

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's	)	
Review of Chapter 4901:1-10, Ohio	)	
Administrative Code, Regarding Electric	)	Case No. 12-2050-EL-ORD
Companies.	)	

---

**REPLY COMMENTS OF OHIO POWER COMPANY**

---

**I. Background**

The net metering rules address compensation for the energy that certain customers (known as “customer-generators”) generate on their own premises from fuel sources such as solar panels or wind turbines, when that energy is intended to offset part or all of the customer-generator’s electricity requirements. In 2015, the Public Utilities Commission of Ohio (Commission) appropriately ordered electric utilities (EDUs) such as Ohio Power Company (AEP Ohio) to make their net metering tariffs available to “customer-generators taking service under the electric utility’s standard service offer [SSO],” while customer-generators who shopped for electricity from competitive retail electric service (CRES) providers “shall be informed that they will not remain on the electric utility’s net metering tariff and will not be credited by the electric utility for excess generation.” This aspect of the 2015 rule was consistent with the General Assembly’s net metering statute, R.C.

4928.67(B)(3)(b), which provides:

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.

(Emphasis added.) R.C. 4928.67(B)(3)(b).

Because customers who shop are not obtaining electricity “supplied by the electric utility” – they have chosen, instead, a CRES provider as their supplier – it was appropriate and reasonable for the Commission in 2015 to exclude shopping customers from the EDU net metering tariff. The 2015 version of the rule was also consistent with the Public Utility Regulatory Policies Act of 1978, as amended by the Energy Policy Act of 2005, which only requires an electric utility “to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.” (Emphasis added.) 16 U.S.C. § 2621(d)(11).

Near the end of the previous Chairman’s tenure, the Commission reversed itself on this issue and adopted a new proposed version of Ohio Adm.Code 4901:1-10-28(B)(1)(a) that would require EDUs to offer net metering not only to SSO customers, but also to shopping customers. The Commission’s decision to require EDUs to offer net metering to shopping customers violates the plain language of R.C. 4928.67 and is inconsistent with federal law. AEP Ohio appealed the decision to the Supreme Court of Ohio to challenge this aspect of the latest version of the net metering rule. The Commission requested dismissal of the appeal since the Commission had not applied the rule and there was no ripe conflict for adjudication, which the Court granted. *In the Matter of the Commission’s Review of Chapter 4901:1-10, of the Ohio Administrative Code*, Entry (May 12, 2020), Sup. Ct. 2019-573.

The Company continues to object to the unlawful rules; the Company also object to the rules being enforced unevenly among the electric distribution utilities (EDUs), to the extent that the Commission requires AEP Ohio to incorporate requirements into its tariff that are not presently enforced against all EDUs. But in order to comply with the

Commission's ruling and finalize the concrete dispute as between the Company's legal position and the adopted rule, AEP Ohio filed compliance tariffs in this docket to implement the changes to its net metering tariffs. On October 28, 2020, Interstate Gas Supply, Inc., IGS Generation, LLC and IGS Solar, LLC (IGS) filed comments objecting to the proposed tariffs. AEP Ohio replies to the comments filed by IGS.

## **II. AEP Ohio's Reply Comments**

IGS states that the tariffs as filed by AEP Ohio violate the Commission's new rule and fail to satisfy the Commission's intended outcome with regard to net metering policy (IGS Comments at 1.) IGS comments that the purpose of net metering is to compensate distribution generation resources when the resource produces more electricity than a customer generator needs (*Id.*) Specifically, IGS states that the proposed tariffs settle load with a customer's CRES provider at zero for any hourly intervals in which the customer is net negative (*Id.* at 2.) IGS proceeds to state that instead of reflecting the customer's full contribution to the grid during the hour in which the customer generator is ultimately net negative, AEP Ohio will settle load with the customers CRES provider at zero and give the customer nothing in return, the electricity is effectively a donation to the grid. (*Id.*)

IGS correctly points out that the Commission initially intended to require EDUs to offer net metering tariffs to only default service customers and in response to arguments raised by IGS on rehearing, the Commission reversed its decision and agreed and adopted a rule requiring the EDUs to offer net metering tariffs to all customers. (*Id.* at 4.) But in doing so the Commission emphasized that it was creating a temporary and transitional scheme:

The Commission 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.

Seventh Entry on Rehearing at ¶ 18 (emphasis added). As a corollary, in granting IGS's Application for Rehearing in the Fifth Entry on Rehearing, the Commission affirmatively stated that "in the long-term, net metering service should be a competitive retail electric service delivered to shopping customers by their CRES providers..." (Fifth Entry on Rehearing at ¶ 16.)

Thus, while AEP Ohio continues to maintain that this transitional scheme is unlawful, the Fifth and Seventh rehearing orders nonetheless show the Commission's clear intent to create a temporary, transitional (and imperfect) scheme. Specifically, the Commission has determined that until such time that certain criteria are met, the EDU is responsible for providing net metering, including any net negative credits. This credit is to be paid by all AEP Ohio's customers. The same approach is used for non-shopping customers so IGS's argument (at 2-3) that shopping customers would be prejudiced through different treatment is inaccurate. These concepts are important to bear in mind when considering IGS' current arguments.

IGS states that the Company's proposed tariffs confiscate excess electricity (IGS Comments at 4.) This is also not true. IGS receives a wholesale settlement under which it gets fully paid for the electricity it supplies, the customer gets their wires charges offset by the full output of their behind-the-meter generation, and the customer gets paid for any net negative generation (both of the customer credits are subsidized by all of the Company's ratepayers and not paid by IGS). What IGS apparently wants is a second credit for hourly

negative loads that the customer is already getting credit for on its wires bill – even though IGS did nothing to get paid and has no additional costs relating to the hourly negative loads. Rather, as explained below, IGS is merely attempting to transform the Commission’s apparent administrative error in this case into additional profit – even though IGS consented to AEP Ohio’s rehearing that was granted but not ultimately reflected in the final rule. That result would not only be unfair to everyone involved but it would exacerbate the current transitional scheme by expanding the unlawful subsidies.

After the Fifth Entry on Rehearing reversed the Commission’s prior position that net metering service should only be extended to non-shopping customers, AEP Ohio filed a rehearing request to contain the resulting inequities by limiting CRES settlements to zero (avoiding negative load settlements). Specifically, the Commission described the Company’s request as seeking clarification “that an EDU’s load settlements for PJM should not reflect net negative usage for shopping customers.” Seventh Entry on Rehearing at ¶ 23. The Commission noted that IGS did not express any “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.” *Id.* at ¶ 24.

In granting AEP Ohio’s request, the Commission held as follows:

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.

*Id.* at ¶ 25 (emphasis added). The Company is following the Commission’s order, but IGS

now effectively seeks to reverse the order even though it agreed to it. Of course, IGS's agreement to a particular Commission order does not add to or take away from the order's legality or validity – but the agreement should certainly estop IGS from collaterally attacking the order.

IGS in Example 1 shows a scenario in which incorrectly states that the proposed structure by AEP Ohio will confiscate any electricity (without compensation) any negative hours produced on an hourly basis where the net of the month is not negative. (IGS Comments at 5.) The example is an accurate example of how the load settlements will work under the proposed tariff. The key part that IGS misses and incorrectly characterizes is that AEP Ohio is confiscating the load. Consistent with the Seventh Entry on Rehearing, the Company will settle this load at a zero for the hour, not at a negative. In turn, the negative hourly load will be credited against the customer's monthly usage and included as unaccounted for energy; this deduction, in turn, reduces the loads of both suppliers as well as auction winners and the settlement will be the same for both shopping and non-shopping customers. As a distribution service and until deemed competitive in the future, the application of net negative should be applied on a monthly basis as is true with all other retail tariffs. There is no confiscation of load as IGS wrongly suggests. In addition, the customer bill will be based on the net of the usage as laid out in IGS's Example 1a. The customer will see the benefit of its net load reduction for purposes of applying the generation, transmission and distribution portion of their bill, 650 kWhs. IGS's Example 1b. shows the settlement of load within PJM accurately for both suppliers and auction winners of 900 kWh. The amounts in the grid export column, 250 kWh, show the amount of load that will be settled as unaccounted for energy and result in load reductions for both

suppliers and auction winners.

Example 2 provided by IGS shows that the supplier will be credited to PJM for the negative hours. This example is precisely the argument raised by AEP Ohio and agreed to by the Commission in the Seventh Entry on Rehearing. The supplier in this scenario would be credited through PJM for the negative 100 kWhs. However, AEP Ohio would be the one to credit the customer the 100 kWhs at the Generation Energy rate, not the supplier and as such that negative load should flow through to unaccounted energy just as the Company has proposed and be a benefit to both suppliers and auction winners which in turn should benefit all customers. This is fair and appropriate since all customers will be responsible for paying for any net negative credits, not the suppliers. IGS continues to push for a fully complete service but that is not what the Commission determined and it is not what IGS is providing.

Example 2 also indicates the challenge in IGS's proposal. IGS states at page 10 that upon reaching the "breaking point" for a billing cycle, the load should be settled for the hourly negatives. For both example 1 and example 2, there is a unique challenge in settling the load with PJM on an hourly basis. If the company were to settle the hourly negatives, the suppliers would get the credit through PJM. However, if the customer is net negative for the month, a manual adjustment would have to be made to go back and manually remove any hourly credits that contributed to that net negative. This would then become part of the PJM 60 day true-up process. Even then, there is still a challenge in how to handle the true up due to AEP Ohio billing cycles versus PJM's monthly settlement. The Company considered these options when it recommended not to settle negative loads with PJM, the company considered these options when it determined that if its customers were

going to be responsible for the credits paid to both SSO and shopping customers, all customers should get the benefit of negative load, and the Company considered these options when it looks at the number of customers that may be in this situation. As an example, in August, , there were only 74 customers that had any interval negative usage out of all of the net metering customers with which AEP Ohio records from IDR meters. The cost to program and implement the changes IGS wants far outweigh the benefits to these few customers and the Company's proposal will spread this benefit to all customers, shopping and non-shopping through the unaccounted for energy reduction.

IGS incorrectly states the request made by AEP Ohio that was granted in the Seventh Entry on Rehearing. Specifically, IGS incorrectly states that the Company's application for rehearing it specifically requested that the commission "limit the load settling process from the EDU to zero usage for customers without interval meters" (IGS Comments at 13.) The application requests that "if the commission maintains its current order, it should clarify that all load settlement should not recognize net negative usage (AEP Ohio request for rehearing at 9). The Company currently handles load for non-interval meters as a net to zero for PJM settlement purposes. However, for a customer that is over 200 kW with an interval meter, the Company currently settles the hourly negatives to the CRES account. This provides a credit to the suppliers. The challenge as mentioned above is that the change from the CRES compensating the customer to the EDU's other customers compensating the customer is that the CRES should not be provided a credit through PJM when AEP Ohio's customers have to fund any credits. The negative hours should go to benefit all other customers, not the suppliers until such time that the Commission revisits the issue on an industry basis.



Though IGS tries to reconcile its position with the Seventh Entry on Rehearing, it is really an attack on that ruling – framed up as a rule violation by AEP Ohio because of the Commission’s administrative oversight in finalizing the rule language after the final rehearing ruling. IGS’s argument (at 12) that the Seventh Entry on Rehearing’s unqualified directive that PJM load settlements “should not reflect negative usage” was really only meant to address monthly net negative under OAC 4901:1-10-28(B)(2)(9)(c) and not hourly negative loads under OAC 4901:1-10-28(B)(2)(9)(h) lacks support. Division (B)(2)(9)(c) of Rule 28 only addresses customer’s credit and billing and not PJM settlements at all. The only provision in Rule 28 dealing with PJM settlements is Division (B)(2)(9)(h) – which is the provision being modified by the Seventh Entry on Rehearing concerning PJM settlements. The fact that the Commission did not clean up that language before finalizing the rule is an administrative oversight that should not serve as a loophole for IGS to boost its profits. The explicit rehearing ruling should serve as a manifest expression of the Commission’s intent and govern the interpretation of any residual language left in the rule. The Commission’s ruling was not limited to monthly customer billing for net negative but clearly directed that PJM load settlements “should not reflect negative usage” – that was a final ruling and should not be disturbed. To the extent the Commission needs an additional procedural vehicle to achieve this result in light of the administrative oversight, it can now exercise its prerogative to waive the rule provision or indicate that a motion for such waiver by the Company would be entertained in order to reach the intended result.

AEP Ohio’s proposed tariffs appropriately align the benefits of net metering with the customers that will be responsible in the interim to pay for the negative credits, in accordance with the Seventh Entry on Rehearing. This approach appropriately aligns costs

with the benefits to all AEP Ohio customers, which in turn appropriately benefits all suppliers and auction winners. If the Commission agrees with IGS's proposal that the Company continue the current process of settling hourly load to the "breaking point" the Commission needs to revisit the rules adopted in its decision and adopt a truly competitive outcome that is not subsidized by distribution customers. As previously stated, the settlement as suggested by IGS is challenging in that the hourly loads are settled daily and changes to the Company's system will be necessary in order to produce a manual true up process.

The Company recognized that the Commission's Seventh Entry on Rehearing and all rehearing prior was the solution to a timing issue for net metering to be a fully competitive service. The Company has implemented the appropriate tariffs to follow these rules and Commission guidance until such time there are additional measure taken to determine the fully competitive application of net metering. Until such time, the Commission should reiterate its decision to settle all loads at a zero for PJM purposes as the customers of AEP Ohio should be provided that credit as they will be responsible to pay for any net negatives, not suppliers.

### **III. CONCLUSION**

Regardless of the language that was left in the rule, the Commission's Seventh Entry on Rehearing adopted a transitional, temporary solution for net metering on the path toward net metering becoming a fully competitive service in the future – which mandated that EDUs' load settlement for PJM should not reflect negative usage for shopping net metering customers. Regardless of future changes that may be adopted, the Company has implemented the appropriate tariffs for now to follow these rules and Commission guidance

until such time there are additional measure taken to determine the fully competitive application of net metering on an industry-wide basis in a manner consistent with R.C. 4928.67. Until that time, the Commission should reiterate its decision to settle all loads at a zero for PJM purposes as the customers of AEP Ohio should be provided that credit as they will be responsible to pay for any net negatives, not suppliers and approve the tariffs as filed by AEP Ohio. And whatever outcome the Commission reaches here, it should be applied to all EDUs in the same manner at the same time.

Respectfully submitted,

/s/ Steven T. Nourse  
Steven T. Nourse  
American Electric Power Service  
Corporation  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, Ohio 43215  
Telephone: (614) 716-1608  
Fax: (614) 716-2950  
Email: [stnourse@aep.com](mailto:stnourse@aep.com)

**Counsel for Ohio Power Company**

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served upon the parties of record in these proceedings by electronic service this 16<sup>th</sup> day of November, 2020.

/s/ Steven T. Nourse

Steven T. Nourse

### **EMAIL SERVICE**

Amy.spiller@duke-energy.com; annie@votesolar.org; bojko@carpenterlipps.com; Bryce.mckenney@puc.state.oh.us; callwein@wamenergylaw.com; cary.cochem@duke-energy.com; cdunn@firstenergycorp.com; chitt@seia.org; daniel.sawmiller@sierraclub.org; dblair@rlcos.com; dianne.kuhnell@duke-energy.com; dwooley@kfwlaw.com; Elizabeth.watts@duke-energy.com; Emma.berndt@opower.com; eric.brown@dplinc.com; Cgelo@napower.com; haydenm@firstenergycorp.com; Jeanne.kingery@duke-energy.com; Jennifer.lause@directenergy.com; jkeyes@kfwlaw.com; joliker@igsenergy.com; joseph.clark@directenergy.com; Judi.sobecki@dplinc.com; kennedy@whitt-sturtevant.com; kjkolich@firstenergycorp.com; kjoseph@napower.com; kjlw@yaho.com; kkooles@kfwlaw.com; mkeaney@calfee.com; mbach@hess.com; mcconnell@smwlaw.com; yost@occ.state.oh.us; mnugent@igsenergy.com); Michael.schuler@aes.com; mjsettineri@vorys.com; mswhite@igsenergy.com;	mwarnock@bricker.com; talexander@calfee.co; nathan@buckeyeforestcouncil.org; Nolan@theoec.org; rdove@attorneydove.com; rendris@firstenergycorp.com; robert.adams@dplinc.com; Sechler@carpenterlipps.com; sellott@metrocdengineering.com; sgiles@hullinc.com; smhoward@vorys.com; smith@carpenterlipps.com; tculley@kfwlaw.com; torahood@bricker.com; trent@theoec.org; vparisi@igsenergy.com; William.wright@puc.state.oh.us jkeyes@kfwlaw.com; rendris@firstenergycorp.com; Sechler@carpenterlipps.com; cynthia.brady@exeloncorp.com; dborchers@bricker.com; mleppla@theOEC.org; bethany.allen@igs.com William.Michael@occ.ohio.gov; fykes@whitt-sturtevant.com jfinnigan@edf.org; tcully@kfwlaw.com; mkeaney@calfee.com; Kurt.Helfrich@ThompsonHine.com; Stephanie.Chmiel@ThompsonHine.com; Jennifer.Spinosi@directenergy.com; kjohnson@oneenergylc.com; jkeyes@kfwlaw.com; haydenm@firstenergy.com;
--	--

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**11/16/2020 4:26:58 PM**

**in**

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

Summary: Comments - Reply Comments of Ohio Power Company electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company