

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)	

APPLICATION FOR REHEARING OF OHIO POWER COMPANY

Pursuant to Section 4903.10, Ohio Revised Code (RC), and Rule 4901-1-35, Ohio Administrative Code (OAC), Ohio Power Company (AEP Ohio) respectfully files this Application for Rehearing of the Public Utilities Commission of Ohio's December 18, 2018 Fifth Entry on Rehearing in this proceeding. The Commission's Fifth Entry on Rehearing is unreasonable and unlawful in the following respects:

- I. The Fifth Entry on Rehearing's modification of OAC 4901:1-10-28(B)(1)(a) to require electric distribution utilities to offer net metering to shopping customers was unlawful and unreasonable.
- II. It was unreasonable for the Commission not to clarify its statement in the Fifth Entry on Rehearing concerning a "waiver" of the rule requiring net metering for shopping customers, and on rehearing the Commission should specify that a formal waiver is unnecessary and a utility need not offer net metering to shopping customers where an advanced meter has been installed and interval billing capability exists.
- III. If the Commission continues to require EDUs to offer net metering for shopping customers, the Commission should clarify that an EDU's load settlements for PJM should not reflect net negative usage for shopping customers.

A memorandum in support of this Application for Rehearing is attached.

January 18, 2019

Respectfully submitted,

/s/ Steven T. Nourse

Steven T. Nourse

Matthew S. McKenzie

American Electric Power Service Corporation

1 Riverside Plaza, 29th Floor

Columbus, Ohio 43215

Telephone: 614-716-1608

Fax: 614-716-2950

stnourse@aep.com

msmckenzie@aep.com

Counsel for Ohio Power Company

MEMORANDUM IN SUPPORT

In the Commission's November 8, 2017 Finding and Order adopting the proposed rules, the Commission correctly determined that electric distribution utilities (EDUs) such as AEP Ohio should offer net metering only to non-shopping customers. For shopping customers, the Commission determined, it should be CRES providers who are responsible for providing net metering. The second sentence of the Finding and Order captured this dichotomy:

The Commission finds that the electric utilities shall offer a standard net metering tariff to standard service offer customers, while competitive retail electric service providers shall be provided greater opportunities to offer diverse net metering products and service to shopping customers.

Finding & Order, Case No. 12-2050-EL-ORD, Nov. 8, 2017, at 1; *see also id.* Attachment A, at 2 (OAC 4901:1-10-28(B)(1)(a)) (“Each electric utility shall offer a standard net metering tariff to all customers taking service under the electric utility’s standard service offer.” (emphasis added)).

Yet on the Fifth Entry on Rehearing, the Commission reversed this determination and held:

Although, in the long-term, net metering service should be a competitive retail electric service delivered to shopping customers by their CRES providers, we agree that further deployment of advanced meters and improvements to the EDU’s billing systems are necessary before the EDU net metering tariffs can be limited to SSO customers.

Fifth Entry on Reh’g, Case No. 12-2050-EL-ORD, Dec. 19, 2018, at 6; *see also id.* Attachment A, at 2 (OAC 4901:1-10-28(B)(1)(a)) (“Each electric utility shall offer a standard net metering tariff to all customers upon request.” (emphasis added)). The Commission also stated that it would “consider a waiver of this rule, on a case-by-case basis, for any EDU that can demonstrate full deployment of appropriate advanced meters in its service territory and demonstrate that its billing systems are fully compatible with net metering service provided by CRES providers.” *Id.* at 6-7.

As discussed below, the decision to require EDUs to offer net metering to shopping customers was unreasonable and violates the plain language of R.C. 4928.67. Moreover, the Commission should clarify its statement concerning a “waiver” of the rule.

I. Revising OAC 4901:1-10-28(B)(1)(a) to require electric distribution utilities to offer net metering to shopping customers violates the net metering statute, R.C. 4928.67, and is inconsistent with federal law.

The plain language of R.C. 4928.67 prohibits the Commission from requiring a utility to offer net metering to shopping customers. Division (B)(3)(b) of that statute sets forth the core requirement with respect to a customer-generator and provides as follows:

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, the customer-generator shall be billed for the net electricity supplied by the utility, in accordance with normal metering practices.

R.C. 4928.67(B)(3)(b) (emphasis added). The plain language of this provision makes clear that net metering is limited to “electricity” that is “supplied by the electric utility.” Yet the EDU only supplies electricity to its non-shopping customers. For shopping customers, the CRES provider supplies the electricity, not the EDU.

For shopping customers, the EDU only provides so-called “wires” service. Although some of the charges for this service are measured in kilowatt-hours, the General Assembly expressly defined net metering in terms of “electricity supplied by the electric utility” – and not, for example, “kilowatt-hour charges.” Moreover, the Supreme Court has held that the term “electricity” in R.C. 4928.67 means “electricity generated and supplied” and does not include “transmission, distribution, or ancillary services.” *FirstEnergy Corp. v. Pub. Util. Comm’n of Ohio*, 95 Ohio St. 3d 401, 2002-Ohio-2430, ¶¶ 13. Therefore, through the plain language of R.C. 4928.67, the General Assembly limited the application of an EDU’s net metering tariff to situations where the EDU supplies electricity, and that necessarily limits the scope of an EDU’s net metering tariff to

non-shopping customers. For shopping customers, it must be the CRES provider – the entity that supplies the electricity – who provides net metering to the customer. Accordingly, it was reversible error for the Commission to expand the scope of the net metering statute and impose this extra-statutory obligation on EDUs.

Other provisions within R.C. 4928.67 confirm that the General Assembly intended to limit an EDU's net metering tariff to non-shopping customers. In particular, division (A)(1) of the statute provides that the mandatory net metering tariff offered by an EDU "shall be identical in rate structure, all retail rate components, and any monthly charges to the contract or tariff to which the same customer would be assigned if that customer were not a customer-generator." R.C. 4928.67(A)(1). This is a key feature of the net metering statute but it is plainly violated by OAC 4901:1-10-28(B)(1)(a) as modified on rehearing. A shopping customer does not purchase electricity from the electric utility, and there are no rate components, rate structures, or monthly charges that cover generation service for shopping customers. Yet the rule as modified on rehearing requires an electric distribution utility to provide a rate credit to shopping customers for excess generation in a month, and this rate credit is calculated "at the energy component of the electric utility's standard service offer." Fifth Entry on Reh'g, Attachment A, at 6 (OAC 4901:1-10-28(B)(9)(c)). *But how could the utility provide a rate credit based on the energy component of its SSO when shopping customers do not purchase energy under the SSO?* This incongruity further confirms that applying net metering tariffs to shopping customers does not make sense and violates the statutory requirement that net metering rates be the same customer would be assigned if that customer were not a customer-generator. R.C. 4928.67(A)(1).¹

¹ As described herein, the Commission should hold on rehearing that electric distribution utilities such as AEP Ohio are not required to provide a net metering to shopping customers. At a minimum, however, the Commission should hold that the excess credit provisions of the net metering rule – which, as described above, are based on the "energy component" of the SSO – do not apply in the context of net metering for shopping customers.

Another provision of the net metering statute that undercuts the Commission’s reasoning is R.C. 4928.67(B)(1), which provides that customer-generators “shall be responsible for all expenses involved in purchasing and installing a meter that is capable of measuring electricity flow in two directions” if such a meter is not already installed on the premises. IGS’s argument, cited by the Commission, is that limiting net metering tariffs to non-shopping customers would be “discriminatory” because of the “lack of wide-spread advanced meters” to enable net metering offerings by CRES providers to shopping customers. However, the plain language of R.C. 4928.67(B)(1) demonstrates the General Assembly’s intent that a customer-generator should be responsible for any additional costs of necessary metering technology to enable net metering. Therefore, if necessary metering is not available for a customer-generator to take advantage of a CRES net metering offering, it is not “discrimination” to simply provide that the customer-generator must pay the additional cost of such metering in order to take advantage of the CRES offering. On the contrary, providing that a shopping customer has to pay for the required metering is simply implementing the mandates of the net metering statute.

The rule as modified on rehearing also exceeds the requirements of federal law. The Public Utility Regulatory Policies Act of 1978 (PURPA), as amended by the Energy Policy Act of 2005 (EPAct), only requires an electric utility to “offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.” 16 U.S.C. § 2621(d)(11) (emphasis added). As with the Ohio net metering statute, the factual predicate for triggering the “net use” billing obligation – of the utility supplying electricity to the customer – is simply not present with respect to shopping customers. Thus, the adopted rule also exceeds the net metering provisions found in PURPA/EPAct.

II. The Commission should clarify its statement concerning a “waiver” of the rule and specify that a utility need not offer net metering to shopping customers where an advanced meter has been installed and interval billing capability exists.

The Commission’s stated reason for requiring electric distribution utilities to offer net metering to shopping customer was the assertion – made by Interstate Gas Supply, Inc. (IGS) on rehearing – that there is a “lack of wide-spread advanced meters and limitations of the EDUs current billing systems” which makes it “impossible for CRES providers to provide net metered compensation to non-interval metered customers in three of the four major EDU territories.” Fifth Entry on Reh’g, Case No. 12-2050-EL-ORD, Dec. 19, 2018, at 6. The Commission also recognized, however, that it would be unnecessary for electric distribution utilities to offer net metering to shopping customers once advanced meters are installed and interval billing is possible. Accordingly, the Commission stated that it would “consider a waiver of this rule, on a case-by-case basis, for any EDU that can demonstrate full deployment of appropriate advanced meters in its service territory and demonstrate that its billing systems are fully compatible with net metering service provided by CRES providers.” *Id.* at 6-7. Of course, the Commission’s “waiver” cannot supersede the statute and, as discussed above, R.C. 4928.67 mandates that net metering customers shall be responsible for all expenses involved in purchasing and installing a meter that is capable of measuring electricity flow in two directions. Even assuming (without agreeing) that the Commission could circumvent this statutory directive, this tentative exception does not go nearly far enough to ensure that the (unreasonable and unlawful) obligation imposed by the Fifth Entry on Rehearing is narrowly tailored to apply only where necessary. Rather, if the obligation of EDUs to provide net metering to shopping customers was limited to circumstances where the factual predicate of smart meters and billing capabilities are absent, then EDUs would at least know with certainty that the extra-statutory net metering obligation would be limited and temporary. As it

stands, the Commission's decision merely says it would consider waiving the requirement; that cannot be relied upon and gives EDUs no reasonable alternative to challenging the decision before the Supreme Court.

On rehearing the Commission – to the extent it does not reverse its requirement that EDUs provide net metering to shopping customers – should clarify this statement and hold that a formal waiver application is unnecessary where advanced meters have been installed and billing systems are capable of interval billing. It would be onerous and a needless use of all parties' resources for electric distribution utilities to be required to file for a formal waiver of OAC 4901:1-10-28(B)(1)(a). Rather, once a customer has an interval meter and the utility's billing system can provide interval data to CRES providers, there should be a presumption that it is not necessary for the EDU to provide net metering to the shopping customer. Indeed, AMI meters have been installed in large parts of AEP Ohio's service territory, and there is no impediment to CRES providers offering net metering service based on interval data in these areas. Therefore, if the Commission does not reverse the obligation imposed on EDUs to provide net metering service to shopping customers, it should alternatively permit utilities such as AEP Ohio to automatically limit the application of their net metering tariffs (rather than relying on an uncertain ruling in a future waiver case) to (a) non-shopping customers and (b) shopping customers *who do not have an interval meter*.

III. If the Commission continues to require EDUs to offer net metering for shopping customers, the Commission should clarify that an EDU's load settlements for PJM should not reflect net negative usage for shopping customers.

If the Commission does not reverse the obligation imposed on EDUs to provide net metering service to shopping customers, it should also limit the load settling process from the EDU to zero usage for customers without interval meters, as currently AEP Ohio recognizes the net

negative which reduces the load settled by the EDU. No reduction past zero should be recognized if the EDU is responsible for the payment of net negative generation. If the Commission maintains its current order, it should clarify that all load settlement should not recognize net negative usage. Otherwise, for those customers currently being settled within PJM at net negative, the supplier charges from PJM are lower than they would be otherwise, and the Commission has no insight as to whether the supplier is paying the customer for the net negative usage even though the CRES is receiving a reduced charge from PJM for final market settlement. That would be a direct subsidy to the CRES provider at the expense of the EDU's customers. On the other hand, if the supplier is passing the savings through to the net metered customer, the customer is being compensated twice for the same net negative usage. Therefore, the Commission should clarify that the EDU should not reflect net negative usage in settlements for shopping customers.

January 18, 2019

Respectfully submitted,

/s/ Steven T. Nourse
Steven T. Nourse
Matthew S. McKenzie
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
Telephone: 614-716-1608
Fax: 614-716-2950
stnourse@aep.com
msmckenzie@aep.com

Counsel for Ohio Power Company

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Application for Rehearing of Ohio Power Company* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 18th day of January 2019, via electronic transmission.

/s/ Steven T. Nourse

Steven T. Nourse

EMAIL SERVICE LIST

Amy.spiller@duke-energy.com;
annie@votesolar.org;
bojko@carpenterlipps.com;
Bryce.mckenney@puc.state.oh.us;
callwein@wamenergylaw.com;
cary.cocherm@duke-energy.com;
cdunn@firstenergycorp.com;
chitt@seia.org;
christopher.healey@occ.ohio.gov
cblend@aep.com;
cmooney@ohiopartners.org;
daniel.sawmiller@sierraclub.org;
dblair@rlcos.com;
dianne.kuhnell@duke-energy.com;
dwooley@kfwlaw.com;
Elizabeth.watts@duke-energy.com;
Emma.berndt@opower.com;
eric.brown@dplinc.com;
haydenm@firstenergycorp.com;
Jeanne.kingery@duke-energy.com;
Jennifer.lause@directenergy.com;
jkeyes@kfwlaw.com;
joliker@igsenergy.com;
joseph.clark@directenergy.com;
Judi.sobecki@dplinc.com;
kjkolich@firstenergycorp.com;
kjklaw@yahoo.com;
kkooles@kfwlaw.com;
mkeaney@calfee.com
mfleisher@elpc.org;

mkeaney@calfee.com
mleppla@theoec.org
msmckenzie@aep.com;
mbach@hess.com;
mcconnell@smwlaw.com;
yost@occ.state.oh.us;
mjsettineri@vorys.com;
mswhite@igsenergy.com;
mwarnock@bricker.com;
talexander@calfee.com;
nathan@buckeyeforestcouncil.org;
Nolan@theoec.org;
rdove@attorneydove.com;
rendris@firstenergycorp.com;
robert.adams@dplinc.com;
Sechler@carpenterlipps.com;
sellriott@metrocdengineering.com;
sgiles@hullinc.com;
smhoward@vorys.com;
smith@carpenterlipps.com;
stnourse@aep.com;
talexander@calfee.com
tculley@kfwlaw.com;
tdougherty@theoec.org
tobrien@bricker.com;
torahood@bricker.com;
trent@theoec.org;
tsiwo@bricker.com;
vparisi@igsenergy.com;
john.jones@ohioattorneygeneral.gov;

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