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September 3, 2014

VIA Electronic Filing

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

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

Dear Secretary Chiavetta:

Enclosed for filing is the Comments of Duquesne Light Company in the above referenced docket.

Please feel free to contact me with any questions or comments.

Sincerely,

Tishekia Williams
Senior Counsel, Regulatory

Enclosures

cc: Kriss Brown via electronic mail at kribrown@pa.gov
Bureau of Investigation and Enforcement (U.S. Mail)
Office of Consumer Advocate (U.S. Mail)
Office of Small Business Advocate (U.S. Mail)
Scott Gebhardt, Bureau of Technical Utility Services (U.S. Mail)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF
DUQUESNE LIGHT COMPANY

Introduction

By Order entered February 20, 2014, the Pennsylvania Public Utility Commission ("Commission") requested comments on the *Proposed Rulemaking Order* amending Chapter 75 of the Commission's regulations, 52 Pa. Code §§ 75.1, et seq., to further comply with the Alternative Energy Portfolio Standards Act of 2004 ("AEPS Act"), 73 P.S. §§ 1648.1 – 1648.8 and 66 Pa.C.S. § 2814. The *Proposed Rulemaking Order* was published in the Pennsylvania Bulletin on July 5, 2014. See 44 Pa.B. 4179. Initially, comments to the *Proposed Rulemaking Order* were due within 30 days from the date of publication in the Pennsylvania Bulletin, i.e., on or before August 4, 2014. In a Secretarial Letter dated August 1, 2014, the Commission extended the comment period to September 3, 2014. Consistent with the *Proposed Rulemaking Order* and the August 1, 2014 Secretarial Letter, Duquesne Light Company ("Duquesne Light" or the "Company") submits these Comments for the Commission's consideration.

The intent of the AEPS Act is to encourage retail electric customers to construct and utilize alternative energy systems. In order to encourage customers to install such alternative energy systems, the AEPS Act provides that customer-generators shall receive full retail value for all excess generation produced on an annual basis. See 73 P.S. § 1648.5.

Duquesne Light supports the Commission's objectives in undertaking this rulemaking and appreciates the opportunity to offer its comments in response to the *Proposed Rulemaking Order*.[1] As an initial matter, Duquesne Light supports the Commission's stated purpose of the *Proposed Rulemaking Order* to update its regulations and clarify certain issues of law, administrative procedure, and policy in accordance with the intent of the AEPS Act. *See Proposed Rulemaking Order*, p. 1. In particular, Duquesne Light supports the Commission's proposal to limit the size of customer-generator's alternative energy systems to no more than 110% of the customer-generator's annual electric consumption. Duquesne Light believes that this limitation is consistent with the AEPS Act requirements that only customer-generators receive the benefits of the AEPS Act, not merchant-generators. Moreover, Duquesne Light agrees that the 110% rule is a reasonable and balanced approach for encouraging customers to develop alternative energy systems while at the same time protecting ratepayers from subsidizing merchant-generators. *See Proposed Rulemaking Order*, p. 12.

Duquesne Light offers the following limited comments for the Commission's consideration. Duquesne Light is not responding to all of the revisions proposed by the Commission; but where the Company has comments, it has organized its comments to follow the order of the regulations.

General Provisions: Section 75.1 - Definitions

The Commission proposes to revise the definition of "customer-generator" to clarify that a customer-generator must not only be a nonutility, but must also be a "retail electric customer." Duquesne Light supports this addition to the definition of a customer-generator because it emphasizes that the entity is a customer first and a generator second. Importantly, as explained

[1] Duquesne Light is a member of the Energy Association of Pennsylvania ("EAP") and supports the Comments filed by the EAP in this docket.

in the *Proposed Rulemaking Order*, a "retail electric customer" is a customer that purchases electric power. *See Proposed Rulemaking Order*, pp. 7-8. Thus, Duquesne Light believes that the addition of "retail electric customer" to the definition of a customer-generator, together with the adoption of the 110% requirement, will help resolve uncertainty regarding who qualifies to receive the net metering benefits under the AEPS Act.

The Commission also proposes to add a definition of "utility" to the regulations. Duquesne Light supports adding the definition of "utility," which makes it clear that a customer-generator cannot be a person or entity that provides traditional utility services, including generation services, at wholesale or retail, to other persons or entities. Duquesne Light believes that any entity whose primary business is electric generation should be considered a utility for purposes of the AEPS Act[2] and, therefore, not a customer-generator eligible to participate in net metering. Duquesne Light believes that these proposed changes are a reasonable way to limit the possibility of merchant-generators attempting to take advantage of the net metering regulations at ratepayers' expense.

Net Metering - Section 75.13 - General Provisions

In Section 75.13, the Commission proposes several conditions required for customers to qualify for net metering. Based on its experience, Duquesne Light believes that there is currently substantial uncertainty and a lack of uniformity regarding who can qualify for net metering. Given the significant uncertainty and the continued development of alternative energy systems within the Commonwealth, Duquesne Light believes that it is appropriate to address and resolve these concerns through revisions to the existing regulations.

Duquesne Light supports all of the proposed conditions required to qualify for net metering, and believes that they will provide guidance and clarity to electric distribution

[2] The AEPS Act is not part of the Public Utility Code and, therefore, that definition does not apply.

companies ("EDCs") and electric generation suppliers ("EGSs") offering net metering, as well as to customers seeking to participate in net metering. In particular, Duquesne Light supports: (a) the condition that customer-generators eligible to participate in net metering be required to have load that is independent of the alternative energy system; (b) the condition that the alternative energy system of customer-generators eligible to participate in net metering be sized to generate no more than 110% of the customer's annual electric consumption; and (c) the condition that the Commission review and approve all net metering applications with a name plate capacity of 500 kilowatts ("kW") or greater under the timeframes set forth in the proposed regulations.

a. Requirement for Independent Load

With respect to the requirement that a net metering customer-generator must have load that is independent of the alternative energy system, the Commission explains that this proposed condition "makes explicit what was already implied in the AEPS Act and the regulations." *See Proposed Rulemaking Order*, p. 11. Duquesne Light agrees that this requirement is consistent with the intent and plain language of the AEPS Act. See 73 P.S. § 1648.2 (net metering is available to alternative energy systems "used to offset part or all of the customer-generator's requirements for electricity").

Duquesne Light agrees with the Commission that merchant-generators should not be able to qualify for net metering because their alternative energy system is being used to offset the load that is related only to the operation, maintenance, or administration of the alternative energy system, such as lighting, security, HVAC, control equipment and/or equipment housing. Such alternative energy systems should not qualify for net metering because, but for the alternative energy system, there would be no load to offset. Duquesne Light believes that such systems should not be subsidized by ratepayers and, instead, these generators should sell their generation into the wholesale electric market. Allowing merchant-generators to sell their excess generation through net metering, rather than in the wholesale competitive electric market, will force ratepayers to subsidize these systems by paying higher rates. Duquesne Light agrees with the Commission's proposal to mandate an independent load requirement in order to preclude merchant-generators from being able to qualify for the net metering benefits.

Importantly, Duquesne Light notes that those alternative energy systems that do not meet the independent load requirement are still able to receive value for the excess generation produced from the alternative energy systems. Indeed, these facilities already have the ability to sell the excess generation in the wholesale electric market in competition with other similarly situated merchant-generators. Further, Duquesne Light will permit these alternative energy systems to interconnect with Duquesne Light's system consistent with and upon review and approval through the PJM generation interconnection process. Thus, little, if any, harm will occur to alternative energy systems with little or no independent load because they will still be able to get the same value for their excess generation as received by other similarly situated merchant-generators. Further, this approach will avoid ratepayers being forced to subsidize these merchant-generators, which could cause higher rates for customers.

Duquesne Light believes that these proposed modifications to the requirement for independent load will provide additional clarity regarding the alternative energy systems that qualify as customer-generators eligible to participate in net metering, and those that do not. Duquesne Light submits that the independent load requirement will help prevent merchant-generators from attempting to qualify as customer generators and being subsidized by ratepayers through net metering by higher rates for customers. Duquesne Light therefore supports this proposed condition and recommends that it be adopted.

b. 110% Size Limitation

In the proposed regulations, the Commission proposes that the alternative energy system must be sized to generate no more than 110% of the customer-generator's annual electric consumption at the interconnection meter and all qualifying virtual meter aggregation locations. The Commission explained that the purpose of this condition is to ensure that the customer-generator is not acting like a utility or merchant-generator and receiving excessive retail rate subsidies from other retail rate customers. *See Proposed Rulemaking Order*, p. 13. Duquesne Light supports this proposed condition and recommends that it be adopted.

Duquesne Light believes that the 110% size limitation is consistent with intent of the net metering provisions of the AEPS Act to provide electric customers with a reasonable means to offset their electric consumption. The 110% design limit is a reasonable and balanced approach to supporting the intent of the AEPS Act by limiting the potential for merchant-generators to use net metering as a way to circumvent the wholesale electric market and receive retail rate subsidies at the expense of retail customers. This 110% size limitation should help resolve much of the ongoing uncertainty and confusion regarding whether merchant-generators are eligible to participate in net metering.

Duquesne Light requests, however, that the 110% size limitation should be clarified to address situations where the customer does not have historic annual consumption, i.e., new or moving customers or new construction. Duquesne Light does not believe that it would be appropriate to exclude such customer-generators to the extent that they are otherwise qualified. Therefore, the Company requests that the Commission develop specific guidance to address such situations.

Further, Duquesne Light requests that the Commission also address situations where a customer-generator exceeds the 110% size limitation after it has qualified for net metering and has been interconnected to the EDC's system. Although the 110% size limitation provides much needed clarity regarding the eligibility for net metering, it remains unclear what should happen if a customer exceeds the 110% size limitation after initial qualification.

For example, it is unclear whether a customer-generator that produces generation in excess of the 110% limit should continue to receive credit for the total excess generation produced, or receive credit only for an amount equal to 110% of the customer's annual consumption. Likewise, it is unclear whether a customer-generator that exceeds the 110% limit must be removed from net metering because it no longer qualifies.

c. Commission Review of Alternative Energy Systems 500 kW or Greater

Duquesne Light also supports the Commission's proposal to review and approve all net metering applications for alternative energy systems with a nameplate capacity of 500 kW or greater under the timeframe set forth in the proposed regulations. Unlike smaller-sized alternative energy systems where it is much easier for the EDC to determine whether the customer qualifies as a customer-generator eligible for net metering, Duquesne Light believes that many of the alternative energy systems sized at 500 kW and above often require significant resources and time to determine if such facilities truly qualify as a customer-generator or are a merchant-generator. Further, Duquesne Light believes that the Commission's review will ensure that these larger-sized alternative energy systems are treated uniformly and consistently throughout the Commonwealth, which will be a significant benefit to the owners of larger-sized alternative energy systems operating in multiple service territories. In addition, Duquesne Light supports the time period for approval of such facilities. In particular, Duquesne Light agrees with the Commission's requirement that EDCs submit net metering applications to the Commission within 20 days of receiving the completed application. Duquesne Light believes that this 20 day period will be necessary for the Company to prepare net metering applications and opposes any request to shorten this period.

Conclusion

Duquesne Light has supported, and continues to support, the AEPS Act and appreciates the Commission's proposal to adopt regulations necessary for the implementation and enforcement of the AEPS Act. Overall, Duquesne Light finds the guidance in the Proposed Order to be beneficial; however, the Commission's further consideration to the above outlined issues is requested in order for Duquesne Light to continue to implement the AEPS Act in a manner consistent with that of other utilities and for the benefit of its customers.

Duquesne Light appreciates the opportunity to comment on this *Proposed Rulemaking Order*, and supports the Commission's efforts to revise its regulations pertaining to the net metering, interconnection, and portfolio standard provisions of the AEPS Act.

Respectfully Submitted,

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