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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  Harrisburg, PA. 17105-3265 |  |

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|  | Public Meeting held March 29, 2012 |
| Commissioners Present: |  |

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| Robert F. Powelson, Chairman | |  |
| John F. Coleman, Jr., Vice Chairman | |  |
| Wayne E. Gardner | |  |
| James H. Cawley | |  |
| Pamela A. Witmer | |  |
|  |  |
| Net Metering – Use of Third Party Operators | Docket No. M‑2011‑2249441 |

**FINAL ORDER**

**BY THE COMMISSION:**

With the passage of the Alternative Energy Portfolio Standards Act of 2004[[1]](#footnote-1) (AEPS Act), this Commonwealth embarked on a policy of promoting alternative generation sources. The Commission has been steadfastly committed to making sure the AEPS Act successfully meets the legislative policy goal of promoting reasonable alternative energy. To further this commitment, the Commission, in a Tentative Order,[[2]](#footnote-2) proposed that it be the policy of the Commission to interpret the term “operator” in the definition of “customer-generator” as including customer-generators with distributed alternative energy systems that contract with a third party to perform the operational functions of the system. With this order, we adopt this policy as modified by this order.

**BACKGROUND**

On November 30, 2004, Governor Edward Rendell signed Act 213 into law. Act 213 became effective on February 28, 2005, and established the Alternative Energy Portfolio Standards Act in Pennsylvania. The AEPS Act includes two key mandates, greater reliance on alternative energy sources, such as solar photovoltaic, in serving Pennsylvania’s retail electric customers and the opportunity for customer-generators to interconnect and net meter small alternative energy systems. The Pennsylvania General Assembly charged the Commission with implementing and enforcing these mandates, with the assistance of the Pennsylvania Department of Environmental Protection.[[3]](#footnote-3)

The AEPS Act defines net metering as “[t]he means of measuring the difference between the electricity supplied by an electric utility and the electricity generated by a customer-generator when any portion of the electricity generated by the alternative energy generating system is used to offset part or all of the customer‑generator’s requirements for electricity.”[[4]](#footnote-4) The AEPS Act also permits virtual net metering “on properties owned or leased and operated by a customer-generator and located within two miles of the boundaries of the customer-generator’s property and within a single electric distribution company’s service territory.”[[5]](#footnote-5)

The AEPS Act defines a 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 or where a microgrid is in place for the primary or secondary purpose of maintaining critical infrastructure, such as homeland security assignments, emergency services facilities, hospitals, traffic signals, wastewater treatment plants or telecommunications facilities, provided that technical rules for operating generators interconnected with facilities of an electric distribution company, electric cooperative or municipal electric system have been promulgated by the Institute of Electrical and Electronic Engineers and the Pennsylvania Public Utility Commission.[[6]](#footnote-6)

The Commission’s regulations require electric distribution companies (EDCs) to “offer net metering to customer-generators that generate electricity on the customer-generator’s side of the meter using Tier I or Tier II alternative energy sources, on a first come, first served basis.”[[7]](#footnote-7) Regarding electric generation suppliers (EGSs) the Commission’s regulations state that “EGSs may offer net metering to customer‑generators, on a first come, first served basis, under the terms and conditions as are set forth in agreements between EGSs and customer-generators taking services from EGSs.”[[8]](#footnote-8)

The Commission’s regulations define a customer-generator facility as “[t]he equipment used by a customer-generator to generate, manage, monitor and deliver electricity to the EDC.”[[9]](#footnote-9) The Commission’s regulations also define net metering as “[t]he means of measuring the difference between the electricity supplied by an electric utility or EGS and the electricity generated by a customer-generator when any portion of the electricity generated by the alternative energy generation system is used to offset part or all of the customer-generator’s requirements for electricity.”[[10]](#footnote-10)

On June 30, 2011, the Commission adopted a motion by Chairman Robert F. Powelson seeking comment on a proposal to make it the policy of the Commission to allow net metering of alternative energy systems where the customer-generator contracts with a third-party to operate the system, provided that the system is designed to generate no more than 110% of the customer-generator’s prior year electric consumption. On July 28, 2011, the Commission entered a *Tentative Order* seeking comment on this proposed net metering policy. The *Tentative Order* was published in the Pennsylvania Bulletin on August, 13, 2011.[[11]](#footnote-11) Comments were due by September 12, 2011.

Comments were filed by Citizen Power; Duquesne Light Company (Duquesne); the Energy Association of Pennsylvania (EAP); EnergyWorks Group (EnergyWorks); the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, FirstEnergy); the Interstate Renewable Energy Council (IREC); the Office of Consumer Advocate (OCA); PECO Energy Company (PECO); PennFuture; the Pennsylvania Solar Energy Industry Association and the Mid-Atlantic Solar Energy Industries Association (collectively PASEIA/MSEIA); the Solar Alliance (SA); SunRun, Inc. (SunRun); the Sustainable Energy Fund (SEF); the Vote Solar Initiative (Vote Solar); and Washington Gas Energy Services, Inc. (WGES).

**DISCUSSION**

The Commission would like to thank all parties who provided comments in this proceeding. Below, we will address those comments that are germane to the proposed policy.

**A. Proposed Commission Policy**

In the *Tentative Order*, we stated that we believe that it should be the policy of this Commission to support access to alternative energy systems to as broad an array of consumers as possible. We further stated that we were aware of the fact that consumers often may need to make a significant initial capital outlay in order to install an alternative energy facility at their residence or small business, and that this significant capital expense is an impediment to many consumers wishing to install such systems.

In the *Tentative Order*, we stated that the AEPS Act and the Commission’s regulations may be interpreted as prohibiting the net metering of an alternative energy system located, on a customer’s premises, which is owned and operated by an alternative energy system developer that sells the electricity generated by that system to the customer through a power purchase agreement. In the *Tentative Order*, we propose that it be the policy of this Commission to allow alternative energy systems installed using the business model described above to net meter. Specifically, we stated that for the purposes of net metering, it should be the policy of this Commission that the term “operator,” as found in the definition of “customer-generator” in the AEPS Act,[[12]](#footnote-12) shall be interpreted as including customer-generators with distributed alternative energy systems that contract with a third-party to perform the operational functions of the alternative energy system.

In the *Tentative Order*, we further proposed that it be the policy of this Commission to limit this interpretation to alternative energy systems installed on property owned or leased and operated by the customer‑generator and designed to generate no more than 110% of the customer‑generator’s annual electric consumption,[[13]](#footnote-13) provided that its nameplate capacity does not exceed the size limits defined in the AEPS Act.[[14]](#footnote-14) We proposed the system size limitation of 110% of a customer‑generator’s prior year electricity consumption to prevent the installation of oversized alternative energy systems that are more accurately described as merchant generation posing as customer-generators.

**1. Comments**

The majority of commenters support or do not object to the Commission’s proposed policy.[[15]](#footnote-15) Many of the commenters do, however, make suggestions to further clarify the intent and application of the proposed policy. We will address these suggestions below.

**2. Disposition**

As the proposed policy was supported by the vast majority of the Commenters, with requests for clarification, and for the reasons expressed in our *Tentative Order*, we will adopt the proposed policy, as modified by this order. Specifically, we adopt as Commission policy that the term “operator,” as found in the definition of “customer-generator” in the AEPS Act,[[16]](#footnote-16) shall be interpreted as including customer-generators with distributed alternative energy systems that contract with a third-party to perform the operational functions of the alternative energy system.

**B. 110% Consumption Limit**

In the *Tentative Order*, we proposed that alternative energy systems installed using the business model in which a developer installs the system, maintains ownership and performs operations and maintenance functions, and sells the generation to the customer through a power purchase agreement, be limited in size. Specifically, we proposed that the system be installed on a property owned or leased and operated by the customer-generator and designed to generate no more than 110% of the customer-generator’s annual electric consumption. This consumption was measured by the customer-generator’s total electric usage in the 12 full months immediately preceding submission of the interconnection application.

**1. 110% Limit**

Several parties commented on the reasonableness of the proposed 110% design limit on third-party owned and operated net metered alternative energy systems.

**a. Comments**

Seven of the 15 commenters state that the Commission’s proposed 110% limitation is reasonable in preventing the installation of oversized alternative energy systems.[[17]](#footnote-17) In particular, PennFuture comments that it “believes that the Commission’s proposal to limit the alternative energy system to 110% of the customer-generator’s electric consumption is fair and reasonable given the fact that net metering is designed to offset all or part of a customer-generator’s electricity requirements.”[[18]](#footnote-18)

PASEIA/MSEIA suggest that the 110% limitation only be applied to commercial systems with a nameplate capacity over 200 kW. PASEIA/MSEIA assert that residential systems should be excluded from the 110% limit as they are already limited to 50 kW and there are other protections against oversizing residential systems.[[19]](#footnote-19) WGES suggests a limit similar to that imposed by Maryland, which adopted a 200% limit, asserting that a higher percentage will allow for growth in electricity usage by the customer-generator and encourage efficient installation of alternative energy systems.[[20]](#footnote-20)

**b. Disposition**

In proposing this limitation, the Commission believed it would be a reasonable way to limit the possibility of merchant generators posing as customer-generators. As we noted in the *Tentative Order*, we believe the intent of the AEPS Act, as expressed in the Act’s definition of net metering, was to provide electric utility customers with a reasonable means to offset their electric consumption. The majority of comments support the 110% design limit as a reasonable and balanced approach to supporting the intent of the AEPS Act and limiting the potential for merchant generators to use net metering as a way to circumvent the wholesale electric market and gain excessive retail rate subsidies at retail customer expense. As such we adopt, as Commission policy, a size limitation of 110% for net metered alternative energy systems owned and operated by third-parties that are interconnected and placed on property owned or leased and operated by an electric utility customer.

The Commission would like to clarify that the 110% limitation is to be part of the criteria used in designing a system that is installed as part of the third-party business model. This limitation does not apply to those systems directly owned or operated by a customer-generator who is not using the third-party owner or operator model.

The Commission declines to adopt PASEIA/MSEIA’s proposal to limit the application of the 110% limitation to commercial systems greater than 200 kW in size. Although there may be other protections in place for residential systems at this time, the Commission believes that the 110% limitation should be applied equally across all rate classes. The intent is to limit oversizing by any third-party owned and operated system. The Commission believes there is still ample opportunity for customers of all rate classes to take advantage of this business model with the 110% limitation in place.

The Commission also declines to adopt WGES’ proposal to increase the design limitation to 200% as Maryland has done. It is the Commission’s belief that a 200% size limitation would not effectively limit the potential for merchant generators to use net metering as a way to circumvent the wholesale electric market and gain excessive retail rate subsidies at retail customer expense.[[21]](#footnote-21)

**2. Determination of 110%**

Several parties sought clarification on how the 110% limit is to be determined and whether it should be a cap on the amount of energy to be netted against electric usage.

**a. Comments**

Some commenters express acceptance of the limitation with additional parameters. Specifically, Duquesne, EAP and PECO suggest that the Commission make the 110% limitation a cap on the kWh output eligible for net metering, implying that the customer-generator would not receive compensation for any generation in excess of 110% of its annual electric usage.[[22]](#footnote-22) EAP also suggests that the Commission clarify that the 110% cap be set during the system design phase such that it limits the size of the system that can be installed based on the customer-generator’s total electric usage during the preceding 12 months. EAP asserts that such a limitation will decrease cost-shifting to customers who do not participate in net metering, will simplify the role of EDCs in monitoring excess generation and limit the opportunity for abuse by merchant generators seeking retail rate subsidies in contradiction of the intent of the AEPS Act.[[23]](#footnote-23)

**b. Disposition**

The Commission would like to clarify that the 110% sizing limitation is a design parameter set forth to govern system size when third-party owners and operators are calculating the size of an alternative energy system to be interconnected and installed on property owned or leased and operated by an electric utility customer for net metering purposes. As the Commission’s goal is to support Pennsylvania ratepayer access to alternative energy systems, it does not believe it is necessary to implement other limitations at this time. Specifically, the Commission believes it is unnecessary to include a kWh output restriction on systems utilizing the third-party operator business model, as proposed by Duquesne, EAP and PECO. The Commission notes that the 110% design limit will be based on historical or estimated annual system output and customer usage, both of which are affected by weather that is beyond the control of the customer-generator. As such, the Commission believes that a hard cap, as proposed by Duquesne, EAP and PECO, would unfairly penalize customer-generators for variations in weather that are beyond their control.

**3. Virtual Net Metering**

In comments to the *Tentative Order*, parties questioned the application of the 110% limitation for customers who wish to implement the third-party business model to install systems that would allow for virtual meter aggregation.

**a. Comments**

FirstEnergy asserts that the 110% limitation should apply solely to the consumption at the meter where the system is interconnected as it would prevent third-parties from greatly oversizing an alternative energy system with the intention of requiring the retail customer to aggregate any nearby metering points to satisfy the 110% limitation.[[24]](#footnote-24) PASEIA/MSEIA and PennFuture assert that the 110% limitation should apply to the cumulative consumption of all meters that qualify for virtual aggregation. [[25]](#footnote-25)

Duquesne requests that the Commission require that each customer must be individually metered and have individual accounts in the homeowner’s name, as opposed to the accounts being placed in the name of the third-party.[[26]](#footnote-26) Duquesne further asserts that the EDC should not have a contractual relationship with any third-party owners or operators, emphasizing that the electric account must continue to be between the customer and the EDC.[[27]](#footnote-27) FirstEnergy comments that the third-party should not be eligible to aggregate EDC customer accounts, asserting that only retail electric customers be eligible to physically or virtually net meter accounts.[[28]](#footnote-28) PECO suggests that the third-party option should not be used to promote community energy aggregation, but to allow electricity generated by the third-party owned and operated alternative energy system to be sold only to a single customer.[[29]](#footnote-29)

**b. Disposition**

The Commission agrees with PASEIA/MSEIA and PennFuture that the 110% limitation should apply to the cumulative consumption of all meters that qualify for virtual meter aggregation under the AEPS Act and the Commission’s regulations. It is the Commission’s belief that restricting third-party owned and operated systems as FirstEnergy suggests would unreasonably discriminate against customer-generators who would otherwise be eligible for virtual meter aggregation under the provisions of the AEPS Act[[30]](#footnote-30) and the Commission’s regulations.[[31]](#footnote-31) As such, the Commission adopts the policy that the 110% limitation as a design criterion of third-party owned and operated alternative energy systems shall apply to the cumulative consumption of all meters that are eligible for virtual meter aggregation in accordance with the AEPS Act and the Commission’s regulations.

The Commission, however, does agree with Duquesne, FirstEnergy and PECO, that this policy should not be interpreted as creating a contractual relationship between the EDC and a third-party owner or operator of an alternative energy system placed on property owned or leased and operated by a customer-generator. Any contractual relations in such a scenario remain between the EDC and the retail electric customer, who is responsible for complying with all applicable EDC tariff provisions and Commission regulations. Furthermore, this policy does not in any way expand the virtual meter aggregation provisions of the AEPS Act and Commission regulations to include community aggregation. This policy simply permits customer-generators who chose to contract with a third-party to own and operate an alternative energy system located on property owned or leased and operated by that customer-generator to virtual net meter in the same manner as if that customer-generator owned or operated the alternative energy system.

4. **New Construction**

In the *Tentative Order* we proposed that the 110% limitation be based on the customer-generator’s total electric usage during the 12 full months immediately preceding submission of the interconnection application.

**a. Comments**

Several commenters request that the Commission provide guidance on how the 110% limitation is to be determined for newly constructed buildings or where the retail customer does not have a full 12 months of historical usage.[[32]](#footnote-32) Some of these commenters suggest that the developer be permitted to use the square footage, usage patterns and number of occupants for the new building to determine that building’s estimated consumption.[[33]](#footnote-33) Other commenters recommend using the usage patterns of similarly situated neighboring buildings to determine an estimate of consumption.[[34]](#footnote-34) FirstEnergy and PECO suggest that the estimate be calculated by the customer/installer and provided to the EDC for review during the interconnection application process.[[35]](#footnote-35) PASEIA/MSEIA suggest that the issue be referred to the Solar Working Group Net Metering Committee for discussion and development of recommendations.[[36]](#footnote-36)

EAP and PECO also suggest that customer-generators with existing alternative energy systems seeking to expand the size of their systems be required to amend their application and provide data showing an increased usage in the immediately preceding 12 month period to show compliance with the 110% limit.[[37]](#footnote-37)

**b. Disposition**

While the Commission understands the desire to have specific criteria defined for determining the 110% limitation value for a building that does not have prior consumption data, it does not believe such granularity is necessary. The use of square footage, occupancy and comparisons to similar buildings are all valid recommendations that could be utilized. The Commission believes that the customer-generator and/or developer has the responsibility to provide an estimate of annual electric consumption for the new building, along with supporting data, to demonstrate that the alternative energy system design does not exceed 110% of that annual consumption. The customer-generator and/or the developer will have to provide adequate support for their usage estimate, which may include one or more years of historical usage or estimates based on similarly equipped and utilized buildings. This estimated consumption shall be provided to the EDC when filing the interconnection application.

The Commission agrees with EAP and PECO that the 110% limitation shall apply as a design criterion for the sizing of an entire alternative energy system, to include any proposed expansion of an existing system. As such, it is Commission policy that customer-generators with third-party owned and operated systems shall provide, with the interconnection application, adequate supporting data to demonstrate that the alternative energy system is designed to provide no more than 110% of the customer-generator’s annual electric usage. This requirement also applies to applications to expand existing alternative energy systems owned and operated by a third-party.

**CONCLUSION**

With this Final Order, the Commission adopts the net metering policy described in this Final Order. This Final Order is to be published in the *Pennsylvania Bulletin* and made available to the public on the Commission’s alternative energy[[38]](#footnote-38) web page. **THEREFORE,**

**IT IS ORDERED:**

1. That it be the policy of the Commission that the term “operator,” as found in the definition of “customer-generator” in Section 2 the AEPS Act, 73 P.S. § 1648.2, shall be interpreted as including customer-generators with distributed alternative energy systems that contract with a third-party to perform the operational functions of the alternative energy system.

2. That it be the policy of the Commission that net metered alternative energy systems owned and operated by third-parties that are interconnected and placed on property owned or leased and operated by an electric utility customer be designed to generate no more than 110% of that utility customer’s annual electricity consumption, at the interconnection meter location and all qualifying virtual meter locations.

3. That it be the policy of the Commission that customer-generators with third-party owned and operated systems shall provide with the interconnection application adequate supporting data to demonstrate that the alternative energy system is designed to provide no more than 110% of the customer-generator’s annual electric usage at all qualifying meter locations.

4. That this Final Order be published on the Commission’s Alternative Energy web page.

5. That this Final Order shall be published in the *Pennsylvania Bulletin* and served upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Bureau of Investigation and Enforcement, all jurisdictional electric distribution companies, and all parties who filed comments at this Docket.

6. That the contact person for technical issues regarding this policy is Scott Gebhardt, Analyst, Bureau of Technical Utility Services – Policy and Planning, (717) 425-2860 or [sgebhardt@state.pa.us](mailto:sgebhardt@state.pa.us). The contact person for legal issues regarding this policy is Kriss Brown, Assistant Counsel, Law Bureau, (717) 787-4518 or [kribrown@state.pa.us](mailto:kribrown@state.pa.us).

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: March 29, 2012

ORDER ENTERED: March 29, 2012

1. 73 P.S. §§ 1648.1 – 1648.8 and 66 Pa.C.S. § 2814. [↑](#footnote-ref-1)
2. See Tentative Order entered on July 28, 2011, under the above referenced caption and docket number (*Tentative Order*). [↑](#footnote-ref-2)
3. 73 P.S. § 1648.7(a) and (b). [↑](#footnote-ref-3)
4. 73 P.S. § 1648.2. [↑](#footnote-ref-4)
5. 73 P.S. § 1648.2 (definition of net metering). [↑](#footnote-ref-5)
6. 73 P.S. § 1648.2. [↑](#footnote-ref-6)
7. 52 Pa. Code § 75.13(a). [↑](#footnote-ref-7)
8. *Id*. [↑](#footnote-ref-8)
9. 52 Pa. Code § 75.12. [↑](#footnote-ref-9)
10. *Id*. [↑](#footnote-ref-10)
11. *See* 41 Pa. Bull. 4515. [↑](#footnote-ref-11)
12. *See* 73 P.S. § 1648.2. [↑](#footnote-ref-12)
13. As measured by the customer-generator’s total electric usage in the 12 full months immediately preceding submission of the interconnection application. In the event of a system expansion, the customer-generator would need to demonstrate that the expansion is designed not to exceed 110% of their electricity consumption in the 12 full months immediately preceding submission of the expansion application, in order to fall within the policy proposed in this Order. [↑](#footnote-ref-13)
14. As set forth in the definition of “customer-generator” at 73 P.S. § 1648.2. [↑](#footnote-ref-14)
15. See Citizen Power Comments at 2, Duquesne Comments at 2, EAP Comments at 3, FirstEnergy Comments at 2, IREC Comments at 2 and 3, OCA Comments, PECO Comments at 2, PennFuture Comments at 2 and 3, PASEIA/MSEIA Comments at 2, SA Comments, SunRun Comments at 1, Vote Solar Comments at 2, and WGES Comments at 1 and 3. [↑](#footnote-ref-15)
16. *See* 73 P.S. § 1648.2. [↑](#footnote-ref-16)
17. Duquesne Comments at 3, IREC Comments at 8, PECO Comments at 2, PennFuture Comments at 3, SA Comments at 1, SunRun Comments at 1, Vote Solar Comments at 3. [↑](#footnote-ref-17)
18. PennFuture Comments at 3. [↑](#footnote-ref-18)
19. PASEIA/MSEIA Comments at 2. [↑](#footnote-ref-19)
20. WGES Comments at 3 and 4 (citing COMAR 20.50.10.01 D). [↑](#footnote-ref-20)
21. We note that both Delaware and New Jersey impose a similar 110% design limit. *See* 26 Del.C. § 1014(d)(5) and N.J.S.A. 4:1C-32.4a(4). [↑](#footnote-ref-21)
22. Duquesne Comments at 3, EAP Comments at 5 and PECO Comments at 4. [↑](#footnote-ref-22)
23. EAP Comments at 5. [↑](#footnote-ref-23)
24. FirstEnergy Comments at 4. [↑](#footnote-ref-24)
25. PASEIA/MSEIA Comments at 3 and 5, PennFuture Comments at 3. [↑](#footnote-ref-25)
26. Duquesne Comments at 4. [↑](#footnote-ref-26)
27. *Id*. [↑](#footnote-ref-27)
28. FirstEnergy Comments at 3. [↑](#footnote-ref-28)
29. PECO Comments at 4. [↑](#footnote-ref-29)
30. See 73 P.S. § 1648.2 (definition of net metering). [↑](#footnote-ref-30)
31. See 52 Pa. Code § 75.12 (definition of virtual meter aggregation). [↑](#footnote-ref-31)
32. Citizen Power Comments at 2 and 3, IREC Comments at 9, PASEIA/MSEIA Comments at 3, PECO Comments at 5 and 6, SA Comments at 1, SunRun Comments at 2, and Vote Solar Comments at 4. [↑](#footnote-ref-32)
33. Citizen Power Comments at 3, SA Comments at 1, and SunRun Comments at 2. [↑](#footnote-ref-33)
34. SA Comments at 1 and SunRun Comments at 2. [↑](#footnote-ref-34)
35. FirstEnergy Comments at 4 and PECO Comments at 6. [↑](#footnote-ref-35)
36. PASEIA/MSEIA Comments at 3. [↑](#footnote-ref-36)
37. EAP Comments at 6 and PECO Comments at 5. [↑](#footnote-ref-37)
38. <http://www.puc.state.pa.us/electric/electric_alt_energy.aspx>. [↑](#footnote-ref-38)