

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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November 19, 2007

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Request for Comments on Revisions to the
Net Metering and Interconnection
Regulations at 52 Pa. Code Chapter 75 to
Conform with the Language of
Act 35 of 2007

Docket Nos. M-00051865
L-00050174
L-00050175

Dear Secretary McNulty:

Enclosed are an original and fifteen (15) copies of the Comments of the Office of Consumer Advocate, in the above-referenced proceeding.

Copies have been served on the parties of record as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

A handwritten signature in black ink that reads "David T. Evrard".

David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. # 33870

Enclosures

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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|---------------------------------------|---|-------------|------------|
| Request for Comments on Revisions to | : | | |
| the Net Metering and Interconnection | : | Docket Nos. | M-00051865 |
| Regulations at 52 Pa. Code Chapter 75 | : | | L-00050174 |
| to Conform with the Language of | : | | L-00050175 |
| Act 35 of 2007 | : | | |

COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

I. INTRODUCTION

On October 4, 2007, the Public Utility Commission (Commission) issued a Secretarial Letter inviting interested parties to comment on the effect passage of Act 35 of 2007 has on the Commission's existing regulations on Net Metering and Interconnection. The Commission's regulations are promulgated at 52 Pa. Code §§ 75.1 *et seq.* The Office of Consumer Advocate (OCA) offers these comments in response to that request.

The Commission's Net Metering and Interconnection regulations were adopted pursuant to the requirements of the Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1 *et seq.* (AEPS Act), which was enacted in November, 2004. Act 35 of 2007, enacted July 17, 2007, made a number of amendments to the AEPS Act including amendments to the provisions governing net metering and generator interconnection. As the Commission has acknowledged in its Secretarial Letter, the Act 35 amendments necessitate making conforming revisions to the Commission's regulations. The Commission notes as follows:

While a majority of the... changes to the Commission's regulations merely involve replacing existing language with language contained in Act 35, some of these changes raise new issues that had not been previously considered. Specifically, several issues are raised by Act 35's requirement that "excess generation from net-metered customer-generators shall receive full retail value for all energy produced on an annual basis."

Secretarial Letter at 2. The Commission then presents a series of questions related to the amendment to section 5 of the AEPS Act, 73 P.S. § 1648.5, which provides for "full retail value" compensation for excess energy produced by net-metered customer-generators. The Commission seeks the views of interested parties in answer to the questions it presents. The OCA offers its response to several of the questions posed by the Commission.

II. COMMISSION QUESTIONS

- * **What is the meaning of "full retail value for all energy produced"? Act 35 does not specifically define this term. The term could be interpreted as meaning the fully bundled retail rate for generation, transmission, distribution, and any applicable transition charges. Alternatively, given the Legislature's use of the terms "excess generation" and "energy" it also could be interpreted as being limited to the generation component of the retail rate.**

OCA Response: The Commission's regulations currently provide that energy produced in excess of the amount used by a customer-generator in a billing period is to be compensated at the supplying EDC's "avoided cost of wholesale power." That term is defined in the regulations to mean either: (1) the EDC's actual cost of wholesale power; or (2) the average Locational Marginal Price (LMP) for energy in the EDC's transmission zone during the applicable billing period. In both instances, the measure of compensation is a proxy for the generation component of the retail rate. The law, as implemented through the current regulations, limits payment for excess generation in a billing period to an amount that is comparable to the generation component of the retail rate.

The General Assembly appears to change the current law by adopting the phrase, “*full retail value*,” (emphasis added) in connection with compensation to customer-generators for excess generation. The OCA would note that “full retail value” is very similar to a phrase that already appears in § 75.13(c) of the Commission’s regulations, “full retail rate.” Section 75.13(c) provides that with respect to the energy produced by a customer-generator that is less than or equal to the quantity of energy used by that customer, the EDC is to credit the customer at the “full retail rate.” In this context, the term “full retail rate” is understood to mean the generation, transmission and distribution components of the rate, because the credit applied by the EDC is intended to provide a *complete* offset to charges the EDC would have imposed for an equivalent amount of energy. Hence, if the quantity of energy produced matched exactly the quantity of energy used, the customer would be responsible for only the basic customer charge, which is non-volumetric.

It is the OCA’s view that the General Assembly’s use of the phrase “full retail value,” appears intended to capture all three components of the retail rate – generation, transmission and distribution – to be used when crediting customer-generators for excess energy produced from month-to-month over the course of a year. It is unclear, however, whether the “full retail value” provision is intended to affect the cash-out provision for excess generation credits that may be held by a customer-generator at the end of the designated annual period. The OCA would note that other states’ regulations, such as those in effect in New Jersey, provide that excess credits remaining at the end of the annual period are to be compensated at the power supplier’s avoided cost of wholesale power. The General Assembly did not alter the provision that requires the Commission’s rules to be consistent with the rules developed in other states within the Regional Transmission Organizations that operate within Pennsylvania.

* **How should any residual stranded cost charges be treated in the annual reconciliation?**

OCA Response: In earlier rounds of comments on the Net Metering regulations, the OCA argued that the level of usage reduction on the part of net metered residential customers would be extremely small and that the resulting impact on stranded cost recovery would be negligible. Because of this, the OCA argued that § 2808(a) of the Public Utility Code, which provides for imposition of stranded cost recovery when a customer's generator's usage reduction is "significant," was not triggered. The OCA urged the Commission not to impose a stranded cost recovery requirement on residential customer-generators.

The Commission adopted the OCA position when it issued its proposed rules and maintained that position in its final Net Metering rules. In its Order issuing the proposed regulations, the Commission stated:

The essential concern is that it would most likely cost more to track usage for residential customer-generators than would be recovered through the resulting allocated share of stranded costs. Accordingly, while all Participants recognize the applicability of section 2808(a) of the Code, it has been forcefully argued that for the residential class, any reduction in usage should be deemed insignificant and not subject to an allocated payment of stranded costs.

The original Staff proposal provided that any reduction in usage from the grid that was equal to or greater than 10% when compared to the prior year would trigger the application of section 2808(a) of the Code. Based upon the comments received and the discussions in the sub-group meetings, we have revised this section and propose that it apply to small commercial, commercial and industrial customer classes only.

Commission Order of November 10, 2005

The OCA sees no reason for the Commission to alter its position for residential customer-generators. With respect to such generators, any residual stranded costs that remain as the result of the annual reconciliation are likely to be insignificant, requiring no special treatment.

- * **Are there any additional issues to be addressed by moving the reconciliation of excess energy from a monthly to an annual basis?**

OCA Response: The OCA is not aware of “additional issues” raised by moving the reconciliation of excess energy from a monthly to an annual basis. The OCA would simply point out that with respect to residential customer-generators, the OCA, through the various iterations of the draft and proposed net metering regulations, has consistently supported the approach adopted by the state of New Jersey, which specifically provides for an annual reconciliation for excess energy.

- * **Act 35 does not define the phrase “annual basis”. Does the phrase mean a calendar year, fiscal year or does it correspond with the AEPS compliance period of June 1 through May 31?**

OCA Response: The OCA maintains that in the absence of a specific legislative directive, the Commission should adopt an interpretation that affords the greatest administrative ease for customer-generators and EDCs.

- * **Should the Commission provide monthly credits for net metered accounts, and carry over monthly excess generation to the next billing month, with any remaining excess energy (where total annual generation of energy exceeds total annual usage) cashed out at the end of the year? Alternatively, do the metering regulations only provide for annual compensation for excess generation in any month?**

OCA Response: Again, there appears to be no legislative guidance on this point. As noted above, the OCA has consistently advocated the adoption of the New Jersey approach, which provides for monthly credits, the rollover from month to month of excess credits, and the

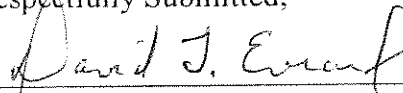
payment for any credits remaining at the end of a designated annual period at the avoided cost of wholesale power. This was the approach taken by the Commission in the proposed phase of the net metering regulations.

It is the OCA's view that the payment approach selected for compensating the net metered customers for excess energy must balance the value of the distributed generation with the cost to other customers on the system. The OCA submits that the New Jersey rules achieve this balance by allowing credits in one month to be carried into subsequent months, and then by compensating surplus, customer-supplied energy at the end of the designated annual period at the avoided cost of wholesale power. The OCA again commends this approach to the Commission.

III. CONCLUSION

The OCA appreciates the opportunity to offer these comments on the effect of Act 35 of 2007 on the Commission's Net Metering and Interconnection regulations. The OCA will continue to work with the Commission and all other interested parties to facilitate net metering and customer generation.

Respectfully Submitted,



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Dated: November 19, 2007