) proposed changes to Section 4901:1-10-01(I) OAC, Customer energy usage data. OCC at 3. Energy usage that is "identifiable to a retail customer" would include any type of energy usage associated with a specific customer. Usage information that is not collected by an advanced or smart meter should also be protected.

[1] For ease of citation, references to other participants' Initial Comments omit the words "Initial Comments of." Citations are in the form [party name or abbreviation] at [page number]. .

DP&L disagrees with the OCC's proposed definition for momentary outages. OCC at 5. Momentary outages are defined by IEEE as interruptions of service to customers for duration of less than five minutes. DP&L believes it is unnecessary to incorporate the definition because momentary outages are not tracked or reported as part of the reporting requirement in Section 4901:1-10-10 OAC, therefore making this proposed inclusion moot.

4901:1-10-05 Metering

DP&L agrees with First Energy Corporation's (FE) proposed changes to Section 4901:1-10-05(C). The additional text further clarifies the utilities' right of access to the utility's meter equipment. FE at 4. DP&L believes implementing this recommendation better enable the utility carry out its authorized functions and will lessen the burden of potential compliance issues on the Company.

DP&L disagrees with the OCC's proposed change to Section 4901:1-10-05(F)(5)(c) OAC. OCC at 5. In DP&L's experience customers generally prefer to apply overpayment to subsequent bills, or in the case when there is no balance, receive a refund. This has historically not been a contentious issue from DP&L's perspective, so notifying the customer of the option between a credit or cash refund simply puts undue burden on the electric utility.

The OCC suggests that electric distribution utilities (EDU) be required to obtain an actual meter reading a minimum of four times a year as opposed to the current requirement of at least once each calendar year. OCC at 6. DP&L makes a reasonable attempt to obtain accurate and actual readings for every billing period. However, there are times where this is physically impossible. For example, some meters are in areas not accessible unless the property owner is present. DP&L is proactive in having these meters upgraded so they can be read via Encoder Receiver Transmitter technology, but until all inaccessible meters are replaced there will be instances where DP&L is unable to obtain actual reads four times in a given year. This proposal is overly burdensome and costly with no added benefit. DP&L urges the Commission to reject OCC's proposed change.

4901:1-10-07 Outage Reports

The Ohio Hospital Association (OHA) urges the Commission to give serious consideration to a reduction in the amount of time that must elapse before an interruption in service is elevated to the status of an "outage" because of major investment in smart grid technologies by all of the Ohio electric utilities. OHA at 3. The OHA goes on to state that the interruption of even a single cycle in the power delivered to a hospital can be enough to interrupt a CT scan or an MRI. To the extent that smart grid technology is making such granularity on the circuit serving a hospital available, OHA requests these events be reported not only to the Commission but to the hospital.

The Commission should reject OHA's recommendations at this time since the implementation of smart grid technologies is not widespread. OHA's premise for this reporting is faulty because not every hospital in Ohio has a smart meter nor does each utility have smart grid technologies in place.

The OCC requests outage reporting when an outage unexpectedly lasts longer than four hours or more for 2,500 or more customers; or 24 hours or more for 100 or more customers. OCC at 7. The intent of reporting outages to the Commission is to keep them abreast of potential problems and determine the need for any assistance on behalf of the Commission or the State. DP&L believes it is unnecessary to report outages after the fact because power will already be restored.

In addition, OCC requests that it receive a copy of all outage reports. This is unnecessary and should be rejected.

4901:1-10-08 Emergency Plan; Annual Emergency Contact Report and Annual Review of Emergency Plan; Critical Customers; Emergency Exercise; and Coordination

DP&L disagrees with the OCC's comments on Section 4901:1-10-08(I)(1) OAC, whereby the OCC recommends that utilities update their critical customer lists quarterly, rather than annually. OCC at 9. DP&L believes that updating this list on a quarterly basis will expend additional tracking resources with little benefit over utilizing an annual tracking schedule. OCC at 9. DP&L also disagrees with the OCC's proposed addition to Section 4901:1-10-08(I)(4) OAC recommending that utilities maintain contact information for critical customer care providers. DP&L notes that this change will be difficult to track and will subsequently subject DP&L to additional liability since the Company must ensure it has current care providers on file.

The Commission should reject OCC's request to have emergency plans kept on site at the PUCO. OCC at 9. The rule currently requires the emergency action plan be available for review at the utility's offices and this has worked well. It appears that OCC is trying to solve a problem that does not exist. The OCC argues that it is for ease of reference and efficiency in the state regulator's work on emergency issues. In addition, the OCC requests a copy of the emergency plan. These plans contain critical and personal employee information therefore the rule should not be changed. OCC states they should receive a copy because it will benefit consumers and others—such as Ohio local governments that are keenly interested in emergency plans and response for their constituents—with important information that is uniformly made available across a service territory. This is unnecessary. It is unclear how providing the OCC a copy of the emergency plan will benefit local governments unless OCC's plans include releasing each

EDU's emergency plan. DP&L already works closely with the communities in its service territory on a regular basis and during restoration events.

The OMA Energy Group (OMAEG) requests the Commission add a section to 4901:1-10-08(A)(18) which would require EDUs to develop policies and procedures which promote lengthening of backup power operating time at critical and business critical facilities (such as manufacturers, grocers, etc.): specifically, encouraging energy-efficient best available technology (BAT) of critical equipment connected to backup power, and policies encouraging combined-heat and power (CHP) at hospitals, manufacturers, and other appropriate facilities. OMAEG at 4. Promotion should be coordinated with the utility's demand-side management programs or as a separate program if demand-side management programs are non-existent. DP&L's Energy Efficiency group has worked with and will continue to work with the Commission and customers on CHP but believes the proposed language is misplaced in an EDU's emergency plan.

4901:1-10-09 Minimum Customer Service Levels

DP&L disagrees with the OCC's proposed addition to Section 4901:1-10-09(D) OAC, which requires the utilities to annually conduct a customer satisfaction survey to measure perceptions about the services provided by the electric utility. OCC at 11. DP&L requests the Commission reject the OCC's suggested addition of an annual customer satisfaction survey. OCC recognizes that EDUs in conjunction with PUCO staff perform a survey in accordance with 4901:1-10-10(B)(4)(b) and EDUs may perform their own customer satisfaction survey. Duplicating these customer surveys for OCC's benefit is a waste of time and resources.

4901:1-10-10 Distribution System Reliability

OCC claims the time is ripe for the Commission to re-initiate implementation of Momentary Average Interruption Frequency Index (MAIFI) reporting because some Ohio EDU's have implemented SmartGrid programs which should enhance the availability of this information. In addition, OCC suggests that customers require ever-greater levels of service reliability and the recording of momentary interruptions will allow the Commission to continue to develop programs and policies that reflect this important indicator of service reliability. OCC at 13. DP&L has not implemented SmartGrid technology and does not have the data available to accurately report MAIFI on all of its circuits. DP&L strongly urges the Commission to reject OCC's proposal to reinstate MAIFI reporting. DP&L, like most utilities, installs reclosers on its overhead distribution system to reduce sustained outages to customers caused by momentary or transient faults, such as animals impacting distribution equipment and lighting strikes. The reclosers, while clearing a fault, operate a number of times causing the momentary loss(es) of power to the customer. While DP&L understands that no customer likes a momentary outage because they can be inconvenient, a momentary outage is far more desirable than a sustained outage which requires a line technician to make repairs before electricity is restored.

The OCC also requests that the Commission re-instate the System Average Interruption Duration Index (SAIDI). OCC at 14. DP&L points out that SAIDI is simply the product of SAIFI and CAIDI. Due to the simplicity of this calculation using data that is currently reported, DP&L urges the Commission to reject OCC's suggestion.

The OCC also recommends that an EDU be required to submit an action plan to PUCO Staff if the EDU fails to meet any reliability standard in a year. OCC at 16. The OCC requests that the action plan be a filed report to provide the OCC access to the information without having to file a public records request. DP&L suggests the Commission reject OCC's recommendation.

An action plan submitted pursuant to this rule extends beyond the action plan that is on paper. EDUs and Staff both are working for the same goal, to provide satisfactory levels of reliability to the customer. This mutually cooperative process should continue without requiring additional reporting at the recommendation of the OCC.

4901:1-10-11 Distribution Circuit Performance

DP&L recommends that the Commission reject OHA's proposal to require utilities to duplicate worst performing circuit reports specifically for Critical Human Service Facility Circuits. OHA at 4. The OHA's recommended definition of Critical Human Service Facility Circuits is any location incorporating a state recognized emergency service department, a state recognized labor and delivery department or a state recognized behavioral health department. This definition is vague and includes more than just hospitals. OHA argues the need for the change because it will reduce the likelihood of outages for hospitals in the first instance and help minimize, to the extent practicable, the impact and duration of outages on hospitals, thereby enhancing the health and safety of the communities served by these facilities. DP&L believes that the priority restoration service required in the EDU's Emergency Action Plan addresses OHA's concerns. OHA's suggested change removes the incentive for the hospital to evaluate and select a redundant feed, additional back up generation or an uninterruptible power supply system which may be more suitable.

OCC requests that the EDU submit the eight worst performing circuit report to the OCC in addition to PUCO Staff because it would be more convenient than performing a public record request. The OCC suggests that they utilize this information for reliability analysis as they are the representative of Ohio residential consumers. OCC at 17. It is difficult for someone unfamiliar with the industry to understand the fundamental difference from one EDU to the next or even from one distribution circuit to the next. Making such information available publically will almost certainly result in inappropriate comparison and incorrect conclusions. Further, DP&L believes this proposal duplicates efforts with the PUCO and the Commission should therefore reject the OCC's requested change.

4901:1-10-11 (F) details that if a circuit is listed for three consecutive years on the 8 worst performing circuit three years in a row then it is deemed a violation of the rule. The OCC suggests that electric utilities should be required to prioritize the necessary improvements for these circuits such that the performance is improved the following year and proposes a two year time period for circuits to be removed from the eight worst performing circuit list prior to it becoming a violation of the rule. OCC at 18. DP&L works diligently to eliminate repeat circuits and invests a significant amount of time and resources in addressing any current or potential reliability concerns. OCC should recognize that it may take longer than a year to improve a circuit's performance. For example, a circuit may appear on the list and the corrective action plan developed could take 9 months or more to fully implement, which gives only 3 months for a circuit to improve. It is unreasonable for OCC to suggest that a circuit that appears on the list two years in a row is a violation of the rule and the Commission should reject the OCC's proposal.

4901:1-10-12 Provision of Customer Rights and Obligations

The OCC suggests the use of credits for customers that experience multiple outages for reasons other than scheduled maintenance. OCC at 22. DP&L believes this conflicts with the intent of the rules as stated in 4901:1-10-02(A)(2) which is to promote safe and reliable service to consumers and the public, and to provide minimum standards for uniform and reasonable practices. DP&L does not believe that refunding customers is a reasonable practice. Not all outages are within the EDU's control and the EDU should not be required to refund customers where it could not have reasonably prevented the outage. Further, DP&L must meet its approved Reliability Standards or be subject to a monetary penalty prescribed by the Ohio Administrative Code. DP&L recommends that the Commission reject OCC's proposal.

The OCC recommends that all utilities provide an annual bill insert containing a written summary of their rights and obligations under this chapter. OCC at 18. DP&L disagrees with the OCC and contends that issuing an annual bill insert to all customers, not just new customers, would be unnecessary and costly. DP&L urges the Commission to reject OCC's proposal.

The OCC proposes in Section 4901:1-10-12(B)(7) that the utilities bear the responsibility of the protection of customer energy usage data and that utilities be subjected to the applicable State and/or Federal laws to the extent there is a security breach. OCC at 19. The proposed staff amendments are merely consumer disclosures regarding the current status of the law. The OCC's modifications are misplaced. To the extent that the OCC is attempting to change the substantive protections pertaining to data privacy, this is not the appropriate avenue.

The OMAEG proposes in Section 4901:1-10-12(F)(4) that utilities provide to customers thirty-six months of consumption data at no charge. OMAEG at 3. DP&L requests that the Commission reject this proposal since the Company only possesses 24 months of customer consumption data readily available in its customer service system. Further, OMAEG proposes that utilities make available to customers participating in a time of use program, 60 months of usage history, payment history, and time differentiated price data and detailed consumption data without charge. Although DP&L does not currently have a time of use tariff, the Company urges the Commission to reject OMAEG's proposal as the Company does not have 60 months of usage history readily available in its customer service system.

4901:1-10-18 Reconnection of Non-Residential Service

DP&L agrees with FE's proposal in Section 4901:1-10-18(A)(1)(a) that in order for nonresidential customers to have service reconnected, the customer must pay the full amount in arrears, including any amounts for which service was not disconnected, but is now past due at the time of reconnection. FE at 11. DP&L notes that including amounts that become past due after the initial disconnection will avoid the cost of another disconnection notice and Company trip to the field. DP&L recommends that the Commission accept FE's proposal.

4901:1-10-22 Electric Utility Customer Billing and Payments

DP&L disagrees with OCC's proposal in Section 4901:1-10-22(B)(25) that any phase in recovery charges and other cost recovery riders be listed separately from base rates on a customer's bill. OCC at 26. This would unnecessarily lengthen the bill and ultimately introduce additional billing costs. Further, DP&L believes the Company's website is a better resource for outlining the respective tariffs in which customers are billed.

4901:1-10-23 Billing Adjustments

Staff's proposed rule change to Section 4901:1-10-23(A) OAC limits the time period to 36 months for back billing for correction of metering inaccuracies. DP&L agrees with FE's recommendation to extend the limitation to no less than 72 months to maintain consistency with the statute of limitations conveyed under Section 2305.07, Ohio Revised Code. FE at 12.

4901:1-10-24 Customer Safeguards and Information

The OCC recommends in Section 4901:1-10-24(E)(3) OAC that electric utilities that collect granular customer energy usage data conduct a privacy impact assessment and identify risks associated with improper disclosure of data. OCC at 29. DP&L notes that it is unclear what a privacy impact assessment would entail and given the vague nature of the request, the

Commission should deny the OCC's proposal. DP&L further requests that verbal consent be included as an acceptable means of consent to disclose customer energy usage data.

The Ohio Power Company (AEP) recommends adding language to Section 4901:1-10-24(F)(3)(f) that would allow contractors and vendors that manage various programs for the utility and have a contract with the utility to maintain customer data privacy. AEP at 13. DP&L urges the Commission to accept this addition as this would save electric utilities significant time and resources when managing programs that entail using customer data.

Duke Energy Retail (DER) proposes that FE and Duke Energy Ohio's (DEO) load profiling methodologies be used as a statewide methodology for the remaining Ohio electric utilities. DER at 6. DP&L contends that DER has exaggerated the scope of this section by proposing a standard load profiling methodology. DP&L urges the Commission to reject this proposal as creating a statewide load profiling methodology would require significant stakeholder input as part of a separate proceeding.

4901:1-10-27 Inspection, Maintenance, Repair, and Replacement of Transmission and Distribution Facilities (Circuits and Equipment)

The OCC recommends that the EDU submit the performance of each transmission circuit to the Commission and the OCC. OCC at 31. The Commission should reject OCC's suggestion since this report is available to the OCC by a simple records request to the PUCO.

4901:1-10-29 Coordination with Competitive Retail Electric Service (CRES) Providers

The Retail Energy Supply Association (RESA) recommends that utilities make available to CRES providers a provision to purchase receivables if the CRES providers utilize consolidated billing for all of their residential and small commercial customers. RESA at 10. DP&L notes several parties have recommended that purchase of receivables (POR) programs be implemented by electric utilities. DP&L opposes the addition of a POR program as a result of the rule amendments in this case and recommends an extensive review of POR programs in a separate proceeding.

4901:1-10-31 Environmental Disclosure

DP&L agrees with AEP's proposal to offer the environmental disclosure data on the utilities' webpage with a bill message informing customers of the link. AEP at 19. DP&L also agrees that some customers may not be able to view the data via the web and in this case will provide the customer a hardcopy upon request.

II. Net Metering Premise

DP&L disagrees with Solarvision's proposal that the premises that hosts a net metering system should include adjacent property owned, operated, leased or otherwise controlled by the customer-generator. Solarvision at 3. DP&L opposes this language addition. The Merriam-Webster dictionary defines adjacent as "not distant" and "nearby". These are both very vague terms, do not clarify exactly what constitutes premises, and would create confusion about what would and would not qualify for net metering. DP&L is in favor of limiting to contiguous property to the property that contains the metering point.

III. Net Metering Billing

A. Manual Billing

Like Duke Energy Ohio (Duke Energy Ohio at 7), all of DP&L's net metered customers' bills are handled individually. The billing system is not capable of billing kWh received from a net metering customer. Also, like FirstEnergy (FirstEnergy at 21), the Company opposes the requirement in 4901:1-10-28(B)(14)(c) to report the estimated total kilowatt hours supplied to customer-generators by the electric utility as the Company has no ready means to extract this information other than manually, which would be time-consuming and a cost ultimately passed on to customers.

B. Customer Data

DP&L disagrees with Duke Energy Retail's assertion that monthly usage data files provided to the CRES suppliers by the EDUs should include the calculation and display of distributive usage and generated usage. Duke Energy Retail at 7. As stated above, for DP&L and other utilities, including Duke Energy Ohio, net metering is a manual billing process and are not capable of performing this function. Data sent via Electronic Data Interchange ("EDI") to CRES providers represents total usage. DP&L currently offers to provide net usage, but only upon request from the customer or CRES provider. The net usage is sent to the CRES provider through a non-EDI format. PJM currently does not track distributed generation data net metered by the EDU.

DP&L also disagrees with Direct Energy's claim that "the Commission should require EDU billing systems possess the capability of communicating hourly load and generation information to the customer and CRES provider within 48 hours of that particular hour's usage" and, if that option is not chosen, "the Commission should require that hourly usage data be transmitted with the summary load and generation data at the end of the customer's billing cycle." Direct Energy at 4. First, the current net metering rules require only that a customer have a single meter capable of registering the amount of electricity which flowed in each direction during a billing period. Direct Energy's proposal would require that net metering customers have interval meters, which would result in additional costs being borne by the Customer. Second, with respect to all customers and not just net metering customers, DP&L currently provides hourly load and generation data upon request only and at a cost defined by tariff. Finally, requiring EDUs to communicate hourly data within 48 hours of the usage presents an unreasonable timeframe.

IV. Requirements for Electricity

A. 120% Limit

In its initial comments, Solar Advocates claim that the 120% level would only create a presumption and would not be an absolute limit. Solar Advocates continue to say that 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. Solar Advocates at 4.

DP&L disagrees with this logic. To begin, the Company is not ceding with the 120% level and specifically with the calculation methodology in Staff's proposed rules. However, once the calculation and the limit are established, the limit should be just that. Anything in excess would be a violation of the net metering rules and would no longer qualify for net metering. The purpose of the rules is to lay out clear guidelines and eliminate doubts as to what is and what is not. Not enforcing this limit would lead to confusion about what qualifies for net metering.

B. Calculation

Ohio Consumers' Counsel ("OCC") recommends in its initial comments that the 120 percent of annual load threshold be used once at the time of the net-metering application. OCC at 34. This is a contradictory statement. OCC suggests calculating a percentage based on what the customer generates before they actually generate anything. 4901:1-10-28(B)(6) states 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 usage." Staff is clearly intending this to be a calculation performed every year.

OCC further contends that performing the percentage calculation annually would subject existing and future customer-generators to unreasonable risks of not getting remunerated for their excess electricity production and increasing their investment paybacks. OCC at 32. The intent of net metering is to offset part or all of the customer-generator's requirements for electricity. It is not intended to create an on-going revenue stream and/or as means to expedite the payback period for investment. Installing a system that is oversized with these purposes in mind signals a clear violation of the net metering rules.

C. Customer Data

With regard to establishing a customer-generator's requirements for electricity, OMA Energy Group recommends revising 4901:1-10-28(B)(7) to include the following language:

"The utility shall use the peak 12-month consumption period from the previous five years for manufacturing facilities to determine the annual electricity requirements." OMA Energy Group at 2.

Per O.A.C. 4901:1-10-03(A)(2), electric utilities are only required to maintain customer data for a period of three years. DP&L also disagrees with the notion of setting the electricity requirements for manufacturing facilities using only consumption. Historical demand should be used to appropriately determine the size of the net metering system installation. DP&L believes strongly that "requirements for electricity" has the meaning of both energy (kWh) and demand (kW). Customers are billed on both energy and demand. The Company's equipment must be sized according to the customer, which takes into account the customer's demand. DP&L has an obligation to meet safety standards and ensure reliable electric distribution service to all of its customers. Sizing only on kWh has the potential to allow for over-sizing of facilities, which may undermine the Company's obligation to meet those safety standards and provide safe and reliable electric distribution service. Historical energy and demand data must be used when determining the customer-generator's requirements for electricity and for sizing of the net metering system.

V. <u>Credit</u>

The Ohio Supreme Court in ruled in <u>FirstEnergy Corp. v. Pub. Util. Comm.</u>, 95 Ohio St.3d 401, 2002-Ohio-2430 that excess generation is not entitled to a full retail rate because a net-generator only generates and supplies electricity. A net-generator does not provide transmission, distribution, or ancillary service.

Paragraph 13 of the Supreme Court Order states:

R.C. 4928.67 and the commission's net-metering rule speak in terms of measuring and charging or crediting for "electricity" produced or consumed. The August Rider as submitted provides for FirstEnergy's ***crediting or refunding to a net generator of the "energy charges of the unbundled generation component of the appropriate rate schedule."*** *In other words, FirstEnergy must credit or pay to a net generator only the tariff charges for generation of the electricity by the net generator and supplied to FirstEnergy. The net-generator provisions of the August Rider speak solely in terms of electricity generated and supplied, as they should. A net-generator customer of FirstEnergy only generates and supplies electricity; it does not provide transmission, distribution, or ancillary services. It has no allowable transition costs for which transition charges are assessed, and is not responsible for paying into the Universal Service Fund or the Energy Efficiency Fund. Yet the commission-ordered modifications to the net-generator provisions of the August Rider would make FirstEnergy liable for payment or crediting of all of those additional charges, in conflict with several provisions of the Revised Code in addition to R.C. 4928.67(B)(2).* (Emphasis added).

The ruling clearly mandates a monetary credit equal to the excess kWh multiplied by the unbundled generation component of the appropriate rate schedule. Several parties have argued that the excess generation credit should be a kWh credit, not a monetary credit, and that a kWh credit would not go against the FirstEnergy Ohio Supreme Court Order. First, the language of the Order undoubtedly refers to a monetary credit. The fact that the Order does not clearly spell out that excess credit cannot be a kWh credit does not indicate that the Ohio Supreme Court left the door open to crediting excess generation on a kWh basis. Second, crediting excess generation as kWh's to be applied to subsequent bills is in turn crediting at the full retail rate, which includes distribution, transmission, and other nonbypassble charges. Again, this violates the Ohio Supreme Court Order. As mentioned above, net-generators do not provide transmission, distribution, or ancillary services. Third, excess generation should be credited at the rate for the month in which it is generated. Issuing a monetary credit for excess generation satisfies this as customers receive credit for that generation at the current base generation price. Credits that "roll forward" in kWh form would result in price differences due to effects such as seasonality and changing auction prices.

In its filing, Solar Advocates promote the idea that a straight kWh rollover system would result in no refunds ever being paid to customer-generators, which would provide an incentive for those customers to rightly size their generation systems. Solar Advocates at 6. This line of reasoning is flawed. O.A.C. 4901:1-10-28(B)(10) states that EDUs will issue a refund to the customer-generator for the amount of the credit remaining in the net excess generation account at the end of the twelve month period of June 1 to May 31. Given this rule, customer-generators do in fact have an incentive to install more generation than needed in order to increase the credits in the net excess generation account. In addition, Solar Advocates contradicts its statement regarding a lack of incentive to install excess generation when it comments "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." Solar Advocates at 7.

A. Interstate Renewable Energy Council

DP&L takes issue with several aspects of proposals by Interstate Renewable Energy Council (IREC). Specifically, IREC proposed the following:

In addition to the generation rate component, IREC suggests that rolled-over excess generation from previous months should be used to offset transmission and distribution-related rate components (i.e., delivery charges) that are also assessed through volumetric charges. This does not require utilities to credit customers for non-volumetric charges, such as fixed monthly charges, or charges which have been determined by the Commission or the courts to be nonbypassable and not eligible to be offset by excess generation." IREC at 8.

"IREC's current proposal to credit excess kWHs against volumetric, bypassable rate components does not seek to overturn Ohio Supreme Court practice, but, rather, seeks to harmonize First Energy's sole affirmative declaration of law – that customer-generators may not avoid nonbypassable rate charges – with the dominant form of net metering in the United States: full retail rate net metering. IREC at 8.

First, contrary to what IREC has proposed in the second paragraph above and as the Company has previously stated, the Ohio Supreme Court has already ruled that excess generation can only be credited at the unbundled generation component and not transmission and distribution. Second, all distribution charges, both volumetric and non-volumetric, are nonbypassable. Lastly, IREC appears to be proposing that excess generation in the form of a straight kWh that rolls over every month is supposed to be used to offset only certain components of certain rates on a customer-generator's bill. This would not be feasible from billing perspective.

IREC's proposal ignores the heart of the First energy Corp. ruling(net-generators are not entitled to the full retail rate on excess generation) and seeks to make an end run in order to receive the full retail rate. Given the regulatory environment in Ohio where distribution, transmission, and generation have been unbundled and customers have the option to choose generation suppliers, what works in other states may not always work in Ohio.

VI. Virtual Net Metering, Aggregate Net Metering

As DP&L stated in its initial comments, the Company urges the Commission to reject the idea of virtual net metering and aggregate net metering. The idea of generating electricity that can be applied to different metered accounts, and even at different locations, is a direct violation of Revised Code §4928.67(B)(3)(a), which states that "the electric utility shall measure the net electricity produced or consumed during the billing period, in accordance with normal metering practices." Readings at one meter being applied to multiple other meters, both on-site and off-site, is not normal metering practices.

First and foremost, the Company would like to point out the obvious administrative difficulties that this idea would entail. As other utilities have noted, net metering as it stands today is largely a manual billing process. The Company's billing system cannot aggregate hourly, daily, or monthly kWh as read from meters that may be miles apart in a way that would permit the other aspects of the net metering rules to apply. Also, some customers with multiple locations and meters may not have meters read on the same day. To further complicate this proposal, customers may have some meters taking SSO service, while the rest of the meters are served by a CRES provider.

The Company emphasizes that the benefits to virtual and aggregate net metering cannot possibly outweigh the barriers, and urges the Commission to reject this proposal.

VII. <u>Compliance with PURPA</u>

DP&L responds to those entities who submitted initial comments with respect to the proposed rules relating to compliance with PURPA as follows:

<u>Advance Energy Economy Ohio at 14.</u>

In an effort to establish another option for energy payments to qualifying facilities, Advance Energy Economy Ohio ("AEEO") recommends utilizing a market referent price based on a combined cycle gas turbine unit cost. AEEO at 14. The Company recommends that the Commission reject this option because 1) gas prices are very volatile, 2) gas is only one fuel source that can be used by a qualifying facility, and 3) the costs of a combined cycle gas turbine are unlikely to be representative of the avoided costs to the utility of purchasing power from qualifying facilities.

<u>Rule 4901:1-10-34(A) Definitions</u>:

FirstEnergy Service Company ("FES") has proposed to change the definition of "Day-ahead energy market" as follows:.

> "Day-ahead energy market" means ~~the~~ <u>any independently administered auction-based</u> day-ahead <u>and real-time</u> ~~hourly~~ forward <u>wholesale</u> market <u>for the sale of electric energy</u>. ~~in which participants offer to sell and bid to buy energy~~.

DP&L supports the originally proposed definition as both clear and consistent with how the PJM Interconnection, LLC would view its day-ahead market, but would not object to adding, as proposed by FES, the phrases "independently administered" and "wholesale." The proposed additional phrase "and real-time" renders the definition both wrong and ambiguous. The day-ahead and real-time markets are two different markets that have different prices. They are related in that many wholesale agreements will be initially priced based on the day-ahead market, with a true-up at some point based on deviations between real-time and day-ahead data. But many wholesale agreements do not contain that kind of true-up mechanism – it all depends on whether the buyer or seller is assuming the risks of price movement between the day-ahead and the real-time market. DP&L also believes that the words "auction-based" as proposed by FES are unnecessary and perhaps raises additional questions in a context where PJM occasionally imposes price mitigation on generation units, which are not therefore being receiving an auction-based price.

<u>Rule 4901:1-10-34(C) Permissible Purchase Price</u>

FES has proposed a total rewrite of this subsection to specify that the rates paid by an Electric Distribution Utility ("EDU") to purchase energy from a Qualifying Facility ("QF") shall not exceed the maximum price permissible under Rule 4901:10-34(J). DP&L generally supports FES' revised language, which eliminates an ambiguity in the originally proposed subsection that had required a QF to provide its electric output to the EDU without specifying whether that was 100% of its gross electric output or 100% of the QF's net output after meeting any behind-the-meter load.

DP&L notes that the FES language, by establishing a maximum rate, has a potential conflict with subsection Rule 4901:10-34(H), which contemplates a negotiated contract arrangement between a QF and an EDU. The Commission may want to use FE's substitute language but precede it with the clause: "Except to the extent consistent with a voluntarily negotiated agreement pursuant to Rule 4901:10-34(H), the rates paid by each EDU . . ."

Rule 4901:1-10-34(H) Negotiated Contract

DP&L opposes the list of five specific factors that the Office of the Consumers' Counsel has suggested be incorporated into this subsection as terms that a negotiated contract "may take into account." While none of OCC's suggested terms are inappropriate for contracting parties to consider, the mere fact that certain factors are listed means that other factors are not. The result is an increased potential for future disputes with the OCC or others any time a negotiated contract is presented to the Commission. Will the OCC or some other entity claim that the negotiated contract fails to comply with the Rule because it only took into account four of the five factors? Will the OCC or some other entity claim that the negotiated contract fails to comply with the Rule because it took into account factors that are not on the list? In either event, the listing of factors creates more opportunities for future disputes than are resolved.

The better approach is not to list specific factors and to leave Rule 4901:10-34(H) as proposed.

Rule 4901:1-10-34(J) Pricing Structure

DP&L has a number of concerns with proposals made regarding this subsection involving the price that an EDU would pay a QF for energy or for a combination of energy and capacity.

The proposed rule itself incorrectly assumed that every EDU will have two alternative prices to offer that a QF could choose at its option: (1) a day-ahead locational marginal price at a liquid trading hub; and (2) the monthly simple swap price. (DP&L notes that the rule does not define or explain how to compute "monthly simple swaps" and it is unclear how the price of an undefined product could be offered to QFs within DP&L's service area.) Even the proposed locational marginal price provision is inartfully drafted since it presupposes a "liquid trading hub" within the DP&L zone. No such liquid trading hub exists. An alternative that would be clear and much easier to administer would be to establish the energy price at the LMP pricing node used by PJM that is closest to the injection point of the QF.

In DP&L's view, there should be no free option for QFs or any other prospective seller to force an EDU to pay among a menu of prices. Based on how energy is sold to and purchased from PJM, the avoided cost of energy purchased by an EDU member of PJM from a QF is, in fact, PJM's locational marginal price. That should be the sole basis to price a forced purchase. If an EDU voluntarily agrees to an alternative arrangement with a QF, that is a different matter entirely and should be permitted pursuant to Rule 4901:1-10-34(H).

Thus, DP&L opposes the suggestion by the Interstate Renewable Energy Council ("IREC") that the Commission establish what IREC calls multi-tier avoided cost pricing. That is an interesting way to recharacterize what might otherwise be known as discriminatory pricing.

IREC is asking that the kind of generation that it promotes be accorded a favorable price compared to the price paid to other QFs. Such an approach is not only discriminatory, it also violates the entire concept of "avoided cost." When energy is purchased from a QF by an EDU that is a PJM member, the EDU "avoids" the LMP cost of purchases from PJM – and it does not matter whether the electrons purchased came from a solar array or from some other less favored category of QF.

DP&L would note, however, that its objection to IREC's proposal is to the mandatory nature of the proposal. DP&L does not oppose the similar suggestion made in OCC's comments at pp. 41 that appear to contemplate that differences in prices for different types of QFs could be established by voluntarily negotiated contracts under Rule 4901:10-34(H). A higher price for solar power purchases could be justified, for example, if the negotiated contract for power also included the Renewable Energy Certificate, which has independent value above the LMP value of the energy itself.

The mandatory nature of their proposals and potentially catastrophic end-results also leads DP&L to oppose the suggestions made by FES and Advanced Energy Economy-Ohio ("AEEO") that the Commission start setting long-term avoided cost rates for capacity and energy. This is the same regulatory trap that cost ratepayers literally billions of dollars in excess charges in States including California and New Jersey. Commissions in those States and several others acted swiftly after PURPA's enactment in 1978 to establish long-term avoided costs rates based on expert testimony and what turned out to be wildly over-estimated projections of future fuel prices and electric prices. In some instances, the Commission not only set the price, but wrote the form of purchase contract that the utility was required to offer. Scores of contracts, many of which extended for 20 or 30 years, were executed at "avoided cost" prices that, in a matter of a few years, were vastly over-priced relative to what market conditions actually turned out to be.[2] The end-result was that massive payments had to be made by utilities to buy-out or buy-down their responsibilities and ratepayers generally had to cover those costs.

The PUCO should not head down the potentially ruinous path laid out by FES and AEEO. Even with the best of intentions and the most sophisticated models and expert testimony, the PUCO simply should not attempt to predict and establish long-term future avoided cost rates.

Rule 4901:1-10-34(K) Reporting

DP&L supports the OCC's proposal that the contemplated Report be filed as a part of an electric utility's annual long-term forecast report. DP&L would note that clarification would be helpful as to how utilities should measure the "incremental reductions" that the proposed rule contemplates. In a behind-the-meter configuration, the EDU will know only how much net power it purchased from the QF and that would be a reduction in its PJM purchases. The EDU may not have the data available, however, to compute how much additional power it would have had to purchase from PJM to serve behind-the-meter load if the QF did not exist.

Conclusion

DP&L appreciates the opportunity to provide comments and urges the Commission to adopt the recommendations set forth above.

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[2] See e.g. http://www.rpa.state.nj.us/nug.htm , (New Jersey Division of the Ratepayer Advocate report at p.1 noting that the New Jersey Board of Public Utilities Board of Public Utilities had estimated long-term avoided cost PURPA contracts in 1998 to be over market by $3.5 - $5.3 billion); http://www.eei.org/whatwedo/PublicPolicyAdvocacy/StateRegulation/Documents/purpa.pdf , (EEI and Brattle Group Report at p. 17 noting testimony by two California utilities in 1990 projecting excessive payments over a 10 year period to QFs of $300 million and $847 million.

Respectfully Submitted,

Judi L. Sobecki (0067186)
Randall V. Griffin (0080499)
Joseph Strines (0069878)
The Dayton Power and Light Company
1065 Woodman Drive
Dayton, OH 45432
Telephone: (937) 259-7171
Facsimile: (937) 259-7178
Email: judi.sobecki@dplinc.com

Attorneys for The Dayton Power and Light Company