



COMMONWEALTH OF PENNSYLVANIA

May 29, 2015

E-FILED

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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:

I am delivering for filing today the Comments on the Advanced Notice of Final Rulemaking Order, on behalf of the Office of Small Business Advocate, in the above-captioned matter.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth Rose Triscari".

Elizabeth Rose Triscari
Deputy Small Business Advocate
Attorney ID #306921

Enclosures

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMMENTS OF THE OFFICE OF SMALL BUSINESS ADVOCATE
ON ADVANCE NOTICE OF FINAL RULEMAKING ORDER**

I. INTRODUCTION

On April 23, 2015, the Pennsylvania Public Utility Commission (“Commission”) issued an Advance Notice of Final Rulemaking Order (“Order”) in the above-captioned proceeding, which proposes additional revisions to regulations pertaining to implementation of the Alternative Energy Portfolio Standards Act of 2004 (“AEPS Act”) in response to comments received to the Proposed Rulemaking Order issued on February 20, 2014. The Order issued the proposed revisions for public comment and directed comments from interested parties to be filed within 20 days of its publication in the *Pennsylvania Bulletin*. On May 9, 2015, the Order was published accordingly. The Office of Small Business Advocate (“OSBA”) submits the following comments pursuant to the Order.

II. COMMENTS

1. In its comments to the Proposed Rulemaking Order, the OSBA established that allowing net metering generators to produce power far in excess of their own needs serves to distort both default service load patterns and default service rates.¹ The Commission, at least initially, wisely determined to mitigate this problem by limiting the magnitude of total

¹ See OSBA comments to Proposed Rulemaking Order at 1-4.

permissible generation by net metering customers. The Commission reasonably concluded that the legislative intent of the net metering program was for customer-generators to produce power commensurate with their own needs.

Unfortunately, the Commission has backtracked on its original sensible proposal to limit the generation to no more than 110 percent of the net metering customer's own needs. It now proposes to allow net metering customers to generate up to 200 percent of their actual consumption.² As net metering expands, and as customers increasingly choose to shop to avoid "ugly" default service rates, the impact of the distortion created by net metering loads on default service will increase. The OSBA respectfully submits that the Commission has not fully considered the impact of excess net metering generation on default service rates for small businesses. Therefore, the OSBA recommends that the Commission's initial and reasonable 110 percent limitation be imposed such that net metering generators are not providing net energy into the distribution grid materially in excess of their actual consumption.

2. The Commission's Order further exacerbates the problem faced by default service customers by proposing to exempt certain manure to energy generators from the excess generation limitation entirely. The Commission bases its exemption on comments from the Department of Environmental Protection ("DEP"), the Department of Agriculture ("PDA"), and the Chesapeake Bay Commission ("CBC"). The OSBA has reviewed the comments and reports referenced by these entities, and can find no quantitative assessment of the economic impact of a restriction on excess net metering generation on the economics of these operations. As such, the OSBA questions the need for the exemption at all. The OSBA is concerned that the Commission

² The Commission claims that the 200% limit is consistent with how net metering is treated in other jurisdictions, but the related footnote only cites to Maryland. See *Advance Notice of Final Rulemaking Order* at 11, fn. 5. The OSBA is aware of jurisdictions with 110% and 120% limits, but no others with 200%.

is adopting an exemption based on unsubstantiated claims that the proposed policy will have some vague, unspecified impact on one particular group of customers. As no evidence has been advanced regarding the impact, the OSBA suggests that the exemption apply only to those customers who can demonstrate that it is economically necessary for the manure to energy generation option to be viable.

3. Nevertheless, the OSBA is a strong supporter of reducing the environmental impact of Pennsylvania farmers on the Chesapeake Bay. Therefore, if it is necessary to allow manure to energy generators to be eligible for special treatment under the net metering regulations in order to achieve those aims, the OSBA recommends that the costs of the exemption be reasonably shared among ratepayers. For the reasons stated in its comments to the Proposed Rulemaking Order, the OSBA concludes that allowing net metering customers to be paid the EDC's price to compare for large excesses in energy generation likely represents a subsidy from regular default service customers to the net metering customer. The DEP, PDA, and CBC apparently agree, or they would not be so intent on obtaining a waiver for manure to energy generators from that restriction. In effect, these parties are requesting that a tax be placed on default service customers in order to better achieve the aims of the Nutrient Management Act. While the OSBA does not oppose these tax and spend policies *per se*, the OSBA fears that the existing tariff mechanisms will inequitably require that small business default service customers absorb the entire costs for this well-intentioned exemption.

The OSBA therefore respectfully submits that customers should not be able to bypass this tax by choosing to shop. Thus, the OSBA recommends that the net costs associated with any public policy exemption to the generation limits for net metering customers be reasonably shared among all customers and all customer classes, through a non-bypassable charge mechanism. In

that way, the subsidies needed to achieve the policy aims of the Nutrient Management Act will be more equitably borne by a broad array of customers, and not limited solely to small business customers who take default service.

4. In addition, the OSBA repeats its request for clarity regarding the pricing for excess generation. In its comments to the Proposed Rulemaking Order, the OSBA expressed concern with respect to how net metering customers' compensation is calculated. Specifically, the OSBA stated:

The Order modifies §75.13(d) to include the following: "In computing the compensation, the DSP shall use a weighted average of the price to compare rate, with the weighting based on the rate in effect when the excess generation was actually delivered by the customer-generator to the DSP."

Conceptually, the OSBA agrees that the payment for net generation should reflect the timing of that net generation. However, it must be recognized that any net generation involves periods of "exports" to the grid and "imports" from the grid. While the proposed language makes it clear that it is the Commission's intent to use a more representative PTC, it is unclear how this will work in practice. In particular, it is unclear whether the PTC will be based only on prices in effect when the customer generator is selling to the grid, or whether the prices in effect when the customer is a net consumer will also be recognized. For example, suppose that a large solar net generator takes default service at an hourly default service rate. For that customer, will the net compensation be based on applying daytime prices to net generation amounts, or will it be based on applying daytime prices to all generation delivered to the grid less nighttime prices for all energy consumed from the grid? Similarly, for a smaller customer who is a net consumer in the summer and a net generator in the other seasons, will the summer PTCs be reflected in the calculation of the cash out price, or will the cash out price be based only on the non-summer months?

From a theoretical standpoint, it would be best to calculate the cash out price with the most detail, namely by applying a credit equal to the PTC for all hours in which the net generator is exporting to the grid, and deducting a charge equal to the PTC for all hours in which the customer generator is importing from the grid.

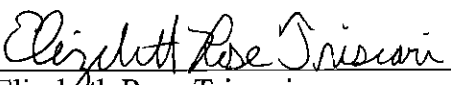
However, from a practical standpoint, the OSBA acknowledges that all EDCs' information systems may not be able to accommodate such a procedure. Thus, while the OSBA generally concludes that reflecting the timing of both exports and imports in the cash out price is preferred to reflecting only the timing of exports, the OSBA respectfully requests that the Commission clarify its intent in this respect.³

The OSBA respectfully requests that the Commission provide adequate clarification and guidance on this issue.

III. CONCLUSION

In view of the foregoing, the OSBA respectfully requests that the Commission enter a Final Rulemaking Order consistent with the OSBA's comments above.

Respectfully submitted,


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For:

John R. Evans
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Dated: May 29, 2014

³ OSBA Comments to Proposed Rulemaking Order at 4-5.