

COMMONWEALTH OF PENNSYLVANIA



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November 19, 2007

HAND DELIVERED

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

**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 and L-00050175**

Dear Secretary McNulty:

I am delivering for filing today the original plus 15 copies of the Comments on behalf of the Office of Small Business Advocate in the above-captioned matter.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "William R. Lloyd, Jr.".

William R. Lloyd, Jr.
Small Business Advocate
Attorney ID No. 16452

Enclosures

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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P. U. C. SECRETARY'S OFFICE

Request for Comments on Revisions to the	:	
Net Metering and Interconnection	:	Docket Nos. M-00051865
Regulations at 52 Pa. Code §§75.1 <i>et seq.</i> to	:	L-00050174
Conform with the Language of	:	L-00050175
Act 35 of 2007	:	

**COMMENTS ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE
ON REVISIONS TO THE NET METERING
AND INTERCONNECTION REGULATIONS**

The act of November 30, 2004 (P.L. 1672, No. 213), known as the Alternative Energy Portfolio Standards Act ("AEPS Act"), requires that increasing percentages of the electricity sold in the Commonwealth be generated from designated alternative energy sources, including distributed generation systems.

As required by Section 5 of the AEPS Act, the Pennsylvania Public Utility Commission promulgated regulations relating to net metering and interconnection. The regulations relating to net metering are at 52 Pa. Code §75.11-75.15. The regulations relating to interconnection are at 52 Pa. Code §75.21-75.51.

The act of July 17, 2007 (P.L. ____, No. 35) amended the AEPS Act in numerous ways. By Secretarial Letter dated October 4, 2007, the Commission requested comments on specific issues relevant to bringing the existing regulations into conformity with Act 35. The Secretarial Letter set the deadline for comments as 30 days following publication of the Secretarial Letter in the *Pennsylvania Bulletin*. The Secretarial Letter appeared in the *Pennsylvania Bulletin* of October 20, 2007, 37 Pa.B. 5597.

The OSBA submits the following comments in response to the Secretarial Letter:

COMMENTS

1. 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.

Under 52 Pa. Code §75.13(d), a customer-generator is to be compensated for the “excess energy” that customer generates, *i.e.*, the kWhs generated by the customer minus the kWhs delivered by the customer’s electric distribution company (“EDC”). That compensation is based on wholesale *generation* prices. The General Assembly is presumed to have been familiar with the specifics of Section 75.13(d). Furthermore, there is nothing in the plain language of the amendment to Section 5 of the AEPS Act which provides a definition of “excess energy” which differs from the one used in Section 75.13(d). Therefore, it is reasonable to infer that the General Assembly did not intend to require compensation to include the value of transmission, distribution or transition charges.

The key difference between amended Section 5 and Section 75.13(d) is with regard to the *rate* at which the customer is to be compensated. Under the existing regulation, the customer is to be compensated for the excess energy “at the EDC’s avoided cost of *wholesale* power.” In contrast, under amended Section 5, the customer is to be compensated at the “full *retail* value” of the excess energy. Therefore, the legislature’s apparent intent was to require compensation of the customer-generator for the excess energy at a retail generation rate rather than at a wholesale generation rate.

2. What are the projected costs associated with these competing interpretations, i.e., given a projected level of net metered generation (kwh), what are the projected costs to the remaining customers of an EDC if net-metered customer-generators receive x cents per kwh versus y cents per kwh?

The OSBA defers to the EDCs for an estimate of the cost of the two suggested alternative measures of compensation, *i.e.*, the retail value of generation versus the retail value of generation plus transmission plus distribution (and possibly plus transition charges).

However, it is noteworthy that, at the same time the General Assembly amended Section 5 of the AEPS Act regarding the rate of compensation, the legislature also amended the definition of “customer-generator” in Section 2 of the AEPS Act. The amendment to Section 2 substantially increases the size of a distributed generation system which qualifies for net metering. The effect will be to increase the cost to non-customer-generators of compensating customer-generators. If such additional compensation were to include non-generation price components, the added cost to non-customer-generators would be even greater. Therefore, in the absence of clear statutory language to the contrary, the Commission should opt for the alternative which will impose the lesser cost on non-customer generators.

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

Under Section 2808(a) of the Public Utility Code, 66 Pa. C.S. §2808(a), a customer-generator remains responsible for its fully allocated share of stranded costs if the customer’s “on-site generation . . . operates in parallel with other generation on the

public utility's system and . . . *significantly* reduces the customer's purchases of electricity through the transmission and distribution network" (emphasis added) In 52 Pa. Code §75.15, the Commission has, in effect, defined "significantly" as "a 10% or more reduction." Furthermore, Section 75.15 specified that whether the reduction is 10% or more is to be determined "for an annualized period when compared to the prior *annualized* period" Therefore, if the customer's on-site generation results in an annual reduction of energy purchases of 10% or less from the prior year, the customer pays the competitive transition charge ("CTC") on the net consumption, *i.e.*, the kWhs purchased from the EDC minus the kWhs which the customer was able to avoid purchasing from the EDC as a result of the customer's own on-site generation. On the other hand, if the reduction in purchases by the customer on a kWh basis is 10% or more from the prior year, then the customer is responsible for paying the CTC on the kWhs consumed, *i.e.*, the sum of the kWhs purchased from the EDC and the kWhs generated and consumed by the customer.

Act 35 did not amend Section 2808(a) or otherwise specify any change in a customer-generator's obligation to pay the CTC. Furthermore, Section 75.15 already determines responsibility for the CTC on an annual basis rather than on a billing period basis. Therefore, a customer-generator's responsibility for the CTC was not changed by Act 35.

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

The OSBA is not aware of any additional issues to be addressed. However, the OSBA reserves the right to reply to any comments from other parties which raise additional issues.

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

Distributed generation systems are Tier II alternative energy sources for purposes of determining an EDC's compliance with the AEPS Act. See the definition of "Tier II alternative energy source" in Section 2 of the AEPS Act. Section 3(b)(3) and Section 3(e)(5) provide for determining compliance with the AEPS Act by counting the number of alternative energy credits ("AECs") acquired during a "reporting period." Section 2 defines "reporting period" as "[t]he 12-month period from June 1 through May 31." That means that the excess generation by customer-generators will be measured over the reporting period for the purposes of determining how much generation by a customer-generator will count toward compliance. Therefore, it would be efficient to determine the amount of compensation owed for that generation over the same reporting period.

6. *Should demand charges for distribution, transmission and generation services paid by net metered customers be adjusted? If so, should each component of the demand charge be adjusted to reflect the net flow of energy through a net meter? How should the adjustments be calculated?*

As indicated in the foregoing response to Question No. 1, it is reasonable to infer that the General Assembly intended to require compensation for generation but not for non-generation components. Furthermore, the legislature's apparent intent was to require compensation of the customer-generator for the excess energy at a retail generation rate rather than at a wholesale generation rate.

There is no provision in Act 35 which requires the Commission to adjust the charges *paid by* (or applicable to) the customer-generator. However, if a customer-generator's internal production were to be relatively constant, the customer-generator's registered billing demand would likely be reduced from the customer's pre-generation levels. This outcome would automatically result in a reduction in the demand charges paid by the customer-generator. On the other hand, if a customer-generator's internal production were to be "hit or miss," the level of the customer-generator's measured billed demand (and resulting demand charges) may very well be unaffected. In any event, Act 35 would not appear to require any artificial change in the demand charges paid by a customer-generator. In other words, the customer-generator's monthly demand charges should continue to be based on that customer's *actual* maximum registered monthly billing demand.

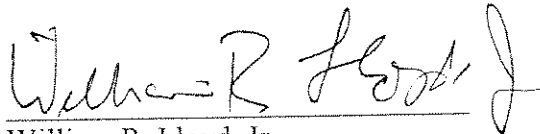
7. *Should the Commission provide monthly credits for net metered accounts, and carry over monthly excess generation to the next billing month, with any remaining excess energy (where total annual generation of energy exceeds total annual usage) cashed out at the end of the year? Alternatively, do the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

It is unclear what the Commission means by “monthly credits.” If the Commission is suggesting the excess generation be applied as a kWh credit in the next month, the customer-generator would effectively receive compensation at a level in excess of the retail generation rate (since the customer would be billed for distribution, transmission and generation services on lesser kWh purchases in the succeeding month). As previously discussed, the apparent intent of Act 35 is to require compensation of the customer-generator for excess energy at a retail generation rate rather than at a wholesale generation rate, and not at a level which includes non-generation charges.

Act 35 amended Section 5 of the AEPS Act to require that a customer-generator be compensated for “[e]xcess generation . . . produced on an annual basis.” This could be interpreted as meaning that compensation is no longer to be paid monthly. Moreover, determining whether a particular customer-generator produced *excess* generation on an *annual* basis will require netting the months in which the customer-generator produced excess energy against the months in which the customer-generator produced less energy than the customer-generator consumed. Under this interpretation, compensation will be paid only for the *annual* excess generation (if any) supplied by the customer-generator.

WHEREFORE, the OSBA respectfully requests that the Commission revise the regulations at 52 Pa. Code §§75.11-75.15 and §§75.21-75.51 in a manner consistent with the foregoing comments.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "William R. Lloyd, Jr.", written over a horizontal line.

William R. Lloyd, Jr.
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