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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  Harrisburg, PA. 17105-3265 |  |

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|  | Public Meeting held June 30, 2011 |
| Commissioners Present: |  |

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| Robert F. Powelson, Chairman | |  |
| John F. Coleman, Jr., Vice Chairman | |  |
| Tyrone J. Christy | |  |
| Wayne E. Gardner | |  |
| James H. Cawley | |  |
|  |  |
| Net Metering – Use of Third Party Operators | Dockets No. M‑2011‑2249441 |

**TENTATIVE ORDER**

**BY THE COMMISSION:**

With the passage of the Alternative Energy Portfolio Standards Act of 2004[[1]](#footnote-1) (AEPS Act), this Commonwealth embarked on a policy of promoting renewable generation sources. The Commission has been steadfastly committed to making the AEPS Act work and promoting reasonable alternative energy policies. With this Tentative Order, we propose that it be the policy of the Commission that the term “operator” shall be interpreted as including customer-generators with distributed alternative energy systems that contract with a third party to perform the operational functions of the system, and seek comment on this proposal, as set forth more completely in this Tentative Order.

**BACKGROUND**

On November 30, 2004, Governor Edward Rendell signed Act 213 into law. Act 213 became effective on February 28, 2005, and established the Alternative Energy Portfolio Standards Act in Pennsylvania. The AEPS Act includes two key mandates: one, greater reliance on alternative energy sources, such as solar photovoltaic, in serving Pennsylvania’s retail electric customers; and two, the opportunity for customer-generators to interconnect and net meter small alternative energy systems. The Pennsylvania General Assembly charged the Commission with implementing and enforcing these mandates, with the assistance of the Pennsylvania Department of Environmental Protection.[[2]](#footnote-2)

The AEPS Act defines net metering as “[t]he means of measuring the difference between the electricity supplied by an electric utility and the electricity generated by a customer-generator when any portion of the electricity generated by the alternative energy generating system is used to offset part or all of the customer‑generator’s requirements for electricity.”[[3]](#footnote-3) The AEPS Act also permits virtual net metering “on properties owned or leased and operated by a customer-generator and located within two miles of the boundaries of the customer-generator’s property and within a single electric distribution company’s service territory.”[[4]](#footnote-4)

The AEPS Act defines a customer-generator as:

a nonutility owner or operator of a net metered distributed generation system with a nameplate capacity of not greater than 50 kilowatts if installed at a residential service or not larger than 3,000 kilowatts at other customer service locations, except for customers whose systems are above three megawatts and up to five megawatts who make their systems available to operate in parallel with the electric utility during grid emergencies as defined by the regional transmission organization or where a microgrid is in place for the primary or secondary purpose of maintaining critical infrastructure, such as homeland security assignments, emergency services facilities, hospitals, traffic signals, wastewater treatment plants or telecommunications facilities, provided that technical rules for operating generators interconnected with facilities of an electric distribution company, electric cooperative or municipal electric system have been promulgated by the Institute of Electrical and Electronic Engineers and the Pennsylvania Public Utility Commission.[[5]](#footnote-5)

The Commission’s regulations require electric distribution companies (EDCs) to “offer net metering to customer-generators that generate electricity on the customer-generator’s side of the meter using Tier I or Tier II alternative energy sources, on a first come, first served basis.”[[6]](#footnote-6) Regarding electric generation suppliers (EGSs) the Commission’s regulations state that “EGSs may offer net metering to customer‑generators, on a first come, first served basis, under the terms and conditions as are set forth in agreements between EGSs and customer-generators taking services from EGSs.”[[7]](#footnote-7)

The Commission’s regulations define a customer-generator facility as “[t]he equipment used by a customer-generator to generate, manage, monitor and deliver electricity to the EDC.”[[8]](#footnote-8) The Commission’s regulations also define net metering as “[t]he means of measuring the difference between the electricity supplied by an electric utility or EGS and the electricity generated by a customer-generator when any portion of the electricity generated by the alternative energy generation system is used to offset part or all of the customer-generator’s requirements for electricity.”[[9]](#footnote-9)

**DISCUSSION**

We believe that it should be the policy of this Commission to support access to alternative energy systems to as broad an array of consumers as possible. We are aware of the fact that consumers often may need to make a significant initial capital outlay in order to install an alternative energy facility at their residence or small business, and that this significant capital expense is an impediment to many consumers wishing to install such systems.

We are aware of a business model employed in other states whereby an alternative energy system developer will install a system on a customer’s premises while maintaining ownership and performing maintenance and operations functions of that system. The electricity generated by the installed alternative energy system is then sold to the consumer through a power purchase agreement. Proponents of this business model are concerned, however, that the AEPS Act and the Commission’s corresponding Regulations could be interpreted as prohibiting such a facility from net metering.

To prevent prejudice to consumers wanting to take advantage of this business model, we propose that it be the policy of this Commission to allow alternative energy systems installed using the business model described above to net meter. Specifically, for the purposes of net metering, it should be the policy of this Commission that the term “operator”[[10]](#footnote-10) shall be interpreted as including customer-generators with distributed alternative energy systems that contract with a third-party to perform the operational functions of that system. We further propose that it be the policy of this Commission to limit this interpretation to alternative energy systems installed on property owned or leased by the customer‑generator and designed to generate no more than 110% of the customer‑generator’s electric consumption[[11]](#footnote-11) and the nameplate capacity of the system does not exceed the size limits defined in the AEPS Act.[[12]](#footnote-12)

We are proposing the system size limitation of 110% of a customer‑generator’s prior year electricity consumption to prevent the installation of oversized alternative energy systems that are more accurately described as merchant generation posing as customer-generators. The Commission believes that not allowing merchant generation to net meter is reasonable and consistent with the intent of the AEPS Act. We note that the definition of net metering contained in the AEPS Act makes it clear that the intent of net metering is to provide electric utility customers with a reasonable means to offset their electric consumption without having to install expensive and potentially hazardous electric storage devices. We do not believe the AEPS Act intended net metering as an avenue for merchant generators to circumvent the wholesale electric market in an attempt to avoid Federal Energy Regulatory Commission jurisdiction. Furthermore, we do not believe it was the intent of the AEPS Act to provide retail rate subsidies[[13]](#footnote-13) to merchant generation facilities at retail customer expense that may result in cross-class subsidization.

**CONCLUSION**

With this Tentative Order, the Commission seeks comments on the proposed net metering policy described in this Tentative Order. This Tentative Order and filed comments will be made available to the public on the Commission’s alternative energy[[14]](#footnote-14) web page. **THEREFORE,**

**IT IS ORDERED:**

1. That this Tentative Order shall be published in the *Pennsylvania Bulletin* and served upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff, all jurisdictional electric distribution companies, all licensed electric generation suppliers, and all parties who filled comments under Docket No. L-00050174.

2. That interested parties shall have thirty (30) days from the date this Tentative Order is published in the *Pennsylvania Bulletin* to file an original and three (3) copies of written comments to the Pennsylvania Public Utility Commission, Attention: Secretary Rosemary Chiavetta, P.O. Box 3265, Harrisburg, PA 17105-3265.

3. That the comments shall be electronically mailed to Scott Gebhardt, Analyst, at [sgebhardt@state.pa.us](mailto:annmarino@state.pa.us), and Kriss Brown, Assistant Counsel, at [kribrown@state.pa.us](mailto:kribrown@state.pa.us).

4. That the contact person for technical issues is Scott Gebhardt, Analyst, Bureau of Conservation, Economics and Energy Planning, (717) 425-2860 or [sgebhardt@state.pa.us](mailto:sgebhardt@state.pa.us). The contact person for legal issues is Kriss Brown, Assistant Counsel, Law Bureau, (717) 787-4518 or [kribrown@state.pa.us](mailto:kribrown@state.pa.us).

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: June 30, 2011

ORDER ENTERED: July 28, 2011

1. 73 P.S. §§ 1648.1 – 1648.8 and 66 Pa.C.S. § 2814. [↑](#footnote-ref-1)
2. 73 P.S. § 1648.7(a) and (b). [↑](#footnote-ref-2)
3. 73 P.S. § 1648.2. [↑](#footnote-ref-3)
4. See definition of net metering at 73 P.S. § 1648.2. [↑](#footnote-ref-4)
5. 73 P.S. § 1648.2. [↑](#footnote-ref-5)
6. 52 Pa. Code § 75.13(a). [↑](#footnote-ref-6)
7. *Id*. [↑](#footnote-ref-7)
8. 52 Pa. Code § 75.12. [↑](#footnote-ref-8)
9. *Id*. [↑](#footnote-ref-9)
10. As found in the definition of “customer-generator” at 73 P.S. § 1648.2. [↑](#footnote-ref-10)
11. As measured by the customer-generator’s total electric usage in the 12 full months immediately preceding submission of the interconnection application. In the event of a system expansion, the customer-generator would need to demonstrate that the expansion is designed not to exceed 110% of their electricity consumption in the 12 full months immediately preceding submission of the expansion application, in order to fall within the policy proposed in this Order. [↑](#footnote-ref-11)
12. As set forth in the definition of “customer-generator” at 73 P.S. § 1648.2. [↑](#footnote-ref-12)
13. We note that this proposed policy will not restrict otherwise qualifying alternative energy systems from selling the alternative energy credits they generate. [↑](#footnote-ref-13)
14. http://www.puc.state.pa.us/electric/electric\_alt\_energy.aspx [↑](#footnote-ref-14)