

Law Offices

November 19, 2007

1000 Westlakes Drive
Suite 300
Berwyn, PA
19312-2409

610-993-2200
610-993-8585 fax
www.drinkerbiddle.com

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

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

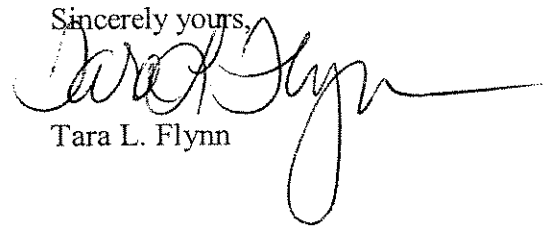
RE: Response to Request for Comments
Docket Nos. M-00051865, L-00050174 and L-00050175

Dear Secretary McNulty:

Enclosed please find an original and 15 copies of the response of the Pennsylvania Waste Industries Association to the Pennsylvania Utility Commissions' October 4, 2007 letter requesting comments on revisions to the Net Metering and Interconnection Regulations at 52 Pa. Code §§ 75.1 *et seq.* to conform with the language of Act 35 of 2007.

Thank you.

Sincerely yours,



Tara L. Flynn

TLF
enclosures
cc w/enc:

Ms. Mary Webber Weston
David J. Brooman, Esquire
Mark C. Hammond, Esquire

Established
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PWIA

Pennsylvania Waste Industries Association
A Chapter of the National Solid Waste Management Association

November 19, 2007

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

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dear Secretary McNulty:

The Pennsylvania Waste Industries Association ("PWIA") appreciates the opportunity to submit these written comments concerning implementation of Act 35 of 2007 ("Act 35"), as part of the *Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards and Processes for Alternative Energy System Qualification and Alternative Energy Credit Certification; Docket Nos. M-00051865; L-00050174 and L-00050175*. The original Alternative Energy Portfolio Standards Act ("Act 213") includes provisions on the standards and processes for qualifying alternative energy systems and certifying alternative energy credits. Act 35 amends several sections of the Act, including those relating to the definition of "Customer-Generator", the reconciliation mechanism for surplus energy supplied through net metering, and the price to be paid for such surplus energy. In its Secretarial Letter published October 4, 2007, the Public Utility Commission (the "PUC" or "Commission") invited comments regarding these revised definitions.

Introduction

PWIA is the Pennsylvania chapter of the National Solid Wastes Management Association, a non-profit organization that represents the interests of the North American waste services industry. PWIA members include both privately-held and publicly-traded companies that own and operate numerous commercial solid waste facilities throughout the Commonwealth. In addition to solid waste landfills, our members operate resource recovery facilities, recycling facilities, transfer stations and collection operations. One of PWIA's primary missions is to advance the safe, efficient, and environmentally responsible management of solid waste, and to promote sound public policy affecting the management of solid waste.

Act 35, Section 1, amending the definition of "Customer-Generator in Act 213, Section 2

The definition of Customer-Generator, in conjunction with the definition of Net Metering, is used to determine eligibility in the net metering program. Under Act 213, non-residential generating systems meet the definition of Customer-Generator only if their nameplate rating was one megawatt or less. Under Act 35, this limit has been raised to three megawatts. In

addition, systems up to five megawatts that operate in parallel with the grid during emergencies or those that operate “for the primary or secondary purpose of maintaining critical infrastructure, such as ... wastewater treatment plants” also meet the definition of Customer-Generator.

PWIA supports this change to the definition of Customer-Generator, as it will allow a greater number of alternative energy generators to participate in the net metering program, thereby promoting alternative energy projects within the Commonwealth.

PWIA encourages the PUC to provide further regulatory definition of the types of activities that have a “primary or secondary purpose” of supplying electricity to a “critical infrastructure.” Any system that regularly provides power to either an on-site or an off-site “critical infrastructure”, including each of those provided as examples in Act 35¹, qualifies for the 5 megawatt threshold. In other words, the “primary or secondary purpose” is not a phrase that should be left to case-by-case interpretations of the electric utility, but should be defined in regulations to include any critical infrastructure system that is regularly powered by the alternative energy system. PWIA recommends that any regulations adopted in this regard specify that wastewater treatment systems used for the treatment of landfill leachate are “critical infrastructure”, as defined in the Acts.

Act 35, Section 3, amending Act 213, Section 5

Act 35 mandates that utilities pay “full retail” for excess electricity supplied by net-metered Customer-Generators. Formerly, under Act 213, the generating facility was compensated at the utility’s “avoided cost of wholesale power” and the measuring period was accrued on a monthly rather than on an annual basis. The regulations implementing this amendment will have a tremendous impact on whether the legislature’s goal of increasing alternative energy generation is met.

The greater the economic incentive to generate alternative power, the greater the generation and supply of alternative power. The legislature recognized that the previous definition failed to provide sufficient incentives to meet the goals of Act 213. The legislature amended the law to provide greater economic incentives for the Customer-Generator to produce alternative energy. That legislative purpose should be fulfilled by the PUC.

The phrase “full retail” is significant. Its use by the legislature is particularly notable given the language it replaces, “avoided cost of wholesale power”. Full is an adjective commonly defined to mean “Containing all that is possible or normal” and “Complete in every detail”². The legislature has spoken—it wants Customer-Generators to be paid the complete, “retail” price, a price that contains all the possible or normal components.

¹ Act 35 does not change the original examples provided in Act 213: “...such as Homeland security assignments, emergency services facilities, hospitals, traffic signals, wastewater treatment plants or telecommunications facilities...”

² Webster’s II New Collegiate Dictionary.

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The first step in analyzing a statute is to give meaning to each word. Unless the statute indicates otherwise, the plain meaning of each word should be used. The legislature used "full retail" as opposed to simply "retail". To compromise the definition of "full retail" in any way would be inconsistent with the explicit language of Act 35. The legislature specifically replaced a "wholesale" value with a "retail" value. The plain language of a statute should not be disregarded in pursuit of unstated legislative intent when the words are clear and free of ambiguity. 1 Pa.C.S § 1921(b). Net generating Customer-Generators are to be paid full retail value, i.e., the price at which the utility sells electricity to its retail customers, for the excess electricity they produce.

Legislative intent requires that full retail be interpreted as the value paid by the Customer-Generator when purchasing electricity. The plain meaning of Act 35 requires the same conclusion. This definition is supported by the public policy underlying Act 213 and Act 35.

We are not unmindful of the argument that somehow "fairness" dictates that Customer-Generators should only be paid for the retail price of power generation, since Customer-Generators are not directly supplying transmission or distribution of the electricity. This argument fails on two accounts. First, this is a policy issue which the legislature considered and rejected. Second, the cost of electrical generation through alternative means by Customer-Generators is different than the costs of electrical generation by traditional means. The legislature recognized that because these costs are different, and generally higher for alternative energy systems, the payment of "full retail" is a necessary incentive to promote alternative energy. If alternative energy and traditional energy could be generated for comparable costs, Act 213 and Act 35 would not be necessary.

Conclusion

PWIA and its members believe Act 213, as amended by Act 35, has significant potential to provide additional incentives for alternative energy generation and deliver increased environmental benefits to Pennsylvania. The legislation requires payment for excess generation by Customer-Generators to be made at "full retail", a value that encompasses all charges that a customer would pay the utility. The PUC should implement the plain meaning of Act 35 and adopt regulations consistent with that legislative directive.

Thank you for the opportunity to comment on Act 35. Please feel free to contact me directly should you wish to discuss our comments in more detail.



Tim O'Donnell
President
Pennsylvania Waste Industries Association