**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** |

# MEMORANDUM CONTRA OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY

## INTRODUCTION

Pursuant to R.C. 4903.10 and Rule 4901:1-35, Ohio Administrative Code, Ohio Edison Company ("Ohio Edison"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("Toledo Edison") (collectively, the "Companies"), hereby file their Memorandum Contra the Application for Rehearing filed by IGS Solar, LLC, IGS Generation, LLC, and Interstate Gas Supply, Inc. (collectively, "IGS"), seeking modification of the Commission's Fifth Entry on Rehearing entered in the journal on December 19, 2018, in the above-captioned case ("Fifth Entry").

The Commission's Fifth Entry in this case is reasonable and lawful with respect to the issues raised by IGS, to wit: the Commission did not err when it provided a monetary credit compensation for monthly net excess generation. As discussed below, IGS's Application for Rehearing ("IGS Application") is untimely, presents duplicative arguments that have already been rejected by the Commission, and is otherwise without merit. For the reasons set forth herein, the Commission should deny the IGS Application.

## ARGUMENT

### I. The Commission did not err when it established a monetary credit compensation for monthly net excess generation.

IGS argues that the Commission erred when it approved a monetary credit compensation for monthly net excess generation. IGS claims that a monetary credit is unjust, unreasonable and unlawful because it "undermines distributed energy development."[1] IGS supports this argument by claiming without evidence that a monetary credit will lead customer-generators to size their systems at "much smaller than 100%" of their requirements.[2] IGS claims this will happen because monthly energy use varies and "many distributed energy resources are of an intermittent nature."[3] IGS fails to overcome the procedural defects of its filing and fails to persuade on the merits.

#### A. IGS's Application for Rehearing is Untimely.

On January 14, 2014, the Commission issued its Finding and Order ("January Order") in in this proceeding approving Rule 4901:1-10-28(B)(9)(c), which requires a monetary credit for excess generation:

> If the customer-generator accrues excess generation during a monthly billing period, the electric utility shall issue a monetary credit in the amount of the net excess generation onto the customer-generator's next monthly bill. If the full amount of the monetary credit is not used within the next monthly billing period, the remaining monetary credit shall be stored in the customer-generator's account and subsequently credited to the customer-generator in months where the monetary credit from the previous month is insufficient to cover the cost of the customer-generator's requirements for electricity.[4]

[1] IGS Application, p.2, 5.
[2] *Id*., p.6.
[3] *Id*.
[4] January Order, Attachment A, at p.68-69 (emphasis added).

Although IGS filed an Application for Rehearing from the January Order, it failed to address the monetary credit in the rules discussed above.[5] Subsequently, the Commission's November 8, 2017 Finding and Order ("November Order") in this proceeding similarly adopted a monthly monetary credit for excess generation.[6] While IGS filed an Application for Rehearing of the November Order, it failed to include the monetary credit among the assignment of errors.

An Application for Rehearing must be filed within thirty days of a Commission Entry or Order.[7] IGS failed to file an Application for Rehearing challenging the monetary credit rules within 30 days of the January Order or the November Order. Therefore, it is statutorily precluded from doing so now.

### B. The Commission Has Already Considered and Rejected IGS's Assignment of Error.

The Commission should reject IGS's application for rehearing because the Commission has already considered and rejected IGS's arguments that were advanced by other parties. Although IGS did not raise the issue of the monetary credit in 2013 during the Initial or Reply Comments phase in this proceeding, the Commission in its January Order noted that several parties advocated a monthly kWh credit that rolls over monthly instead of the proposed monetary credit.[8] Like IGS's current Application for Rehearing, those parties at that time argued that the kWh rollover credit was needed to fully compensate customer-

[5] See, Application for Rehearing of Interstate Gas Supply, Inc., February 14, 2014.
[6] November Order at p.17.
[7] R.C. 4903.10.
[8] January Order at p. 39 (citing IREC Reply at 9; OMA Reply at 3; Solar Advocates Reply at 4).

generators for their excess generation, to incent distributed energy resources, and to eliminate facilities sizing concerns. The Commission rejected this recommendation and adopted the monthly monetary credit mechanism in the January Order.

On November 18, 2015, the Commission issued a second set of proposed net metering rules that again included Staff's proposed monthly monetary credit, and requested interested parties to file Initial and Reply Comments.[9] Although Environmental Advocates argued a kWh rollover credit was necessary to provide full compensation for excess generation, IGS again failed to submit comments on the monetary credit. When the Commission again adopted the monthly monetary credit in the November Order, it rejected the Environmental Advocates' argument. IGS now makes the same argument, asking the Commission to again consider a monthly kWh rollover credit, and merely rehashing prior rejected arguments. The Commission should again reject these arguments.

### C. A kWh Rollover Credit Would Violate the Statutory Requirement to provide credits in each billing cycle and is Contrary to the Ohio Supreme Court's *FirstEnergy* Decision Interpreting the Credit Compensation.

IGS asserts that the netting period (or cycle) for calculating credit compensation for excess generation must be a whole year in duration.[10] However, Section 4928.67(B)(3) of the Revised Code provides that credit compensation for excess generation must be calculated based on monthly billing cycles:

[9] Entry, November 18, 2015.
[10] IGS Application at p. 6 ("Annual netting allows customers to receive the full value of the electricity the customer produces throughout the year, even if they may produce more or less in a given month.").

> (a) The electric utility shall measure the net electricity produced or consumed during the billing period, in accordance with normal metering practices.
>
> (b) 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. If electricity is provided to the utility, the credits for that electricity shall appear in the next billing cycle.[11]

The Companies' normal metering practices require monthly billing cycles of between 29 and 34 days.

Moreover, IGS' recommendation for annual netting of monthly kWh rollover credits would compensate net excess generation at the full retail price of electricity. However, the Ohio Supreme Court determined in *FirstEnergy v. Pub. Util. Comm'n of Ohio* that credits for net excess electricity cannot include non-generation components of the delivered price of electric service.[12] As the Companies explained in their Reply Comments five years ago, a monthly kWh rollover credit compensation would include non-generation and non-energy cost components such as transmission, energy efficiency, distribution uncollectibles, universal service (PIPP), and more.[13] According to the Court's order, costs that legally can be collected only by utilities cannot have been what the Ohio General Assembly established as "credits for [excess] electricity" that are collected by customer-generators.[14]

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[11] R.C. 4928.67(3) (emphasis added).
[12] *FirstEnergy Corp v. Pub. Util. Comm.*, 95 Ohio St.3d 401 (2002).
[13] Reply Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, February 6, 2013, p. 37 ("Banking *energy* instead of the value of *generation* gives customer-generators payment for excess generation at full retail costs (generation, transmission, and distribution components along with all applicable riders) even though the customer-generator is only providing generation to the utility's system.")
[14] *FirstEnergy Corp*. at par. 15—18.

Although not directly stated in its support for a kWh rollover credit, IGS replaces fully offsetting electricity *requirements* with fully offsetting electricity *bills*, and in so doing runs afoul of the statutory requirement that a net metering system "be intended primarily to offset part or all of a customer-generator's requirements for electricity."[15] IGS states with respect to replacing a monetary credit with a kWh rollover credit, "In this fashion, a customer's net metering facility may permit them to fully self-generate their energy requirements."[16] This statement implies that customers cannot fully self-generate without a kWh rollover credit, which simply isn't true. Since the Commission's adopted rules specifically allow net metering facilities to be sized to self-generate as much as 120% of annual kWh requirements, a customer-generator clearly can produce the necessary kWh.

Because IGS's proposed annual netting with kWh rollover credits violates statutory requirements for both the monthly billing cycle and what may be included for compensation, IGS's Application for Rehearing must be rejected.

## CONCLUSION

For all of the foregoing reasons, the Companies respectfully request that the Application for Rehearing of IGS be denied.

Respectfully submitted,

[15] R.C. 4928.01(A)(31)(d).
[16] IGS Application at p.6.

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## CERTIFICATE OF SERVICE

I certify that the foregoing Memorandum Contra of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company has been filed with the Commission's Docket Information System on January 28, 2019 and is available for all interested parties.

/s/ *Robert M. Endris*
*One of the Attorneys for Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company*

Summary: Memorandum Contra of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company electronically filed by Mrs. Ashlee E Waite on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company and Endris, Robert M Mr.