BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

REPLY COMMENTS OF 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 submit their reply comments to comments filed in this proceeding addressing several Staff questions contained in the Commission Entry and recommended amendments to rules contained in Chapter 4901:1-10-28 of the Ohio Administrative Code ("O.A.C."). The Companies respectfully request the Commission consider their reply comments, their comments filed December 18, 2015, and those previously filed in this proceeding, and appropriately modify and/or add the proposed rules.[1]

II. COMMENTS

The comments of several stakeholders can be categorized as follows: 1) change the monthly credit for excess generation from a monetary credit to a kWh "rollover"; 2) allow customer-generators to consistently over-generate on purpose; 3) do not impose "undue" fees; 4)

[1] The Companies' decision not to include a reply to all comments filed in this proceeding may not be interpreted as the Companies' agreement with or acquiescence to other parties' comments.

allow non-qualifying technology to be declared eligible; and 5) open a new docket for aggregate and virtual net metering. While there are other miscellaneous recommendations, the Companies specifically address each of these arguments below.

1. A monthly kWh rollover credit is unlawful in Ohio.

Some commenters again propose the Commission change the existing monetary credit for excess generation by a customer-generator into an "indefinite rollover of a straight kWh credit."[2] Environmental Law & Policy Center, Ohio Environmental Council, Natural Resources Defense Council, Environmental Defense Fund, and Vote Solar ("Environmental Advocates") claim that their recommended approach will both provide a "full credit" for excess generation by customer-generators and also would avoid the potential loss of credits through expiration or shopping. Neither of these rationales survive scrutiny and should be rejected for the same reasons the Commission did not approve this recommendation in the prior proceedings.[3] The Companies addressed these arguments in their Reply Comments filed February 6, 2014, and incorporate those comments herein.

Although Environmental Advocates characterize a straight kWh credit as "full credit" for all generation components of their bills, including "all generation riders and surcharges,"[4] in reality a straight kWh credit would credit customer-generators for <u>all</u> billing components, including distribution and transmission components and non-bypassable riders, which would be inappropriate. This fact is easily illustrated in the following example. Assume a customer-generator generated a net excess of 300 kWh in January, and then consumed a net 300 kWh in

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[2] Joint Comments of the Environmental Law & Policy Center, Ohio Environmental Council, Natural Resources Defense Council, Environmental Defense Fund, and Vote Solar, ("Joint Comments"), p. 4.
[3] See, Finding and Order, January 15, 2014, p.39,40.
[4] Id.

February. Because the February billing cycle would carry forward the prior month straight kWh credit under Environmental Advocates' proposal, the customer-generator's January and February bills would be zero for all kWh-based charges despite having consumed a net 300 kWh during the month of February.[5] In other words, this customer-generator would effectively net its electricity over multiple billing periods—forcing the Companies to become its "virtual battery storage"—and would avoid paying not only distribution and transmission charges but all applicable kWh-based riders in February as well. This is not permissible under the statute and controlling court authority.[6]

2. Allowing deliberate oversizing of a generation system is contrary to the intent requirement of the statute.

Environmental Advocates recommend the Commission remove the proposed "absolute limit" on the size of a customer-generator's facilities in order to accommodate "unique circumstances."[7] Environmental Advocates suggest a scenario that a customer that anticipates a future increase in electricity needs could oversize more than 120% today, yet "still intend only to offset its *future* electricity needs."[8] This ill-conceived recommendation omits even a passing consideration of the multitude of issues that would arise under such a loosely defined qualification: How many years ahead could a customer-generator project anticipated increased consumption? How long would an electric utility have to accept deliberate excess generation before consumption increases to the size of the system? What proof of anticipated increase

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[5] "If the electricity supplied by the electric utility exceeds the electricity generated by the customer-generator and fed back to the utility during the billing period…." R.C. 4928.67(B)(3)(b)
[6] *FirstEnergy Corp. v. Pub. Util. Comm.*, 95 Ohio St.3d 401, 2002-Ohio-2430; R.C. 4928.67(B)(3)
[7] Joint Comments, p.2.
[8] Id. p.8 (emphasis added).

would suffice to prevent customers from abusing the net metering tariff? What happens if the anticipated increase never materializes?

While Environmental Advocates alternatively suggest the Commission should re-establish that sizing generation up to 120% of a customer-generator's annual requirements "merely trigger(s) the presumption that the system was primarily intended to offset the customer-generator's electricity requirements,"[9] this recommendation misstates the amendment previously adopted by the Commission which referenced annual generation rather than initial sizing. The Commission explained the purpose for the earlier amendment was so that subsequent energy efficiency efforts would not trigger disqualification from an electric utility's net metering tariff. Clearly, Environmental Advocates' proposal to create a presumption for *sizing* at 120% would cause subsequent energy efficiency to result in exceeding the 120% threshold. The Companies oppose establishing a 120% excess generation threshold for all of the reasons set forth in the Companies' prior filings in this proceeding, and oppose allowing systems designed to exceed electricity requirements by 20% to participate under the Companies' Net Energy metering tariffs.

The Companies note the proposals by the other Ohio electric utilities with respect to the 120% threshold offer somewhat unique but generally similar solutions to the problem of effectuating the statutory provision regarding intent. The Companies reiterate their commitment to evaluate excess generation on a case-by-case basis, and to remove customers from their net energy metering tariffs only when it becomes clear that excess generation, rather than offsetting part or all of the customer's requirements for electricity, is the apparent intent of a customer-generator's operation of its system. From that standpoint, the Companies do not believe they

[9] Id.

should be required to allow designed excessive generation to continue for a 12-month period, but, rather, should immediately take steps to require compliance with or removal from the retail net energy metering tariff.

3. Requiring statutorily imposed fees and compensation does not create an undue burden.

Some commenters recommend that the Commission not impose fees on net metering customers even when those costs are expressly caused by the customer-generator. For example, OCC recommends that a customer-generator not be required to pay for the cost if meter reprogramming is required to accommodate net metering for the customer-generator.[10] It then cites to AEP's tariff to suggest that Ohio Power's tariff provision represents the status quo for all tariffs in Ohio. OCC's statement is incorrect. The Companies' existing tariffs clearly require such costs to be paid by the customer-generator.[11] Furthermore, the Commission previously specifically addressed the issue of cost responsibility for reprogramming meters, finding that it would not require electric utilities to absorb the cost of such reprogramming.[12] The question unanswered by the OCC's recommendation is this: if the customer-generator were not charged for costs necessary to accommodate its net metering request, and the utility is not required to absorb the cost, then who does the OCC propose be required to pay? OCC's proposal would

[10] OCC Comments p.8. OCC suggests that AEP's Interconnection fee should cover such reprogramming costs. The Companies note that their Interconnection fees cover the cost for analyzing and processing interconnection applications; not to accommodate a customer's specific costs to accommodate net metering.
[11] See, for example, Net Energy Metering Rider, Ohio Edison Company ("The customer-generator will pay the Company all expenses involved in either modifying the existing meter or providing a new meter capable of measuring the flow of electricity in each direction.")
[12] Finding and Order, p.38. ("The Commission finds that the proposals by Ohio Power and DP&L should be adopted, and that the electric utilities should not be required to absorb the cost of reprogramming or setting up a meter for net metering.")

ultimately require non-metering residential customers to pay part of the upfront cost for net energy metering residential customers to install their own generation.

The Companies also oppose OCC's recommendation to insert the term "reasonable" into proposed Rule 4901:1-10-28(B)(8) as unnecessary and confusing. The Companies only charge the actual costs when customers request meter replacements, and it is appropriate for customers to pay the full cost of special requests. The proposed addition of the word "reasonable" would likely create confusion and an incentive for customers to challenge actual costs as "unreasonable" simply because they want to avoid paying them. The Companies likewise oppose the recommendation by The Alliance for Solar Choice ("TASC") to impose deadlines for providing cost estimates for meter replacements, for the reason that there has been no evidence to suggest that the Companies' provision of such cost estimates have been untimely, problematic, or in any other way justifying the imposition of potentially costly and administratively burdensome deadlines.

Similarly, IGS recommends that any customer-generator who pays for the cost of an advanced meter should not be charged for any applicable advanced metering riders.[13] This proposal ignores the reality that advanced metering capability requires infrastructure and administrative back office support far beyond the cost of the advanced meter itself. To exempt a customer-generator from paying for advanced metering infrastructure and administrative cost responsibility is simply one more effort to inappropriately force non-net metering customers to subsidize customer generators.

[13] Comments of IGS Energy, et al, p.4.

Finally, yet another example of mischaracterizing lawful treatment as an impediment to distributed generation is the effort to abandon the energy-only credit for excess generation. The Staff proposal to change the Rule to include the Companies' capacity component of the SSO generation rate in the monetary credit for excess generation does not comport with the statute.[14] As the Companies and Ohio Power[15] have noted frequently throughout this proceeding, including in their appeals to the Supreme Court of Ohio, customer-generators simply do not provide capacity resources to electric utilities in a manner that offsets capacity obligations. As IGS acknowledges from an electric services provider perspective, it would be unfair to compensate the excess generation of customer-generators by "paying the customer while receiving nothing in return."[16] It is just as unfair when applied to electric utilities and their customers as it is to retail electric services companies. Although the Commission in its earlier ruling portrayed customer-generators as providing "demand-side reduction in the amount of capacity [an electric utility] must procure,"[17] net excess generation during any given monthly billing period bears no direct relationship to the cost of providing capacity required for SSO service. To include a capacity component in the compensation to all customer-generators would present a classic free-rider problem of "paying something for nothing," and would be like making demand response payments to customers without any obligation or ability to curtail.

[14] "Strongly supported" by The Alliance for Solar Choice ("TASC"), p. 2 (emphasis added). See also, Joint Comments urging "full credit" for excess generation.

[15] The Companies agree with Ohio Power's analysis of controlling legal authority requiring energy-only credits be paid for excess generation set forth in their December 18, 2015 Comments.

[16] IGS Comments p.4.

[17] Entry on Rehearing, p.21.

4. Reciprocating engines are not a qualifying technology.

IGS once again recommends the Commission administratively rewrite the statutory definition of a net metering system.[18] Even though IGS acknowledges that the "draft rules rely upon the statutory definition of a net metering system," it urges the Commission to "invoke principles" and simply ignore the statute.[19] Rewriting the statute would exceed the Commission's authority, and should be rejected for the same reasons the Commission previously rejected IGS' recommendation.

5. Virtual net metering and aggregate net metering are not permitted under Ohio law.

Several commenters urge the Commission to open a proceeding to establish virtual or aggregate net metering.[20] The concepts of "virtual" and "aggregate" with respect to net metering are not compatible with the Ohio statutory definitions of a net metering system, a customer-generator, and the netting process, and further would violate the statutory establishment of certified territories of electric utilities under R.C. 4933.81 and 4933.83. A more accurate term for allowing multiple customers at multiple locations to net multiple meters is: "*pretend* net metering." Ohio law simply does not permit "pretend net metering," and opening a docket to discuss a concept that is in conflict with the law would be fruitless.

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[18] IGS Comments p.6.
[19] Id. p.7.
[20] See, for example, IGS Comments p.5, Joint Comments, p.9.

6. Requiring electric utilities to offer a time-differentiated Standard Service Offer for non-hospital net metering customers is contrary to law.

OCC urges the Commission to mandate that electric utilities "offer a time-differentiated Standard Service Offer (alongside an average Standard Service Offer) to allow customers to realize the full benefit of their energy supply contribution in the instance where no Marketer time-differentiated net metering contracts are available in the marketplace."[21] OCC's recommendation is to effectively make the "market value at the time of generation" provision of R.C. 4928.67(A)(2)(b) applicable to all net metering customers instead of just to hospital net metering customers. This recommendation is contrary to the statutory provision which makes this tariff provision a requirement for only hospitals, while the provisions of R.C. 4928.67(B)(3)(a) and (b) prescribe different tariff requirements to credit excess generation for non-hospital customer-generators. The Companies note specifically that billing periods are monthly, not hourly, and that the vast majority of the existing meter base for its customers do not measure hourly intervals.

Moreover, OCC does not limit its recommendation for a time-differentiated Standard Service Offer to apply only to customer-generators taking service under the utility's net energy metering tariff. The Companies submit that an Electric Security Plan proceeding is the proper place to establish generally applicable Standard Service Offer rates and tariffs—not a net energy metering rule review proceeding. OCC's recommendation should be rejected.

[21] OCC Comments, p.9.

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 8th day of January, 2016. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ *Robert M. Endris*_____________

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