



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

July 3, 2014

To the Pennsylvania PUC:

The Commission is proposing a new interpretation of the AEPS Act whereby customer-generator system sizes would be limited to 110% of the prior year's annual consumption for purposes of net metering. This new rule should be rejected in its entirety, since it is in conflict with the plain language of the AEPS Act as amended in 2007. The role of the PUC is to regulate, not legislate. *"Where there is a conflict between the statute and a regulation purporting to implement the provisions of that statute, the regulation must give way."* *Heaton v. Commonwealth Department of Public Welfare, 96 Pa.Cmwlth. 195, 506 A.2d 1350 (1986).*

Listed below are several excerpts from and aspects of the AEPS Act that confer upon customer-generators the statutory right to create renewable energy and the limits that are to be imposed. The AEPS Act clearly delineates the conditions under which net metering is allowed. Nowhere is there a reference to constraining system size to a percentage of onsite consumption. The PUC has not cited any statutory references in support of their position. On the contrary, in 2008 the Commission removed the single constraint in their regulations that might have limited the size of a renewable energy system based on a mandate from the PA legislature (see #5 below). When the legislature expanded the definition of net metering in 2007, the PUC was forced to comply by updating their regulations appropriately.

In proposing the 110% rule, the PUC is essentially stating that a customer-generator's system must primarily offset their requirement for electricity. That specific language was removed from the AEPS Act in 2007, and was replaced with *"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"*. As a result, the PUC's proposed 110% Rule is in direct conflict with the amended definition of net metering in the AEPS Act, and it should be removed from the proposed rulemaking.

Regards,

David N. Hommrich  
President  
Sunrise Energy, LLC



## AEPS Act References

### 1. Descriptive Title of the AEPS Act

*“Providing for the sale of electric energy generated from renewable and environmentally beneficial sources, for the acquisition of electric energy generated from renewable and environmentally beneficial sources by electric distribution and supply companies and for the powers and duties of the Pennsylvania Public Utility Commission.”*

### 2. 73 P.S. § 1648.2 – Definition of Alternative Energy System

*"ALTERNATIVE ENERGY SYSTEM." A facility or energy system that uses a form of alternative energy source to generate electricity and delivers the electricity it generates to the distribution system of an electric distribution company or to the transmission system operated by a regional transmission organization.*

### 3. 73 P.S. § 1648.2 – Definition of Customer Generator

*"CUSTOMER-GENERATOR." 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,*

### 3. 73 P.S. § 1648.2 – Definition of Customer Generator (continued)

*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.*

### 4. 73 P.S. § 1648.2 – Definition of Net Metering

*"NET METERING." The 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. Virtual meter aggregation 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 shall be eligible for net metering.*

### 5. Implementation of Act 35 of 2007; Net Metering and Interconnection – FINAL OMITTED RULEMAKING ORDER (Docket #L-00050174)

*Net Metering - The definition of net metering in these regulations has been revised to conform to the definition as amended by Act 35. Specifically, the Commission has deleted the requirement that the system be intended to primarily offset the customer's electricity requirements and added language noting that net metering is available when any portion of the electricity generated is used to offset part or all of the customer-generator's requirements for electricity*