**BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| 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 |

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**MEMORANDUM CONTRA OF OHIO POWER COMPANY**

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Pursuant to R.C. 4903.10 and Ohio Administrate Code Rule 4901:1-35, Ohio Power Company ("AEP Ohio") submits this Memorandum Contra the Application for Rehearing ("IGS Application") filed by Interstate Gas Supply, Inc., IGS Generation, LLC, and IGS Solar, LLC (collectively "IGS") seeking modification of the Commission's December 19, 2018 Fifth Entry on Rehearing in this proceeding ("Fifth Entry").

IGS asks the Commission to reconsider its adoption of Rule 4901:1-10-28(B)(9)(c), which sets the compensation for excess generation at the energy component of the utility's SSO rate. As an initial matter, IGS already sought rehearing on this provision, and the Commission rejected IGS's arguments in its Fifth Entry on Rehearing. *See* Fifth Entry at 12-15. The fact that the Commission has already rejected IGS's request for rehearing on this very issue is sufficient grounds, by itself, to deny IGS's application here.

In addition, IGS's arguments are meritless. IGS argues that the Commission should facilitate "annual netting" by customer-generators by providing for a "a kilowatt[-hour]-based credit which can be banked for months when usage exceeds production." IGS Application at 6.[1] However, a kilowatt-hour credit would directly contravene the Commission's previous correct determination that customer-generators do not reduce the capacity costs incurred by utilities.

[1] IGS's application refers to a "kilowatt-based credit," but we assume that IGS meant a "kilowatt-*hour*-based credit" (i.e., based on energy, not demand). If IGS was in fact referring to a demand-based credit, it made no attempt to explain how this would work or why it would be advisable.

The Commission found: "It would be manifestly unfair to pay customer-generators for reducing capacity requirements when that capacity reduction is not reflected in the cost to serve the customer-generator." Fifth Entry at 15. IGS's application for rehearing only reinforces this point by acknowledging that "[m]any distributed energy resources *are of an intermittent nature*." IGS Application at 6 (emphasis added). IGS also acknowledges that a customer-generator's "[u]sage may exceed production in the winter months," when capacity needs are greatest, and that a customer-generator's "production often exceeds usage in shoulder months such as April and May when the sun is shining but air conditioning load is insignificant" – and capacity needs are lowest. *Id*. This underscores the Commission's correct determination that it would be unjust to compensate net metering customers for capacity through the excess generation credit.[2]

A kilowatt-hour credit, moreover, is even more extreme – and unjust – than a credit which includes a "capacity" component, because a kilowatt-hour credit would not only compensate customer-generators for energy and capacity costs but also for *distribution and transmission* costs. Yet distributed generation does not offset distribution and transmission costs, because there are always periods when the distributed generation is offline and the distribution and transmission system is needed to serve the customer. (The distribution system is also needed to serve the customer when the customer is putting excess generation on the grid.)

[2] It is important to note, furthermore, that customer-generators <u>are</u> compensated for capacity under the proposal rules through the monthly netting of usage. For instance, if a customer uses exactly as much as it produces in a month, the customer will receive a bill based on zero kilowatt-hours usage. (This is opposed to other methodologies for accounting for distributed generation, such as an "all-in all-out" methodology.) Therefore, the customer-generator will receive compensation for *all* capacity costs included in the utility's rates by virtue of the "netting" of the customer's bill. Critically, moreover, the customer-generator receives this compensation for capacity regardless of whether the customer actually reduces the utility's capacity costs. For example, a net metering customer with behind-the-meter solar generation may produce considerable excess generation during the day when the sun is shining, and yet be a net *consumer* – and thus a capacity cost *causer* – during the utility's morning and evening peaks when the sun is down. Even in that scenario, the customer-generator would be compensated as if it fully offset the utility's capacity costs through the "netting" of its monthly bill. Thus, it is incorrect to imply that customer-generators receive no compensation for capacity under the proposed rules. To the contrary, under the proposed rules, customer-generators receive significant compensation for capacity through the monthly netting of their bills.

This point is even clearer in the context of the excess generation *credit*, where a credit for excess generation in one month is used to reduce bills in a future month. There is simply no way in which a customer-generator's excess generation in *January* could offset the utility's distribution and transmission costs in *July*. To provide such a credit, therefore, would be an unjust and unreasonable subsidy, would be at odds with cost-causation principles, and would send incorrect price signals to customers. Net metering customers are already granted extensive benefits (paid for by AEP Ohio's other customers), and this extension would go too far and be overly generous with the funds of the Company's non-net-metering customers. To that end, such a proposal also contravenes the requirement in R.C. 4928.6 that net metering tariffs "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."

Further, a kilowatt-hour credit would be at odds with the Supreme Court's decision in *FirstEnergy Corp. v. Pub. Util. Comm'n of Ohio*, 95 Ohio St. 3d 401, 2002-Ohio-2430. There, the Court expressly determined that a "net-generator customer of [a utility] only supplies electricity; it does not provide transmission, distribution, or ancillary services." The Court held, therefore, that the plain language of R.C. 4928.67(B)(3)(b) forecloses an excess generation credit that includes compensation for distribution and transmission. Adopting IGS's proposed kilowatt-hour credit, therefore, would violate binding Supreme Court precedent.

In sum, the excess generation credit issue has been thoroughly examined from all angles in this lengthy proceeding. The Commission has rejected all of the arguments raised by IGS before, and the Commission has correctly determined that the excess generation credit should be set at the energy component of a utility's SSO rate. IGS offers no grounds for the Commission to change its mind. IGS's application for rehearing should be denied.

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Respectfully submitted,

*/s/ Steven T. Nourse*

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## 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 *Memorandum Contra of Ohio Power Company* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 28th day of January 2019, via electronic transmission.

/s/ Steven T. Nourse
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Summary: Memorandum - Memorandum Contra of Ohio Power Company electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company