BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Establishing the Solar Generation Fund Rider Pursuant to R.C. 3706.46.	: : :	Case No. 21-447-EL-UNC

MEMORANDUM CONTRA OF THE DAYTON POWER AND LIGHT COMPANY D/B/A AES OHIO TO THE APPLICATION FOR REHEARING FILED BY THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP

On July 14, 2021, the Public Utilities Commission of Ohio ("PUCO" or "the Commission") issued an Entry establishing a rate mechanism for the retail recovery of costs related to the solar generation fund ("SGF") pursuant to R.C. 3706.46 for the period up to December 31, 2027. In doing so, the Commission rejected certain requests submitted by the Ohio Manufacturers' Association Energy Group ("OMAEG"). OMAEG filed an application for rehearing, which should be denied for the following reasons.

I. The Commission Appropriately Found that Customer Accounts Should not be Aggregated for Purposes of Charging the SGF Rider.

OMAEG once again attempts to read a definition of "customer" into the law that does not exist in order to charge the SGF Rider in a way favorably to OMAEG customers. OMAEG attempts to rely upon the "plain language" of R.C. 3706.46[1] despite the fact that R.C. 3706.40 *et al.* does not define the term "customer." As a result, OMAEG also attempts to draw a conclusion about the meaning of "customer" based upon legislative history of a law that is not at issue in this proceeding. Namely, OMAEG argues that the as introduced version of H.B. 6 (the predecessor to H.B. 128) contained the phrase "per account" in the "as introduced" version,

[1] Application for Rehearing of The Ohio Manufacturers' Association Energy Group ("OMAEG AfR") at pp 9-10 (August 13, 2021).

which was later amended to use "per customer" in the "as enrolled" version of the bill.[2] OMAEG argues that this connotes some intent that "customer" means something different than "account."[3] This argument plainly overlooks the assumption that the legislature was aware of the Commission's rules when it passed R.C. 3706.46, reflecting that "customer" already has a plain meaning in Ohio.

The Commission rules have long defined "customer" to mean "any person who has an agreement, by contract and/or tariff with an electric utility or by contract with a competitive retail electric service provider, to receive service."[4] The rules further define "customer premises" to mean "the residence(s), building(s), or Office(s) of a customer."[5] Accordingly, each account receives services pursuant to a contract and/or tariff; therefore, each account is a customer under the Commission's Rules. In rejecting OMAEG's request to aggregate accounts in this case, the Commission "appl[ied] our prior reasoning" to find that "the legislative use of the word 'customer' in R.C. 4706.46(B) is clear and unambiguous."[6] In that prior Entry, the Commission pointed to R.C. 4928.6611 and R.C. 4928.6615 as examples of where "the legislature has previously acted to modify the definition of 'customer' where it intended to alter the meaning of the term."[7]

Indeed, H.B. 128, which created the SGR Rider was introduced on February 16, 2021, well after OMAEG had raised these same arguments in response to the Clean Air Fund Rider in their Comments (filed on October 17, 2019) and Application for Rehearing (filed on December

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[2] OMAEG AfR at p. 11.

[3] Id. at p. 12.

[4] Ohio Adm. Code 4901:1-10-01(I).

[5] Ohio Adm. Code 4901:1-10-01(K).

[6] Case No. 21-447-EL-UNC, Entry at ¶ 16 (July 14, 2021).

[7] Case No. 19-1808-EL-UNC, Entry on Rehearing at ¶ 13 (Jan. 15, 2020).

23, 2019). Yet, both the "as reported by House Committee" and "as enrolled" versions of H.B. 128 employed the same "per customer" language that had clearly been interpreted by the Commission under its predecessor H.B. 6. The Rules and the law, therefore, do not ponder the concept suggested by OMAEG – that multiple meters/accounts are considered a single "customer." For these reasons, the Commission should deny OMAEG's second assignment of error.

II. The Commission Correctly Found that the SGF Rider Should include the Commercial Activity Tax ("CAT").

OMAEG again takes issue with the Commission finding that H.B. 128 permits the SGF Rider to include CAT pursuant to R.C. 5751.02.[8] OMAEG does not appear to dispute that the electric distribution utilities ("EDUs") will be subject to the CAT on revenues collected pursuant to the SGF Rider. To support its argument, however, OMAEG cites to "legislative intent" that is wholly unrelated to CAT.[9] Rather, the legislative intent referenced describes the elimination of the Clean Air Fund Rider and the decoupling provisions previously enacted under H.B. 6 – not anything about the CAT. In fact, OMAEG clearly raised the CAT issue numerous times under the predecessor version of this law in 2020,[10] which the Commission duly rejected.[11] Yet, the legislature saw fit not to add language expressly stating that the EDUs were prohibited from including the CAT in the SGF Rider when it introduced H.B. 128 in February 2021 or any time prior to passing it on March 25, 2021.

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[8] OMAEG AfR at pp. 14-17.

[9] OMAEG AfR at p 15.

[10] Case No. 21-1143-EL-UNC, OMAEG Comments at p. 10 (July 17, 2020); Case No. 20-1143-EL-UNC, OMAEG AfR pp.5-6 (September 2, 2020).

[11] Case No. 21-1143-EL-UNC Entry at ¶ 18 (August 26, 2020); Case No. 20-1143-EL-UNC, Entry on Rehearing at ¶ 12 (October 21, 2020).

OMAEG's response to the *in pari materia* ruling by the Commission argues that Rider SGF is not collecting a cost for any good or service provided by the EDUs and thus cannot include the CAT in the SGF Rider.[12] It is well known that utilities can only charge rates authorized by the regulatory body, and the Commission has routinely authorized the CAT for other similar passthrough riders, like the standard service offer, despite no express language in the Ohio Revised Code. Based upon the law contained in R.C. 5751.02, as well as the issues that were well known at the time of H.B. 128's passage, it was unnecessary for the legislature to expressly state that the CAT should be included in the SGF Rider. To the contrary, it should be assumed that the legislature was well aware of the CAT issue from the prior year and chose not to address the matter.

For these reasons, the Commission correctly found previously under H.B. 6, and again under H.B. 128, that "had the legislature intended to establish the SGF at an adjusted amount to account for any CAT offset, it would have expressly done so."[13] Accordingly, the Commission should deny OMAEG's fourth assignment of error.

III. CONCLUSION.

For the reasons explained above, the Commission should reject the assignments of error submitted by OMAEG.

[12] OMAEG AfR at p. 16.

[13] Case No. 21-447-EL-UNC, Entry at ¶ 14 (July 14, 2021); see also, Case No. 20-1143-EL-UNC, Entry at ¶ 18 (August 26, 2020).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served via electronic mail upon the following counsel of record, this 23rd day of August, 2021:

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Summary: Memorandum Contra of The Dayton Power and Light Company d/b/a AES Ohio to the Application for Rehearing Filed by the Ohio Manufacturers' Association Energy Group electronically filed by Mr. Michael J Schuler on behalf of The Dayton Power and Light Company d/b/a AES Ohio