

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Implementation of the Alternative
Energy Portfolio Standards Act of 2004

Public Meeting held February 11, 2016
2404361-LAW
Docket No. L-2014-2404361

STATEMENT OF CHAIRMAN GLADYS M. BROWN

Before the Commission for consideration and disposition is the Final Rulemaking Order proposing amendments to our regulations at 52 Pa. C.S. §§ 75.1-75.70, which implement the net metering, interconnection, and compliance provisions of the Alternative Energy Portfolio Standards Act (AEPS Act), 73 P.S. § 1648.1, *et seq.*

With one notable exception, I support the proposed amendments to our regulations and believe that they succeed in implementing the changes to the AEPS Act made by Act 35 of 2007, explaining changes generated by Act 129 of 2008, and, generally clarifying compliance obligations.

However, I am unable to support the proposed amendment of Section 75.13(3) of the regulations that would require an alternative energy system to be sized to generate no more than 200% of the customer generator's annual electric consumption at the interconnection meter and all qualifying virtual meter aggregation locations. The rationale for imposing the 200% limit is noble in that it recognizes that any above market payments made to customer generators are paid for by the rest of the rate paying class of customers. Because, one of the basic tenets of public utility regulation, per 66 Pa. C.S. § 1301, is to set rates that are "just and reasonable," any rational regulator would be tempted to limit a customer generator from being paid retail rates for energy produced by a system that was purposefully oversized. But, setting such a limit ignores the very specific size limitation provided in the AEPS Act.

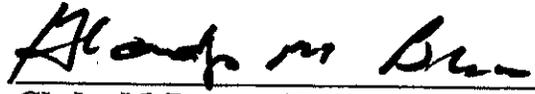
The Act defines customer generator as: "A nonutility owner or operator of a net metered distributed generation system with a nameplate capacity of not greater than **50 kilowatts** if installed at a residential service or not larger than **3,000 kilowatts** at other customer service locations, except for customers whose systems are above three megawatts and up to **five megawatts** who make their systems available to operate in parallel with the electric utility during grid emergencies as defined by the regional transmission organization ..." 73 P.S. § 1648.2 (emphasis added). Because the AEPS Act very precisely provides that customer generators may size up to 50kw for residential systems and up to 3 or 5 MW for non-residential systems, this Commission commits legal error by imposing a different size limitation in our regulations.¹ The

¹ An agency has no power to "tailor" legislation to bureaucratic policy goals by rewriting unambiguous statutory terms. Agencies exercise discretion only in the interstices created by statutory silence or ambiguity; they must always "give effect to the unambiguously expressed intent of Congress." It is hard to imagine a statutory term less ambiguous than the precise numerical thresholds at which the Act requires PSD and Title V permitting. When EPA

statutory requirement that utility rates be just and reasonable does not authorize the Commission to ignore or alter other statutory directives. *Popowsky v. Pa. PUC*, 910 A.2d 38, 53 (Pa. 2006).

Because of this error, I am unable to fully support the staff recommendation and will dissent, in part.

February 11, 2016
Date


Gladys M. Brown, Chairman

replaced those numbers with others of its own choosing, it went well beyond the "bounds of its statutory authority."
Utility Air Regulatory Group v. EPA, 573 U.S. ___, ___, 134 S. Ct. 2427, 2445, 189 L. Ed. 2d 372, 392 (2014)
(citations omitted).