

**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.)	

**THE DAYTON POWER AND LIGHT COMPANY'S MEMORANDUM IN
OPPOSITION TO APPLICATION FOR REHEARING**

In their January 28, 2019, Application for Rehearing, Interstate Gas Supply, Inc., IGS Generation LLC, and IGS Solar, LLC (collectively “IGS”) raise the exact same arguments that have already been decided by this Commission in previous Orders in this case and have also been addressed by the Supreme Court of Ohio. IGS filed a single assignment of error – that the Commission “should modify the net metering rules to allow for annual netting or net metering credits rather than monthly netting.”¹ IGS goes on to clarify its proposal requesting an amendment to the rules to allow for “months when a customer produces more than they consume, instead of providing a dollar credit, the customer receives a kilowatt-based credit which can be banked for months when usage exceeds production.”² Although worded slightly different, IGS’ argument is another way of arguing that excess generation kilowatt hours for net metering customers should “rollover” into subsequent months and be “cashed out” on an annual basis. As DP&L has previously stated in this proceeding, allowing the credit to rollover and be applied on a kWh basis inappropriately permits the excess generator to receive a credit on the full retail rate, which includes distribution, transmission, and other non-bypassable charges.

¹ See, Application for Rehearing and Memorandum in Support of Interstate Gas Supply, Inc., IGS Generation, LLC, and IGS Solar, LLC, at pp. 4-5 (January 18, 2019).

² See, Id. at p. 6.

During a previous comment period, “the Environmental Advocates proposed the Commission use a kWh credit rollover,” for a period of a year or more,³ which is exactly what IGS has proposed in this Application for Rehearing. Directly addressing that argument, this Commission found that “the credit for excess generation for customer-generators on the utility’s standard net metering *tariff shall be a monetary credit calculated at the energy-only component of the electric utility’s SSO* and applied to a customer-generator’s total bill.” Id. at ¶ 45. The Commission made no edit to the respective portion of 4901:1-10-28 (B)(9)(c) in its December 19, 2018 Fifth Entry on Rehearing. Yet, IGS attempts to take another bite at the apple despite having failed to timely raise the issue previously.

“After any order has been made by the public utilities commission, any party who has entered an appearance in person or by counsel in the proceeding may apply for a rehearing in respect to any matters determined in the proceeding. Such application shall be filed within thirty days after the entry of the order upon the journal of the commission.” R.C. 4903.10. Despite the Commission clearly addressing a similar argument in its November 11, 2017, Opinion and Order, IGS failed to apply for rehearing on the Commission’s determination regarding excess generation rollover.⁴ This Commission has previously found that parties have waived certain arguments where they have been decided and are not raised in an application for rehearing within 30 days after the applicable decision.⁵ Accordingly, the Commission should deny IGS’ Application for Rehearing because it waived the “rollover” argument by failing to timely raise the issue in 2017.

³ Opinion and Order at ¶ 43 (Nov. 11, 2017).

⁴ See, Application for Rehearing and Memorandum in Support of Interstate Gas Supply, Inc. (December 8, 2017).

⁵ See e.g., *In Re Ohio Power Company’s Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR, 2017 Ohio PUC LEXIS, at ¶ 70 (April 5, 2017).

Not only has IGS waived its ability to raise this issue and the Commission has substantively rejected this concept, but this type of charge would also run contrary to Supreme Court of Ohio precedent. As DP&L and others raised during the previous comment period, IGS' proposed credit structure is contrary to the Supreme Court of Ohio holding that excess generation is not entitled to a full retail rate because a net-generator only generates and supplies electricity; it does not provide transmission, distribution, or ancillary services.⁶ Specifically, the Supreme Court of Ohio stated:

R.C. 4928.67 and the commission's net-metering rule speak in terms of measuring and charging or crediting for 'electricity' produced or consumed. The August Rider as submitted provides for FirstEnergy's *crediting or refunding to a net generator of the 'energy charges of the unbundled generation component of the appropriate rate schedule.'* In other words, FirstEnergy must credit or pay to a net generator only the tariff charges for generation of the electricity by the net generator and supplied to FirstEnergy. The net-generator provisions of the August Rider speak solely in terms of electricity generated and supplied, as they should. *A net-generator customer of FirstEnergy only generates and supplies electricity; it does not provide transmission, distribution, or ancillary services.* It has no allowable transition costs for which transition charges are assessed, and is not responsible for paying into the Universal Service Fund or the Energy Efficiency Fund. Yet the commission-ordered modifications to the net-generator provisions of the August Rider would make FirstEnergy liable for payment or crediting of all of those additional charges, in conflict with several provisions of the Revised Code in addition to R.C. 4928.67(B)(2).⁷ (Emphasis added).

Pursuant to this ruling, an excess generator should receive a monetary credit equal to the excess kWh multiplied by the unbundled generation component of the appropriate rate schedule. But IGS' proposal would result in a rollover such that kWh savings would offset all volumetric charges on a subsequent bill – including transmission and distribution delivery charges.

⁶ Reply Comments of The Dayton Power and Light Company, at pp.2-3 (Jan. 8, 2016); Initial Comments of the Ohio Power Company, pp. 7-8 (Dec. 18, 2015).

⁷ FirstEnergy Corp. v. Pub. Util. Comm., 95 Ohio St.3d 401, 2002-Ohio-2430 at ¶13.

This Commission should deny IGS' Application for Rehearing because IGS waived its right to raise this argument. Alternatively, IGS' Application for Rehearing should be denied because both this Commission and Supreme Court have found that excess generation should be credited on a generation energy-only basis.

Respectfully Submitted,

/s/ Michael J. Schuler

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was filed with the Commission's Docket Information System on January 28, 2019 and is available for all interested parties.

/s/ Michael J. Schuler

Michael J. Schuler (0082390)

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Case No(s). 12-2050-EL-ORD

Summary: Memorandum in Opposition to Application for Rehearing electronically filed by Mr. Tyler A. Teuscher on behalf of The Dayton Power and Light Company