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August 4, 2014

Via Electronic Filing
Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: Implementation of the Alternative Energy Portfolio Standards Act of 2004
Docket No. L-2014-2404361

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Comments of Granger Energy of Honey Brook LLC and Granger Energy of Morgantown LLC on the Proposed Regulations with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Carl R. Shultz

CRS/lww
Enclosure

cc: Kriss Brown w/enc. (via email only)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of the Alternative Energy Portfolio Standards Act of 2004	:	Docket No. L-2014-2404361

COMMENTS OF
GRANGER ENERGY OF HONEY BROOK LLC AND
GRANGER ENERGY OF MORGANTOWN LLC
ON THE PROPOSED REGULATIONS

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Date: August 4, 2014

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I. INTRODUCTION

Granger Energy of Honey Brook LLC and Granger Energy of Morgantown LLC (collectively, "Granger") is concerned that the Commission's Proposed Regulations[1] will severely limit both the existing and prospective eligibility of customer-generators' existing and planned energy projects for net metering in Pennsylvania.

Alternative energy systems that are either already on line or which have taken substantial steps to be on line should not have new and significant restrictions imposed on them. They have made financial and operational commitments in good faith reliance on the existing rules. Specifically, Granger believes that any existing customer-generator who is, at the time of the final passage of any such limitation, (a) actually engaged in the practice of net-metering or (b) have or are seeking a Method of Accommodation from the Electric Distribution Company ("EDC") should be grandfathered and exempted from the application of the Commission's proposed regulations.

Granger further believes that any such grandfathered energy projects should be permitted to expand to full nameplate capacity as set forth in the Alternative Energy Portfolios Standards Act[2] ("AEPS Act") and the existing regulations: 50 kW for residential customer-generators, 3

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1 *See Proposed Rulemaking; Implementation of the Alternative Energy Portfolio Standards Act of 2004*, PUC Docket No. L-2014-2404361, Order entered February 20, 2014 ("Proposed Rulemaking Order"); *Notice; Proposed Rulemaking; Implementation of the Alternative Energy Portfolio Standards Act of 2004*, 44 Pa.B. 4157, 4179 (Saturday, July 5, 2014). Annex A of the Proposed Rulemaking Order is referred to as the "Proposed Regulations."

2 The Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.1, *et seq.*, was signed into law in 2004. Act 213 of 2004. It has been amended on two occasions. First, by the Act 35 of 2007, which took effect July 19, 2007, amended certain definitions and provisions for net metering and interconnection. Notably, Act 35 added the definition of virtual meter aggregation to the AEPS Act. Second, by the Act 129 of 2008, which became effective on November 14, 2008, amended the AEPS Act by modifying the scope of eligible Tier I alternative energy sources and the Tier I compliance obligation. Except where the context clearly indicates otherwise, references to the AEPS Act shall include reference to Act 213 of 2004 as originally enacted and as amended.

megawatts (MW) for non-residential customer-generators or 5 MW for non-residential customer-generators who satisfy the additional statutory design criteria contained in the AEPS Act.

II. BACKGROUND

The parent of Granger, Granger Holdings, LLC, is a leader in the development of renewable energy projects that use landfill gas and has been since the technology began. It is a third generation, family-owned and operated business based in Lansing, Michigan. It specializes in partnering with landfill owners, private industry, municipalities and utilities to create mutually beneficial landfill gas recovery solutions that make sense economically and environmentally. Once recovered, landfill gas can be used as an alternative to natural gas or other conventional fossil fuels by directly powering industrial applications or as a fuel to generate electricity.

Granger is a customer-generator using, and intending to use, net metering in PPL's service territory. Specifically, Granger Energy of Honey Brook LLC is located at the Chester County Solid Waste Authority Lanchester Landfill in Chester County, Pennsylvania, and provides landfill gas to industrial customers.[3] Granger Energy of Honey Brook LLC also owns and operates generation facilities that use landfill gas to generate electricity (currently 3.2 MW) which is delivered to the distribution system of PPL Electric Utilities ("PPL"), consistent with current law, rules and regulations. This Landfill Gas Generation Facility generates sufficient electric energy to satisfy the annual energy usage at the landfill gas processing plant. Each year it also generates excess electric energy. Granger Energy of Honey Brook LLC has plans to expand these existing generation facilities (up to 5 MW as currently allowed) and to continue to

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3 *Petition of Granger Energy of Honey Brook, LLC for a Declaratory Order Concluding that the Provision of Landfill Gas by Granger Energy of Honey Brook, LLC to Four Industrial Customers Constitutes Neither the Provision of Public Utility Service under 66 Pa. C.S. § 102 nor Natural Gas Distribution Service or Natural Gas Supply Services under 66 Pa. C.S. § 2202*, PUC Docket No. P-00032043, Order entered September 8, 2004, 2004 Pa. PUC LEXIS 33.

deliver electricity to the PPL system under the AEPS Act, the Commission's Regulations, and PPL's net metering tariff provisions. In fact, Granger Energy of Honey Brook LLC has a Method of Accommodation from PPL for the expansion from 3.2 MW to 4.8 MW.

Granger Energy of Morgantown LLC is located at the Conestoga Landfill in Berks County, Pennsylvania. It provides landfill gas to industrial customers.[4] It is in the process of planning and permitting generators, which it will own and operate, to generate electricity (up to 5 MW as currently allowed under the AEPS Act) that will be delivered to the PPL distribution system under the AEPS Act, the Commission's Regulations, and PPL's net metering tariff provisions. In fact, Granger Energy of Morgantown LLC has a Method of Accommodation from PPL for the project at 3.2 MW, and an application is currently in process for a revised method of accommodation for the project for 4.8 MW. This Landfill Gas Generation Facility will be sized to satisfy the annual electrical consumption at the landfill and to generate excess electric energy.

In addition, Granger has also assisted others to design and construct an alternative energy generating system using landfill gas. Granger teamed up with L&S Sweeteners ("L&S"), a division of Zook Molasses Company, to produce renewable energy. L&S is an electric distribution customer of PPL. L&S and Granger created a special purpose entity ("SPE"), Zook Generation LLC, so that they could share the ownership and benefits of the energy project. The energy project uses landfill gas supplied by Granger to generate electricity for use by L&S and to use net metering to sell the excess electricity to PPL. The project's current alternative energy generating system is 3.2 MW, but there are plans to expand it up to 4.8 MW. The project was sized to satisfy the annual energy usage at the L&S' manufacturing plant and to generate excess

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4 *See Granger Energy of Morgantown, LLC;* PUC Docket No. M-00051865F0002, Notice and Disclosure Statement, published on July 12, 2008. That Notice and Disclosure Statement is available at http://www.pabulletin.com/secure/data/vol38/38-28/1309.html.

electric energy. Presently, L&S uses electricity from the project to power roughly 80 percent of its operations. So, expansion is necessary for L&S to fully self-supply its own requirements for electricity.

Other current landfill gas customers of Granger are also interested in owning and operating facilities that use landfill gas to generate electricity and in selling any excess electricity to PPL (or an EGS) under the AEPS Act, the Commission's Regulations, and PPL's net metering tariff provisions.

III. COMMENTS ON THE PROPOSED REGULATIONS

The Commission has been charged by the Pennsylvania General Assembly ("General Assembly" or "Legislature") with carrying out the provisions of the AEPS Act. Among other things, the AEPS Act guarantees the right of customer-generators to interconnect and net meter alternative energy systems.[5]

Granger opposes any new or additional restrictions on the eligibility of customer-generators and energy projects for net metering in Pennsylvania. Granger submits that the proposed revisions to the Commission's net metering and interconnection regulations, which implement the AEPS Act, will severely limit the eligibility of both customer-generators and energy projects for net metering in Pennsylvania. Such changes are inconsistent with the text and spirit of the AEPS Act and should be rejected.

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5 *See* 73 P.S. §§ 1648.2 (definition of "net metering" and "customer-generator"), 1648.5 (relating to interconnection standards for customer-generator facilities).

A. Legislative Intent Behind The AEPS Act

The legislative intent behind the AEPS Act is to encourage the use of alternative energy systems.[6] The intent and the clear language of the AEPS Act itself show an effort to remove the burdens and barriers for using alternative energy sources. As noted, the AEPS Act provides for the right of customer-generators[7] to interconnect and net meter[8] alternative energy systems.[9] The AEPS Act specifies the eligibility and design criteria for the alternative energy systems:[10] It lays

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6 *See Final Rulemaking Re Net Metering for Customer-generators pursuant to Section 5 of the Alternative Energy Portfolio Standards Act*, 73 P.S. § 1648.5; *Implementation of the Alternative Energy Portfolio Standards Act of 2004: Net Metering,* PUC Docket No. L-00050174; M-00051865, Final Rulemaking Order entered June 23, 2006 ; 2006 Pa. PUC LEXIS 20 ("Final Rulemaking Order – June 2006")(which provides that the AEPS Act's intent is to remove barriers to net metering and provide appropriate treatment to customer-generators who wish to net meter); *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, PUC Docket No. M-00051865, *Implementation Order entered March 25, 2005* 2005 Pa. PUC LEXIS 35 ("Implementation Order") (which notes that distributed resources will play an important role in the alternative energy market and that the Commission intends to develop net metering and interconnection rules that will facilitate the participation of these resources in this market).

7 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." 73 P. S. § 1648.2.

8 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.'' 73 P. S. § 1648.2.

9 *See* footnote 5, *supra.*

10 *See* footnotes 11 to 14, *infra.* In comparison, the technical requirements and the requirements for interconnection where left open for promulgation by the Commission. *See* 73 P.S. § 1648.5.

out the power sources that quality,[11] the allowance size of individual systems,[12] the rate at which excess generation from customer-generators is credited,[13] and the period over which credits may accrue.[14]

This right was expanded by Act 35 of 2007 which amended a number of provisions in AEPS Act.[15] These changes included (a) revising the statutory definition of "customer-generator" to increase the capacity limit on non-residential projects from 1 to 3 MWs generally, and from 2 to 5 MWs for those projects that operate in parallel with the grid; (b) revising the statutory definition of "net metering to delete the requirement that the primary purpose of the generation system must be to offset part or all of the customer-generator's electricity needs; and (c) revising the AEPS Act to require that customer-generators be compensated for excess generation on an annual basis at the full retail value for energy, as opposed to the current monthly standard at the avoided cost of wholesale power.[16]

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11 Net metering is available for alternative energy systems that use Tier I or Tier II alternative energy sources. *See* 52 Pa. Code § 75.13(a). Alternative energy sources, including (but are not limited to) landfill methane gas. 73 P.S. § 1648.2 (definition of "alternative energy sources" at subparagraph 8).

12 The General Assembly expressly stated that, to qualify for net metering, the customer-generator have an alternative energy system must have a nameplate capacity of (a) not greater than 50 kilowatts if installed at a residential service location; (b) not larger than 3 MWs at other customer service locations; or (c) not larger than 5 MWs and meets the other conditions set forth the AEPS Act. 73 P.S. §§ 1648.2.

13 73 P.S. § 1648.5 ("Excess generation from net-metered customer-generators shall receive full retail value for all energy produced on an annual basis.").

14 *Id.*

15 *See* footnote 2, *supra.*

16 The Commission revised the net metering regulations to be consistent with the Act 35 of 2007 amendments to AEPS through a final omitted rulemaking. *Implementation of Act 35 of 2007; Net Metering and Interconnection,* PUC Docket No. L-00050174, Final Omitted Rulemaking Order entered July 2, 2008; 2008 Pa. PUC LEXIS 724 ("Final Omitted Rulemaking Order – July 2008"). These revisions were approved by IRRC and became effective November 29, 2008. 38 Pa.B. 6445, 6473 (November 29, 2008).

There are good reasons for reading the AEPS Act as providing the maximum development of alternative energy sources. For example, converting landfill gas to energy has many benefits: Landfill gas is a reliable source of energy because it is generated 24 hours a day, seven days a week. By using landfill gas to produce energy, landfills can significantly reduce emissions of methane and decrease the need to generate energy from fossil fuels.[17] And, according to the Environmental Protection Agency's ("EPA") Landfill Methane Outreach Program, landfill gas projects also provide an array of benefits in the local economy:[18]

- Landfill gas use can create jobs associated with the design, construction and operation of energy recovery systems.
- Landfill gas projects involve engineers, construction firms, equipment vendors and utilities or end-users of the power produced.
- Businesses are also realizing the cost savings associated with using landfill gas as a replacement for fossil fuels, such as natural gas.

B. Section 75.13(a)(3); The 110% Consumption Limit

Granger submits that the proposed 110% consumption limitation should be rejected as inconsistent with the text and spirit of the AEPS Act. Granger further submits - if consumption limits are accepted, the grandfathering of existing and proposed customer-generator facilities is absolutely required in order to avoid interfering with the reasonable business and operational expectations of the customer-generators who are either already on line or have taken substantial steps to become so.

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17 http://www.epa.gov/lmop/basic-info/index.html.

18 *Id.*

1. Consumption Limits Should Be Rejected

The AEPS Act provides for the right of customer-generators to interconnect and net meter alternative energy systems.[19] There are no consumption limits within the AEPS Act on the size of customer-generator facility.[20] But, the AEPS provides that customer-generators may design, build and operate a facility up to a specified nameplate capacity. For a residential property, the nameplate capacity limit is 50 kilowatts.[21] For non-residential properties as business or industry), the nameplate capacity limit is 3,000 kilowatts or 3 MWs.[22] But, if certain design criteria are satisfied,[23] a non-residential facility can have a nameplate capacity of up to 5,000 kilowatts or 5 MWs.[24]

The current regulation tracks the statutory design criteria.[25] But, in the Proposed Rulemaking, the Commission has proposed a consumption limit for all customer-generator facilities.[26] This consumption limit would be in addition to the nameplate capacity limits in the AEPS Act.[27] Stated otherwise, a customer-generator facility must be designed to generate no more than 110% of the customer-generator's annual electric consumption, provided that its nameplate capacity does not exceed the nameplate capacity limit defined in the AEPS Act.

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19 *See* footnote 5, *supra.*

20 *See* footnotes 7 to 14 , *supra*, and the accompanying text.

21 73 P.S. § 1648.2 (definition of customer-generator). *See* footnotes 7 , *supra.*

22 *Id.*

23 *Id.*

24 *Id.*

25 *See* footnotes 7 to 14 , *supra*, and the accompanying text.

26 Proposed Regulations, at Section 75.13(a)(3).

27 Proposed Rulemaking Order, at p. 13.

It is beyond the statutory authority of the Commission to promulgate a consumption limitation. The creation of consumption limits would exceed the Commission's statutory authority to promulgate regulations. The basic policy of the Commonwealth encourages the use of alternative energy sources. At the legislative level, that basic policy does not include consumption limits. It is true that consumption limits exist in other states.[28] But, those consumption limits were established by the legislative bodies in those states.[29] Those

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[28] *See* 26 Del. C. § 1014(d)(5) ("The Commission .... [shall] provide for net energy metering for customers who own and operate, lease and operate, or contract with a third party that owns and operates an electric generation facility that: ... (5) Is designed to produce no more than 110% of the host customer's expected aggregate electrical consumption, calculated on the average of the 2 previous 12-month periods of actual electrical usage at the time of installation of energy generating equipment. For new building construction, electrical consumption will be estimated at 110% of the consumption of units of similar size and characteristics at the time of installation of energy generating equipment." That standard is repeated in Delaware's regulations, 26 Del. Admin. Code 3001-8.6.2: "The customer-Generator Facility is designed to produce no more than 110% of the Customer's aggregate electrical consumption...." See also, N.J. Stat. § 48:3-87(e)(4) ("The standards shall provide that in order to qualify for net metering aggregation, the customer's solar electric power generation system shall be sized so that its annual generation does not exceed the combined metered annual energy usage of the qualified customer facilities ..."), That standard is repeated in New Jersey's regulations: N.J.A.C. 14:8-4.3(a): EDCs "shall offer net metering . . . provided that the generating capacity of the customer-generator's facility does not exceed the amount of electricity supplied . . . to the customer over an historical 12-month period . . . ." And, N.J.A.C. 14:8-7.3(a)(2): "The generating capacity of the eligible customer's system does not exceed the combined metered annual energy usage of the customer's qualified facilities."; *See also* Rhode Island Gen. Laws § 39-26.4-2 (which limits the "Excess Renewable Net Metering Credit" to that portion of the renewable self-generator's production of electricity beyond one hundred percent (100%) and no greater than one hundred twenty-five percent (125%) of the renewable self-generator's own consumption at the eligible net metering system site during the applicable billing period); Colorado R.S. 40-2-124 (... "retail distributed generation shall provide electric energy primarily to serve the customer's load and shall be sized to supply no more than one hundred twenty percent of the average annual consumption of electricity by the customer at that site."); Michigan CLS § 460.1173 ("The [statewide net metering] program shall ... limit each customer to generation capacity designed to meet only the customer's electric needs."); Nevada Rev. Stat. Ann. § 704.771 ("The term [net metering system] does not include a facility or energy system for the generation of electricity which has a generating capacity that exceeds the greater of: ... One hundred percent of the peak customer-generator's annual requirements for electricity.").

[29] *Id.* Maryland's consumption limit is based on statutory language that limits a customer-generator's facility to one "intended primarily to offset all or part of the customer's own electricity requirements." Md. PUBLIC UTILITIES Code Ann. § 7-306. Because net metering in Maryland is intended primarily to offset part or all of a net-metering customer's requirements

consumption limits were not created "out of whole cloth" by the regulatory body. The creation of consumption limits is a basic policy choice which our Generally Assembly cannot, and did not, delegate to the Commission.[30] The General Assembly authorized the Commission to establish rules, regulations, and standards that implement the legislative intent expressed in the AEPS Act. The Commission cannot invest itself with authority or powers not fairly or properly within the legislative grant.[31] It is, therefore, beyond the statutory authority of the Commission to promulgate a consumption limitation regulation that will act to prohibit and prevent alternative energy sources that satisfy all of the statutory requirements.

Even if this Commission has the statutory authority to promulgate regulation establishing a consumption limitation, any such limitation must be consistent with the AEPS Act. Regulations must be consistent with statute under which it is promulgated, and it is beyond the statutory authority of the Commission to promulgate a regulation that is inconsistent with the AEPS Act..

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for electricity, the Maryland Public Service Commission created a consumption limitation. Specifically, under the Maryland's regulations, a customer may net meter using facilities that are sized to produce up to 200% of a customer's annual baseline kWh use. COMAR 20.50.10.01D(1)(b). Similar language does not currently exist in the AEPS Act.

30 Administrative agencies are created by the Pennsylvania General Assembly, as part of the executive branch, to aid in the faithful execution of laws. Pa. Const. art. IV, § 1; *Blackwell v. State Ethics Commission,* 567 A.2d 630 (Pa. 1989). In *Blackwell*, the Pennsylvania Supreme Court stated that "the Legislature cannot constitutionally delegate the power to make law to any other branch of government or to any other body or authority." *Blackwell*, 567 A.2d at 636. "While the General Assembly may, with adequate standards and guidelines, constitutionally delegate the power and authority to execute or administer a law, the prohibition against delegation of 'legislative power' requires that the basic policy choices be made by the General Assembly." *Id.* at 637.

31 *See, e.g.. Federal Deposit Insurance Corp. v. Board of Finance and Revenue*, 84 A.2d 495, 499 (Pa. 1951).

It is alleged that the Commission has already set more restrictive size limitations on customer-generators in a policy statement.[32] **That is not the case**. In developing that non-binding policy statement,[33] the Commission noted that, under the express terms of the AEPS Act, net metering may not be allowed for an alternative energy system that was owned and operated by an alternative energy system developer.[34] The Commission read the intent of the AEPS Act as providing the maximum development of alternative energy sources, and determined that it would be the policy of the Commission to interpret the term "operator" in the definition of "customer-generator" as including customer-generators with alternative energy systems that contract with a third party that owns and performs the operational functions of that system.[35]

Stated otherwise, this policy statement expressly allowed the development of alternative energy systems that were not clearly within the scope of the AEPS Act. That allowance is consistent with providing the maximum development of alternative energy sources in the Commonwealth.[36] To balance this expanded reading of the AEPS Act, the Commission placed a condition on such alternative energy systems: They must be designed to generate no more than

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32 Proposed Rulemaking Order, at p. 12.

33 Policy statements lack the force of law of properly adopted regulation. A general statement of agency's policy does not establish binding norm upon that agency. It merely announces the agency's provisional intentions for future. Reviewing courts, however, have discretion whether to accept or reject agency's general statement of policy depending on how accurately the agency's interpretation reflects meaning of statute. *See, e.g., Eighty-Four Mining Co. v. Three Rivers Rehabilitation*, 721 A.2d 1061 (Pa. 1998).

34 The AEPS Act requires that the customer-generator be the "owner or operator" of an alternative energy system. 73 P.S. § 1648.2 (definition of "customer-generator").

35 *See Net Metering – Use of Third Party Operators*, Final Order at Docket No. M-2011-2249441 (entered March 29, 2012).

36 The Commission previously read the intent of the AEPS Act as providing the maximum development of alternative energy sources. For example, the Act 213 of 2004 did not express permit virtual net metering. The Commission proposed the allowance of virtual net metering, and that proposal was later adopted by General Assembly in Act 35 of 2007. *See Final Rulemaking Order – June 2006, supra*. That final form rulemaking was legally effective upon publication in the *Pennsylvania Bulletin* on December 16, 2006. 36 Pa.B. 7523, 7562 (December 16, 2006).

110% of the customer-generator's annual electric consumption. That limitation did not conflict with the statute because the circumstance covered was not expressly permissible under the AEPS Act. Nothing supports the expansion of the consumption limitation from this non-binding "policy" – that to Granger's knowledge has not been reviewed by the Independent Regulatory Review Commission or the Courts – into a binding regulation applicable to all alternative energy sources in the Commonwealth.

Granger submits that consumption limits for all projects are inconsistent with the AEPS Act for the following reasons:

First, the consumption limits are inconsistent with the removal of the "primary purpose" requirement from the AEPS Act. Act 213 originally stated, in the definition of net metering, that the primary purpose of the alternative energy system must be to offset part or all of the customer-generator's electricity needs. That "primary purpose" requirement was deleted by Act 35. Presumably, it was deleted to further encourage the use of alternative energy systems. The AEPS Act provides that net metering is available "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."[37] This means that net metering is available if 1% of the electricity generated is used to offset part of the customer-generator's requirements for electricity. If the General Assembly intended to limit eligibility for net metering to alternative energy systems whose "primary purpose" was to offset load, the General Assembly would not have deleted that part of the definition of net metering. By recreating a "primary purpose" requirement through a regulation, the Commission is acting counter to the express legislative action that removed that requirement from the statutory definition.

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[37] 73 P.S. § 1648.2 (emphasis added).

Second, the consumption limits would materially, and illegally, alter and limit the eligibility conditions for net metering in the Commonwealth. The AEPS Act is permissive in nature; it give a customer-generators the right to design, build and operate an alternative energy system up to a specified nameplate capacity.[38] Any consumption limitation in the Proposed Regulations is prohibitory in nature. The consumption limitation is intended to be more stringent and restrictive than the nameplate capacity limits under the AEPS Act, and it would prohibit alternative energy systems from being designed, built or operated at more than some level (100%, 110% or 200%) of the customer-generator's annual electric consumption – even if a larger system could be designed, built or operated under the nameplate capacity limits under the AEPS Act. The 110% consumption level is not based on the reality of electricity needs.[39] To engage in self-supply, a business or industry must be able to satisfy its electricity needs 24 hours a day. Net metering helps the business or industry to "bank" electricity for future use. But, a limit on the aggregate consumption may not enable the business or industry to fully bank credits sufficient to cover down-time for its alternative energy source.

Third, the consumption limitations would limit – rather than encourage – the use of alternative energy systems using alternative energy sources. Granger submits that the

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38 The General Assembly expressly stated that, to qualify for net metering, the customer-generator have an alternative energy system must have a nameplate capacity of (a) not greater than 50 kilowatts if installed at a residential service location; (b) not larger than 3 MWs at other customer service locations; or (c) not larger than 5 MWs and meets the other conditions set forth the AEPS Act.

39 It should be noted that the 110% consumption limitation would not necessarily enable a customer-generator to self-supply at peak demand. If a customer-generator is able to build to satisfy its peak (or more), the EDC should see a reduction in its peak demand requirements. But, if the design limitation is measured on historical or estimated annual system output and customer usage, a customer-generator will not be able to self-supply at its peak demand and the EDC will not see a reduction in its peak demand requirements. Given that this Commission expects EDCs to reduce their peak demand, it is odd that the Commission would refuse to permit customer-generators to self-supply their own peak requirements.

consumption limits would materially harm landfill gas projects, which is one of the types of Tier I alternative energy sources listed under Act 213.[40] Landfill gas is converted to electricity by way of an engine-generator set. The engine is similar to the engine in a car (or large truck). That engine drives the attached generator. To operate efficiently, a single engine-generator set has a name-plate capacity of 1.6 MW. To ensure that a customer-generator is able to fully self-supply, two or three engine-generators may be necessary. Two engine-generator sets would have a nameplate capacity of 3.2 MW, a three engine-generator sets would have a nameplate capacity of 4.8 MW. But, 110% consumption limitation fails to account for the size of the engine-generator set. The landfill gas generating units have been designed to run at the full baseload 1.6 MW and cannot be derated significantly for long periods of time without detrimental effect to the equipment. It is therefore, impossible to operate a landfill gas renewable energy project at a level that is determined by a percentage of a customer-generator load requirement. This means that the 110% consumption limit could effectively foreclose the opportunity for landfill gas renewable energy projects in this Commonwealth. By increasing the burdens and barriers for using net metering, the Commission is disregarding both the intent but also the clear language of the AEPS Act itself. This should not be done by the Commission.[41]

In conclusion, Granger does not agree that the proposed 110% consumption (or similar) limitation should be created by the Commission and applied to any customer-generator, and submits that the Commission is precluded from creating a regulatory definition that is inconsistent with the statutory definition. Notwithstanding the foregoing, if any such limitations are created by the Commission, Granger submits (for the reasons explained in greater detail

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40 *See* footnote 11, *supra.*

41 *See* 1 Pa. C.S. § 1921(b).

below) that Granger and any other customer-generator who is planning to be or actually engaged in the practice of net-metering should be grandfathered and exempted from the application of any such limitation.

2. The Grandfathering Of Existing And Proposed Customer-Generator Facilities Is Necessary - If Consumption Limits Are Accepted

The Proposed Regulations do not contain an explicit provision that preserves prior rights or otherwise acts as a savings clause. It is, therefore, unclear if the Commission intended the Proposed Regulations to terminate any rights of a customer who is actually engaged in the practice of net-metering at the time of the final passage of 110% consumption or similar limitation. If the right to engage in net-metering is not preserved for customer generators who are actually engaged in the practice of net metering at the time of the final passage of such limitation, their facilities may be deemed ineligible for net metering on or after said final passage.[42]

The lack of a savings or similar clause could substantially impair the pending and existing interconnection agreements, and would disturb the vested right of the customer generators, such as Granger, who are engaged in or planning to be engaged in net metering. For example, Granger secured the right to engage in net metering under the AEPS Act and the Commission's regulations at its Lanchester Landfill location. Granger's Landfill Gas Generation Facility was designed, and has been operating under, all of those design constraints. Those

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42 See *Larry Moyer v. PPL Electric Utilities Corp.*, PUC Docket No. C-2011-2273645, Opinion and Order entered January 9, 2014, at 20 (wherein the Commission suggested the Mr. Moyer's prospective eligibility for net metering or virtual meter aggregation was subject to future changes in applicable laws or tariffs). The Reconsideration Opinion and Order entered February 14, 2014 in that case did not provide any clarity on Mr. Moyer's prospective eligibility for net metering or virtual meter aggregation.

constraints allowed the Landfill Gas Generation Facility to be designed to generate more than 110% of Granger's on-site power consumption. Arguably, if the 110% consumption limitation is applied to Granger's Landfill Gas Generation Facility, the entire Landfill Gas Generation Facility would be deemed ineligible for net metering. This is the likely result because 110% consumption limitation is written as a limitation on the design or size of the facility, and not output of the facility. Thus, if the Landfill Gas Generation Facility is not eligible for net metering, Granger would not be able to use that Facility to self-supply electricity and generate excess electricity that can displace the need for traditional electricity.

Elimination of Granger's right to engage in net metering is not supported by the nature and strength of the public interest articulated by the Commission. As noted above, the Legislative intent behind the AEPS Act was to encourage the use of alternative energy sources. The 110% consumption limitation would have the opposite effect.

Simply put, Granger submits that the lack of grandfathering for its existing and planned projects would violate Granger's vested rights to engage in net metering. Such grandfathering should not be limited to the "as-built" facilities or the facilities in the queue of the interconnection process. At the least, any project with a submitted Method of Accommodation application should be grandfathered from the Proposed Regulations. A "Method of Accommodation" is a report resulting from interconnection studies conducted by an EDC, such as, PPL. It is also known as Feasibility, System Impact, and Facilities Studies, and is based on the project. It identifies options to interconnect the project and contains analysis of the options in the load flow.

That being said, grandfathering to be fully protective must also include the right to expand any such project to its full nameplate capacity for which net metering is permitted by the

AEPS Act. Depending on the customer-generator and the system design, this could be 50 kW, 3 MW or 5 MW. Expansion may not necessarily occur in every grandfathered project. But each grandfathered project should be allowed to grow and expand. Expansion would merely reflect the nature and purpose of the grandfathered use, but that expansion would not be unlimited. Under the AEPS Act, expansion would continue to be limited by nameplate capacity, and by the interconnection process. Stated otherwise, to be expanded, a facility may require improvements or expansion of the interconnection. Interconnection improvements may (or may not) be viable or economical.

C. Section 75.1 and 75.12(a)(2); Eligibility Requirement - Customer-Generators May Not Be A "Utility"

The Commission proposes to define the term "utility" as follows: "A person or entity that provides electric generation, transmission, or distribution services, at wholesale or retail, to other persons or entities."[43] The Commission proposed said regulatory definition so that said term will set forth the class of persons or entities who are not eligible for net metering. Specifically, the second proposed condition on eligibility provides that: "To qualify for net metering, the customer-generator must meet the following conditions: … The owner or operator of the alternative energy system may not be a utility."[44]

Granger submits that the term utility need not be defined by the Commission's regulations.[45] The AEPS Act uses the adjective "nonutility" as part of the statutory definition of

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43 Proposed Regulations, at Section 75.1.

44 Proposed Regulations, at Section 75.13(a)(2) (emphasis added).

45 Granger believes that the terms used in the Commission's net metering and interconnection regulations should be used consistently with the Commission's other regulations, the Public Utility Code and the AEPS Act. This belief should be shared by the Commission. In 2005, the

a customer-generator. That definition specifically identifies a customer-generator as a "nonutility owner or operator" of the distributed generation system. The AEPS Act does not define the term "nonutility," and the Commission does not propose one as part of the Proposed Rulemaking. Why? A definition of term "nonutility" is not necessary or appropriate. When the AEPS Act is read in *pari materia* with the Public Utility Code, a nonutility is a person or entity that does fall within the statutory definition of a public utility. It is, therefore, convoluted (a) to avoid the term actually used by the AEPS Act and (b) to create a regulatory definition that differs from a statutory definition – in an effort to explain an eligibility condition that is already easily understood.

The proposed regulatory definition is inconsistent with the statutory definition and should not be adopted by the Commission. The proposed regulatory regulation definition of "utility" does not incorporate the statutory definition of "public utility." In fact, the regulatory definition of "utility" makes no reference to the statutory definition,[46] the published guidelines[47] or established precedent related to a "public utility." It is important to note that the proposed regulatory definition of "utility" only requires that a "service" (electric energy) be provided by customer generator to others (the EDC or the Electric Generation Supplier ("EGS")). That definition is, therefore, inconsistent with the statutory definition in Section 102 of the Public

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Commission noted that the AEPS Act and the Public Utility Code are in *pari materia* and should be construed together as one statute. *See* 1 Pa. C.S. § 1932, which provides that (a) Statutes or parts of statutes are in pari materia when they relate to the same persons or things or to the same class of persons or things; and (b) Statutes in pari materia shall be construed together, if possible, as one statute; *Implementation Order, supra* (wherein the Commission explained that provisions of the Public Utility Code and its associated regulations would be applied to the implementation and enforcement of the AEPS Act, except where prohibited by the express statutory language or necessary implication thereof). So, as noted herein, the Commission should not create a regulatory definition that is inconsistent with the statutory definition.

46 66 Pa. C.S. § 102.

47 52 Pa. Code § 69.1401.

Utility Code,[48] and in Section 201 of the Federal Power Act[49] Each of these statutory definitions requires a sale (either a retail or at wholesale), which is an element missing from the proposed definition of "utility." No explanation is given by the Commission for the difference in definitions, and it is not explained how the deviation between definitions is consistent with the Public Utility Code and the legislative intent of the General Assembly.

Granger further submits that the proposed regulatory definition of "utility" is confusing for customer-generators (and others). The regulatory term "utility" is not easily distinguishable from the statutory term "public utility." And, Granger would argue that the term "utility" is actually a shorthand term of art expressing the concept of a "public utility." The Commission's use of inconsistent definitions means that the regulatory definition would allow a person not otherwise an "electric" public utility[50] under the statutory definition to be a "utility" under the proposed regulatory definition. This sets a regulatory standard that is hopelessly inefficient, which is likely to be mismanaged and that will lead to absurd results.

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48 The Public Utility Code defines a "public utility" as: "Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for … Producing, generating, transmitting, distributing or furnishing … electricity … for the production of light, heat, or power to or for the public **for compensation**." 66 Pa. C.S. § 102 (emphasis added). The term does not include: "Any person or corporation, not otherwise a public utility, who or which furnishes service only to himself or itself." *Id.*

49 Generally, the term "public utility" when used in this subchapter and subchapter III of this chapter means any person who owns or operates facilities subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC"). 16 U.S. Code § 824(e). FERC's jurisdiction over sales of electricity is limited to sales for resale (i.e., wholesale sales) in interstate commerce. Section 201(b) of the Federal Power Act ("FPA") states that FERC's jurisdiction applies to "the sale of electric energy at wholesale in interstate commerce, but except as provided in paragraph (2) shall not apply to any other sale of electric energy." 16 U.S. Code § 824(b).

50 The Commission suggests that clarification is needed so that non-electric utilities, such as water and wastewater utilities are not included in the statutory prohibition. However, the Commission expressly rejected any such implication in 2006, and has not indicated that anyone has actually attempted to preclude non-electric utilities, such as water and wastewater utilities, from engaging in net metering. *See Final Rulemaking Order – June 2006, supra.*

For example, a landlord providing electric service to his tenants does not fall within the statutory definition of a public utility.[51] That same landlord would, however, fall into the regulatory definition of "utility" because that landlord would be providing electric generation service to other persons or entities. This means that landlords would be precluded from using a net metered alternative energy system to provide electric service to tenants. In addition, it would appear that the definition of "utility" could be read as preventing a customer-generator from forming or taking part in a SPE to help it finance the alternative energy generating system. That SPE would, technically, be engaged in providing electric generation service to a customer-generator. No justification or explanation is given by the Commission for excluding such businesses or business structures from using net metering.

In conclusion, Granger submits that it is not necessary or appropriate or define the term "utility" in the Commission's Regulations. Alternatively, if the term "utility" is to be defined, it should be defined in a way that matches the statutory definition in Section 102.

D. Section 75.12; The "Retail Customer" Requirement

The Commission has proposed to change the regulatory definition of "customer-generator" to include a requirement that the customer-generator be a "retail customer" of the EDC.[52] The term "retail customer" does not exist in the statutory definition of "customer-generator,"[53] and it should not be inserted by the Commission.

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51 *Drexelbrook Associates v. PUC*, 212 A.2d 237, 239 (Pa. 1965) ("Drexelbrook") (provision of electric and water service by a landlord to limited group, the landlord's own tenants, was not service to the public).

52 Proposed Regulations, at Section 75.12.

53 *See* footnote 7, *supra*.

The proposed meaning of the term "retail customer" is not clear. That term is not being defined in the Proposed Regulations. That term is, however, defined in other Commission Regulations and by the Public Utility Code as a "retail electric customer.[54] Under the Public Utility Code, a "retail electric customer" is a "direct purchaser of electric power. The term excludes an occupant of a building or facility where the owners/operators manage the internal distribution system serving such building or facility and supply electric power and other related power services to occupants of the building or facility; where such owners/operators are direct purchasers of electric power; and where the occupants are not direct purchasers."[55]

The proposed use of the term "retail customer", as defined in the Public Utility Code, is inconsistent with the intent of the AEPS Act. Using the above-described statutory definitions of "retail customer" and "retail electric customer," the Commission will prohibit customer-generators who manage their own internal distribution systems from using a net metered alternative energy system. Despite the fact, that said customer-generation and system would otherwise be eligible for net metering under the AEPS Act. No justification or explanation is given by the Commission for excluding such owners/operators from using self-supply and net metering to provide electric service to their occupants or tenants.

The proposed use of the term "retail customer" will create uncertainty and confusion. The AEPS Act permits a customer-generator to use self-supply and net-metering to offset all of its electricity needs.[56] That customer-generator would have the right to directly purchase electricity from the EDC or an EGS. But, if they are self-supplying their own electricity, they

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54 66 Pa. C.S. § 2803 (definition of "retail customer"); 52 Pa. Code § 54.182 (Terms retail customer or retail electric customer have the same meaning as defined in 66 Pa. C.S. § 2803).

55 *Id.*

56 73 P.S. § 1648.2 (definition of net-metering).

would not actually be making any direct purchases of electric power. Accordingly, it is not clear if the self-supplied customer would quality as a "retail customer." To wit: If we assume that a customer-generator can satisfy the "retail customer" definition by having (but not actually exercising) the right to make purchases from the EDC or an EGS, there does not appear to be any need for the term "retail customer." All net metering interconnections permit the purchases of power by the customer-generator from the EDC/EGS. Since all net metering interconnections will (by definition) satisfy the requirement, it is not clear why the Commission needs to depart from the statutory definition of "customer-generator" to add the term "retail customer." If that assumption is wrong, the self-supplied customer may not quality as a "retail customer" because it is not, in the normal course, making direct purchases of electric power from the EDC or EGS. And, it is not clear how much, or how often, the self-supplied customer-generator must make a direct purchase to maintain its eligibility for net metering.

E. Section 75.13(a)(1) and Section 75.14(e); The Independent Electric Load Requirement

The Commission has proposed a prohibition on "stand-alone" alternative energy generating systems. Specifically, Section 75.13(a)(1) of the Proposed Regulations provides that: "To qualify for net metering, the customer-generator must meet the following conditions: … (1) Have electric load, independent of the alternative energy system, behind the meter and point of interconnection of the alternative energy system. To be independent of the alternative energy system, the electric load must have a purpose other than to support the operation, maintenance or administration of the alternative energy system."[57]

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[57] Proposed Regulations, at Section 75.13(a)(1).

Initially, it should be noted that this blanket prohibition would apply to all customer-generators. However, there is little – if any – justification for creating and applying such a restriction on residential customer generators. Residential customer-generators are, by definition, limited to alternative energy generating systems of 50 kW or less. It is unlikely that a 50 kW system is actually a "merchant generator" posing as a customer-generator. Similarly, as noted below, there is little justification for applying this restrictive requirement to non-residential customers. There are legitimate scenarios where a customer-generator may wish to build a stand-alone, alternative energy system and use virtual net metering to offset that customer-generator's demands at another location.

1. The Independent Electric Load Requirement Should Be Abandoned

The proposed requirement for "independent" electric load is contrary to the legislative intent of the General Assembly and should be abandoned. There is no statutory support in the AEPS Act for an "independent" electric load requirement in the AEPS Act. The statutory definition of "net metering" is satisfied if "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."[58] But, the Act does not create a distinction between requirements for electricity related to (a) the operation, maintenance or administration of the alternative energy system and (b) any other demand or need for electricity. Nor should this Commission. Both requirements for electricity constitute the customer-generator's requirements for electricity and should be used to determine if the statutory definition of "net metering" is satisfied.

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58 73 P.S. § 1648.2.

2. Independent Electric Load Does Not Need To Be Physically Connected To The Alternative Energy Generating System

The Commission's "independent" load requirement, as it is being codified in Section 75.13(a)(1) and Section 75.14(e) of the Proposed Regulations, should be rejected because it would prohibit a customer-generator from creating a stand-alone, net metered alternative energy system – even if that system is designed to self-supply that customers' need for electricity.[59] That requirement, as written, requires that the "independent" electric load, i.e., load not associated with the operation, maintenance or administration of the alternative energy system itself, be physically connected to the alternative energy system.[60]

The Commission's underlying logic is flawed. The Commission's stated intent is to only permit a limited amount of virtual meter aggregation.[61] No such intent was expressed by the Commission in 2006,[62] or in any or prior rulemakings.[63] Nor was it expressed by the Legislature

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59 *See* Proposed Regulations, at Section 75.14(e) ("All properties to be aggregated must be receiving electric generation service and have measureable load independent of any alternative energy system.").

60 PPL appears to be arguing, in other proceedings, that independent electric load must be physically connected to the alternative energy generation system. *See, e.g., Petition of PPL Electric Utilities Corporation for a Declaratory Order To Resolve Uncertainty Regarding Whether Certain Applicants Qualify as a "Customer-Generator" Eligible to Participate In Net Metering*, PUC Docket No. P-2014-2420902; *Larry Moyer v. PPL Electric Utilities Corp.*, PUC Docket No. C-2011-2273645, Opinion and Order entered January 9, 2014, as modified by the Reconsideration Opinion and Order entered February 14, 2014.

61 Proposed Rulemaking Order, at p. 19.

62 *Final Rulemaking Order – June 2006, supra* (wherein the Commission explained: "The fundamental intent of [the AEPS] Act is the expansion and increased use of alternative energy systems and energy efficiency practices. Regulatory and economical barriers have been in place that prevented systems such as anaerobic digesters from being more economical or further developed. This rulemaking provides an opportunity to advance the use of these alternative energy systems in a way that will benefit the customer-generator, ratepayers and the environment by allowing exceptions for this important class of customers. Accordingly, we will permit virtual meter aggregation for customer-generators."). The examples given at that time were limited to agricultural situations. But, nothing in the justification or regulation limits virtual net metering to agricultural situations.

when it made virtual net metering a part of the AEPS Act.[64] And, in any event, it should not be forgotten that said stated intent is actually contrary to the fundamental intent of the AEPS Act.[65]

Under the AEPS Act, a person with electric load at one property should be eligible to build a net metered, stand-alone alternative energy system on the same, an adjacent or nearby property. The two properties can fully eligible for virtual net metering under the AEPS Act and the applicable regulations.[66] As written, both the AEPS Act only requires electric load. It does not require that said independent electric load must be physically connected to the alternative energy generation system. Nor should it. There is nothing inherently wrong with a stand-alone alternative energy system that is designed to satisfy the customer-generator's cumulative demand for electricity. And, no justification has been presented to justify the different treatment based on the existence, or lack, of a physical connection between the independent electric load and the alternative energy generation system.

For example, the Commission has noted that it is common for a farmer to own multiple, non-contiguous parcels of land that were separately metered to measure the load served at each location. The proposed independent load requirement would prohibit a farmer from designing,

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63 *See Final Rulemaking Re Interconnection Standards for Customer-generators pursuant to Section 5 of the Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.5*, PUC Docket No. L-00050175, Final Rulemaking Order entered August 22, 2006, as modified on Reconsideration September 19, 2006 ("Final Rulemaking Order – August 2006"); *Final Omitted Rulemaking Order – July 2008, supra; Implementation of the Alternative Energy Portfolio Standards Act of 2004*, PUC Docket No. L-00060180, Final Rulemaking Order entered September 29, 2008 ("Final Rulemaking Order – September 2008").

64 *See* footnote 2, *supra*.

65 *See* footnote 62, *supra*. *See* also footnotes 7 to 14 , *supra*, and the accompanying text.

66 73 P.S. § 1648.2 (definition of net metering, which provides that: "Virtual meter aggregation 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 shall be eligible for net metering."). *See, e.g.,* 52 Pa. Code §§ 75.12, 75.13(c), 75.14(e).

building and operating a stand-alone alternative energy system on unproductive farm land located away from (but within 2 miles of) other farming activities where "independent" electric load exists and using virtual net metering offset his electricity needs. The lack of a physical connection between the alternative energy system and the need for electricity does not negate in any way the customer-generator's cumulative need for electricity. The need for virtual meter aggregation is not limited to agricultural situations. It would not inconceivable that a business, such as hotel or resort, that is located next to a major highway may wish to self-supply all or a portion of its demand for electricity. If space is limited at the actual site of the business, that business may need to install and operate an alternative energy system at site located away from (but within 2 miles of) its primary business. The business would then use virtual net metering to offset demand at its primary business. By way of further example, solar installations at schools are generally limited by roof space. No justification is presented for preventing a school from stand-alone wind, solar or other alternative energy system on a parcel located away from (but within 2 miles of) the main school buildings, and using virtual net metering to offset its electricity needs.

The independent load requirement, as proposed in the Proposed Regulations, is unclear and appears to be prone to inconsistent application. By way of illustration, consider Mr. Moyer's situation.[67] Mr. Moyer and his wife own the property in western Schuylkill County. They are electric distribution customers of PPL. Mr. Moyer has two metered accounts with PPL: One account measures electric service to his residence. The other account measures electric service to a light attached to a pole (on a different part of the same property). Mr. Moyer installed solar panels to self-supply part of his need for electricity. The solar panels are associated with the

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67 *See Larry Moyer v. PPL Electric Utilities Corp., supra.*

light attached to the pole, and Mr. Moyer uses virtual net metering to offset electric load at his nearby residence. PPL has argued that Mr. Moyer is not eligible for net metering because he does not have "independent" electric load at the alternative energy system itself. But, if the solar panels were associated with his residence and Mr. Moyer wanted to use virtual net metering to offset electric load at a light (on a different party of the same property) or some other electric load, it is clear Mr. Moyer is not eligible for virtual net metering. So, the question then becomes how much "independent" electric load is necessary? Will Mr. Moyer have sufficient "independent" electric load if he builds a work shed (complete with electric power tools) next to the pole? The result for Mr. Moyer in this hypothetical is uncertain, and – if this regulatory standard is adopted – it is not clear that EDCs will consistently apply this requirement within their respective service areas and/or across the Commonwealth.

In conclusion, it is clear that the Commission's Proposed Regulations would place a restriction and limitation on virtual net metering that does not exist in the AEPS Act itself.[68] It is also clear that said restriction and limitation would prevent customer-generators from using alternative energy systems and projects to self-supply. Accordingly, Granger submits that the Commission should explain why "independent" electric load is being required at all locations being aggregated by a customer-generator –when no such requirement exists in the AEPS Act itself.

[Signature appears on next page]

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68 *See* footnote 66, *supra.*

IV. CONCLUSION

Granger appreciates this opportunity to provide its viewpoints regarding this important proceeding and looks forward to continuing to assist the Commission with this very important process.

Respectfully submitted,

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