

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**ENVIRONMENTAL LAW & POLICY CENTER, OHIO ENVIRONMENTAL
COUNCIL, ENVIRONMENTAL DEFENSE FUND, NATURAL RESOURCES DEFENSE
COUNCIL, AND VOTE SOLAR MEMORANDUM CONTRA APPLICATION FOR
REHEARING OF THE OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY**

I. INTRODUCTION

The Environmental Law & Policy Center, Ohio Environmental Council, Environmental Defense Fund, Natural Resources Defense Council, and Vote Solar (collectively, “Environmental Advocates”) file this Memorandum Contra the Application for Rehearing of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, “FirstEnergy”). Specifically, Environmental Advocates respond in support of two aspects of the net metering rules that the Public Utilities Commission of Ohio (“Commission”) issued in its November 8, 2017 Finding and Order (“Order”) in this proceeding.

First, contrary to FirstEnergy’s arguments, limiting the size of a net metering facility to 120 percent of the customer’s annual electricity requirements is a reasonable, workable rule that faithfully implements the statutory definition of a “net metering system” as one that “is intended *primarily* to offset part or all of the customer-generator's requirements for electricity.”¹ Second, the Commission’s definition of customer “premises” sensibly permits customers to install a net metering system on areas owned, operated, or leased by the customer-generator and permits net metering of contiguous lots, though the Environmental Advocates believe the new provision

¹ R.C. 4928.01(A)(31)(d) (emphasis added).

could be improved if the Commission adopted the revisions suggested by One Energy in their Application for Rehearing.²

II. FACTS

Though the Environmental Advocates have sought rehearing of one aspect of the Order, on the whole it effectively carries out state policy in favor of promoting distributed generation under R.C. 4928.02(C), (F), and (K), by establishing clear and workable rules for customer-generators to access net metering statewide. Two key elements of that approach are the new rule provisions regarding sizing of net metering systems and the definition of “premises” on which a customer can install a net metering system.

R.C. 4928.01(A)(31)(d) defines a “net metering system” as one that “is intended primarily to offset part or all of the customer-generator’s requirements for electricity.” The prior version of the net metering rule did not provide any specific interpretation of that language. As a result, a customer’s eligibility to participate in a net metering tariff had to be resolved on a utility-by-utility and customer-by-customer basis, with the ever-present possibility that a utility might disqualify a customer from net metering based on changing usage patterns after installing distributed generation years prior. The Order fills in that gap through Rule 4901:1-10-28(B)(7)(b), providing that “[a] customer-generator must size its facilities so as to not exceed one hundred and twenty percent of its requirements for electricity at the time of interconnection.”

The Order also defines the “premises” where a customer may install a “net metering system” within the meaning of R.C. 4928.01(A)(31)(b). Rule 4901:1-10-28(B)(6) provides that:

A customer-generator’s premises is the area that is owned, operated, or leased by the customer-generator with the metering point for the customer-generator’s account. A contiguous lot to the area with the customer generator’s metering point may be considered the customer-generator’s premises, so long as it would

² One Energy App. for Rehearing (Dec. 8, 2017) at 12.

not create an unsafe or hazardous condition as determined by the electric utility on a case-by-case basis.

This clarifies the prior net metering rule by allowing a customer to install a net metering system serving a single area with a single meter, even if that customer-generator property happens to include multiple lots.

III. ARGUMENT

FirstEnergy challenges both the sizing provision of the new net metering rule and the definition of “premises.” In both cases, FirstEnergy suggests that the Commission has not reasonably interpreted the relevant statutory language in R.C. 4928.01(A)(31). In both cases, FirstEnergy takes an unreasonably narrow view of the statute and ignores Ohio’s policy in favor of encouraging distributed generation under R.C. 4928.02(C), (F), and (K).

A. The Commission Reasonably Interpreted the Definition of Net Metering System to Provide Customers with Needed Flexibility.

The language of R.C. 4928.01(A)(31)(d) makes clear that the General Assembly intended to give customers some flexibility in choosing the size of a net metering system, while still ensuring that the system is “intended *primarily* to offset part or all of the customer-generator's requirements for electricity.”³ By including the word “primarily” – rather than say, “only” – the legislature reasonably recognized that a customer may intend to offset its electricity consumption but still install a system that at times produces more electricity than the customer requires. The Commission thus reasonably interpreted R.C. 4928.01(A)(31)(d) to provide some, but not unlimited, flexibility in sizing a net metering system to meet a customer’s needs.

This flexibility is important to allow customers to make common-sense decisions about sizing of distributed generation installations. FirstEnergy contends that there is no explanation for a customer installing a system sized to meet more than 100% of their annual electricity

³ R.C. 4928.01(A)(31)(d) (emphasis added).

requirements “other than to conclude that it is intended primarily to exceed the customer-generator’s requirements for electricity.”⁴ The Commission can easily disregard that argument for two reasons.

First, electricity requirements vary over time, and a customer may well anticipate increased electricity consumption after a net metering system is installed. FirstEnergy itself acknowledges this in citing the example of a commercial or industrial customer that might reduce its load due to energy efficiency or economic cutbacks.⁵ But a customer’s electricity requirements may well go up instead of down. FirstEnergy failed to mention the scenarios where a manufacturer increases production or adds a shift, or a family has a child or buys an electric vehicle. The Commission’s chosen approach allows customers at least some ability to plan ahead for such circumstances rather than tying them inflexibly to their past energy consumption patterns.

Moreover, although it may be reasonable to set a size limitation based on annual electricity requirements, the fact is that for many customers electricity consumption is not constant throughout the year. A typical Ohio residential customer with gas heating is likely to use significantly more electricity during the summer months. Such a customer may choose a system designed to offset their consumption during those summer months that results in some excess generation during other times of the year. The 120 percent limit again allows a customer some flexibility to make that choice while still placing reasonable bounds on the amount of excess generation.

A brief sampling of other jurisdictions bears out the reasonableness of the Commission’s approach. As one example of a state explicitly endorsing the sizing of a net metering system to

⁴ FirstEnergy App. for Rehearing (Dec. 8, 2017) at 5.

⁵ *Id.* at 5.

offset peak monthly demand, the Arkansas legislature has defined a “net-metering facility” to include one that “[h]as a generating capacity of not more than: (i) The greater of twenty-five kilowatts (25 kW) or one hundred percent (100%) of the net-metering customer’s *highest monthly usage in the previous twelve (12) months for residential use.*”⁶ A number of states that have adopted Ohio’s annual approach similarly provide flexibility on initial sizing, such as Maryland (net metering customer may size up to 200% of baseline annual usage⁷), Colorado (individual system limit of 120% of average annual consumption, same for solar garden subscription⁸), Minnesota (120% individual limit applicable only to systems of 40 kw or more, solar garden subscriptions allowed up to 120% of subscriber’s annual usage,⁹), and Rhode Island (no percentage size limit for systems up to 10 MW, guaranteed compensation for excess generation up to 125% of annual consumption¹⁰). There are even some states with no individualized size restrictions based on annual usage, such as Pennsylvania, where the only system size requirement is a generic kw capacity limit (*e.g.*, 50 kw for residential customers).¹¹

Finally, it is worth noting that FirstEnergy appears to be imagining a problem for which there is no evidence. According to FirstEnergy’s own data as reported to the U.S. Energy Information Administration (“EIA”), in 2016 its net metered customer-generators produced *no* excess generation.¹² If and when customers on FirstEnergy’s net metering tariff do begin producing significant amounts of excess generation and accruing large credit balances, the Order

⁶ Ark. Code § 23-18-603(6)(B) (emphasis added).

⁷ Md. Code Regs. § 20.50.10.01(D)(1)(b).

⁸ 4 Colo. Code Regs. §§ 723-3-3652(ff), 3664(i)(III), 3665(a)(I)(B).

⁹ Minn. Stat. §§ 216B.1641(b), 164.4c.

¹⁰ R.I. Gen. Laws § 39-26.4-3(a)(4).

¹¹ Penn. Pub. Utilities Comm’n, *In re Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Case No. L-2014-2404361, Second Amended Final Rulemaking Order at 1, 11, 48-56 (Oct. 27, 2016) (rescinding regulatory 200% size limit provision pursuant to legislative review commission order disallowing limit on net metering as inconsistent with statute); Penn. Admin. Code § 75.13.

¹² Form EIA-861M, 2016 Net Metering Detailed Data, *available at* <https://www.eia.gov/electricity/data/eia861m> (based on “energy sold back” for all technologies for Ohio Edison Company, Cleveland Electric Illuminating Company, and Toledo Edison Company).

invites the utilities to raise that issue with the Commission so that the Commission can consider actual evidence of whether the 120 percent limit is reasonable.¹³ Although FirstEnergy complains that avenue will be “completely ineffective,”¹⁴ the Commission will clearly have the ability to take up the issue at the next five-year rule review – if not earlier – and evaluate whether any rule changes are necessary. In the meantime, a 120 percent sizing limit constitutes a reasonable interpretation of R.C. 4928.01(A)(31)(d) in the spirit of Ohio policy in favor of “encouraging the development of distributed and small generation facilities.”¹⁵

B. The Commission’s Order to Permit Net Metering on Contiguous Lots Is Lawful and Reasonable.

The Commission’s definition of “premises” under R.C. 4928.01(A)(31)(b) will assist in increasing customer choice and provide additional flexibility to ensure all Ohioans have access to renewable distributed generation options.¹⁶ The Environmental Advocates strongly agree that the Commission needed to amend the definition of premises to include areas owned, operated, or leased by a customer-generator, as it clarifies that there are arrangements other than direct ownership in which Ohioans have the right to install distributed generation systems. Further, including contiguous lots in the definition of customer-generator’s premise is reasonable because it recognizes the reality that customer-generators, especially larger ones, often have sites that encompass several parcels. Arbitrary parcel lines should not stop a customer from choosing to install and operate a net metered system, nor should it prevent including nearby properties merely separated by easements, public thoroughfares, transportation rights-of-way, or utility rights-of-way.

¹³ Order at 18.

¹⁴ FirstEnergy App. for Rehearing at 5.

¹⁵ R.C. 4928.02(C).

¹⁶ Order, Att. A at 4.

FirstEnergy's argument that the revised definition conflicts with the certified territory act is misguided.¹⁷ The revised definition does not change the interconnection point for the utility, and the utility will still serve the same single metered point of delivery. The Certified Territories Act dictates *who can provide* electricity to the end user, not what kind of facility can be installed. FirstEnergy's argument simply does not apply here.

Further, FirstEnergy's argument that contiguous properties are not a "single location" as contemplated by the statute¹⁸ fails to recognize the realities of land use by large customers, as previously noted. It is not atypical for a large customer to own several parcels and operate a business over the entirety of those parcels. There is no valid reason that customer should be denied the right to net meter because of this, even where the parcels are separated by easements, thoroughfares, or rights-of-way, especially where the system must be tied to a single metering point for the customer-generator's account. Even under the prior rule, customers could connect a net metering system to multiple buildings on a single parcel, and have done so safely subject to the normal interconnection process. Allowing such connections across an easement, thoroughfare, or right-of-way that may well be a very small feature of a parcel is only a minor, and reasonable, extension of existing policy.

While the Environmental Advocates support the Commission's revised definition, we also believe the clarification suggested by One Energy in its Application for Rehearing would improve it even further, ensuring that the utilities do not have unchecked authority to deny a net metering or interconnection application arbitrarily. Additional standards should be included to ensure there is a recognizable standard that the utilities must uphold when net metered systems are being sited.

¹⁷ FirstEnergy App. for Rehearing at 8-9.

¹⁸ *Id.* at 9.

IV. CONCLUSION

The Commission's Order brings important clarity and uniformity to Ohio's net metering rules based on reasonable interpretations of state law. The Commission should not grant FirstEnergy's rehearing application with respect to either the definition of "net metering system" or the definition of "premises."

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra has been electronically filed with the Public Utilities Commission of Ohio and has been served upon all parties to the case via electronic mail on December 18, 2017.

/s/ Miranda Leppla
Miranda R. Leppla

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Summary: Memorandum Contra the Application for Rehearing of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company electronically filed by Ms. Miranda R Leppla on behalf of Environmental Law & Policy Center and Ohio Environmental Council and Environmental Defense Fund and Natural Resources Defense Council and Vote Solar