

**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)	

**MEMORANDUM CONTRA OF IGS SOLAR, LLC, IGS GENERATION, LLC, IGS
INTERSTATE GAS SUPPLY, INC., DIRECT ENERGY BUSINESS, LLC AND DIRECT
ENERGY SERVICES, LLC. TO APPLICATION FOR REHEARING OF OHIO POWER
COMPANY AND DAYTON POWER & LIGHT COMPANY**

Joseph Olikier (0086088)
Counsel of Record
joliker@igsenergy.com
Michael Nugent
Mnugent@igsenergy.com
IGS Energy
6100 Emerald Parkway
Dublin, Ohio 43016
Telephone: (614) 659-5000

Attorneys for IGS Energy

Mark A. Whitt
Rebekah J. Glover
Whitt Sturtevant LLP
88 E. Broad St., Suite 1590
Columbus, Ohio 43215
(614) 224-3911
whitt@whitt-sturtevant.com
glover@whitt-sturtevant.com

***Attorneys for Direct Energy
Business, LLC and Direct Energy
Services, LLC***

January 28, 2019

I. INTRODUCTION

On December 19, 2018, the Commission issued a Fifth Entry on Rehearing (“Fifth Entry”) amending the net metering rules. Recognizing the current limitations in electric distribution utility (“EDU”) metering and information technology—limitations that preclude a competitive retail electric service (“CRES” provider) from providing full net metering service and compensation to customers that deliver energy back to the grid—the Entry required EDUs to make a net metering tariff available to shopping customers. On January 18, 2019, consistent with their historical opposition to any net metering provisions that provide fair compensation to behind-the-meter distributed generation, Ohio Power Company (“AEP Ohio”) and the Dayton Power and Light Company (“DP&L”) filed applications for rehearing. While both EDUs feign support for renewable resources, both EDUs have sought rehearing despite the fact that the Entry ensured that they would be made whole for any associated costs that may result from implementing the Entry. The Entry ensures that net metering for customers continues until the systems to allow for a CRES provider to offer net metering are built. This time around, they have focused their opposition against fair net metering compensation for shopping customers without disclosing their complete lack of systems to allow for shopping customers to receive net metering from a CRES provider.

In its application for rehearing, AEP Ohio raises three assignments of error, two of which are aimed at eliminating the opportunity for shopping customers to have access to net metering compensation. First, AEP Ohio alleges that providing a net metering tariff to shopping customers is inconsistent with R.C. 4928.67 and PURPA. Second, AEP Ohio argues that it should not be required to seek a formal waiver of the requirement to provide

compensation to shopping customers once it has deployed smart meters and provides interval billing. Third, AEP Ohio argues it should not be required to provide a negative load for shopping customers that receive net metering compensation from the utility. AEP Ohio's first two assignments of error lack merit, as do DP&L's similar arguments. IGS and Direct Energy do not oppose AEP Ohio's third assignment of error, subject to certain clarifications provided herein.

II. BACKGROUND

The State Policy of Ohio is to encourage development of distributed generation resources. R.C. 4928.02(C). It is also the State Policy to “[e]nsure that an electric utility's transmission and distribution systems are available to a customer-generator or owner of distributed generation, so that the customer-generator or owner can market and deliver the electricity it produces.” R.C. 4928.02(F). Finally, it is the State Policy to encourage development of distributed generation through regular “review and updating of administrative rules governing critical issues such as . . . net metering.” R.C. 4928.02(K).

When a customer produces energy in excess of their usage requirements, it is placed onto the distribution and transmission grid. Net metering rules ensure that a customer generator receives compensation when they deliver electricity onto the distribution grid. Ohio law provides that net metering compensation may be provided by an electric service company or an electric utility. But, an electric utility—defined as an electric distribution utility—must provide a standard net metering tariff.

Ohio law does not specifically contemplate what happens to the electricity that a customer generator placed onto the distribution grid. It would make sense that the electricity was “sold” to or made available to the customer generator's provider of

competitive retail electric services. But it is not. The manner in which the energy is treated at the wholesale level is dependent on the sophistication of utility meter data management and billing systems. For example, when a utility has functional bi-directional smart meters capable of recording hourly interval data usage, the utility *may* record and report the amount of excess electricity a customer places onto the grid in each hour of the day.

To the extent that the utility utilizes this granular energy usage information to calculate the settlement statements of load serving entities (Suppliers and the utility itself), this excess energy will show up on the PJM settlement statements as a reduction to the LSE's load, i.e., as a negative load. In this instance, the value to the Supplier or LSE is the value of avoided cost of the electricity being displaced by the net metered electricity. That value is generally the locational marginal price ("LMP") for each hour excess energy is placed onto the grid. For the EDU, the value is equal to the reduction in SSO wholesale requirements, because SSO net metered customers are serving a portion of SSO load by reducing the total PJM load requirements of the utility (their LSE).

Regardless, EDUs generally do not calculate Supplier PJM settlement statements based upon actual hourly energy usage for all customer classes because (1) the rollout of advanced metering technology is far from complete and (2) EDUs have not deployed sophisticated IT and billing systems necessary to translate customer generators' excess production into a negative load on LSEs' settlement statements;¹ (3) EDU's which have deployed advanced metering continue to use monthly aggregate amounts for settlement rather than hourly load for customers with AMI below a certain size. Given this limitation,

¹ See <https://www.eia.gov/todayinenergy/detail.php?id=34012> (viewed Dec. 7, 2017). As of right now, only AEP Ohio can potentially calculate settlements based upon actual metered data for Supplier customers. AEP Ohio has installed nearly 150,000 smart meters.

Suppliers receive no compensation or cost reduction when their customers net meter electricity.

Indeed, even AEP Ohio—the EDU that is furthest along in its deployment of advanced metering—has yet to calculate residential and small commercial customers’ peak load contributions based upon actual usage. There is currently no date or estimate for when AEP Ohio will have the capability to provide a negative load on a CRES provider’s PJM settlement statement when a customer generator placed electricity on the distribution grid. The other EDUs are even further behind.

Although Suppliers receive no cost reduction when their customers place excess electricity onto the grid, that does not mean the electricity simply disappears. The electricity either residually reduces the EDU’s PJM settlement statement or it is treated as unaccounted for energy and reduces the hourly load requirements of all LSEs in the PJM zone. It is really up to the EDU—PJM gives wide latitude to the EDUs with respect to the manner in which they calculate the settlement statements of all LSEs that operate in their PJM zone. Although AEP Ohio and DP&L have the benefit of all excess energy that customer generators place onto the grid, these EDUs seek to deprive shopping customers from any value from such energy. That result would be unjust, unreasonable, and contrary to state policy and federal law.

III. ARGUMENT

A. AEP’s interpretation of Section 4928.67 is incorrect

AEP Ohio argues that it is only required to provide standard net metering tariff to SSO customers. AEP Ohio alleges that it must only provide a net metering tariff when it “supplied” electricity to a customer under the SSO. First, nowhere does the law state that

the standard tariff must be limited to SSO customers. Second, the law does not contain the words that AEP Ohio reads into the statute.² AEP Ohio supplies or provides retail electric service to all customers in its role as an electric distribution utility. Indeed, R.C. 4928.01(A)(27) defines retail electric service broadly to include “any service involved in supplying or arranging for the supply of electricity to ultimate consumers in this state.” Had the General Assembly intended a more narrow interpretation, it would have so limited the availability of the standard net metering tariff to electricity supplied under the SSO.

DP&L does not claim an outright statutory prohibition against net metering, but instead argues that allowing shopping customers to take advantage of net metering results in “double-dipping” and is therefore inconsistent with state policy disfavoring subsidies.³ The Commission has already considered and rejected DP&L’s argument.⁴

AEP Ohio further argues that the language in R.C. 4928.67(A)(1) further supports its interpretation. That section, however, merely provides guidelines for the substance of what must be included in a standard net metering tariff. That section makes no mention of whether a customer would qualify for the tariff itself. AEP Ohio’s argument contains an overly literal reading of the law, which merely provides structure for the price components that must be included in the standard tariff.

In a tortured reading of R.C. 4928.67(B)(1), AEP Ohio claims that the obligation of a customer to purchase their own bi-directional meter lends support to the conclusion that

² AEP Ohio latches on to the phrase “electricity *supplied by the electric utility*” to claim that R.C. 4928.67 only applies to electricity “supplied” by an EDU. “For shopping customers, the CRES provider supplies the electricity, not the EDU.” The term “supplied” means different things in different contexts. The context here is net metering. R.C. 4928.67(B)(3)(b) uses the term “supplied” to distinguish between the volume of electricity provided *to* an EDU from the volume of electricity provided *by* the EDU. The statute makes no distinction between shopping and non-shopping customers.

³ DPL Mem. Supp. at 2 (citing R.C. 4928.02(H)).

⁴ Fifth Entry on Rehearing at 6-7.

shopping customers can be entirely denied of net metering compensation. Whether a customer has to pay for their own meter is irrelevant—the meter is only a small piece of the equation when it comes to providing a shopping customer compensation for energy placed onto the distribution grid. Even if a shopping customer purchases a bi-directional meter, it does not appear that any of the EDUs within this state have the back-office capability to provide a negative load on the settlement statement of a shopping customer's LSE. In other words, the credit of the power remains to the EDU and LSE's across the system not solely to a single CRES provider under currently capabilities. Thus, it is irrelevant whether a shopping customer pays for their own meter.

Finally, AEP Ohio alleges that the Entry is contrary to PURPA, alleging that PURPA only requires AEP Ohio to provide net metering for customers that are on the SSO. In fact, PURP dictates the opposite result.

Under PURPA, all distributed energy resources are deemed “qualifying facilities.” PURPA requires electric utilities to purchase electricity from any qualifying facility. The utility may seek relief from this mandatory requirement if FERC determines that the QF has nondiscriminatory access to markets; however, there is a rebuttable presumption that QFs with capacity of 20 MW or less lack nondiscriminatory access to markets. 16 U.S. Code § 824a–3; 18 CFR 292.309. “Order No. 688 placed the burden of proof on the electric utility to demonstrate that a small QF has nondiscriminatory access to the markets of which the electric utility is a member.”⁵ Here, AEP Ohio has made no such filing before FERC. Moreover, given that EDUs are not currently capable of placing a negative load on CRES provider's PJM settlement statement, a shopping customer generator has

⁵ *PPL Electric Utilities Corporation*, Docket No. QM13-2-00, *et al*, Order Denying Application to Terminate Mandatory Purchase Obligation (Oct. 17, 2013).

absolutely no access to market-based compensation for its excess generation. Consequently, AEP Ohio holds an obligation under federal law to purchase the output of any such facility at the utilities avoided cost. AEP Ohio's avoided cost is the energy portion of the SSO rate—or exactly what the Entry ordered AEP Ohio to pay under the standard net metering tariff.

B. The Commission should not provide blanket waivers.

AEP Ohio alleges that it is on the path to being able to provide a negative load on LSE's settlement statement. When it is allegedly ready to do so, it does not believe it should be required to file a waiver of the Commission's rules. AEP Ohio goes so far as to state that "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."⁶

In a similar vein, DP&L claims that it, too, will be able to offer the practical equivalent of net metering by installing interval meters and upgrading its billing systems. DP&L asks that the Commission "codify" this alternative in lieu of requiring a formal waiver request.⁷

AEP Ohio's claim that there is "no impediment" to CRES providers offering net metering to customers with an AMI meter is simply false. AEP cannot provide a CRES provider a negative load on their settlement statement—AEP Ohio cannot even provide a capacity PLC based upon actual energy usage for most customers, which is a basic endeavor relative to calculating wholesale energy settlement statements (5 hours vs.

⁶ AEP Ohio Mem. Supp. at 8.

⁷ DP&L Mem. Supp. at 3-4.

8760 hours per year). It has been eight years since this docket was opened and despite having AMI deployed on a wide basis AEP Ohio does not use AMI data for settlement, does not use AMI data for PLC calculation and (outside of a limited product option) does not even allow a CRES provider AMI data for billing purposes let alone PJM settlement. Despite eight years of this case, AEP Ohio did not build their system to accommodate this capability and shouldn't be allowed to effectively eliminate net metering for shopping customers simply because they have the AMI meters installed.

Second, the requests to discard a waiver requirement are premature. Waivers must be granted based upon good cause and the facts and circumstances presented in the waiver application. As the Entry determined, that time is not now, given EDU billing and IT limitations. AEP Ohio and DP&L should be required to file formal waivers. Their applications should specifically demonstrate the basis for relief from the rule based upon actual capabilities at that time. The Commission should reject these companies' request for a delegation of authority to dictate their own net metering rules.

C. PJM Load Settlements

AEP Ohio asks that if it is required to offer net metering to shopping customers, then for settlement purposes, no customer's usage should be reported to PJM in an amount less than zero. IGS and Direct do not object to this clarification, provided AEP Ohio continues to calculate customer PLCs based on actual data.

IV. CONCLUSION

For the foregoing reasons, IGS and Direct Energy request that the Commission deny AEP Ohio's Application for Rehearing.

Dated: January 28, 2019

Respectfully submitted,

/s/ Joseph Olikar

Joseph Olikier (0086088)
Counsel of Record
joliker@igsenergy.com
Michael Nugent
Mnugent@igsenergy.com
IGS Energy
6100 Emerald Parkway
Dublin, Ohio 43016
Telephone: (614) 659-5000

Attorneys for IGS Energy

/s/ Mark A. Whitt

Mark A. Whitt

Rebekah J. Glover

Whitt Sturtevant LLP

88 E. Broad St., Suite 1590

Columbus, Ohio 43215

(614) 224-3911

whitt@whitt-sturtevant.com

glover@whitt-sturtevant.com

***Attorneys for Direct Energy
Business, LLC and Direct Energy
Services, LLC***

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing upon the following parties
via electric transmission, this 28th day of January 2019.

William.wright@ohioattorneygeneral.gov	jkeyes@kfwlaw.com
callwein@keglerbrown.com	tculley@kfwlaw.com
tdougherty@theoec.org	Amy.spiller@duke-energy.com
mleppla@theoec.org	Jeanne.kingery@duke-energy.com
bojko@carpenterlipps.com	Elizabeth.watts@duke-energy.com
annie@votesolar.org	trent@theoec.org
nathan@buckeyeforestcouncil.org	sellriott@metrocdengineering.com
Judi.sobecki@dplinc.com	haydenm@firstenergycorp.com
mswhite@igsenergy.com	scasto@firstenergycorp.com
joliker@igsenergy.com	burkj@firstenergycorp.com
vparisi@igsenergy.com	cdunn@firstenergycorp.com
mjstatterwhite@aep.com	cmooney@ohiopartners.org
stnourse@aep.com	cloucas@ohiopartners.org
msmckenzie@aep.com	ricks@OHANET.org
sgiles@hullinc.com	joseph.clark@directenergy.com
Emma.berndt@opower.com	jennifer.lause@directenergy.com
jnice@energy-avenue.com	rdove@attorneydove.com
sechler@carpenterlipps.com	Cynthia.brady@exeloncorp.com
dparram@bricker.com	Kurt.helfrich@thompsonhine.com
dborchers@bricker.com	Stephanie.chmiel@thompsonhine.com
whitt@whitt-sturtevant.com	ktreadway@oneenergyllc.com
glover@whitt-sturtevant.com	
campbell@whitt-sturtevant.com	

/s/ Rebekah J. Glover

Rebekah J. Glover

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/28/2019 5:13:34 PM

in

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

Summary: Text Joint Memorandum Contra Applications for Rehearing of Ohio Power Company and Dayton Power & Light Company electronically filed by Ms. Rebekah J. Glover on behalf of Direct Energy Services, LLC and Direct Energy Business, LLC and Interstate Gas Supply, Inc.