THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S REVIEW OF CHAPTER 4901:1-10 OF THE OHIO ADMINISTRATIVE CODE.	CASE NO. 12-2050-EL-ORD

SEVENTH ENTRY ON REHEARING

Entered in the Journal on February 27, 2019

I. SUMMARY

{¶ 1} In this Seventh Entry on Rehearing, the Commission denies the applications for rehearing filed by the Dayton Power and Light Company; Ohio Power Company; and Interstate Gas Supply, Inc., IGS Generation, LLC, and IGS Solar, LLC.

II. DISCUSSION

{¶ 2} R.C. 111.15(B) and R.C. 106.03(A) require all state agencies to conduct a review of their rules every five years to determine whether those rules should be continued without change, be amended, or be rescinded. Currently, the Commission is reviewing the net metering rules contained in Ohio Adm.Code 4901:1-10-28.

{¶ 3} On November 8, 2017, the Commission issued a Finding and Order (November 2017 Order) amending the net metering rules contained in Ohio Adm.Code 4901:1-10-28.

{¶ 4} On December 8, 2017, the Ohio Consumers' Counsel; Interstate Gas Supply, Inc. (Interstate Gas); The Environmental Law & Policy Center, Ohio Environmental Council, Environmental Defense Fund, Natural Resources Defense Council, and Vote Solar (collectively, Environmental Advocates); One Energy Enterprises, LLC (One Energy); and Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy) filed applications for rehearing of the Commission's November 2017 Order. The Dayton Power and Light Company (DP&L), Environmental Advocates, One Energy, Interstate Gas, and FirstEnergy, who

submitted jointly with the Ohio Power Company (AEP Ohio), filed memoranda contra the applications for rehearing. The Commission then scheduled and, on January 10, 2018, heard oral arguments on the issues raised by the various parties on rehearing.

{¶ 5} On December 19, 2018, the Commission issued a Fifth Entry on Rehearing (Fifth Entry on Rehearing). Therein, the Commission granted, in part, and denied, in part, the applications for rehearing filed by One Energy and Interstate Gas and denied all other applications for rehearing.

{¶ 6} Pursuant to R.C. 4903.10, any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding by filing an application within 30 days after the Commission's order is journalized. Any party may file a memorandum contra to an application for rehearing within ten days after its filing. Ohio Adm.Code 4901-1-35.

{¶ 7} On January 18, 2019, DP&L and AEP Ohio each filed an application for rehearing of the Commission's Fifth Entry on Rehearing; a third application for rehearing was filed jointly by Interstate Gas, IGS Generation, LLC, and IGS Solar, LLC (collectively, IGS). On January 28, 2019, Direct Energy Business, LLC, Direct Energy Services, LLC, and IGS combined to file a memorandum contra the applications for rehearing filed by DP&L and AEP Ohio. Additionally, FirstEnergy, AEP Ohio, and DP&L each filed a memorandum contra IGS's application.

{¶ 8} By Entry dated February 6, 2019, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing.

III. DISCUSSION

{¶ 9} In their respective applications for rehearing, DP&L and AEP Ohio both challenge Ohio Adm.Code 4901:1-10-28(B)(1)(a)'s requirement that a single net metering tariff be offered to all customer-generators, regardless of whether the customer-generator

takes service under the utility's standard service offer (SSO) or shops for generation. DP&L asserts that the Fifth Entry on Rehearing is unlawful and unreasonable because the rule amendment creates a subsidy in violation of R.C. 4928.02(H). AEP Ohio, on the other hand, submits that the amended rule violates R.C. 4928.67 and is otherwise inconsistent with federal law.

{¶ 10} DP&L's first assignment of error contends that Ohio Adm.Code 4901:1-10-28(B)(1)(a) exercised in conjunction with Ohio Adm.Code 4901:1-10-28(B)(9)(h) results in a "double-dipping" effect. More specifically, because the latter rule requires electric distribution utilities (EDUs) to ensure that any final settlement data sent to the regional transmission organization (here, PJM) include negative loads provided to a competitive retail electric service (CRES) provider—which essentially acts as a credit against the CRES provider's energy obligation through the settlement process—while the former requires that the EDU provide the net metering tariff, and thus any associated credits to the customer-generator, DP&L believes that CRES providers and their customers receive a subsidy. To avoid this unlawful subsidy, DP&L urges the Commission to revert to the version of Ohio Adm.Code 4901:1-10-28(B)(1)(a) set forth in the November 2017 Order, which required the EDU to offer a net metering tariff to only those customers taking service under the SSO.

{¶ 11} Citing to R.C. 4928.67 and the Public Utility Regulatory Policies Act of 1978 (PURPA), AEP Ohio also submits that the Commission's revision to Ohio Adm.Code 4901:1-10-28(B)(1)(a) is contrary to state statute and federal law. AEP Ohio first argues that several provisions of R.C. 4928.67 plainly prohibit the Commission from requiring a utility to offer net metering to shopping customers. For example, in discussing how the measurement of net electricity supplied or generated shall be calculated, R.C. 4928.67(B)(3)(b) specifically uses the phrase "electricity supplied by the electric utility." AEP Ohio interprets this language as a clear intent by the General Assembly to limit the application of an EDU's net metering tariff to situations in which the EDU supplies

electricity. Given this interpretation, and the idea that the EDU does not supply electricity to a shopping customer (whose electricity is procured from a CRES provider), AEP Ohio contends that the Commission cannot promulgate a rule under which the EDU must offer its net metering tariff to a shopping customer.

{¶ 12} In further support of its argument, AEP Ohio offers the language of R.C. 4928.67(A)(1), which states that the standard net metering tariff must be identical in rate structure, all retail rate components, and monthly charges to the tariff to which the customer would be assigned if it were not a customer-generator. AEP Ohio states that a shopping customer does not purchase electricity from the EDU and, consequently, there are no rate components, rate structures, or monthly charges for generation. Yet, AEP Ohio continues, the rule as modified on rehearing combined with Ohio Adm.Code 4901:1-10-28(B)(9)(c) requires AEP Ohio to provide a rate credit—calculated at the energy component of an EDU's SSO—to shopping customers for excess generation in a month. AEP Ohio concludes that it is illogical, and thus illustrative as to why the standard net metering tariff should not apply to shopping customers, that an EDU can provide a rate credit based on the energy component of its SSO when the shopping customer does not purchase energy under the SSO.

{¶ 13} AEP Ohio also refers to 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 premises. AEP Ohio contends that this mandate clearly demonstrates that the General Assembly intended for the customer-generator be responsible for any additional costs of metering technology necessary to enable net metering. And, therefore, it was error for the Commission to find it discriminatory to limit net metering tariffs to SSO customers; in other words, AEP Ohio states that it cannot be discriminatory to mandate that a customer-generator pay the additional cost of metering in order to take advantage of net metering through a CRES provider.

{¶ 14} Turning to the federal law, AEP Ohio submits that PURPA 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). Thus, much like its argument under R.C. 4928.67(B)(3)(b), AEP Ohio states that the EDU actually supplying electricity to the customer is a necessary predicate for net metering. As such, AEP Ohio declares that the version of Ohio Adm.Code 4901:1-10-28(B)(1)(a) adopted in the Fifth Entry on Rehearing exceeds the authority found in PURPA.

{¶ 15} In their memorandum contra rehearing, Direct Energy Business, LLC, Direct Energy Services, LLC, and IGS (collectively, IGS/Direct) focus their response on AEP Ohio's arguments. With regard to DP&L's subsidy claim, IGS/Direct simply state that the Commission has already considered and rejected the argument. As to AEP Ohio's argument, IGS/Direct assert that the utility's interpretations of R.C. 4928.67 and PURPA are incorrect.

{¶ 16} IGS/Direct declare that there is nothing in the statute limiting the standard net metering tariff to SSO customers and that AEP Ohio reads words into the statute that do not exist. In support, they point to R.C. 4928.01(A), which defines retail electric service broadly to include "any service involved in supplying or arranging for the supply of electricity to ultimate consumers," arguing that it is accurate to say that AEP Ohio supplies retail electric service to all customers in its role as an EDU. Moving on, IGS/Direct firmly criticize AEP Ohio's suggestion that either R.C. 4928.67(A)(1) or R.C. 4928.67(B)(1) exhibit an intent by the General Assembly to limit the availability of an EDU's standard net metering tariff to its SSO customers. According to IGS/Direct, the former simply provides guidelines for the substance of what must be included in the tariff, with no mention of to whom it must be offered, while the latter simply states that the customer must pay for a meter. IGS/Direct stress that the meter is but one piece of the complex net metering equation; billing and other informational infrastructure must also be in place. Lastly, IGS/Direct point out that PURPA only reinforces the need for

EDUs to provide net metering to all customers. Explaining, they claim that PURPA deems all distributed energy resources as qualifying facilities (QFs) from which electric utilities are required to purchase electricity unless the utility has demonstrated that the QF has nondiscriminatory access to markets. And, given the rebuttable presumption that QFs with capacity of 20 megawatts or less lack such access, IGS/Direct reason that the EDUs are obligated by PURPA to purchase the output of shopping customer-generators at the utilities' avoided cost, i.e., the energy portion of the SSO rate.

{¶ 17} Initially, the Commission notes that we have, in fact, previously thoroughly addressed and dismissed DP&L's argument against a single net metering tariff. Fifth Entry on Rehearing at ¶ 15-16. Accordingly, because DP&L has not raised any new arguments on rehearing, DP&L's first assignment of error should be denied.

{¶ 18} Furthermore, the Commission disagrees with AEP Ohio's interpretation and application of R.C. 4928.67. The Commission has found that, until all necessary factors are in place, net metering cannot be a truly competitive service. Fifth Entry on Rehearing at ¶ 16. And, until such time as net metering can be transitioned to a fully competitive retail service, it is necessary that the EDUs offer a standard net metering tariff to all customer-generators. Meanwhile, the Commission has provided the means by which an EDU can secure a waiver from this requirement and recover all of the costs of providing net metering. The Commission concludes that this compromise satisfies the statutory mandates of both R.C. 4928.67 and PURPA. AEP Ohio's arguments raise no new challenge to the Commission's conclusions on this topic. Accordingly, AEP Ohio's first assignment of error should also be denied.

{¶ 19} In the event that their first assignments of error are not successful, AEP Ohio and DP&L propose a similar correction to the Fifth Entry on Rehearing: clarification to the Commission's offer of a potential waiver of the standard net metering tariff. DP&L asserts that the Fifth Entry on Rehearing is unreasonable because it requires EDUs to offer a single net metering tariff without codifying the possibility of waiver where the utility

can provide sufficient infrastructure and information to customer-generators and CRES providers. DP&L points out that, while the Commission acknowledged that an EDU could file for a waiver of the rule upon demonstration of full deployment of appropriate advanced meters in its service territory and billing systems that are fully compatible with net metering service provided by CRES providers, the rule itself provides no such reassurances. Moreover, in DP&L's view, a utility should not have to demonstrate territory-wide capabilities to obtain a waiver from offering the net metering tariff to customer-generators who obtain generation through a CRES provider. Instead, citing planned modernization projects, DP&L contends it would be able to implement basic programming and installation of meters capable of providing interval data to CRES providers for net metering customers. As such, DP&L claims that full deployment of advanced meters is not necessary to provide CRES providers with the information they seek for the limited number of net metering customers that currently exist. As such, DP&L urges the Commission to codify and expand the waiver by amending Ohio Adm.Code 4901:1-10-28(B)(1) as follows:

> (1) Each electric utility shall develop a standard net metering tariff and a hospital net metering tariff. The electric utility shall make such tariffs available to customer-generators upon request, in a timely manner, and on a nondiscriminatory basis. An electric utility will not, however, be required to provide a standard net metering tariff to a net metering customer served by a CRES provider if the electric utility can provide the CRES provider hourly interval data for the customer-generator.
>
> ~~(a) Each electric utility shall offer a standard net metering tariff to all customers upon request.~~
>
> ~~(b)~~(a) * * *.
>
> ~~(c)~~(b) * * *.[1]

[1] Though the subparagraphs would be re-lettered due to the deletion of subparagraph (a), DP&L does not suggest any change to the language of the remaining subparagraphs.

{¶ 20} AEP Ohio's second assignment of error similarly criticizes the Commission's statement considering waiver of the single net metering tariff as tentative and illusory. AEP Ohio submits that the Commission should clarify its position and hold that a formal waiver application is unnecessary where advanced meters have been installed and billing systems are capable of interval billing. In other words, once a customer-generator has an interval meter and the utility's billing system can provide interval data to the CRES provider, AEP Ohio believes there should be a presumption that it is not necessary for the EDU to provide net metering to the shopping customer. Thus, AEP Ohio urges the Commission to permit EDUs to automatically limit the application of their standard net metering tariff to non-shopping customers and shopping customers who do not have an interval meter in lieu of a formal waiver process.

{¶ 21} In response, IGS/Direct present two arguments. First, they contend that the utilities' representations that there is no real impediment to CRES providers offering net metering based on interval data are disingenuous. Instead, IGS/Direct state that, despite the age of this particular docket and obvious movement toward greater deployment of advanced meters, Ohio's EDUs do not, and cannot, use advanced metering infrastructure (AMI) data for settlement or load calculations; nor do they allow a CRES provider AMI data for billing or settlement purposes. IGS/Direct argue that, until the EDUs accommodate these capabilities, they should not be permitted to effectively eliminate net metering for shopping customers simply because an interval meter has been installed. Second, IGS/Direct state that any request to discard or attempt to codify the waiver requirement is premature. Thus, they urge the Commission to maintain the status quo as established in the Fifth Entry on Rehearing.

{¶ 22} The Commission finds that the utilities' arguments on rehearing regarding waiver should be denied. As we determined in the Fifth Entry on Rehearing, further deployment of advanced meters and improvements to the EDUs' billing systems are necessary before the net metering tariffs can be limited to SSO customers. Thus, the

Commission adopted Ohio Adm.Code 4901:1-10-28(B)(1)(a) to reflect the current reality while recognizing the potential for waiver. A waiver, by nature, is granted only upon a showing of good cause based on facts and circumstances presented by an applicant and analyzed by the Commission at the time the waiver is requested. To codify or otherwise dispose of the potential for a formal waiver at present based on what may (or may not) be in the future is not sound policy. However, we do agree with DP&L that territory-wide deployment of advanced meters is unnecessarily restrictive. We will clarify that waivers will be considered from an EDU where there has been significant, if not full, deployment of advanced meters as long as the EDU's billing systems have been upgraded.

{¶ 23} As a final alternative, AEP Ohio presents a third argument on rehearing. AEP Ohio asserts that, if the Commission continues to require EDUs to offer net metering to shopping customers, the Commission should clarify that an EDU's load settlements for PJM should not reflect net negative usage for shopping customers. In short, AEP Ohio reasons that if the EDUs are held responsible for the payment of net negative generation, no reduction past zero should be recognized. Without this clarification, AEP Ohio suggests that for customers currently being settled within PJM at net negative, the PJM supplier charges are lower than they would otherwise be, and the Commission has no insight as to whether the CRES provider is paying the customer for the net negative usage even where it is receiving a reduced charge from PJM for final market settlement. AEP Ohio contends that this situation represents a direct subsidy to the CRES provider at the expense of the EDU's customers. Conversely, if the CRES provider is passing savings through to the net metered customer-generator, that customer is being compensated twice for the same net negative usage. To avoid these consequences, AEP Ohio argues that the Commission should clarify that the EDU should not reflect net negative usage in settlements for shopping customers.

{¶ 24} In their memorandum contra rehearing, IGS/Direct express no objection to limiting customer usage reported to PJM to an amount not less than zero as long as AEP Ohio continues to calculate customer peak load contributions based on actual data.

{¶ 25} The Commission agrees with AEP Ohio that, for the time being, EDUs' load settlements for PJM should not reflect negative usage for shopping customers. We may revisit this issue in the future if the requirement for EDUs to offer net metering to shopping customers is modified, either by rule or through a waiver of this rule for an individual EDU. We also agree with IGS/Direct that the calculation of customer peak load contributions is essential for net metering and is a major benefit of advanced meter deployment; and, we expect all EDUs to continue to provide this calculation when actual data exists and to further expand this capability as advanced meters are deployed.

{¶ 26} IGS presents a single argument on rehearing, stating that the Fifth Entry on Rehearing unjustly, unreasonable, and unlawfully undermines distributed energy resource development by authorizing a monthly monetary "cash out" that unintentionally discourages a customer from self-generating their total energy requirements. Alluding to, but never identifying, Ohio Adm.Code 4901:1-10-28(B)(9)(c)'s mandate that excess electricity be converted to a monetary credit at the energy component of the electric utility's SSO and continuously carry forward as a monetary credit on the customer-generator's future bills, IGS argues that this compensation structure discourages the full development of distributed generation in Ohio. IGS submits that annual netting—under which the customer receives a kilowatt-based credit for excess generation that can be banked for months when usage exceeds generation—is a policy cornerstone that facilitates the deployment of distributed generation. As a corrective measure, IGS urges the Commission to modify the net metering rules to allow for annual netting of net metering credits rather than the monthly netting procedure currently in place.

{¶ 27} AEP Ohio, DP&L, and FirstEnergy each filed a memorandum contra to IGS's application for rehearing. All three, with slight variation, argue that IGS's application is untimely or repetitive to previously raised arguments. AEP Ohio states that IGS previously sought rehearing on Ohio Adm.Code 4901:1-10-28(B)(9)(c) in its December 8, 2017 Application for Rehearing of the Commission's November 2017 Order, and the Commission denied those arguments in the Fifth Entry on Rehearing. This is enough, declares AEP Ohio, to deny IGS's current application. Continuing, however, AEP Ohio also contends that IGS's proposal is contrary to Supreme Court of Ohio precedent and the Commission's decision to base compensatory credits for excess generation on only the energy component of the EDU's SSO rate. DP&L's argument is similar, but goes further to point out that the Commission already rejected a proposal to use a kilowatt-hour-based credit in the November 2017 Order. FirstEnergy repeats these contentions and adds a third: that a kilowatt hour (kWh) rollover credit would violate R.C. 4928.67(B)(3)'s requirement that credit compensation for excess generation be based on monthly billing cycles.

{¶ 28} The Commission agrees with AEP Ohio, DP&L, and FirstEnergy that the issue raised by IGS has been thoroughly considered and rejected in the Commission's previous orders. November 2017 Order at ¶ 41-46; Fifth Entry on Rehearing at ¶ 27-33. Accordingly, the Commission finds that IGS's application for rehearing should be denied.

IV. ORDER

{¶ 29} It is, therefore,

{¶ 30} ORDERED, That the applications for rehearing filed by AEP Ohio, DP&L, and IGS be denied. It is, further,

{¶ 31} ORDERED, That a copy of this Seventh Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

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