BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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

JOINT COMMENTS OF THE ENVIRONMENTAL LAW & POLICY CENTER, OHIO ENVIRONMENTAL COUNCIL, NATURAL RESOURCES DEFENSE COUNCIL, ENVIRONMENTAL DEFENSE FUND, AND VOTE SOLAR

I. INTRODUCTION

The Environmental Law & Policy Center, Ohio Environmental Council, Natural Resources Defense Council, Environmental Defense Fund, and Vote Solar (collectively, "Environmental Advocates"), submit these Joint Comments in accordance with the Entry issued in this case on November 18, 2015. The Entry seeks comments on a draft net metering rule in the wake of the withdrawal of a prior version of the rule originally finalized by the Public Utilities Commission of Ohio ("Commission") in January 2014. Opinion and Order (Jan. 15, 2014) ("January 2014 Order"). As explained below, the Environmental Advocates generally support the Commission's proposed revisions – most of which were already approved by the Commission in the January 2014 Order – as a positive step toward a successful net metering framework in Ohio. However, the Environmental Advocates have three main concerns or comments on the Commission's approach:

1. The monthly excess generation credit should be a kWh credit that rolls over month to month indefinitely or, alternatively, until the end of the year. A true kWh credit, as opposed to a monetary credit, is consistent with the statutory definition of "net metering"

at Ohio Revised Code ("R.C.") 4928.01(A)(30) and could be implemented consistent with Ohio statutes and precedent.

2. The Commission should not establish an absolute limit on the size of a net metering system in order to qualify for default service. Ohio law allows customers to receive net metering service based on the *intent* to offset their own electricity requirements, and codifying a bright-line limit on the size of a system does not allow for unique circumstances where the customer may have such intent but the system falls outside the bounds of the proposed quantitative limit.
3. The Commission's draft rule allows competitive retail suppliers to offer net metering service in addition to default service from the distribution utility. The Environmental Advocates do not oppose this approach, but urge the Commission to clarify its role in ensuring customers have adequate information to evaluate such competitive offers.
4. In its January 2014 Order, the Commission indicated that, although it had solicited comments on whether aggregate net metering and virtual net metering could be implemented under Ohio law, it would defer the issue to a separate docket. January 2014 Order at 42-43. The Commission has not yet opened such a docket, and we urge it do so in order to allow exploration of these approaches as important mechanisms to allow utility customers to deploy distributed generation without artificial constraints.

The Environmental Advocates' comments on these and further issues are detailed below.

II. BACKGROUND

The Commission opened this docket in July 2012, and has already been through the full rulemaking process once, culminating in an Opinion and Order adopting a final net metering rule on January 15, 2014. That version of the rule had many similarities to the current draft

provisions. For example, the rule included the presumption that if a customer-generator's net metering facility was sized at less than 120% of its generation requirements, then that customer intended to offset part or all of its own requirements for electricity, as required under R.C. 4928.01(A)(31). The rule also required each electric distribution utility ("EDU") to offer a tariff providing for compensation for excess generation, including compensation for the capacity component of the electricity supplied by the customer.

The January 2014 Order and final rules were contested through multiple applications for rehearing, which the Commission denied with only one minor exception with respect to the net metering provisions. Second Entry on Rehearing (May 28, 2014) at 13-24; Third Entry on Rehearing (July 23, 2014) at 4-9. However, the Commission reopened consideration of further potential revisions to the rule in early 2015. Entry (Mar. 13, 2015). The Commission held a workshop on May 5, 2015, in which all of the Environmental Advocates participated. The Commission then issued a new draft rule for comment on November 18, 2015, with the primary substantive change from the rule issued in January 2014 being the addition of an option for Competitive Retail Electric Service ("CRES") providers to offer net metering service as an alternative to net metering through an EDU tariff.

III. COMMENTS

The current draft of the net metering rule is generally consistent with the Commission's earlier rulings and Ohio law. The Environmental Advocates will not reiterate our prior detailed comments filed in this docket in support of many of the major provisions of this rule. Joint Comments of the Environmental Law & Policy Center, Sierra Club, Ohio Environmental Council, Solar Energy Industries Association, and Vote Solar Initiative (Jan.7, 2013); Reply Comments of the Environmental Law & Policy Center, Sierra Club, Ohio Environmental

Council, Solar Energy Industries Association, and Vote Solar Initiative (Feb. 6, 2013). However, we do have several comments regarding aspects of this rule that may stand as obstacles to true net metering. True net metering offers full compensation for the value of electricity generated by a customer and thus effectively promotes distributed generation consistent with R.C. 4928.02(C).

A. Credit for Excess Generation

The draft rule provides that when a customer-generator receives net metering service from an EDU, and generates more electricity than it receives from the utility over a monthly billing cycle, "the excess electricity shall be converted to a monetary credit at the electric utility's 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." Entry (Nov. 18, 2015), Att. A at 5-6. That credit is not refunded to the customer, but rather applied to future customer bills, and "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." *Id.* at 6.

The Environmental Advocates urge the Commission to replace this approach with indefinite rollover of a straight kWh credit rather than a monetary credit. This would resolve two problematic aspects of the rule as proposed.

1. Ensuring Full Credit to Customer-Generators

First, a kWh credit rather than a monetary credit will ensure customers are credited for all generation components of their bills, including all generation riders and surcharges. This will mitigate the possibility of customer confusion in attempting to determine whether an EDU is providing full credit, and also help avoid inconsistent treatment of customer-generators by different EDUs. In addition to being simpler than a monetary credit, this approach would be consistent with the vast majority of states that have adopted net metering, Ohio statutes, and

Ohio precedent. Of the forty-four states that have a statewide net metering policy, thirty-six allow either a straight kWh rollover credit or a monetary credit equal to the full retail rate of the excess generation.[1] Of Ohio's closest neighbors, Pennsylvania, Kentucky, West Virginia, and Indiana all allow a credit at full retail rate, while Michigan provides for a full retail rate credit for all systems 20 kW or less. Adopting a straight kWh credit in Ohio would best represent a true net metering system and promote distributed generation in the state.

Ohio law certainly permits the Commission to provide for a straight kWh credit for excess generation. R.C. 4928.01(A)(30) states that "net metering" means "measuring the difference in an applicable billing period between the electricity supplied by an electric service provider and the electricity generated by a customer-generator that is fed back to the electric service provider." R.C. 4928.67(B)(3)(b) directs that "[i]f [excess] electricity is provided to the utility, the credits for that electricity shall appear in the next billing cycle." R.C. 4928.67 does not mandate that these "credits" be monetary. A straight kWh credit, equal to the amount of excess generation, would be consistent with this language.

The Commission could also implement a straight kWh credit in a manner consistent with *FirstEnergy Corp. v. Pub. Utils. Comm'n of Ohio*, 95 Ohio St. 3d 401 (Ohio 2002). In that case, the Ohio Supreme Court disallowed the Commission's requirement that FirstEnergy issue a monetary credit or refund to a customer-generator in an amount equal to the generation, transmission, distribution, and other nonbypassable rate charges associated with the excess electricity. A kWh rollover credit would not conflict with *FirstEnergy* for two reasons. First, the

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

court in *FirstEnergy* was addressing a monetary credit, rather than a straight kWh credit, which the Commission could implement in this rulemaking.[2] Second, the court in *FirstEnergy* was concerned about customer-generators receiving a refund or, in other words, being paid in amounts equal to the total of the underlying electricity charges. Under a kWh rollover system, the excess electricity generation would simply rollover month-to-month. No refund would ever have to be paid to the customer-generator. In fact, an indefinite rollover of excess kWh credits will fairly credit customer-generators for potential excess generation while providing an incentive for those customers to rightly size their generation systems. If customers can receive a kWh credit but will never receive a check for the excess generation, the customer will not have an incentive to install a generation system that exceeds electricity needs. Providing for an indefinite rollover of kWh credits and eliminating the refund would also simplify the credit process and avoid any potential tax or jurisdictional complications associated with that refund.

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

2. Avoiding Loss of Credit for Excess Generation

An indefinite rollover of a kWh credit would also eliminate the need for expiration of a monetary credit after thirty-six months. By setting this arbitrary deadline, past which an EDU will not in fact compensate a customer-generator for excess generation, the Commission would unnecessarily establish a disincentive to net metering by potentially preventing the customer-

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

generator from receiving full value for its distributed generation. R.C. 4928.02(C) directs the Commission to "encourag[e] the development of distributed . . . generation facilities," and it would be inconsistent with state policy to deprive customer-generators of compensation for all excess generation.

Alternatively, if the Commission retains a monetary credit framework, this issue could be addressed through a true-up of that credit annually, including if the customer has switched from the distribution utility's Standard Service Offer ("SSO") to generation service from a CRES provider. The Commission, in fact, adopted this approach in the previous version of the net metering rule, and it remains compatible with the new draft rule. Second Entry on Reh'g, Att. A at 14 (providing for annual true-up of monetary credit at the end of each May billing cycle). An annual true-up, in addition to helping avoid depriving customer-generators of compensation for the full value created by distributed generation facilities, would remove a potential disincentive to shopping because of the fear of losing accumulated credits. Otherwise, customer-generators might remain on SSO service despite superior net metering offers from CRES providers, contrary to the state policy codified in R.C. 4928.02(C): to "ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers."

B. Size of a Net Metering System

The draft rule straightforwardly applies the requirement of R.C. 4928.01(A)(31) that a net metering system must be "intended primarily to offset part or all of the customer-generator's requirements for electricity." *See* Entry (Nov. 18, 2015), Att. A at 3. However, the draft rule also expands on this requirement by mandating that a customer-generator "must size facilities so as not to exceed one hundred and twenty percent of their requirements for electricity at the time of

interconnection" in order to receive net metering service from an EDU. *Id*. at 4. This transforms the 120% size from a presumptive boundary to a bright-line limit, without regard to potential variations in customer circumstances. It is certainly possible that customer may design a facility to be greater than 120% of its historic electricity requirements yet still intend only to offset its future electricity needs – for example, if the customer anticipates an increase in its electricity requirements and seeks to install distributed generation in order to offset potential bill increases. As drafted, the rule eliminates the possibility of the customer obtaining net metering service from its EDU under such a scenario, even though that result is not required by Ohio law and in fact, the proposed rule could discourage the deployment of distributed generation in circumstances where it makes sense for customers.

Although a customer may potentially obtain net metering service from a CRES provider if its system is over the 120% limit, there is no guarantee as to whether any adequate retail offers will be available. Even if such a CRES offer is initially available, the customer would be forever precluded from switching to SSO service in the future, since the size cap applies "at the time of interconnection." This limitation is unnecessarily restrictive.

The Environmental Advocates suggest that the Commission return to the approach it adopted in the prior version of this rule, where sizing a net metering system under 120% merely triggered the presumption that the system was primarily intended to offset the customer-generator's electricity requirements, rather than serving as an absolute limit. Second Entry on Reh'g, Att. A at 13 ("A customer-generator that annually generates less than one hundred and twenty percent of its requirements for electricity is presumed to be primarily intending to offset part or all of its requirements for electricity."). This would still offer specific guidance to EDUs and customers in applying R.C. 4928.01(A)(31), but would leave open the possibility of

accommodating customer-generators who might have circumstances that do not fit the usual mold.

C. Net Metering Service from Competitive Suppliers

The Environmental Advocates do not oppose the provisions of the draft rule allowing CRES providers to offer net metering service. However, opening that pathway raises potential concerns with respect to customer confusion as to the value provided by CRES offers or watering down of available net metering service in Ohio. These concerns could be mitigated if the Commission extends its current role in ensuring customers receive accurate information about their shopping options (as through the "Apples to Apples" website) to the net metering context. In particular, the Commission should not allow CRES providers to label service as a "net metering" option where the offer does not in fact provide the customer with true net metering: full compensation for the value of electricity generated to offset the customer's own requirements and excess electricity provided to the grid.

D. Aggregate or Virtual Net Metering Docket

In its original consideration of revisions to Ohio's net metering rules, the Commission properly sought to explore the potential for aggregate or virtual net metering as one mechanism to encourage the development of distributed generation. The January 2014 Order put off this issue for future resolution, providing that the Commission would "open[] a new docket for the purpose of continuing to consider and evaluate virtual and aggregate net metering." Opinion and Order at 43. The Commission has not yet opened such a docket, but there is no reason to delay doing so – especially looking to nearby states such as Illinois that are already moving forward

with introducing aggregate and virtual net metering options.[3] The consideration of how best to implement aggregate or virtual net metering need not wait on the resolution of the separate issues involved in this docket.

IV. CONCLUSION

Overall, the Commission's proposed revisions represent a positive step forward in implementing successful net metering and distributed generation in the state. However, as explained above, the rule should clarify that the monthly credit for excess generation is a kWh credit with an indefinite rollover, or alternatively an annual true-up. The Commission should also eliminate any absolute cap on the size of a net metering system and clarify its role in supervising competitive offers for net metering service. Finally, the Commission should pursue aggregate and virtual net metering in Ohio. The Environmental Advocates appreciate the Commission's efforts and the opportunity to comment on the revisions in the proposed rule. We look forward to participating further in the Commission's rulemaking process.

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[3] *See* Illinois Commerce Commission, Docket No. 15-0273 (proposing rules allowing for meter aggregation for the purpose of net metering).

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Summary: Comments electronically filed by Madeline Fleisher on behalf of Environmental Law and Policy Center and Ohio Environmental Council and Natural Resources Defense Council and Environmental Defense Fund and Vote Solar