



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

May 15, 2015

Docket Number: L-2014-2404361

The PUC is proposing fundamental changes to the provisions of the AEPS Act. Many of them are doomed to fail on the simple grounds that they are in conflict with the underlying statute. But even if that were not the case, the PUC's attempts to promulgate this new regulation do not pass muster with the Regulatory Review Act.

The Regulatory Review Act was written in the 1980's, and serves a system of checks and balances to prevent agencies from straying from legislative intent or creating regulations that are oppressive or unduly burdensome. Any time an agency like the PUC desires to promulgate a new regulation, they must first submit a Regulatory Analysis Form (see attached RAF) to the Independent Regulatory Review Commission (IRRC). The IRRC determines the need for new regulations and if they are compliant with the intent of the Regulatory Review Act.

The Regulatory Analysis Form asks specific, pointed questions of the agency wishing to promulgate new regulations. Below is an example, and the response given by the PUC (in blue).

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how 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 but 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/electric/pdf/AEPS/AEPS_Ann_Rpt_2012.pdf.

The 2012 report that the Commission points to does not address any aspect of the cost of net metering, which is at the heart of this proposed new rule. The RAF asks for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. So far, all that the PUC has produced is a blanket statement that "unfair subsidies" exist. Presumably these subsidies take the form of AEPS Act cost recovery, although the Commission doesn't specify how the alleged costs are passed on to ratepayers. Last year, it was discovered that the PUC does not audit this important financial transaction. In short, no evidence has been produced that points to unfair subsidies because the evidence doesn't exist. In order to fulfill the requirements of the Regulatory Review Act, the PUC must produce evidence that a need exists for this new regulation. The answer given in this RAF is insufficient; a point that the IRRC made when they filed their response to the original rulemaking.

Regards,

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