

May 29, 2015

Pennsylvania Public Utility Commission
Attn: Rosemary Chiavetta, Secretary
Commonwealth Keystone Building
400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Advance Notice of Final Rulemaking Order:
Implementation of the Alternative Energy Portfolio Standards Act of 2004
(Docket No. L-2014-2404361)

VIA ELECTRONIC AND FIRST CLASS MAIL

Dear Members of the Commission:

Pennsylvania Farm Bureau (PFB) appreciates the opportunity to offer additional comments specific to the Commission's aforementioned advance notice of final rulemaking order, published in the May 9, 2015 edition of the *Pennsylvania Bulletin*, revising the governing regulatory standards for implementation of the Alternative Energy Portfolio Standards Act of 2004 (AEPS Act), 73 P.S. § 1648.1, et seq.

PFB is a general farm organization, made up of more than 59,780 members. Since 1950, PFB has provided support, advocacy and informational and professional services for agriculture and farm families, including those operating Tier I energy generation systems on farms who may be affected by this proposed rulemaking. Our organization includes 54 local organizations (County Farm Bureaus) that actively operate in 64 of Pennsylvania's 67 counties. PFB initially submitted comments on September 3, 2014 in response to the rulemaking originally proposed by the Commission on this issue.

PFB would like to recognize the effort made by the Commission in the final regulations in attempting to understand and address the concerns raised by our members who operate electrical generation systems as part of their farm operation. Relative to the regulations originally proposed, the final order provides better opportunity for alteration and growth of on-farm generation systems that farmers need to operate to meet economic and, more importantly, environmental demands of their farms.

As noted in our initial comments, the three systems most often developed and operated on farms eligible for net metering generate electricity through utilization of anaerobic methane digestion, solar energy and wind energy. These systems are very often operated on more concentrated farming operations, and are developed and operated as integral part of the farm's plan to meet the environmental standards imposed under state and federal law. While opportunity for supplemental income through electrical generation may be part of the reason why Tier I energy systems are developed and operated on farms, it is hardly the primary incentive behind their development and operation. Farmers must incur high input and operation costs to viably engage their farms in agricultural production, and development and maintenance of alternative energy systems requires farmers to make significant capital outlays and incur debt.

Rarely, if ever, are farmers using their farms as a facade for operation of the type or scale of intensive electrical generation system commonly operated by commercial electrical companies. Typically, the “income” from the electrical generation “enterprise” is merely part of the income and cost factors managed by the farmer in the overall management of the farm as a single, viable business unit.

However, PFB remains very concerned over the adequacy of response made in the advance order to the concerns and criticisms we expressed in our initial comments. In particular, we still believe farmers’ future ability to viably utilize on-farm generate systems to meet legal environmental requirements will be seriously compromised, even under the final regulations’ revised standards of “customer generator” eligibility. The Commission’s proposal to increase the threshold of maximum capacity of qualifying “customer generation” systems from 110 percent to 200 percent of the generator’s actual electric consumption, while helpful, does not sufficiently take into account current **and future** needs farm families will have to address in the environmental and economic management of their farms. While many farmers have systems **today** that fall under the generation capacity cap to be established in the final regulations and will continue to receive net metering treatment of their systems for the immediate future, the cap will place in substantial jeopardy farmers’ ability to augment their systems to meet necessary and reasonably foreseeable farm needs and continue to qualify those systems for net metering **long-term**.

Farm families face two major and potentially divergent challenges: the need to improve and increase production yields on a static acreage of farmland available for production, and the need to practically and legally manage the adverse environmental impacts that often arise from more intensive farming practices and activities. Operation of Tier I energy generation systems can and does play a critical role in farmers’ ability to attain agricultural production yields necessary for the farm’s continued economic viability in a way that is more compatible with sustaining the environment.

In our initial comments, we noted that the use of methane digesters on farms provides an expensive, but feasible, opportunity for farmers engaged in more intensive farming operations to manage adverse environmental effects and legally meet the increased water and air quality standards imposed on more intensive agricultural practices while also providing the opportunity to offset costs or generate revenue from the process, which is an important factor due to the high capital costs of the system. The U.S. Department of Agriculture, U.S. Environmental Protection Agency and the U.S. Department of Energy recognize the many benefits and opportunities offered by anaerobic digestion systems and strongly encourage animal agriculture operations (particularly those in the Chesapeake Bay Watershed) to increase implementation of these systems. We also noted that for many “larger scale” farms in the Commonwealth, a farmer’s decision to initially develop a methane digestion system or to install capital infrastructure to increase operational capacity of their current system is done more for environmental purposes than for purposes of additional income or increased access to electrical energy.

In the same vein, relative to crop production, development of solar and wind energy systems provide farmers the opportunity to manage their farms in a more economically efficient and environmentally efficient manner. These systems can be located on marginally productive lands that are susceptible to high rates of soil erosion when used in field crop production, which allows resources and inputs for increasing crop production yields to be more effectively and efficiently directed to fields with more fertile soil types and more optimum slope and land conditions.

Finally, as noted in our previous comments, income from the generation of electricity is often the only revenue stream that will be factored into a project's "payback period" or "return on investment" by lenders and investors. For that reason, the ability of a project to recoup retail electricity prices (versus wholesale prices or avoided costs) through net metering is extremely important.

In light of the critical benefits that development and operation of Tier I systems on farms can feasibly provide to the ability of Pennsylvania farmers to achieve environmental quality and legally meet environmental obligations of the Chesapeake Bay TMDL and other requirements of federal and state law, we strongly reiterate our recommendation that any regulations finally adopted by the Commission ensure the broadest eligibility of all Tier I systems on farms engaged commercially by farm families in agricultural production to the benefits of net metering, both now and in the future.

In spite of the Commission's changes to the proposed rulemaking, the language in the advance order would not substantially enhance the ability of farmers to be eligible for net metering in development of on-farm systems whose capacity for electrical generation exceeds 200 percent of the farmer's annual consumption. As previously stated, while the 200 percent limitation is an improvement relative to the Commission's original proposal, it remains an arbitrary figure that is problematic for several reasons. As described above, farmers develop and operate on-farm generation systems more for environmental management rather than economic gain. Given the high costs and debt that farmers must incur in developing these systems, the 200 percent limitation will still disincentivize farm families' use of Tier I generation to achieve the level of environmental control or economic efficiency that they will need to viably sustain their farms in agricultural production.

PFB notes that the Commission, in the advance order, has included language that would provide an exception to the 200 percent limit. The exception would apply to systems which the Pennsylvania Department of Environmental Protection (DEP) determine are necessary to comply with Pennsylvania's Chesapeake Bay Watershed Implementation Plan (WIP), or must be performed for compliance with the farm's Nutrient Management Act.

While we believe the Commission was well intentioned in its effort to provide this exception, we believe the analyses and determinations that the Commission is requesting DEP to undertake are utterly contradictory to the role, analyses and determinations that DEP traditionally performs, and should perform exclusively, as a regulatory and enforcement agency. Essentially, what the Commission is asking DEP to determine is whether or not a particular activity or system is **necessary** for the regulated entity's compliance with the law or regulation. This is extremely different from the more limited focus that regulatory agencies normally have, which is to determine whether the operations actually being performed by a regulated entity or on a regulated facility are in compliance with minimum standards imposed by law or regulation.

To put it another way, the focus of government agencies is to determine whether the current activities and conditions of regulated entity or facility **are** in compliance with law or regulation, not to determine which among those activities and conditions **are or are not** necessary to comply with law or regulation. As such, we believe the function of DEP in the Commission's application of the exception to the maximum capacity cap is skewed. Many of the regulatory standards that apply to farming operations as nonpoint sources of environmental pollution are qualitative in nature.

There are few specific, quantified and measurable standards for pollution that apply to farms, as there are predominantly for sewage treatment plants and other point sources of environmental pollution. As such, there are various methods and systems in which a farm can comply with its legal requirements, each one of which will place the farm operation in legal compliance. What the Commission is asking DEP to do is to determine, among the legally viable alternatives a farmer can pursue, which conservation activities and systems are “needed” and which are “too much,” including the use and extent of use of on-farm generation systems.

At the same time, DEP is under no legal obligation to make a timely decision or to make any decision at all on these matters or on any other activity the Commission would prescribe for DEP in its regulations. What DEP does or does not do relative to this rulemaking is voluntary. And farmers who may really believe expansion of their generation system is necessary for legal compliance are nonetheless beholden to if and when a voluntary decision would be made by DEP in order to sustain their operations.

Again, we do not question the Commission’s intention in providing for this exception. We do, however, have serious questions about the exception in its practical application and the effects its application will have in the pursuit and implementation of on-farm generation systems that farmers reasonably believe are necessary for economic and environmental sustainability.

In our initial comments, PFB recommended the Commission provide an outright exemption of farming operations from the proposed restriction in capacity. We understand that the Commission’s concern that only “legitimate” farming operations should benefit from the “consumer generator” provisions. Nevertheless, we also believe there are other and more reasonable ways for demonstration of “legitimacy” than the one offered by the Commission in its final regulation. Other agencies have had similar concerns that the advantages to be provided to agriculture should only be provided to those genuinely engaged in farming. These agencies have required farmers to provide to the agency documentation that persons actually engaged in farming operations regularly file and may legally be required to file as a condition for the farmer’s receipt of the advantage or benefit the agency provides. We believe the Commission can implement similar means and documentation to ensure the legitimacy of engagement of persons in agriculture, without resorting to cumbersome analyses and determinations of “legitimacy” that must be employed pursuant to the exception provision.

In light of the discussion above, PFB again urges the Commission to reconsider its final regulation and include language that provides for an outright farm exemption from the restriction in capacity.

PFB again thanks the Commission for the opportunity to comment on the advance order, and will continue to work with the Commission to develop net metering regulations that encourage the continuing efforts of Pennsylvania farmers to implement projects that provide substantial environmental benefits while producing clean, renewable sources of electricity.

Sincerely,



Grant R. Gulibon
Director, Regulatory Affairs