

**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

**MEMORANDUM CONTRA APPLICATIONS FOR REHEARING BY THE
INTERSTATE RENEWABLE ENERGY COUNCIL, INC.**

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Pursuant to Rule 4901:1-35(B), O.A.C., the Interstate Renewable Energy Council, Inc. (IREC) hereby submits this memorandum contra three Applications for Rehearing (AFR) filed by (1) Dayton Power and Light Company (DP&L); (2) Ohio Power Company (AEP Ohio); and (3) Ohio Edison Company (Ohio Edison), Cleveland Electric Illuminating Company (CEI) and Toledo Edison Company (Toledo Edison).

I. INTRODUCTION

In this proceeding, the Public Utilities Commission of Ohio (Commission) conducted the required five-year review of its electric service and safety rules. On January 15, 2014, the Commission issued its Finding and Order adopting certain amendments to the rules, including updated net metering rules, O.A.C. 4901:1-10-28. IREC commends and strongly supports the Commission’s efforts to “advance the policy of encouraging the development of distributed and small generation facilities set forth in R.C. 4928.02(C) . . . by streamlining and clarifying the provisions for net metering.” Finding and Order at 32, ¶ 62. IREC agrees that the Commission’s revisions to its net metering rules “encourage the development of distributed and small generation facilities while at the same time assuring residential and business consumers access to adequate, safe and reliable utility services at fair prices.” *Id.*

Together the three AFRs listed above seek to undermine some of the positive changes that the Commission has made to its net metering rules. Although their specifics differ, each of the AFRs expresses concerns related to excess generation, in particular with respect to compensation for excess generation and the treatment of net metering customers that become excess generators. IREC believes that the Commission's rules, as articulated in the Finding and Order, adequately address these concerns, as described in more detail below. In addition, in their joint AFR, Ohio Edison, CEI and Toledo Edison oppose the Commission's decision to open a docket in which to evaluate aggregate and virtual net metering. As discussed below, IREC does not believe that opening such a docket would be unjust, unreasonable or unlawful; in fact, it would be the appropriate forum in which the companies may voice the concerns they identify in their AFR.

II. ARGUMENT

A. The Commission Should Maintain Rule 4901:1-10-28(B)(10), Which Prohibits Imposing Additional Charges on the Electricity that Customer-Generators Feed Back into the System.

In its AFR, DP&L argues for an exception to Rule 4901:1-10-28(B)(10) that would allow an electric utility to charge customer-generators for monthly excess generation at the utility's base distribution rate. DP&L AFR at 11-12. In the first place, as the Commission notes in its Finding and Order, DP&L made an identical proposal in prior comments. Finding and Order at 39, ¶ 68 ("DP&L proposes that customer-generators be billed on the monthly excess generation at the EDU's base distribution rate"). The Commission stated at the outset of the Finding and Order that "[a]ny comments or recommended changes not below or incorporated into the

proposed rules have been considered by the Commission and should be considered denied.”

Finding and Order at 4, ¶ 10. Thus DP&L has already had the opportunity to present its proposal, and the Commission has already evaluated and rejected it. There is no need for any further changes or rehearing.

Moreover, DP&L’s proposal is contrary to the Commission’s express intention in Rule 4901:1-10-28(B)(10) that customer-generators not be subject to such additional charges. It is also contrary to the intent of Rule 4901:1-10-28(B)(9)(c), which requires electric utilities to provide a “monetary credit in the amount of net excess generation onto the customer-generator’s next monthly bill.” That is, this Rule 4901:1-10-28(B)(9)(c) requires utilities to provide customer-generators with the full value of their net excess generation on a monthly basis, not the full value less the base distribution rate. *See also* Finding and Order at 38, ¶ 68. It also allows any monetary credits to “roll over” to the following month. As the Commission acknowledges, IREC and others proposed that the Commission adopt a monthly kilowatt-hour (kWh) credit that would roll over monthly, as most other states have done, rather than a monetary credit. Finding and Order at 39, ¶ 68. Although it did not state as much in the Finding and Order, the Commission implicitly rejected our suggestion by specifying that the credit would be a monetary credit. Like DP&L, we made our proposal and the Commission did not accept it; an AFR is not an opportunity to re-raise issues already presented and acknowledged.

In any case, the Commission has addressed DP&L’s concerns by maintaining or putting into place several provisions that effectively serve to limit excess generation. First, a customer-generator “must intend primarily to offset part or all of the customer-generator’s requirements for electricity.” Rule 4901:1-10-28(B)(6). In addition, an electric utility must provide information on its website and in an application packet regarding “the terms and conditions

regarding excess generation,” which should include “criteria used in determining whether a customer-generator is considered to be an excess-generator and procedures an electric utility has in place to address excess-generator situations.” Rule 4901:1-10-28(B)(3)(b). Together these two rules not only require customer-generators not to intentionally over-generate, but also require utilities to inform them of this obligation and what will occur if they do generate in excess. These rules adequately discourage excess generation from occurring.

If an electric utility finds that a net metering customer does generate in excess of 120 percent of her load, in violation of Rule 4901:1-10-28(B)(6), the utility “should notify the customer-generator and work with the customer-generator to appropriately identify a way for the customer-generator to intend primarily to offset part or all of its requirements or electricity; such as increased electricity usage, decreased generation output, or transferring to a small power production tariff for qualifying facilities.” Finding and Order at 33, ¶ 63. In other words, the utility has the ability to work immediately with the customer-generator to fix the problem or else remove the customer from its net metering program.

In addition, the Commission requires utilities to track and report “the number of net metering customers who have exported excess generation to the grid,” as well as the “total number of customer-generators deemed by the electric utility to be excess-generators at the end of the reporting period.” Rule 4901:1-10-28(B)(13)(b), (g). Under these provisions, the Commission will stay up to date on the extent to which excess generation occurs and can act as needed in the unlikely event that it emerges as a problem.

Given all of these existing protections against excess generation, the issue does not warrant re-investigation by the Commission. Ultimately the Commission has successfully balanced having a net metering policy that is easy for customers to understand and for utilities to

administer, with ensuring that customers can offset all or most of their electricity load and encouraging the installation of distributed generation. The Commission should not modify its rules as DP&L suggests.

B. The Commission Should Maintain Rule 4901:1-10-28(B)(9)(c) and Not Change the Process by Which Customer-Generators Are Credited.

Similar to DP&L, AEP Ohio suggests that the credit for net excess generation should reflect only energy charges. AEP Ohio AFR at 9-10. Instead of taking DP&L's approach of suggesting an additional charge to be deducted from a customer-generator's monthly monetary credit, AEP Ohio suggests a lower credit rate. The outcome is the same and the Commission should reject AEP Ohio's proposal as well as DP&L's. As discussed above, both are contrary to the Commission's intention in Rules Rule 4901:1-10-28(B)(6) and Rule 4901:1-10-28(B)(9)(c), and the Commission has already acted to put in place protections against excess generation. Likewise, the proposals are contrary to best practices: most states allow excess generation to rollover at the customer's retail rate. *See* IREC Opening Comments at 9. Furthermore, as noted above, the Commission has already considered similar issues in DP&L's proposal and declined to make the requested modifications. Finding and Order at 39, ¶ 68. Therefore, the Commission should reject AEP Ohio's proposal and maintain Rule 4901:1-10-28(B)(9)(c) as written.

C. Rule 4901:1-10-28(B)(6) Is Just, Reasonable and Lawful in Its Requirement that a Customer-Generator Must Intend Primarily to Offset Part or All of the Customer-Generator's Requirements for Electricity, up to 120 Percent of Those Requirements, and the Commission Has Already Provided for Its Transparent Enforcement.

Rule 4901:1-10-28(B)(6) states that a “customer-generator must intend primarily to offset part or all of the customer-generator’s requirements for electricity.” In other words, a customer-generator must intend primarily to offset up to 100 percent (“all”) of the customer-generator’s requirements throughout the customer’s participation in the program, including when the customer initially sizes and installs her system. Contrary to the claim of Ohio Edison, CEI and Toledo Edison, the Rule is completely clear in this respect. *See* Ohio Edison/CEI/Toledo Edison AFR at 19, 21. Moreover, contrary to the claim of AEP Ohio, the current Order does not incent customers to size their generation to be at 120 percent of their requirements. *See* AEP Ohio at 10. As explained in its Finding and Order, the Commission permits a 20-percent margin of error in order to give customer-generators the ability to implement energy-efficiency measures and to account for the occasional unpredictability of renewable energy. Finding and Order at 35, ¶ 65. The intent is to “protect customer-generators who *incidentally* generate more than their requirements for electricity.” *Id.* (emphasis added). In adopting energy-efficiency measures, customers’ intent is to save energy, not to over-generate, as Ohio Edison, CEI and Toledo Edison claim; such excess generation is only incidental. *See* Ohio Edison/CEI/Toledo Edison AFR at 19-21.

As discussed in Section II.A above, the Commission has already put into place a number of transparent enforcement provisions discouraging excess generation, requiring utilities to track

and report excess generation, and giving utilities and customers a path to address it should it occur. Further reporting and enforcement is not necessary. *See* AEP Ohio AFR at 10-12.

D. To the Extent the Three AFRs Have Broader Concerns with Respect to the Benefits and Costs of Net Metering, Cost Recovery and Cost Allocation, the Commission Should Consider These Issues in a Separate Proceeding.

The three AFRs make various statements related to the benefits and costs of net metering, alleging a net metering subsidy or cost shift to non-participating customers. *See* DP&L AFR at 11-12; AEP Ohio AFR at 7-9; Ohio Edison/CEI/Toledo Edison AFR at 22-23. To the extent these utilities and any other stakeholders have these broader concerns with respect to cost recovery and cost allocation under the Commission's net metering paradigm, IREC recommends that the Commission evaluate these issues in a separate proceeding. They are more appropriately understood in a broader ratemaking context and should be carefully evaluated before the Commission makes any changes to its successful net metering policy. Therefore IREC urges the Commission to reject AEP Ohio's suggestion that the Commission establish an explicit cost-recovery mechanism within this proceeding. *See* AEP Ohio AFR at 7-9.

E. The Commission's Order to Open a Virtual Net Metering and Aggregate Net Metering Docket Is Just, Reasonable and Lawful, and the Commission Should Open this Docket.

In its Finding and Order, the Commission does not establish any new rules with respect to virtual and aggregate net metering. Finding and Order at 42-43, ¶ 72. It simply states its plan to open a new docket for continued consideration of these concepts. *Id.* By opening a new docket, the Commission does nothing to infringe upon the electric utilities' service franchises. To the extent Ohio Edison, CEI and Toledo Edison have concerns that these policies may violate their

exclusive service territories, a new docket would be the appropriate place to raise and vet these concerns with the Commission and other stakeholders. *See* Ohio Edison/CEI/Toledo Edison AFR at 24-25. IREC disagrees with the positions these utilities take in their AFR, and would welcome the chance to discuss virtual and aggregate net metering further. We support the Commission's determination to open a new docket to allow for this.

III. CONCLUSION

IREC recommends that the Commission reject the following AFR proposals:

1. "Rule 4901:1-10-28(B)(10) is unlawful and unreasonable because it ignores the fact that customer-generators with excess-generation avoid the cost of using the distribution system, at the expense of customers without net metering." DP&L AFR at 2, 11-12.
2. "The Commission should provide that the net excess credit should only reflect energy charges, for both shopping and non-shopping customer-generators." AEP Ohio AFR at 1, 9-10.
3. "The Commission should establish an explicit mechanism for recovery of costs associated with the mandate." AEP Ohio AFR at 1, 7-9.
4. "Rule 4901:1-10-28(B)(6) is unjust, unreasonable and unlawful in that it does not specify that it is not applicable to the initial sizing decision and permits intentional excess generation." Ohio Edison/CEI/Toledo Edison AFR at 3, 19-23.

5. “The Commission should provide for transparent enforcement of the 20% margin of error criteria adopted in OAC 4901:1-10-28(B)(6) for customer-generators.”
AEP Ohio AFR at 1, 10-12.
6. “The Commission’s Order to open a virtual net metering and aggregate net metering docket is unjust, unreasonable and unlawful in that it violates the Companies’ exclusive service territories granted by Sections 4933.81 and 4933.83, O.R.C. and an evaluation docket should not be opened.” Ohio Edison/CEI/Toledo Edison AFR at 3, 24-25.

Respectfully submitted this 24th day of February, 2014,

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