Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building, 2nd Floor
Harrisburg, Pennsylvania 17120

July 29, 2014 Docket Number: L-2014-2404361

An important part of the regulatory review process is the creation and submittal of a Regulatory Analysis Form. This is a form that the PUC (and other agencies) must submit to the IRRC justifying their actions. The form is designed to capture key information about the proposed regulations, including:

- Why the regulation is needed
- The compelling public interest that justifies it
- Who will benefit from the regulation
- The degree to which stakeholders were involved
- The type and number of persons, businesses and small businesses affected
- The financial , economic and social impact of the regulation
- How the benefits outweigh the cost and adverse effects

The Regulatory Review Act requires that agencies like the PUC answer important questions, and forces them to quantify issues that might otherwise be left vague or ill-defined. Which is precisely the case with this form as submitted by the PUC. When pressed to answer the questions in the RAF, the PUC has failed multiple times. They are unable to provide the mandatory "empirical, replicable and testable" data that this important regulatory review process demands.

The recipients of the Regulatory Analysis Form (below) rely on the integrity of the data provided so that they can make an informed decision on the content of a proposed new regulation. The recipients are:

- The Independent Regulatory Review Committee
- The standing committees in the House and Senate
- The Attorney General
- The Governor's Office of the Budget

The PUC is seeking to fundamentally alter the intent of the AEPS Act under the guise of clarification and further interpretation of the AEPS Act, although the statute has existed in its present form for seven years. It is difficult to grasp how the PUC can claim that their sudden flurry of regulations is necessary to maintain compliance with a seven year old statute. It begs the question "What has the status of our compliance been over the last seven years?"

The content of the Regulatory Analysis Form does not comply with the clear instructions that accompany it. The PUC has failed to provide key data when requested to do so. It is hoped that the IRRC and others will read this breakdown of the form that was filed, and take appropriate action.

Regards,

David N. Hommrich
President
Sunrise Energy, LLC

(7) Briefly explain the regulation in clear and non-technical language (100 words or less)

Under its statutory duty to implement and enforce the Alternative Energy Portfolio Standards Act ("AEPS Act" or "Act"), 73 P.S. §§ 1648.1-1648.8 and 66 Pa. C.S. § 2814, The Pennsylvania Public Utility Commission sees to revise the regulations pertaining to net metering, interconnection, and portfolio standard compliance provisions of the Act to comply with the Act 35 of 2007 and Act 129 of 2008 amendments to the AEPS Act and to clarify certain issues of law, administrative procedure, and policy.

Sunrise Energy Comments:

Several of the PUC's proposed changes would repeal aspects of the AEPS Act, and would reduce the availability of net metering to customer-generators who receive that right today. The Commission is seeking to define a new class of customer-generators, which they give the off-hand designator of "merchant generators", and to apply new rules to this class in a clearly discriminatory manner. The AEPS Act created no sub-categories for customer-generators, therefore all customer-generators must be treated the same under the law. To state that this new discriminatory practice is simply an outcome of the AEPS Act is false.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

As discussed above, these regulation changes are needed and proposed pursuant to state law in order to comply with the AEPS Act, the Act 35 of 2007 and Act 129 of 2008 amendments to the AEPS Act and to clarify certain issues of law, administrative procedure and policy.

There are clear statutory problems in the proposed rulemaking. The most glaring of which is the introduction of a new regulatory constraint on system sizes, which the AEPS Act does not support. The Commission wishes to impose a 110% rule on system size primarily because "other states are doing it". We have our own legislature here in PA, and we write our own laws. What the Commission is proposing is in direct conflict with the AEPS Act. Frankly, what New Jersey and Delaware does is not germane when it comes to applying Pennsylvania statutes, which is what the PUC is tasked with doing.

All stakeholders and interested parties, including electric distribution companies (EDCs), electric generation suppliers (EGSs), alternative energy system developers and customer-generators seeking net metering, will benefit from these regulations, which clarify issues of law, administrative procedure and policy by reducing uncertainty regarding which generation resources qualify for alternative energy system status, interconnection and net metering. In particular, the approximately one-hundred alternative energy system development companies and installation companies will benefit from these clarifications, as it should reduce the time and money spent on developing, installing and qualifying alternative energy systems. It should also reduce or even eliminate the time and money spent by these companies in the past on investigating and beginning initial development of systems that they later learn will not qualify.

This is simply not true, and the PUC knows it. System sizes will shrink as a result of this new rule. That is the stated goal of the PUC, since they believe that systems are too big now (or why else limit the size?). When system sizes shrink, nearly all parties will suffer. If a developer is forced to build smaller facilities, revenue and profit drops. Smaller facilities means less construction jobs. And the customer-generator will be forced to get by with less energy than they could have had under the existing statute and regulation. To gloss over all of this and say that "all will benefit" strains credulity. The PUC seems to be saying "although we will have fundamentally harmed the industry, there will be no lack of certainty in that harm. Therefore, in the end everyone will win."

In reality, the only winners will be the EDCs, who uniformly oppose net metering and will certainly welcome a reduction in net metering.

These regulation changes will also balance the benefits provided to developers, owners of alternative energy systems, and net metering customer-generators with the costs borne by EDCs, EGSs and the electric utility ratepayers to meet the requirements of the AEPS Act in a cost-effective manner. These proposed changes will benefit millions of EDC ratepayers and EDC customers. The Commission, in its 2012 AEPS Act Annual Report, is projecting that it could cost over $60 million to comply with the AEPS Act's 18% of retail sales requirements. The 2012 Annual Report is available at: http://www.puc.pa.gov/electric/pdf/AEPS/AEPS_Ann_Rpt_2012.pdf . The net metering costs that are also borne by the ratepayers will be in addition to those costs. Therefore, based on these magnitudes, it is imperative that this program be eliminated in a cost-effective manner.

The PUC is referring here to the cost of EDCs and EGSs acquiring Alternative Energy Credits (AEC), which is mandated under the AEPS Act. It is a bit of a red herring to include AEC costs in this Regulatory Analysis Form, since the PUC does not set the price or the quantity of AECs that are required each year. The mandatory credit purchases are set in the statute, and the price is set by the free market.

What is troubling is that the PUC reports this projected compliance cost without any context. AEPS Act compliance is not free, nor did the legislature ever think that it would be. The intent was to create incentives to foster the creation of new clean/green sources of energy. But the PUC provides a cost projection from a two year old report, which leaves the reader lacking any frame of reference. It is surprising that the PUC didn't take this opportunity to compare PA to other states as they do elsewhere in this form. If they had, they would have realized that PA has some of the lowest costs of renewable energy portfolio compliance in the country. This is a report from PJM, who is clearly an unbiased third party in this debate.

http://pfenergycenter.blogspot.com/search?updated-min=2012-12-31T21:00:00-08:00&updated-max=2013-11-13T19:30:00-05:00&max-results=50&start=7&by-date=false

And finally…..the Commission neglects to mention the near certain **negative** impact that their regulation will have on AEC prices. The price of an AEC is set by supply and demand. Each year, the requirement increases until 2021. This annual increase is (in theory) offset by increases in the development of new projects. But the PUC is clearly curtailing net metering with their proposed rulemaking. This can only cause AEC prices to rise, which are then passed on to ratepayers. What other outcome can there be? When net metering opportunities decrease, it hurts the supply side of the supply/demand equation. The PUC is silent regarding this likely outcome of their proposed rulemaking.

Sunrise Energy Comments:

The PUC is introducing much of this new regulation as a means to deal with what they perceive to be the excessive cost of net metering. But nowhere do they bother to quantify this cost, or even prove that net metering costs anything at all. Recent open records request have proven that the PUC does not audit this cost category, nor do they have any means to quantify it. They are literally moving forward based on a hunch, which defeats the spirit and the letter of the Regulatory Review Act. If net metering costs are so burdensome, why aren't they included in the annual report, which the PUC mentions repeatedly in this RAF? Surely all sizable costs should be reported by the PUC, as required by the AEPS Act.

The appearance of this sudden need to revise net metering regulations based on a perceived but unquantified compliance cost does not clear the "credibility bar". The PUC has not been reporting this cost for 10 years. Either it is very small, or they have simply chosen to ignore it. Or the more likely scenario, which is that no such cost exists. Sunrise Energy has produced data showing that the EDCs actually benefit from net metering, and that ratepayers under no circumstances are harmed. In fact, given the gut-wrenching rate spikes recently experienced by PA ratepayers due to wholesale pricing fluctuations, the steady and reliable pricing of renewable energy acts as a "shock absorber" to mitigate the impact on ratepayers. It seems that the PUC has not considered any of these aspects.

The PUC fails in a key area of the Regulatory Analysis Form. They can't show a compelling need, nor can they relate their proposed changes to any quantifiable benefits to PA ratepayers (or other stakeholders).

(12) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

As discussed in the PUC's Proposed Rulemaking Order of February 20,2014, Docket No. L-2014-2404361, the proposed regulation's changes regarding net metering are consistent with the regulatory treatment of net metering in other states. See Proposed Rulemaking Order at 13, fn. 6. Just like Pennsylvania's proposed regulations in 52 Pa. Code § 75.13(a)(3), Delaware regulations state: "The customer-Generator Facility is designed to produce no more than 110% of the Customer's aggregate electrical consumption…" Del. Pub. Serv. Comm'n, DE ADC 26 3000 3001, § 8.62 (Westlaw) (2014). New Jersey regulations similarly provide that EDC's "shall offer net metering…provided that the generating capacity of the customer-generator's facility does not exceed the amount of electricity suppled…to the customer over an historical 12-month period…." N.J. Admin. Code 14:8-4.3(a) (Westlaw) (2014). Additionally, "The generation capacity of the eligible customer's system [should] not exceed the combined metered annual energy usage of the customer's qualified facilities." N.J. Admin. Code 14:8-7.3(a)(2) (Westlaw) (2014).

Each state has its own distinct alternative / renewable energy portfolio standards. Generally speaking, Pennsylvania's standards run the middle of the gamut, and are not as stringent as many other states in the northeast and elsewhere that have alternative / renewable energy portfolio standards. Many other states do not have mandatory alternative / renewable energy portfolio standards. The proposed regulations under Pennsylvania's Alternative Energy Portfolio Standards Act should not materially affect Pennsylvania's ability to compete in other states.

Sunrise Energy's Comments:

While it is useful to know what other states are doing in similar circumstances, nothing can trump the plain and unambiguous language of the AEPS Act. The PUC rulemaking conflicts with the statute in several key areas. Particularly in their constraining of system size, which is a clear departure from the current AEPS Act. To impose this rule simply because "New Jersey and Delaware are doing it" is not in keeping with the rules of statutory interpretation.

"Where there is a conflict between the statute and a regulation purporting to implement the provisions of that statute, the regulation must give way." Heaton v. Commonwealth Department of Public Welfare, 96 Pa.Cmwlth. 195, 506 A.2d 1350 (1986).

As a result of reading this RAF, Sunrise Energy has conducted a more thorough review of other state's alternative / renewable energy portfolio standards and has found that there are many similarities (and differences) when compared with Pennsylvania. The PUC has chosen to shore up their position by referencing two states that comport with their desire to limit renewable energy production. But there are also states who do allow excess generation. This sort of "cherry picking" in support of the PUC's claims could leave the IRRC and others with a false impression, and should be avoided.

But the comparison with other states confuses the underlying issue. The plain and unambiguous language of the statute must prevail. The PUC's position is not that the statute backs up their proposed rulemaking. Instead, they are merely saying that "other states are doing it". That logic does not represent a compelling reason for a new regulation.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

Pursuant to the AEPS Act, 73 P.S. § 1648.7, the PU and the Department of Environmental Protection (DEP) "shall work cooperatively to monitor the performance of all aspects of [the AEPS Act] and provide an annual report to the chairman and minority chairman of the Environmental Resources and Energy Committee of the House of Representatives". The proposed changes to these regulations do not effect this cooperation. Under the

proposed revised regulations, the Commission, in cooperation with the DEP, will continue to provide this annual report. A copy of the latest Annual Report is available at http://www.puc.pa.gov/electric/pdf/AEPS/AEPS_Ann_Rpt_2012.pdf .

In addition, DEP is to "ensure that all qualified alternative energy sources meet all applicable environmental standards and shall verify that an alternative energy source meets the standards set forth in section 2." See 73 P.S. § 1648.7(b).

The proposed regulation changes will not affect the regulations of DEP or other state agencies. To date, the DEP has not promulgated regulations related to the AEPS Act. Regarding DEP's responsibility to verify that an alternative energy source meets the standards set forth in Section 2 of the AEPS Act, 73 P.S. § 1648.2 (Definitions), the proposed changes to the definitions section of the regulations simplify incorporate new definitions contained in the Act 129 of 2008 amendments, 66 Pa. C.S. § 2814, , or provide guidance on the meaning of words used throughout the regulations. These proposed regulation definition changes are intended to provide clarity and better understanding to all stakeholders and have been developed based on experience with implementing the AEPS Act over the past ten years.

Sunrise Energy Comment:

Buried in the newly proposed rulemaking is the introduction of a newly defined term "Default Service Provider" or "DSP". . In February, 2014, when the Proposed Rulemaking Order was issued, Senate Bill 1121 was being circulated and was under consideration in the Pennsylvania legislature, and enjoyed growing support. That bill and the proposed changes here are completely compatible. It is clear that some of the proposed changes by the Commission anticipated passage of that bill, which was later withdrawn. That bill proposed exactly the same kind of shift (from utilities to new DSP's) that the new rulemaking envisions.

The many insertions of DSP language suggest that the proposed changes were paving the way for SB 1121. There is no other justification for adding these revisions. In SB 1121, for example, EDC's would have been relieved of their role as DSP's and all customers would eventually have chosen (or been assigned to) a limited number of third party EGS's.

The Commission delayed publishing its Order for nearly five months, and without the context of SB 1121, the new category of DSP's is unnecessary, incoherent and incongruent. The long delay in publishing the Order creates an awkward "disconnect".

The PUC should avoid attempting to link existing regulations to those associated with bills that may never become laws. While it might seem prudent to be forward-looking, none of us can tell the future. In this case, the PUC has introduced a new term that has no meaning in the context of the AEPS Act.

Until the notion of a Default Service Provider (as defined in the context of the PUC in this rulemaking) becomes part of a statute, it is not appropriate to include it in this or any other regulation.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific person and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012)

During the development and drafting of the regulation changes, there were no formal communications with no solicitations for input from the public, any advisory council/groups, small businesses or groups representing small businesses. However, during the ten years the Commission has been implementing the AEPS Act, there have been innumerable communications and solicitations from the public, small and large alternative energy system developers and installers, customer-generators from all rate classes, small and large businesses that buy and sell alternative energy credits, small and large EGSs, and EDCs, as well as groups and associations that represent these various interests. As previously noted, most of the proposed changes to the regulations are intended to

clarify certain issues of law, administrative procedure, and policy based on the innumerable communications and solicitations.

Sunrise Energy Comments:

The admitted failure by the PUC to solicit stakeholder input is a cause for concern. The Commission would have us believe that over the last ten years, they have essentially heard all that they need to on the topic of the AEPS Act. As a result, they need not avail themselves of stakeholder input. What's worse, the PUC is mischaracterizing their changes as being minor and administrative in nature. Far from that, the changes are fundamental in nature and in direct conflict with the plain and unambiguous language of the AEPS Act. The proposed rule will impose constraints that conflict with the existing statute, and that will curtail net metering in Pennsylvania. Surely this rises to the level of requiring stakeholder input.

It might be helpful if the Commission were to provide some of the "innumerable communications" that support their plans to curtail net metering. It is doubtful that anyone from the renewable energy sector was supportive, although one can believe that the EDCs were. Given the fact that the AEPS Act was created in part to protect customer-generators from the past predatory practices of the EDCs, one would hope that the Commission would not willingly grant their wish for less (not more) net metering.

While it is true that the PUC has met with stakeholders on numerous topics in the past, the intent of the AEPS Act remained intact afterward. Stakeholders could not have commented on the currently proposed changes because they were not proposed back then. The Commission's position that their current rulemaking has somehow been vetted previously is simply false.

What's more, some previously agreed upon rule changes are being altered again with this new wave of changes. Which is painfully ironic, given the Commission's claims that they are striving for regulatory certainty. For example, the 110% Rule was only applied to 3rd party owned systems in 2012. **Customer-generators who owned their own systems were assured by the PUC in the rulemaking that they would not be affected**. This assurance kept many stakeholders silent, since they were not directly involved. Their silence shouldn't be construed as support…..they were merely not affected.

Fast forward to today, and the Commission is attempting to apply their 110% Rule to **all** customer-generators. Anyone betting on the regulatory certainty from the 2012 PUC decision clearly lost that bet. For the PUC to use this as an example of buy-in by the regulated community is laughable. It is a bait and switch of the worst kind, and creates an atmosphere of distrust which results in much **less** regulatory certainty. Customer-generators will be left wondering when the PUC might change their minds again.

The PUC is introducing new rules that will destabilize the renewable energy market in Pennsylvania. Some of the many unaddressed issues are:

- When would the new procedures be in place, and what will they look like?
- What process would be followed in the mean time? Will the industry be in a state of limbo during the transition?
- What protections would exist for customer-generators who took their systems live under the current regulatory scheme? Would they be grand-fathered, or forced to comply?
- What happens when a customer-generator's load requirements change? If a company downsizes due to economic problems, must they shut off a proportional amount of their renewable energy production? How will they make up the shortfall, and continue to service their debt?
- What if a customer implements energy savings practices that bring down their annual usage? Will they in turn be penalized by having to shut off a portion of their renewable energy system (in order to comply with the 110% rule)?

There is no aspect of the proposed rulemaking that provides certainty. In fact, the very fact the PUC could produce such an ill-advised and undocumented request for changes has had a chilling impact on the renewable energy industry, as illustrated by several large scale projects that have been stopped in their tracks this year. See

Docket Number P-2014-2420902. Multi-million dollar projects will be eliminated by the PUC's actions in this rulemaking.

(17) Identify the finance, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulations.

It is possible that there may be a minor increase in the cost of future small solar photovoltaic system installations with a nameplate capacity of 15 kilowatts or less due to the proposed metering requirements. Only a few installations would be effected as all installations of this type use inverters that register the generation output and most, if not all, can install a qualifying meter at minimal cost. The current regulations do not require inverter or meter readings to verify the output of those systems. Under the current regulations, these small systems have been able to use estimates of the system output, provided they meet specific requirements, such as the type of solar photovoltaic panel material and directional orientation. Experience demonstrates that while the proposed metering requirements on these small systems will increase the costs and administrative burdens on the system owners, those costa are minimal compared to the need for system integrity to ensure that the credits being claimed are valid. In addition, we note that these metering requirements are currently required for all other alternative energy systems and have not been proven to be a barrier to development of those systems. Finally, we note that the elimination of the use of estimates for these small systems will result in reduced time spent by the Commission's contracted program administrator to run modeling software to estimate the generation output of these systems. The cost savings associated with this are deemed insignificant but there is greater confidence in the long-term reliability of the claimed alternative energy credits by not relying on estimates of generation. This is consistent with the direction being taken by many other states, including New Jersey. See e.g. N. J. Admin. Code 14:8-2.9(c) (Westlaw) (2104).

Sunrise Energy Comments:

It is likely to cost residential customers several hundred dollars to install the type of meter that the PUC will require. This is burdensome to owners of residential systems, and goes against what they were promised when they first decided to invest in solar. This investment, by the PUC's own words, will not solve any quantifiable problem but it will provide "system integrity". This is a classic example of regulatory uncertainty provided by the PUC. Each system owner that is affected by this new rule went live under the assumption that they didn't need a special meter. Had they known, they could have included it in their system cost and received a federal tax subsidy. Now that ship has sailed, and the cost of having an electrician retrofit to accommodate the latest thinking of the PUC is borne by the customer-generator…..who presumably relied on regulatory certainty from the PUC early on. This only adds to the distinct impression that this Commission can change their minds whenever it suits them, and with no data in support of their claims. The fact that the PUC is not self-aware enough to realize this is center-most to this controversy. The Commission claims to seek regulatory certainty, but is clearly capable of leaving a "wake of uncertainty" in their path.

The PUC's response to this section completely avoids the tremendous cost of their new rule. It is difficult to believe that the PUC would so flagrantly avoid talking about the true cost of their new regulations. The PUC has the expressed intent of curtailing net metering. How can they conclude that the cost of this curtailment will be minimal? Have they consulted the developers who will experience a quantifiable revenue reduction as a result? Have they spoken to the customer-generators who will have their system sizes curtailed? Have they thought about the impact on the entire Alternative Energy Credit market when net metering constraints are imposed? The supply / demand of AECs must certainly be affected, since net metering will be reduced as a result.

The PUC has set themselves a trap of sorts. If the impact of these changes are intended to achieve some substantial savings, then by logic the scope must be extensive. Yet they are claiming that the effects are minimal. If that is true, then where are the savings coming from? This kind of circular logic has no place in a rigorous regulatory review.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The proposed regulations will add clarity to definitions and administrative processes that will reduce uncertainty for all stakeholders. Costs associated with these clarifications and administrative processes should be offset by the benefits of obtaining more certainty as to the benefits available to qualified alternative energy systems, as well as any potential alternative energy system development. This increased certainty should decrease developmental costs associated with the development of alternative energy systems.

Sunrise Energy Comments:

The Commission's response to this question is confusingly circular, and does not even begin to answer the question of…. "How do the benefits of the regulation outweigh any costs and adverse effects?"

The new regulations will reduce or eliminate certain types of renewable energy projects. This is a certainty, since the PUC is attempting to eliminate (in their own words) alleged excess ratepayer subsidies from customer-generators that they refer to as merchant generators. Presumably in the new scheme, any facility that is designed to generate more than 110% of its onsite demand would receive this new designation and would no longer be eligible for net metering. That must clearly result in reductions in net metering, which will have a cost and adverse effect to the customer-generator in question.

How can the PUC adequately answer this question when they do not address a single project scenario in their response? And how can their answer be complete without showing the easily quantified harm to customer-generators? Most important of all, where is the benefit that outweighs the clear harm they are inflicting?

Let's take the simple case of a facility that was initially designed to be 1 MW in size, but is forced to be downgraded to 500 kW in order to accommodate the newly-minted 110% rule. This reduction in size results in several easily quantified losses.

- The developer loses $100-150k in additional revenue, since they are only building half the project that was planned. (based on real-world data from prior projects)
- About half of the jobs that would have been created would disappear, which amounts to another $100-150k in lost payrolls. (also based on quantifiable data from prior projects)
- The owner of the facility would lose approximately $50,000 / year in additional financial benefits. Over the 25 year lifetime of the facility, this could amount to $1.25 million. This is easily proven based on conservative cash flow estimates.

One project being downsized would result in over $1.5 million in lost revenue and income. And there will surely be more than just this one project.

The PUC should have to roll up their sleeves and do some real-world analysis. Instead they are largely ignoring the impact of their actions, and claiming that all will benefit from regulatory certainty. And the most punishing aspect is that their actions will create uncertainty…..not certainty.

(19) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar amounts were derived.

Although a specific cost study was not conducted, any costs related to the additional administrative processes were either mandated by the AEPS Act or the Act 129 of 2008 or will be offset by avoided costs attributable to the increased regulatory certainty.

Sunrise Energy Comments:

This response is so unspecific that it is meaningless, and it shows the casual disregard that the PUC has for the regulatory review process. The AEPS Act was written in 2004 and amended in 2007. Act 129 came out in 2008. That is 6-7 years ago, yet the PUC would have us believe that the newly proposed changes are a direct result of those acts. Has the entire renewable energy industry been out of compliance for 7 years? What prompted these changes now? Particularly the ones that have no basis in the statutes, and directly change the clear legislative intent of the AEPS Act.

The most disturbing aspect of this response is the claim that the cost (which they can't be bothered to calculate) will somehow be offset by regulatory certainty. This sort of pseudo-accounting is extremely troubling. Especially when the PUC is introducing regulatory uncertainty by their actions, which clearly convey their belief that they may change the regulations whenever it suits them, regardless of the underlying statue. But more to the point, they have not answered this very simply question. In order to be responsive to this portion of the Regulatory Analysis Form, the PUC must provide an estimate of costs and of savings. They have done neither, and as a result their answer is essentially non-responsive.

(20) Provide a specific estimate of the costs and / or savings to the local governments associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollars were derived.

Except to the extent that a local government owns an alternative energy system, in which case it will be treated the same as any other system owner, local governments are not impacted by the regulations as they have no compliance obligations under the AEPS Act and therefore, should incur no costs and / or savings as a result of these regulations.

Sunrise Energy Comments:

There are local governments in PA that either have built or plan to build large scale solar power facilities. These facilities will either be significantly reduced or eliminated by the proposed rulemaking. The resulting impact will be in the hundreds of thousands of dollars annually. The PUC is aware of these facilities because they are mentioned in other dockets. To simply overlook the harm that will come to these projects is inexcusable. There is no question that harm will be felt, and the mechanism is similar to the previous example. When artificial constraints on system size are imposed, quantifiable harm occurs. And the PUC has yet to explain the benefit that balances out this harm.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Regarding the proposed requirements at §75.13(a)(3), customer-generators, the owners, developers or installers of these systems will now have to submit documentation demonstrating that the alternative energy system is designed to provide no more than 110% of the electric customer's historical load requirements. While this is a new requirement under the current regulations, the regulated community has experience with this requirement under the Commission's policy statement for third-party owned and operated systems. In that policy statement, the Commission made it a policy of the Commission to allow interconnection and net metering of alternative energy systems that are owned and operated by third-parties that place the alternative energy system on the customer's property and sell the power from those systems to the customer, provided the systems were sized to provide no more than 110% of the customer's historical load. See, Net Metering – Use of Third Party Operators, Final Order at Docket No. M-2011-2249441 (entered March 29, 2012). In addition, as mentioned above, both New Jersey and Delaware have similar requirements. Based on two years of operating under this policy

statement and the experiences of New Jersey and Delaware, we do not believe that this requirement will be burdensome or be a barrier to the development of alternative energy systems.

The only "experience" that the regulated community has with the 110% Rule is that the Commission is not above a bait and switch when it suits their agenda. In 2012, the new 110% Rule was imposed on 3rd party owned systems. The PUC clearly stated in their rulemaking that it was not their intent to apply this rule to customer-owned systems. Now, two years later, that is precisely what they are doing. Many of us mistakenly held back comments on this rulemaking at the time, since it clearly didn't apply to us. Now it is clear that there was in fact multi-step initiative under way to strip away rights granted by the AEPS Act. This is the opposite of regulatory certainty.

Regarding the proposed requirements at §75.17 (process for obtaining approval of customer-generator status) EDCS will have to provide applications for net metering to the Commission along with a recommendation as to whether the alternative energy system qualifies for net metering for all applications for net metering with a nameplate capacity of 500 kilowatts or greater. While the submission of this information to the Commission for review is a new requirement, EDCS currently obtain this information and provide feedback to the applicant as to whether a system qualifies for net metering. Therefore, the additional burden of submitting this information to the Commission for review should be minimal and not pose a barrier to the development of qualified alternative energy systems. Furthermore, we note that this step provides the added benefit of increased regulatory certainty for both the applicant and the EDC.

The PUC is proposing that they replace a 10 day process (in the current regulation) with a 50 day process; a five-fold increase. They plan to give EDCs 20 days instead of the mandatory 10 days they have today. They also grant themselves 30 days to conduct a review process, although the application is not yet defined and presumably no staff has been allocated (since the PUC claims this cost will be minimal). Adding a single full time person is likely to increase the cost by $100,000 / year (with salary, pension and healthcare). And there will undoubtedly be more. The cost of this process will not be minimal as the PUC would have us believe.

Many renewable energy projects require tax equity investment in order to be economically viable. This makes each project essentially a one-year project, since investors insist that the credits be available the following year. Once 6 months is allocated for construction, the project only has 6 months to locate the customer, agree on terms, permitting and planning and secure financing. Adding 50 days into this project (with the near certainty of more, given the likely delays by the PUC) will crater certain deals. First the tax equity investors will leave, since they will not be comfortable that their credits will be ready as promised. Then the bank will rescind their offer, since the tax equity investment is gone. And that will be the end of the project. This scenario is likely to play out countless times under the new 50 day review. On the contrary, the current 10 day analysis works well (Sunrise Energy is very familiar with it). It also allows for the normal, but unplanned-for, delays. Course corrections are possible without risking the project timeline.

Sunrise Energy Comments:

Two years after their creation of the 3rd party 110% Rule, the Commission is now backtracking on their initial promise. It is this kind of regulatory uncertainty that makes the PUC's promises difficult to bank on, let alone assign a value to as they propose in their response. It is clear that the PUC can and will change their minds whenever it suits their agenda. When the Commission offers regulatory certainty as compensation for constraints in the new rulemaking, the renewable energy industry need only remember the recent past to have a healthy dose of skepticism.

Equally disconcerting is the implication that the renewable energy industry has had ample time to deal with and become comfortable with the 3rd party 110% rule. They provide no proof of that happening. It would be interesting to know how many times this rule has even been invoked since it was created by the PUC. The existence of a rule doesn't mean that the industry has become adept at dealing with it, or that it has flushed out any potential problems. Especially given then disingenuous manner in which it was imposed.

Most importantly, a 110% rule is simply not legal. It is in direct conflict with the AEPS Act, where the definition of net metering clearly states that net metering is

"The 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."

The PA legislature took into account other state's laws, and many other parameters when they wrote the net metering definition. The legislature even refined the definition in 2007 to further clarify their intent. The Commission's 110% rule, while it may exist in some form in other states, creates a constraint on system size that doesn't exist in the Pennsylvania statute….which is the one that counts. Since the PUC rule attempts to reduce the opportunities provided for in the plain language of the AEPS Act, it must ultimately fail.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY+1 Year	FY+2 Year	FY+3 Year	FY+4 Year	FY+5 Year
Savings:	**$**	**$**	**$**	**$**	**$**	**$**
Regulated Community	**Minimal**	**Minimal**	**Minimal**	**Minimal**	**Minimal**	**Minimal**
Local Government	**0**	**0**	**0**	**0**	**0**	**0**
State Government	**Minimal**	**Minimal**	**Minimal**	**Minimal**	**Minimal**	**Minimal**
Total Savings	**0**	**0**	**0**	**0**	**0**	**0**
COSTS:						
Regulated Community	**Minimal**	**Minimal**	**Minimal**	**Minimal**	**Minimal**	**Minimal**
Local Government	**0**	**0**	**0**	**0**	**0**	**0**
State Government	**Minimal**	**Minimal**	**Minimal**	**Minimal**	**Minimal**	**Minimal**
Total Costs						
REVENUE LOSSES						
Regulated Community	**Minimal**	**Minimal**	**Minimal**	**Minimal**	**Minimal**	**Minimal**
Local Government						
State Government						
Total Revenue Losses						

Sunrise Energy Comments:

Filling a table with the word "minimal" does not constitute an estimate of fiscal savings and costs. This response is a non-answer, and it shows that the PUC didn't even try to justify their position.

It misrepresents the serious nature of this new rulemaking, and the impact it will have on the Pennsylvania renewable energy industry. It specifically ignores the fact that some renewable energy projects will undoubtedly shrink or fail altogether under the newly proposed rule. Surely the PUC understand that, at least in the eyes of a developer or a customer-generator, the cost of the new rulemaking is far more than minimal. Living with the new 110% rule would certainly cost the regulated community millions of dollars annually. The PUC is not ignorant of this fact, but they have chosen to avoid the discussion entirely.

(23a) Provide the past three year expenditures history for programs affected by the regulation.

Program	FY-3	FY-2	FY-1	Current FY
EDC reporting requirements for quarterly adjustments for 75.72	Estimated at $17,000	Estimated at $17,000	Estimated at $17,000	Estimated at $17,000
EGS reporting requirements for quarterly adjustments fo 75.72	Estimated at $37,000	Estimated at $37,000	Estimated at $37,000	Estimated at $37,000
Generator reporting requirements for quarterly adjustments for 75.72	Estimated at $2,700	Estimated at $2,700	Estimated at $2,700	Estimated at $2,700

Sunrise Energy Comments:

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

(a) An identification and estimate of the number of small businesses subject to the regulation.

Four electric distribution companies, seven electric generation suppliers, approximately one-hundred alternative energy systems development and installation companies, 57 alternative energy credit aggregators, and two facilities that generate electricity in Pennsylvania from pulping processes.

(b) The projected reporting recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.

The four electric distribution companies are anticipated to have annual reporting, record keeping and other administrative costs of $1,545 / EDC to comply with the reporting requirements in §75.72, which involves tracking and reporting electric sales in their service territory.

The seven electric generation suppliers are anticipated to have annual reporting, record keeping and other administrative costs of $400/EGS to comply with the reporting requirements in §75.72, which involves tracking and reporting their electric sales in each EDC service territory where they have sales.

The two facilities that generate electricity in Pennsylvania from pulping processes are anticipated to have annual reporting, record keeping and other administrative costs of $900/company to comply with the reporting requirements in §75.72

The two facilities that generate electricity in Pennsylvania from pulping processes are anticipated to have annual reporting, record keeping and other administrative costs of $900/company to comply with the reporting requirements of §75.72, which involves tracking and reporting their electric generation.

Alternative energy system developers and installers will have some additional reporting requirements when developing customer-generator installations. These additional reporting requirements include the customer's historical annual electric usage and the design output of the alternative energy system to demonstrate that the system is not designed to exceed 110% of the customer's historical annual usage. These costs are anticipated to be minimal as the customer can obtain the usage data from the EDC and the developer already needs the design output of the system to ensure a safe and reliable system.

Again, the PUC neglects to consider the cost of projects that they will have either regulated out of existence, or reduced the scope substantially. The companies that build these systems and the owners that operate them are fundamentally harmed, and the PUC must clearly address this issue.

(c) A statement of probable effect on impacted small businesses.

As explained and demonstrated above, the costs and impacts on small businesses are expected to be minimal. Many of these costs and impacts will be offset by more regulatory clarity and certainty, which should reduce development costs.

The regulated community will suffer clear and quantifiable harm as proven early in these comments. Since regulatory certainty is not a useable currency, it is doubtful that any small business will be able to make use of it in order to cover the very real and substantial revenue shortfalls created from this proposed rulemaking.

(d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Many of the proposed regulation changes were added to provide clarity and certainty to minimize cost and time needed to develop projects, obtain certification and to comply with the Act. Where additional administrative and reporting requirements were added, §75.17 (process for obtaining Commission approval of customer-generator status for systems with a nameplate capacity of 500 kilowatts or greater) or §75.72 (reporting requirement for quarterly adjustment of non-solar Tier 1 obligation), the known least intrusive and least costly alternative method was used.

If the PUC is complying with the Act via these new regulations, they are seven years late. That is how long the current statute has gone unchallenged by the PUC. In fact, prior Commissions have supported renewable energy wholeheartedly, which accounts for the relative "quiet" when it came to new regulations. But with the passage of time the makeup of the PUC has changed, and the current majority clearly believes that renewable energy should be curtailed.

Sunrise Energy Comments:

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

(a) The establishment of less stringent compliance or reporting requirements for small businesses;
(b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
(c) The consolidation or simplification of compliance or reporting requirements for small businesses;

(d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and

(e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

Other than providing additional clarity and regulatory certainty, the proposal to require Commission approval of applications for net metering was limited to systems with a nameplate capacity of 500 kilowatts or greater, which are systems not typically installed by small businesses. In addition, regarding the quarterly reporting requirement in §75.72, the Commission only required the EGSs to verify the monthly sales data submitted by the EDCs. This method reduces the burden on small EGSs by not requiring them to enter data for sales in each EDC service territory, they simply have to verify that the data entered by the EDC is correct.

The PUC again fails to answer the questions that are asked. The proposed rulemaking is voluminous, and contains many, many proposed changes. Nearly all ignored, and instead the Commission only responds to the proposed review of +500 kW systems. Even with that, their claim that small businesses don't install those systems is wholly inaccurate. The definition of a small business in the Regulatory Review Act is in accordance with the size standards described by the United States Small Business Administration's Small Business Size Regulations under 13 CFR Ch. 1 Part 121 (relating to Small Business Size Regulations) or its successor regulation. (Def. added June 29, 2012, P.L.657, No.76). By that definition, the majority of renewable energy developers in the state are small businesses. To equate the construction of +500 kW to only "large" businesses is simply inaccurate. Most systems in the state are installed by small businesses, regardless of size.

Sunrise Energy Comments

If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and hot it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered by not used, please explain why that data was determined not to be acceptable.

Experience in implementing the AEPS Act has provided the basis for most of the proposed regulation changes. Much of the data contained in the Commission's AEPS Act annual report also informed the Commission on the need for the proposed changes. A copy of the latest Annual Report is available at http://www.puc.pa.gov/electricity/pdf/AEPS/AEPS_Ann_Rpt_2012.pdf

Sunrise Energy Comments:

The PUC is short on data and long on adjectives. Despite many claims that "benefits outweigh costs" and "regulatory certainty makes up for expenses", they provide no proof of these claims. The total lack of any sort of critical cost/benefit analysis is the hallmark of this new rulemaking. As such, it seems clear that this proposed rule is exactly the sort of thing that the Regulatory Review Act was created to prevent.

***Regulatory Review Act, Section 2. Legislative** intent.*

(a) The General Assembly has enacted a large number of statutes and has conferred on boards, commissions, departments and agencies within the executive branch of government the authority to adopt rules and regulations to implement those statutes. The General Assembly has found that this delegation of its authority has resulted in regulations being promulgated without undergoing effective review concerning cost benefits, duplication, inflationary impact and conformity to legislative intent. The General Assembly finds that it must establish a procedure for oversight and review of regulations adopted pursuant to this delegation of legislative power in order to curtail excessive regulation and to require the executive branch to justify its exercise of the authority to regulate before imposing hidden costs upon the economy of Pennsylvania.

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation. The Commission will continue to work with EDCs, EGS, customer-generators, other interested members of the public, and other state agencies to determine whether the regulatory provisions of the AEPS Act require further interpretation or clarification.
Sunrise Energy Comments: In their own words, the Commission acknowledges that they have NOT sought stakeholder feedback. To say that they will "continue" to do this is in direct conflict with their own statements in this Regulatory Analysis Form.