

## BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review	)	
of Chapter 4901:1-10, Ohio Administrative	)	Case No. 12-2050-EL-ORD
Code, Regarding Electric Companies	)	

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### INITIAL COMMENTS OF OHIO POWER COMPANY

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#### INTRODUCTION

In a November 18, 2015 Entry, the Commission issued proposed rules amending Section 4901:1-10-28, Ohio Administrative Code, regarding net metering ("Proposed Rules"). The Commission also requested comments from stakeholders concerning the Proposed Rules.

Ohio Power Company ("AEP Ohio" or the "Company") commends the Commission for proposing net metering rules that reflect many of the recommendations the Commission previously received from utility stakeholders, including AEP Ohio. However, AEP Ohio believes that the proposal still raises several issues that the Commission should address before issuing a final rule. Accordingly, AEP Ohio submits these initial comments for the Commission's consideration and reserves the right to file reply comments on any matter addressed in the comments of other parties.

#### SUBSECTION 4901:1-10-28(B)(9)(b)

##### Specific Rule Changes Proposed by AEP Ohio

AEP Ohio proposes the following changes to Subsection 4901:1-10-28(B)(9)(b) of the Proposed Rule:

(b) If the electricity supplied by the electric utility exceeds the electricity received from the customer-generator over a monthly billing cycle, then the customer-generator shall be billed for the net electricity supplied to it in accordance with normal metering practices. When the electric utility receives more electricity than it supplies to the customer-generator over a monthly billing cycle, the excess electricity shall be converted to a monetary credit at the electric utility's standard service offer **generation energy** rate and be carried forward as a monetary credit

to the customer-generator's future bills for a period of thirty-six months. The electric utility shall not be required to pay the monetary credit, other than having it credited to future bills, and the monetary credit may be lost if the customer-generator does not use the credit within thirty-six months or stops taking service under the electric utility's standard service offer. The electric utility shall apply the monetary credit to customer bills on a first-in, first-out basis after calculating the customer-generator's bill for each month.

## Comments

The most serious issue in the Proposed Rules is the proposed rate at which utilities must issue monetary credits for excess generation of energy. The net metering statute contemplates that, if a net metering customer generates more electricity than he or she consumes during a billing period (sometimes called "excess generation"), "credits for that electricity shall appear in the next billing cycle." R.C. 4928.67(B)(3)(b). The Proposed Rules implement that statutory requirement by establishing the amount of the monetary credit for excess generation. If the customer is a shopping customer who receives generation service from a competitive retail electric service (CRES) provider (what the Proposed Rules call an "electric services company"), the Proposed Rules allow the CRES provider to offer "any . . . manner of credit for excess generation." Proposed Rules § 4901:1-10-28(B)(9)(c).

But if the customer is a non-shopping customer who receives generation service under the utility's standard service offer (SSO), the Proposed Rules require the utility to provide a credit for excess generation "at the utility's standard service offer rate." Proposed Rules § 4901:1-10-28(B)(9)(b). That provision of the Proposed Rules could be read to require the utility to provide a monetary credit for excess generation based on the *total* rate for *all components* of an SSO – not just the *generation energy* component of an SSO rate, but all components of an SSO, including the non-generation charges that utilities, such as AEP Ohio, often include in their SSO as part of an electric security plan (ESP).

Requiring a utility to provide an excess generation credit “at the utility’s standard service offer rate” is improper. Under R.C. 4928.67(B)(3)(b) and *FirstEnergy Corp. v. Pub. Util. Comm’n of Ohio*, 95 Ohio St. 3d 401, 2002-Ohio-2430, the excess generation credit may only compensate a net metering customer for “electricity” provided to the grid, which means the credit should be set at the utility’s current rate for energy.

**A. The Excess Generation Credit Should Be Set at the Utility’s Energy Rate**

As an initial matter, requiring a utility to provide an excess generation credit “at the utility’s standard service offer rate” appears to be a considerable change from the last iteration of the Proposed Rules. Previously, the Commission set the excess generation credit at the utility’s “SSO generation rate.” Second Entry on Rehearing, May 28, 2014, at 20, *In re Commission’s Review of Chapter 4901:1-10*, Case No. 12-2050-EL-ORD (“Second Entry on Rehearing”); accord Third Entry on Rehearing, July 23, 2014, at 8, *In re Commission’s Review of Chapter 4901:1-10*, Case No. 12-2050-EL-ORD. The Commission recognized that “the refund for net excess generation must be for the electricity supplied and may not include distribution, transmission, ancillary services, transition, universal service fund, or energy efficiency fund costs.” Second Entry on Rehearing 20. The Commission expressly found that this result was “consistent with the Revised Code and the Supreme Court’s holding in *FirstEnergy Corp.*” *Id.* Now, however, the Commission appears to have abandoned that rationale and has proposed setting the excess generation credit at the *full* SSO rate, including the rate for distribution, transmission, and other services that the Commission previously recognized were improper to include under the Revised Code and *FirstEnergy*. If that is, in fact, the Commission’s new position on this issue, it is unlawful.

As the Commission previously recognized, setting the excess generation credit “at the utility’s standard service offer rate” – as provided in the *current* Proposed Rules – would be directly at odds with the Ohio Supreme Court’s holding in *FirstEnergy Corp. v. Pub. Util. Comm’n of Ohio*, 95 Ohio St. 3d 401, 2002-Ohio-2430. There, FirstEnergy had proposed a net generation tariff that credited excess generation based on “*energy charges* of the unbundled generation component of the appropriate rate schedule.” *Id.* ¶ 13 (emphasis added). But the Commission denied FirstEnergy’s proposal and ordered FirstEnergy “to credit a net generator not only for the generation charges for electricity it supplied in excess of its consumption, but for additional amounts equivalent to the charges for . . . transmission, distribution, ancillary services, . . . the Universal Service Fund,” and other charges. *Id.* ¶ 10.

On appeal, the Court sided with FirstEnergy and struck down the Commission’s order on the ground that the Commission’s excess generation credit was far higher than permitted by statute. *FirstEnergy*, 2002-Ohio-2430, ¶¶ 9-18. The Court reasoned that R.C. 4928.67(B)(3)(b) permits only credits for “*electricity*,” and FirstEnergy’s proposed energy-only credit adhered to that language by crediting a net generator only “in terms of electricity generated and supplied.” *Id.* ¶ 13 (emphasis added). As the Court reasoned, a “net-generator customer of FirstEnergy only supplies electricity; it does not provide transmission, distribution, or ancillary services.” *Id.* Thus, whereas FirstEnergy’s energy-only credit properly compensated a customer based on the excess energy he or she supplied the grid, the Commission’s proposed credit was improper because it “would make FirstEnergy liable for payment or crediting of all of those additional charges” related to transmission, distribution, and ancillary services, as well as other plainly non-generation charges, such as “Universal Service” fund charges. *Id.* As a result, the Court struck down the Commission’s order as violating R.C. 4928.67(B)(3)(b) and ordered the Commission

to “approve” FirstEnergy’s net metering proposal – including its energy-only excess generation credit – “without modification.” *Id.* ¶ 19.

Here, the Proposed Rules’ excess generation credit is unlawful on precisely the same ground as the credit struck down in *FirstEnergy*. By setting the credit “at the utility’s standard service offer rate,” Subsection 4901:1-10-28(B)(9)(b) of the Proposed Rules violates R.C. 4928.67(B)(3)(b) by requiring utilities to compensate net metering customers for far more than “electricity.” As in *FirstEnergy*, a net-generating customer of AEP Ohio “only supplies electricity; [he or she] does not provide transmission, distribution, or ancillary services.” *FirstEnergy*, 2002-Ohio-2430, ¶ 13. Yet like other utilities who have implemented ESPs, AEP Ohio’s current “standard service offer rate” contains charges that go far beyond the provision of “electricity.” For example, AEP Ohio’s current SSO rate includes charges for distribution service (e.g., Distribution Investment Rider, Enhanced Service Reliability Rider, gridSMART Rider), transmission service (e.g., Basic Transmission Cost Rider, Transmission Under-Recovery Rider), as well as other ESP components (e.g., Energy Efficiency/Peak Demand Reduction Rider, Economic Development Rider, Deferred Asset Phase-in Rider, Universal Service Fund Rider, kWh Tax Rider).<sup>1</sup> By setting the excess generation credit “at the utility’s standard service offer rate,” the Proposed Rules could be read as requiring the utility to credit excess generation at the rate of *all* of these distribution, transmission, and other ESP components. Yet net metering customers with excess generation do not provide any of the distribution services, transmission services, and other services that these ESP components address. Thus, requiring AEP Ohio and other utilities to provide credits “at the utility’s standard service offer rate” would “make [the utility] liable for payment or crediting of all of those additional charges” unrelated to

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<sup>1</sup> See generally Opinion & Order of February 25, 2015, *In re Application of Ohio Power Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case Nos. 13-2385-EL-SSO et seq.

“electricity.” *FirstEnergy*, 2002-Ohio-2430, ¶ 13. That is precisely what the Supreme Court found unlawful in *FirstEnergy*.

Instead, in order to comply with *FirstEnergy* and R.C. 4928.67(B)(3)(b), the Proposed Rules must base the excess generation credit on “*energy charges* of the unbundled generation component of the appropriate rate schedule.” *FirstEnergy*, 2002-Ohio-2430, ¶ 13 (emphasis added). As *FirstEnergy* established, a net metering customer with excess generation “only generates and supplies electricity” – meaning “energy” – and does not provide any other service. See *FirstEnergy*, 2002-Ohio-2430, ¶ 13. Accordingly, the excess generation credit should compensate the net metering customer for what he or she actually provides the grid – energy – and nothing else.

For AEP Ohio, this means providing a credit equal to AEP Ohio’s Generation Energy (GEN-E) Rider. As noted in the Commission order approving AEP Ohio’s most recent ESP, AEP Ohio currently procures energy and capacity for serving SSO load through an auction process, and auction cost recovery is divided among three riders – the GEN-E Rider, which recovers energy costs; the GEN-C Rider, which recovers capacity costs; and the Auction Cost Recovery Rider (ACRR), which recovers auction administrative costs and addresses over/under recovery. See Opinion & Order of Feb. 25, 2015, at 32, *In re Application of Ohio Power Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case Nos. 13-2385-EL-SSO et seq. AEP Ohio’s GEN-E Rider rate, therefore, identifies exactly what net metering customers with excess generation provide the grid – energy. The Proposed Rules should be changed so that AEP Ohio may set its excess generation credit according to its current GEN-E rate. Specifically, as proposed above, the Proposed Rules should be changed to specify

that the excess generation credit will be set “at the electric utility’s standard service offer *generation energy* rate.”

**B. Settling the Excess Generation Credit at the Utility’s SSO *Generation* Rate Is Not a Valid Alternative**

Some parties to this proceeding will no doubt advocate that the Commission return to its previous position and set the excess generation credit at a utility’s SSO *generation* rate – including the rate for both energy *and capacity* service.<sup>2</sup> See Second Entry on Rehearing 20; Third Entry on Rehearing 3-9. Although this outcome would be closer to the statutory requirement than the current Proposed Rules, it is still invalid. Previously, the Commission reasoned that the word “electricity” in R.C. 4928.67(B)(3)(b) referred to “generation service,” including the rate for “energy, demand, and capacity.” Second Entry on Rehearing 20; Third Entry on Rehearing 3-9. But that reasoning is at odds with the holding of *FirstEnergy*, which expressly approved a credit based on FirstEnergy’s then-existing “*energy charges*.” *FirstEnergy*, 2002-Ohio-2430, ¶ 13. It would also be at odds with the basic rationale of *FirstEnergy* – that “electricity” in R.C. 4928.67(B)(3)(b) refers to what net metering customers with excess generation *actually supply to the grid*. See *FirstEnergy*, 2002-Ohio-2430, ¶ 13 (net metering customer with excess generation “only supplies electricity; [he or she] does not provide transmission, distribution, or ancillary services”). And although they supply energy, there is no sense in which net metering customers with excess generation supply capacity service to the grid. To provide capacity service, a generation resource must be able to reliably contribute to a system’s ability to provide generation supply during times of peak demand. But net metering

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<sup>2</sup> As discussed above, the Commission should set the excess generation credit at the energy component of the utility’s SSO. For AEP Ohio, this means the GEN-E Rider rate. However, in the event the Commission reverts to its previous position and sets the excess generation credit rate at the *generation* component of the utility’s SSO, AEP Ohio would understand this to mean the rate of its GEN-E and GEN-C Riders (and not any other riders or ESP components).

systems are not dispatchable. It is pure happenstance whether a net metering system is operational during times of peak demand or, for that matter, at any other point during the billing period. In particular, for solar panels and wind turbines, by far the most common type of net metering system, whether they are operating at any given time is literally as varied and unpredictable as the weather. Net metering customers, moreover, make no commitments concerning the maintenance of their systems. If a rooftop solar panel system fails, nothing requires the net metering customer to fix it promptly to ensure that the resource is available to provide capacity at times of peak demand.

By contrast, the capacity resources that utilities provide through their SSO are dispatchable, reliable generation resources that are required to be available during times of peak demand. For AEP Ohio in particular, the capacity product procured through SSO auctions must adhere to the strict capacity requirements of the PJM markets, which impose fines if capacity resources are unavailable during times of peak demand. Indeed, the auction price that AEP Ohio pays for this PJM-qualified capacity – and which AEP Ohio recovers through its GEN-C Rider – incorporates the cost of building and maintaining a PJM-qualified capacity resource. To provide unreliable net metering generation systems with the very same price for alleged “capacity” service would be gross overcompensation. The capacity that steel-in-the-ground, PJM-qualified capacity resources provide is far more valuable than the non-firm capacity that unreliable rooftop solar panels provide.

Critically, moreover, the utility must ensure that there is a sufficient amount of this PJM-qualified, steel-in-the-ground capacity to serve net metering customers regardless of the potential generation of their net metering systems. That is, because net metering systems are often unavailable due to weather or maintenance, the utility must procure sufficient capacity on the



assumption that net metering systems will *not* be available to serve load during times of peak demand. Thus, not only are PJM-qualified capacity resources far more reliable (and thus more valuable) than net metering systems, but net metering systems do not even meaningfully alter the amount of that PJM-qualified capacity that the utility must procure.

In sum, if a net metering generation system provides excess generation over a billing period, there is no doubt that it provided energy to the grid, and it should be compensated at the utility's price of energy. But there is no way in which the net metering generator provided true capacity service – and it certainly did not provide distribution service, transmission service, and all the other services provided in an ESP. Thus, the rate for the excess generation credit should reflect the utility's current *energy* charges and exclude “all of those additional charges.”

*FirstEnergy*, 2002-Ohio-2430, ¶ 13.

#### **SUBSECTION 4901:1-10-28(B)(7)(a)**

##### **Specific Rule Changes Proposed by AEP Ohio**

AEP Ohio proposes the following changes to Subsection 4901:1-10-28(B)(7)(a) of the Proposed Rules:

(a) The electric utility shall calculate a customer-generator's requirements for electricity as the average amount of electricity supplied by the electric utility to the customer-generator annually over the previous three years. In instances where the electric utility does not have the data or cannot calculate the average annual electricity supplied to the premises over the previous three years, such as instances of new construction, vacant properties, facility expansion, or other unique circumstances, the **customer-generator** ~~electric utility~~ shall use any available consumption data or measures to establish an appropriate consumption estimate. Upon request from any customer, the electric utility shall provide to the customer the average annual electricity supplied to the premises over the previous three years, or provide a consumption estimate for the premises. **The customer must provide a signed attestation of its expected annual electricity generation and a report verifying that the generation is sized to offset the customer's expected annual electricity usage when applying for net energy metering service.**

## Comments

The net metering statute establishes a strict maximum size that a “net metering system” must meet in order to be eligible for a net metering tariff: The “net metering system” must be “intended primarily to offset part or all of the customer-generator’s requirements for electricity.” R.C. 4928.01(A)(31)(d).<sup>3</sup> Thus, a customer must size his or her generating system so that it produces no more than the amount of electricity the customer typically consumes. If a system is too large – if the customer installs a system designed not to “offset” but to *exceed* the customer’s requirements – then, by statute, the customer is not eligible for a net metering tariff. Instead, the customer must be placed on a different tariff designed for customers who are net sellers of energy – for example, AEP Ohio’s Co-Generation Tariff, Schedule COGEN/SPP.

Subsection 4901:1-10-28(B)(7) of the Proposed Rules reiterates the statutory requirement that a “customer-generator must intend to primarily offset part or all of the customer-generator’s requirements for electricity.” Subsections (a) and (b) of 4901:1-10-28(B)(7) then establish rules and procedures for implementing this requirement. AEP Ohio agrees with many of the implementing rules proposed in Subsections 4901:1-10-28(B)(7)(a) and (b), but requests further refinement to several specific provisions. This Part of AEP Ohio’s Initial Comments describes requested changes to Subsection (B)(7)(a); the next Part addresses Subsection (B)(7)(b).

### **A. In the Absence of Historical Usage Data, the Customer, Not the Utility, Should Estimate Electrical Requirements**

As an initial matter, AEP Ohio requests that the Commission change the procedure established in Subsection (B)(7)(a) for situations in which “the electric utility does not have the data or cannot calculate the average annual electricity supplied to the premises over the past three years.” Proposed Rule § 4901:1-10-28(B)(7)(a). In such situations, the onus for estimating

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<sup>3</sup> Subsection 4901:1-10-28(A)(7) provides that, in the Proposed Rules, “[n]et metering system’ shall have the meaning set forth in section 4928.01(A)(31).”

electrical requirements should be on the customer – not the utility – because only the customer knows how much electricity the customer is likely to use.

AEP Ohio is fully willing to assist customers in estimating their requirements for electricity when historical usage data is available as the basis for such an estimate. Thus, AEP Ohio does not request any changes to the part of the Proposed Rules providing that the “electric utility shall calculate a customer-generator’s requirements for electricity as the average amount of electricity supplied by the electric utility to the customer-generator annually over the previous three years.” Proposed Rules § 4901:1-10-28(B)(7)(a).

But when historical usage data is not available, the Proposed Rules incorrectly place the responsibility on the *utility* to estimate the customer’s likely electricity requirements; instead, that responsibility should be placed on the *customer*. The Proposed Rules provide that where the utility lacks three years of historical usage data – “such as instances of new construction, vacant properties, facility expansion, or other unique circumstances” – then the utility must “use any available consumption data or measures to establish an appropriate estimate.” In AEP Ohio’s experience, however, the “available consumption data or measures” are inadequate to estimate a new customer’s likely electric usage, because that usage depends on numerous decisions that the customer must make. For instance: What kind of electric-consuming heating, lighting, and appliances will the customer install? At what temperature will the customer set his or her thermostat? Will the customer stay home during the day, or stay up late at night? These questions – among many others – are critical in estimating a customer’s likely electric usage in the absence of historical data, and they are questions that only the customer (and not AEP Ohio) can answer. Thus, the onus should be on the customer to estimate his or her electric usage where historical usage data are unavailable.

**B. New Net Metering Customers Should Be Required to Submit an Attestation and Report to Ensure the Proper Sizing of Their Systems**

AEP Ohio also requests that the Commission add an additional sentence to Subsection 4901:1-10-28(B)(7)(a) further clarifying that customers have a critical role in ensuring that “net metering systems” meet the system-size eligibility requirements of R.C. 4928.01(A)(31)(d). Specifically, AEP Ohio proposes that the Commission require a customer to provide two documents when applying for a net metering service: (i) a signed attestation of the net metering system’s expected annual electricity generation and (ii) a report verifying that the generation is sized to offset the customer’s expected annual electricity usage. For example, if a residential customer intends to install solar panels and is requesting net metering service, the customer would be required to provide (i) an attestation specifying the expected number of kilowatt-hours that the solar panels will produce, and (ii) a report comparing the likely number of kilowatt-hours the solar panels will produce against the likely number of kilowatt-hours the customer will consume, ensuring that the solar panels are sized only to offset – and not exceed – the expected usage, as required by R.C. 4928.01(A)(31)(d).

These two proposed documents – the customer attestation and report – will fulfill a twofold purpose: customer education and customer accountability. As for customer education, the act of completing the attestation will require the customer to consider the sizing of his or her generator, and the report will require the customer to expressly consider the sizing eligibility requirements of R.C. 4928.01(A)(31)(d) and ensure that the generator is sized only to “offset” – but not exceed – the customer’s requirements. As for customer accountability, signing the attestation and report will instill in the customer a critical sense of ownership and responsibility over the issue of meeting the eligibility requirements of R.C. 4928.01(A)(31)(d). It will also,

hopefully, compel the customer to make any necessary adjustments to ensure that the system is sized correctly to preserve the customer's eligibility for a net metering tariff.

The customer education and accountability that AEP Ohio's proposal would bring is urgently needed. In the past year alone, AEP Ohio has received twenty-five net metering applications with oversized systems – i.e., systems that would have *exceeded* rather than offset the customer's electric usage. Thus, many net metering customers are either unaware of the size limitations of R.C. 4928.01(A)(31)(d) or intend to flout them voluntarily. The education and accountability that would come with AEP Ohio's proposed attestation and report would alleviate this problem and help customers learn about and adhere to the statutory requirements.

It is important to note, moreover, that the proposed attestation and report will impose little burden on net metering customers. The companies that sell and install net metering systems have thorough information, available to the customer, regarding the system's likely output. There are, moreover, widely available tools for estimating solar and wind generation based on location. *See, e.g.,* National Renewable Energy Laboratory, PVWatts Calculator, *available at* <http://pvwatts.nrel.gov/>. Information about system sizing is available to customers, but many customers are apparently not taking advantage of it. AEP Ohio's proposed attestation and report would solve that problem.

#### **SUBSECTION 4901:1-10-28(B)(7)(b)**

##### **Specific Rule Changes Proposed by AEP Ohio**

AEP Ohio proposes the following changes to Subsection 4901:1-10-28(B)(7)(b) of the Proposed Rules:

(b) The electric utility's net metering tariff shall provide that customer-generators taking service under the electric utility's standard service offer must size their facilities so as not to exceed one hundred ~~and twenty~~ percent of their requirements for electricity at the time of interconnection. **A customer-generator taking service under the electric utility's standard service offer**

**may remain on the electric utility's net metering tariff so long as the net metering system does not exceed one hundred and twenty percent of the customer-generator's requirements for electricity.** No limit on the size of a net metering facility shall be applied to customers taking service from an electric services company, except that customer-generators taking service from an electric services company must intend primarily to offset part or all of their requirements for electricity.

## Comments

In implementing the sizing eligibility criteria of R.C. 4928.01(A)(31)(d), the last iteration of the Proposed Rules provided that a customer who “annually generates less than one hundred and twenty percent of [his or her] requirements for electricity is presumed to be primarily intending to offset part of all of its requirements for electricity.” *See* Second Entry on Rehearing Attach. A, at 13. The current Proposed Rules eliminate this “presumption” and provide, instead, that net metering customers “must size their facilities so as not to exceed one hundred and twenty percent of their requirements for electricity at the time of interconnection.”

AEP Ohio agrees that the “presumption” provision, which was vague and difficult to enforce, was properly eliminated. But AEP Ohio proposes that the current language be clarified with two mutually enforcing provisions: First, the eligibility criteria should be amended so that customers “must size their facilities so as not to exceed *one hundred* percent of their requirements.” Second, a new sentence should be added specifying that a net metering customer “may remain on the electric utility's net metering tariff so long as the net metering system does not exceed one hundred and twenty percent of the customer-generator's requirements for electricity.”

Together, these two provisions would more properly implement R.C. 4928.01(A)(31)(d). Sizing a system to 100% of a customer's capacity will give effect to R.C. 4928.01(A)(31)(d)'s mandate that a net metering system be “intended primarily to offset” – not to exceed – “part or

all of the customer-generator's requirements for electricity.”<sup>4</sup> Then, allowing customers to generate up to 120% of their requirements after installation fulfills a dual purpose. First, it recognizes that customers should not be “penalized for incidentally generating in excess of their requirements, which can result from engaging in energy efficiency measures or from the unpredictability of renewable resources.” Second Entry on Rehearing 17. Second, it establishes a bright-line rule for net metering tariff eligibility after a system is installed.

In AEP Ohio's experience, AEP Ohio's suggested changes to the Proposed Rules – an initial sizing requirement of 100% of a customer's requirements coupled with a 120% “allowance” after the system is installed – is needed based on actual customer behavior. As for initial sizing, in the past year, 25 of 186 net metering applications presented to AEP Ohio were for systems sized greater than 100% of the customers' requirements. Half of these oversized systems were sized greater than 120% of the customers' requirements, and one system was sized for 265% of the customer's requirements. Thus, customers appear to be incentivized to design new systems not to offset – but to exceed – their requirements. Setting the eligibility criteria at 100% will properly implement R.C. 4928.01(A)(31)(d)'s eligibility criteria and prevent these oversized systems from being installed.

Moreover, in the past three months, AEP Ohio has advised 43 existing net metering customers that their annual production has exceeded their annual requirements for several months – and, in some cases, several years. Most of these customers installed systems that were

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<sup>4</sup> In addition, requiring that new net metering systems be sized to 100% of the customer's requirements would forestall any potential encroachment on FERC's jurisdiction as established by the Federal Power Act, the Public Utility Regulatory Policies Act (PURPA), and the Energy Policy Act. *See, e.g., Sun Edison LLC*, 129 FERC ¶ 61,146, ¶ 18 (Nov. 19, 2009) (clarifying that FERC has declined jurisdiction where a net metering system merely offsets the customer's usage over a billing period, but FERC *has* asserted jurisdiction where “the net metering program produces more energy than it needs over the applicable billing period” because in this scenario, the net metering customer “is considered to have made a net sale of energy to a utility over the applicable billing period”).

initially sized to offset 80-90% of their requirements, but since the installation of their systems, the customers' annual requirements have changed to a point where they now have become consistent net sellers of energy. If customers are allowed to size their systems to 120% of their requirements (as provided in the current Proposed Rules), then in the future, such customers may in fact be generating far above 120% of their requirements, and R.C. 4928.01(A)(31)(d)'s eligibility criteria will be rendered meaningless.

AEP Ohio's experience with net metering customers' changing electricity requirements also demonstrates the need for a bright-line rule for net metering tariff eligibility after a system is installed. AEP Ohio does not know the specific reasons for the load reductions or generation increases for these customers, and it would be unduly burdensome to continually monitor and assess the reasons for the ongoing changes. These net metering generation systems often have decades-long lifespans, and the responsibility of adhering to rules should not end after the installation date, nor should this responsibility be borne by the utility. If a customer intends primarily to exceed his or her electric requirements and consistently make sales of energy to the utility, there are more appropriate tariff options, such as AEP Ohio's Co-Generation Tariff. If the customer intends to receive the substantial benefits of the net metering tariff, there should be a bright-line rule capping ongoing net metering tariff eligibility at 120% of the customer's baseline requirements.

Finally, AEP Ohio recognizes that the Commission previously reasoned that the word "primarily" in R.C. 4928.01(A)(31)(d) justified a system sized at 120% of a customer's requirements. *See* Second Entry on Rehearing 16-17. AEP Ohio respectfully disagrees with this reasoning and contends that, just as the "presumption" in the last iteration of the Proposed Rules was changed in favor of a bright-line test for eligibility, so too should any "leeway" above 100%



of a customer's requirements be eliminated in order to strictly apply the statutory mandate. Customers who initially size their systems to 120% (as permitted under the current Proposed Rules) do not intend "primarily" to offset their requirements; their primary intention is to *exceed* their requirements. Only customers who size their systems to 100% of their requirements intend "primarily" to offset their requirements, and thus the Proposed Rules should be changed to reflect that eligibility criteria.

Moreover, insofar as the word "primarily" in R.C. 4928.01(A)(31)(d) justifies some level of flexibility for customers, that flexibility should be provided only *after* systems are initially sized and installed. Thus, as AEP Ohio has proposed, customers who size their systems to 100% of their requirements should be permitted to generate up to 120% of their requirements if circumstances change due to "engaging in energy efficiency measures or from the unpredictability of renewable resources." Second Entry on Rehearing 17. But customers who intentionally size their systems above 100% of their requirements – or who, after installation, generate greater than 120% of their requirements – violate R.C. 4928.01(A)(31)(d)'s eligibility criteria and should not be eligible for the benefits of the net metering tariff.

#### **SUBSECTION 4901:1-10-28(B)(9)(d)**

##### **Specific Rule Changes Proposed by AEP Ohio**

AEP Ohio proposes the following changes to Subsection 4901:1-10-28(B)(9)(d) of the Proposed Rules:

(d) If a customer-generator is engaged in net metering with an electric services company, and uses a meter capable of measuring hourly interval usage data, ~~at least twenty-four hours before the electric utility sends a bill to a customer-generator~~ the electric utility shall transmit to the electric services company the customer-generator's interval data for that billing period **within twenty-four hours after performing industry-standard validation, estimation, and editing (VEE) processes. As part of a non-pilot Commission-approved AMI deployment, the electric utility shall also transmit or make available through a web portal** to the electric services company the customer-generator's daily

interval usage data **for customer-generators with an advanced meter** within twenty-four hours **of performing daily industry standard VEE processes.**

## Comments

AEP Ohio proposes several clarifying changes to Subsection 4901:1-10-28(B)(9)(d), which addresses the exchange of meter data between the utility and a CRES provider (i.e., an “electric services company”) when a shopping customer takes advantage of the CRES provider’s net metering offer.

First, the time at which the utility must transmit billing-period interval data to the CRES provider should be amended to avoid a significant disruption to current utility billing processes. The Proposed Rules require the utility to transmit billing-period interval data to the CRES provider twenty-four hours *before* the utility sends a bill to the customer. That is impracticable, however, because under AEP Ohio’s current billing processes, AEP Ohio does not have billing-period interval data to transmit to CRES providers until AEP Ohio performs its monthly validation, estimation, and editing (VEE) billing process. Yet as soon as the VEE process is complete, bills are immediately printed and sent to customers. Thus, the proposed rules would effectively require AEP Ohio to delay sending bills to net metering shopping customers for twenty-four hours while the processed billing-period interval data are sent to CRES providers. This will severely disrupt AEP Ohio’s revenue cycling processing. To avoid this problem, AEP Ohio proposes that the Proposed Rules be changed so that the utility need only transmit billing-period interval data to CRES providers “within twenty-four hours *after* performing industry-standard validation, estimation, and editing (VEE) processes prior.” This would allow AEP Ohio to transmit billing-period interval data to CRES providers without any delay in the existing billing processes.

Second, regarding the final sentence addressing transmission of “*daily* interval usage data,” an introductory phrase should be added clarifying that this provision applies only to AMI meters that are *not* part of a pilot program, such as AEP Ohio’s gridSMART Phase I deployment. AEP Ohio’s gridSMART Phase I deployment was a pilot program and did not include cost-recovery for the infrastructure investments necessary to make *daily* interval data available to third parties, and thus AEP Ohio currently does not have that capability for its Phase I AMI deployment. AEP Ohio has requested cost-recovery for this infrastructure development as part of its gridSMART Phase II, but until such time as this cost-recovery is granted and AEP Ohio makes the required investment, AEP Ohio’s gridSMART Phase I pilot program AMI meters should be exempt from the daily interval data requirements of the Proposed Rules.

Third, language should be added authorizing utilities to transmit daily interval usage data to CRES providers through a web portal. AEP Ohio has had such a web portal in development for two years and, through this portal, has successfully provided suppliers information concerning customer usage. As described above, AEP Ohio does not currently offer daily interval data through this portal because AEP Ohio’s gridSMART Phase I pilot program did not include cost recovery for the infrastructure investment needed to do so. But if the Commission grants AEP Ohio’s gridSMART Phase II application and provides the needed infrastructure investment cost recovery, AEP Ohio plans to use its existing web portal to provide daily interval data. Thus, the Proposed Rules should make clear that using a web portal of the type already in use by AEP Ohio is an appropriate means of providing net metering daily interval data to CRES providers.

Fourth, a phrase should be added to the final sentence clarifying that this sentence, addressing transmission of daily interval usage data, only applies to customers with advanced

meters. Traditional metering interval usage data is gathered through manual read routes and monthly phone line interrogations. Thus, it is impossible for the utility to provide daily interval meter usage to CRES providers for customers with traditional meters. The utility can only provide daily interval data for those customers who have advanced meters.

Fifth, as above, a phrase should be added specifying that utilities need not provide daily interval meter usage to CRES providers until after the utility performs “daily industry standard VEE processes.” As discussed above, AEP Ohio does not currently provide daily interval data. But if, in AEP Ohio’s gridSMART II application, the Commission authorizes the cost-recovery necessary to allow AEP Ohio to do so, AEP Ohio – like any other utility – will perform *daily* VEE to the interval data it receives. Thus, as above with the *billing-period* VEE process, the Proposed Rules should clarify that a utility need not transmit *daily* interval data until it performs an industry-standard VEE process.

#### **SUBSECTION 4901:1-10-28(B)(9)(f)**

##### **Specific Rule Changes Proposed by AEP Ohio**

AEP Ohio proposes the following changes to Subsection 4901:1-10-28(B)(9)(f) of the proposed rule:

(f) The electric utility shall ensure that any final settlement data sent to a regional transmission organization includes negative loads in the hourly load calculation of any electricity provided to an electric services company from its customer-generators **with hourly interval metering**. Load from a customer-generator shall be incorporated in the electric services company's total hourly energy obligation reported to the regional transmission organization, and will offset the energy services company's reported load to the regional transmission organization. **For customer-generators with non-hourly metering, customer generation will offset the electric services company’s energy obligation.**

##### **Comments**

Two changes are needed to Subsection 4901:1-10-28(B)(9)(f) – which addresses the utility’s reporting of load data to PJM for customers engaged in net metering with a CRES

provider – to account for customers whose meters are not capable of recording hourly interval data. The Proposed Rules should make clear that the current text of Subsection 4901:1-10-28(B)(9)(f) applies only to customers with hourly interval metering and does not apply to customers with non-hourly metering. For customers with hourly interval metering, the meter records sufficient information to report negative loads, on an hourly basis, to the regional transmission organization (i.e., PJM). But for customers without hourly interval metering, there is no way to tell which hours involved *negative* loads and which hours involved *positive* loads.

That is, when a non-hourly-metering net metering customer has net consumption for a month (e.g., the customer consumes 1000 kWh and generates 600 kWh), the utility performs a month-end meter reading, and the meter shows the net consumption (400 kWh). For settlements with PJM, there are 400 kWh of total billing period load attributable to the CRES provider, and the utility uses standard load profile data to distribute the 400 kWh across the specific hours of the billing period. Thus, as made clear in AEP Ohio's proposed final sentence to Subsection 4901:1-10-28(B)(9)(f), energy generated by net metering systems will *offset* the CRES provider's load obligation as reported to PJM for non-hourly-metering customers (in the example above, PJM receives a report of only 400 kWh total billing period load attributable to the CRES provider).

Importantly, however, for non-hourly-metering customers, there is no way to give the CRES credit for *excess* generation, because there is no standard load profile data or other means to distribute any net-negative load for the billing period across the hours for that billing period. Thus, if a net metering customer without hourly billing has excess generation for the billing period, the utility will report 0 kWh to PJM, and the CRES provider will get the benefit of the full *offset*. But because the utility cannot tell which hours were net negative and which were net

positive, the utility cannot report to PJM any negative loads for this non-hourly metering customer. Instead, the negative load is reported to PJM as part of “unaccounted for” energy. This gives a benefit to all load serving entities on AEP Ohio’s distribution grid, but there is no way to assign this benefit to the specific CRES provider. AEP Ohio’s suggested changes to the Proposed Rules account for these realities for non-hourly-metering customers who are engaged in net metering with a CRES provider.

### **CONCLUSION**

For the foregoing reasons, AEP Ohio respectfully requests that the Commission implement the proposed rule changes set forth above.

December 18, 2015

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Initial Comments of Ohio Power Company* was served by email upon the following counsel of record for all parties on this 18th day of December 2015.

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