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**

COMMENTS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY

I. INTRODUCTION

Pursuant to the Commission's Entry of November 18, 2015, Ohio Edison Company ("Ohio Edison"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("Toledo Edison") (collectively, the "Companies"), respectfully file their comments in this proceeding to several Staff recommended amendments to rules contained in Chapter 4901:1-10-28 of the Ohio Administrative Code ("O.A.C."). The Companies appreciate the opportunity to comment and respectfully request the Commission consider their comments in addition to their earlier submissions in this proceeding, which are incorporated herein by reference, and appropriately modify Staff's proposed rules and add the additional rules proposed by the Companies, as discussed below.

The Companies also note that this round of comments in this proceeding limited to only the net metering rule arose from concerns raised previously at the Joint Committee on Agency Rule Review ("JCARR") regarding certain of the proposed rules and their consistency with the underlying authorizing statute, Revised Code 4928.67 and related statutory provisions. A number of the concerns previously identified were not addressed which may potentially lead to

the same outcome. The Companies urge the Commission to adopt net metering rules that are both consistent with the underlying statutory authority and the comments set forth below.

Rule 4901:1-10-28(A)(5)

Staff proposes that "'Microturbine'" shall mean a turbine with a capacity of two megawatts or less." This proposed definition does not give adequate effect to the statutory requirement set forth in Revised Code 4928.01(A)(31)(a) that distinguishes "microturbine" from other types of combustion turbines. Clearly the General Assembly intended a low size threshold for combustion turbine eligibility for net metering, otherwise it would have just simply used the word "turbine." The initial version of the net metering rule, promulgated shortly after enactment of the legislation while legislative intent was still fresh in the minds of the Commission and interested stakeholders, established a size threshold of 100 kW.[1] Since the General Assembly has not amended R.C. 4928.01(A)(31)(a) since the time of its enactment that would cause a different interpretation of the term "microturbine", deference should be given to the contemporaneous definition of that term. In support of continued use of that definition, it is appropriate to consider other reliable sources available today for a definition to provide a reasonable basis for that threshold.

The National Renewable Energy Laboratory's Federal Energy Management Program website defines "microturbines" as smaller, somewhat less efficient versions of combustion turbines, in the range of about 30 to 250 kW."[2] The "Whole Building Design Guide," a program of the National Institute of Building Sciences, describes "microturbines" as "small combustion

[1] *See In re the Commission's Promulgation of Rules for Minimum Competitive Retail Electric Service Standards Pursuant to Chapter 4928, Revised Code, Case No. 99-1611-EL-ORD, Rule 4901:1-21-03(A)(25), April 6, 2000.*
[2] http://www.nrel.gov/docs/fy02osti/31570.pdf

turbines approximately the size of a refrigerator with outputs of 25 kW to 500 kW."[3] Thus, the proposed rule would define a microturbine size threshold four to eight times the current industry conventions, and twenty times the threshold previously established in the Rule, all without any justification for departure from any of these standards.

The Companies, therefore, based upon the Commission's own previous findings, based upon unchanged statutory authority, and based upon current industry standards for the size of a microturbine, recommend that Rule 4901:1-10-28(A)(5) be modified to read:

Microturbine shall mean a turbine with a capacity of five hundred (500) kW or less.

This proposed definition would both be closer to the Commission's original interpretation of the statute and the top end of the current industry definition while substantially increasing the size of a microturbine for purposes of net metering.

Rule 4901:1-10-28(B)(6)

The proposed definition of "premises" is contrary to the statutory exclusive certified territory established by the General Assembly, and would promote unsafe conditions. An "electric load center" under the statute means "all the electric-consuming facilities of any type or character owned, occupied, controlled, or used by a person at a single location which facilities have been, are, or will be *connected to and served at a metered point of delivery* and to which electric service has been, is, or will be rendered." Revised Code 4933.81(E). (emphasis added) The exclusivity of service in a certified territory is established in R.C. 4933.83(A): "each electric

[3] https://www.wbdg.org/resources/microturbines.php; National Institute of Building Sciences | © 2015 National Institute of Building Sciences.

supplier shall have the exclusive right to furnish electric service to all electric load centers located presently or in the future within its certified territory…"

While Staff's proposed definition of "premises" follows the statutory construct by referencing "a metering point", the proposed definition then conflicts with the statute by departing from the statutory "single location" and "a metered point of delivery," to also include nearby properties that are separated by easements, public thoroughfares, transportation rights-of-way, or utility rights-of-way." Such properties simply are not "a single location."

Moreover, nearby properties on the other side of the road cannot be characterized as a single metering point of delivery—customers cannot string their own electric wires across easements, public thoroughfares, transportation rights-of-way, or utility rights-of-way. Indeed, under the Companies' tariffs, and pursuant to the Commission's rules, the Companies would not approve an application for interconnection that involves the customer or a third party distributing electricity across a roadway as both a violation of statutes and Commission rules.

More importantly, a customer stringing an electrical line over a roadway is a dangerously unsafe practice. Any effort to expand net metering through the fiction that crossing a highway is still a single location or metering point of delivery simply is not worth the consequent safety hazards.

The Companies therefore recommend deleting the last sentence of this proposed rule.

Rule 4901:1-10-28(B)(7)(a)

The Companies have two concerns with this proposed rule. First, it would require the electric distribution utility to disclose proprietary customer information of the previous occupant of a premise to the new occupant of the premise, without the knowledge or consent of the previous occupant. This may create issues for the electric distribution utility, so the rule should

be very clear if this is in fact the intent of the proposed rule. Further, the Companies understand the rule to require the Companies to provide the annual average kilowatt-hour consumption at the premises as reflected on the previous occupant's meter over the thirty six billing cycles immediately preceding the occupancy of the premises by the new customer, to the extent such information is available. If this understanding is correct, the Companies recommend using this language in place of the language used in the proposed rule.

Second, the proposed rule would require the Companies to "provide a consumption estimate for the premises." The Companies oppose this provision as improperly shifting the responsibility for determining the customer's expected consumption of electricity for purposes of net metering. While the Companies may be able to calculate an estimate of consumption, the calculation would be entirely dependent upon information and representations made to the Companies by the customer. Therefore, the Companies should not be placed in the position of bearing any liability for being required to predict whether a customer's behavior or equipment will be different than whatever assumptions would be necessary to produce such an estimate. Net metering is available to a wide range of customers with unique and variable consumption decisions, and customers are in a superior position to project their own future behavior and energy consumption decisions. The proposed rule would require the Companies to play this role of engineering consultant to customers, which role should be performed by the customers' own generation and facility consultants.

The Companies recommend deletion of the phrase ", or provide a consumption estimate for the premises" from the final sentence of this proposed rule and the proposed rule to be revised as discussed above.

Rule 4901:1-10-28(B)(7)(b)

Staff proposes this rule, in pertinent part, that "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." The Companies oppose the proposed amendment to the extent that it would allow a prospective net metering customer to size its generating facility up to 120% of its requirements for electricity at the time of interconnection.

Revised Code 4928.01(A)(31)(d) requires that a customer-generator intend primarily to offset "part or all" of their requirements for electricity. The statutory language unmistakably means customer-generators generating electricity in any amount *up to* their annual requirements. Conversely, the proposed amendment would allow customer-generators to intend primarily to offset "all and 20% more" of their requirements for electricity. This proposed rule provision directly contradicts the authorizing statute.

The meaning of "intended primarily to offset part or all of the customer-generator's requirements for electricity" is clear – generation for net metering may only be sized to, at most, offset the customer's electricity requirements at the time of interconnection. The impact of the proposed rule, if adopted, would both be contrary to statute and create a new subsidy for net metering customers. The Companies submit that the "intended primarily to offset" language cannot be held to mean "intend to receive incremental revenue from other utility customers subsidizing the cost of the customer-generator's system." Yet any interpretation of "intended primarily" that would presumptively ignore significant intentional annual excess generation would produce exactly that result. The statute says "*part or all*" and that has a very different meaning from the proposed rule which would allow "*all and more*."

This is not just the Companies' perspective. Shortly after enactment of this law the Commission itself noted in its Merit Brief to the Supreme Court of Ohio the statutory safeguards against excess generation that:

> It would appear that FirstEnergy is concerned with a proliferation of customer self-generators that will regularly produce excess power into FirstEnergy's system. *That is neither the intent nor the expectation of the General Assembly or the Commission*, each of which has established safeguards to ensure that this does not happen.[4]

The Commission went on to argue therein that "the proper focus is upon whether the customer-generator, over entire billing periods, *consistently produces more power than it uses*"[5] and "the intention of the General Assembly was to encourage development and introduction of alternative, competitive energy supplies for customers and not as a revenue source for customer self-generators."[6] The Commission further argued "The statute is equally clear that, under the *infrequent* circumstances where, over a complete billing cycle, a customer generator produces more power than it uses…."[7] What was clear to the Commission then, should remain clear now as the underlying authorizing statute has not changed in this regard.

As the Commission's own arguments illustrate, to remain consistent with the legislative intent and express language of the General Assembly, the Commission cannot now increase "part or all" to mean "all plus twenty percent extra." The proposed rule diametrically opposes the Commission's own contemporaneous interpretation of statutory intent that excess generation be infrequent, not consistent, and not a revenue source. However, as the commenter for One

[4] Merit Brief Submitted on Behalf of Appellee, the Public Utilities Commission of Ohio, FirstEnergy Corp. v. Public Utilities Commission of Ohio, Case No. 01-573, p.8, (filed July 18, 2001) (emphasis added), (*FirstEnergy Corp. v. Pub. Util. Comm'n*, 95 Ohio St. 3d 401 (2002)).
[5] Id. p.9. (emphasis added)
[6] Id. (emphasis added)
[7] Id., p.14. (emphasis added)

Energy explained at the May 5, 2015 technical conference, if the Rule allows as a consultant he will always *design* facilities to over-generate at 120 percent; that is, the excess generation would be purposeful at the time of installation. Setting aside the issue of whether such intentional consistent excess generation rightfully falls under PURPA or wholesale transaction jurisdiction instead of state retail jurisdiction, it clearly does not fall within the General Assembly's intended purpose related to net metering. The proposed rule simply cannot fit within the statutory language and intent expressed in the Code.

The Companies recommend that the first sentence of the proposed rule be deleted in its entirety. Alternatively, the Companies recommend the first sentence of the proposed rule be revised so as not to condone initial sizing to deliberately produce excess generation:

> 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 their requirements for electricity at the time of interconnection.

Rules 4901:1-10-28(B)(8) and 4901:1-10-28(B)(8)(a)

The Companies note that "an advanced meter capable of measuring interval usage data on at least an hourly basis" must also be capable of measuring electricity flow in both directions in order to identify the amount of any excess generation to be credited by an electric services company. The Companies are concerned that the proposed language could be interpreted to mean that an advanced meter that is capable of registering the flow of electricity in both directions must be installed at the Companies' expense which would not be consistent with the statutory and regulatory construct that customer-generators must pay for the incremental costs to accommodate net metering. Therefore, the Companies propose that any incremental metering costs arising from electric services company or customer requests for metering capable of

registering both directions, or any other incremental, special metering request, be paid for entirely by the customer or electric services company under the rule.

Rule 4901:1-10-28(B)(9)(b)

The Companies oppose the proposed revision to require the Companies to credit excessive generation by customer-generators at the Companies' standard service offer ("SSO") rate[8], to the extent this provision would require the Companies to pay net metering customers for the capacity component of the SSO rate. If net metering credits are expanded to include capacity charges, the Commission's rules would be at odds with the net metering statute, which requires the Commission to limit the program to electric energy. For the same reason, the proposed new rules improperly conflict with existing administrative rules. The reality is that net metering customer-generators provide energy only and do not offset the Companies' capacity obligation to serve SSO customers. Further, the Companies have no way to offer net metering capacity into the PJM capacity market to offset the cost associated with providing a capacity credit to customers. Therefore, if this provision is adopted, which would be contrary to law, the Companies must be authorized to promptly and fully recover those costs from customers.

The General Assembly has demonstrated its clear intent for a net metering system and a customer-generator to provide only the energy component of electricity. The General Assembly has defined the term "net-metering system" as a "facility for the production of electrical energy ***." R.C. 4928.01(A)(31). And the term "customer-generator" is defined as "a user of a net-metering system." R.C. 4928.01(A)(29). Consequently, compensating net excess customer-generators for electricity components beyond energy, as the rule requires, is inconsistent with the

[8] The Companies assume Staff meant 'SSO g*eneration* rate' as appeared in the adopted rule issued previously in this proceeding, and have drafted their comments accordingly. The Companies submit that the same legal authority which precludes inclusion of a capacity component in calculating excess generation credits also precludes inclusion of any other non-energy components.

General Assembly's plain language and intent for a net metering system and a customer-generator to provide only electrical energy.

Second, in both the existing Rule 4901:1-10-28(B) and proposed Rule 4901:1-10-28(C), O.A.C., the provision of the net metering rule applicable to hospital customer-generators, "[a]ll electricity generated by the hospital and delivered to the electric utility *** shall be measured and credited at the market value as of the time the hospital generated the electricity." "Market value" as defined in the rule "means the locational marginal price of energy determined *** at the time the customer-generated electricity is generated." There is no capacity component in the credit paid to hospital customer-generators for their excess "electricity." The Net Metering Rule proposed by the Staff in this proceeding for non-hospital customer-generators, however, conflicts with both the existing Rule 4901:1-10-28(B)(3) and proposed Rule 4901:1-10-28(C)(3), by requiring the monetary credit paid to non-hospital customer-generators to be calculated based on the utility's full SSO generation rate that includes capacity, even though hospital customer-generators and non-hospital customer-generators both only provide electrical energy back to the grid.

Furthermore, the Supreme Court of Ohio ordered the Commission to approve the Companies' tariff crediting only the energy portion of the generation rate based on statutory language that hasn't changed since that opinion was issued.[9] The General Assembly's consistent use of the term "electricity" in referring to the net metering credit calculation for both non-hospital customer-generators and hospital customer-generators, viewed in conjunction with the *FirstEnergy Corp.* opinion, requires the Commission to interpret the term "electricity" in

[9] *FirstEnergy Corp. v. Pub. Util. Comm'n,* 95 Ohio St. 3d 401 (2002).

Revised Code sections 4928.01(A)(30) and 4928.67 *et seq*., and specifically 4928.67(A)(2)(b), consistently as well to mean only electrical energy.

Finally, the Commission should establish an explicit mechanism for recovery of the costs associated with complying with Rule 4901:1-10-28(B)(9), O.A.C. The Commission conducted no analysis of the adverse impact on utilities associated with the potentially significant costs of complying with the proposed rule. In addition, the Commission failed to incorporate features into the rule (such as providing for an explicit and timely cost recovery mechanism) that would eliminate or adequately reduce any adverse impact the rule might have on businesses. The Companies do not take ownership of customer-generators' excess energy, nor do they collect revenues or experience less cost due to customer-generators' excess energy. Instead, from the Companies' perspective, any reductions to SSO obligation results in less revenues collected from customers to reconcile that obligation. Thus, absent an appropriate authorized mechanism for cost recovery from customers, these credits are simply an unfunded mandate.

Accordingly, the Companies recommend that proposed Rule 4901:1-10-28(B)(9)(b) be revised to include the following underlined language:

> 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 <u>energy component</u> of the standard service offer 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<u>, and shall timely recover the costs of the monetary credit in the electric utility's appropriate cost reconciliation mechanism to the extent such costs are not recovered elsewhere by the electric distribution utility</u>.

Rule 4901:1-10-28(B)(9)(c)

The proposed rule allows an electric services company to "offer a net metering contract at any price, rate, or manner of credit for excess generation." However, the proposed rule makes no provision for the electric utility to be notified when such a contract has been entered into by a customer nor the terms of such a contract. The Companies recommend that the rule be revised to require the electric services company to notify the electric utility and that the electric utility be permitted to automatically move the customer to bill-ready billing for the duration of such contract, as follows:

> An electric services company may offer a net metering contract at any price, rate, or manner of credit for excess generation. *The electric services company shall notify the electric utility whenever a net metering contract has been entered with a customer, and the electric utility shall be permitted to automatically move the customer-generator to bill-ready billing if the electric services company has not elected separate (dual) billing.*

Rule 4901:1-10-28(B)(9)(d)

The proposed rule would require hourly interval usage data to be transmitted to an electric services company engaged in net metering with a customer-generator who uses an interval meter. The Companies presently make such data available to electric services companies through its portal and through EDI within 24 to 48 hours. The Companies recommend the same practice be applied for customer-generators as for other similarly-metered customers, and to revise this rule accordingly:

> 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 or make available to the electric services company the customer-generator's interval data for that billing period. The electric utility shall also transmit or make available to the electric services company the customer-generator's daily interval usage data within forty-eight hours.

Rule 4901:1-10-28(C)

The Companies note that the proposed "Hospital net metering" rules do not explicitly make clear that hospital customer-generators have the same opportunity to engage in net metering with an electric services company as afforded "Standard Net Metering" under 4901:1-10-28(B). The Companies recommend adding a new paragraph (9) to cover shopping for hospital customer-generators as follows:

Hospital customer-generators may engage in net metering with an electric services company under the same conditions as provided in Part (B) of this chapter.

CONCLUSION

The Companies urge the Commission to adopt the recommendations of the Companies set forth above to fully address the issues that were previously identified in order to be more fully in concert with underlying statutory authority.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that these Comments were filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 19th day of December 2015. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ *Carrie M. Dunn*

One of the Attorneys for Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company

Summary: Comments electronically filed by Ms. Carrie M Dunn on behalf of The Toledo Edison Company and The Cleveland Electric Illuminating Company and Ohio Edison Company