

Carl R. Shultz
717.255.3742
cshultz@eckertseamans.com

August 4, 2014

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Comments of Granger Energy of Honey Brook LLC and Granger Energy of Morgantown LLC on the Proposed Regulations with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Carl R. Shultz

CRS/lww
Enclosure

cc: Kriss Brown w/enc. (via email only)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMMENTS OF
GRANGER ENERGY OF HONEY BROOK LLC AND
GRANGER ENERGY OF MORGANTOWN LLC
ON THE PROPOSED REGULATIONS**

Carl R. Shultz, Esquire
(Pa. Attorney ID No. 70328)
Eckert Seamans Cherin & Mellot, LLC
213 Market Street, 8th Fl.
Harrisburg, PA 17101
717 237 6000

Date: August 4, 2014

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	2
III.	COMMENTS ON THE PROPOSED REGULATIONS	4
	A. Legislative Intent Behind The AEPS Act.....	5
	B. Section 75.13(a)(3); The 110% Consumption Limit	7
	1. Consumption Limits Should Be Rejected	8
	2. The Grandfathering Of Existing And Proposed Customer-Generator Facilities Is Necessary - If Consumption Limits Are Accepted	15
	C. Section 75.1 and 75.12(a)(2); Eligibility Requirement - Customer-Generators May Not Be A “Utility”	17
	D. Section 75.12; The “Retail Customer” Requirement.....	20
	E. Section 75.13(a)(1) and Section 75.14(e); The Independent Electric Load Requirement.....	22
	1. The Independent Electric Load Requirement Should Be Abandoned.....	23
	2. Independent Electric Load Does Not Need To Be Physically Connected To The Alternative Energy Generating System	24
IV.	CONCLUSION	28

I. INTRODUCTION

Granger Energy of Honey Brook LLC and Granger Energy of Morgantown LLC (collectively, “Granger”) is concerned that the Commission’s Proposed Regulations¹ will severely limit both the existing and prospective eligibility of customer-generators’ existing and planned energy projects for net metering in Pennsylvania.

Alternative energy systems that are either already on line or which have taken substantial steps to be on line should not have new and significant restrictions imposed on them. They have made financial and operational commitments in good faith reliance on the existing rules. Specifically, Granger believes that any existing customer-generator who is, at the time of the final passage of any such limitation, (a) actually engaged in the practice of net-metering or (b) have or are seeking a Method of Accommodation from the Electric Distribution Company (“EDC”) should be grandfathered and exempted from the application of the Commission’s proposed regulations.

Granger further believes that any such grandfathered energy projects should be permitted to expand to full nameplate capacity as set forth in the Alternative Energy Portfolios Standards Act² (“AEPS Act”) and the existing regulations: 50 kW for residential customer-generators, 3

¹ See *Proposed Rulemaking; Implementation of the Alternative Energy Portfolio Standards Act of 2004*, PUC Docket No. L-2014-2404361, Order entered February 20, 2014 (“Proposed Rulemaking Order”); *Notice; Proposed Rulemaking; Implementation of the Alternative Energy Portfolio Standards Act of 2004*, 44 Pa.B. 4157, 4179 (Saturday, July 5, 2014). Annex A of the Proposed Rulemaking Order is referred to as the “Proposed Regulations.”

² The Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.1, *et seq.*, was signed into law in 2004. Act 213 of 2004. It has been amended on two occasions. First, by the Act 35 of 2007, which took effect July 19, 2007, amended certain definitions and provisions for net metering and interconnection. Notably, Act 35 added the definition of virtual meter aggregation to the AEPS Act. Second, by the Act 129 of 2008, which became effective on November 14, 2008, amended the AEPS Act by modifying the scope of eligible Tier I alternative energy sources and the Tier I compliance obligation. Except where the context clearly indicates otherwise, references to the AEPS Act shall include reference to Act 213 of 2004 as originally enacted and as amended.

megawatts (MW) for non-residential customer-generators or 5 MW for non-residential customer-generators who satisfy the additional statutory design criteria contained in the AEPS Act.

II. BACKGROUND

The parent of Granger, Granger Holdings, LLC, is a leader in the development of renewable energy projects that use landfill gas and has been since the technology began. It is a third generation, family-owned and operated business based in Lansing, Michigan. It specializes in partnering with landfill owners, private industry, municipalities and utilities to create mutually beneficial landfill gas recovery solutions that make sense economically and environmentally. Once recovered, landfill gas can be used as an alternative to natural gas or other conventional fossil fuels by directly powering industrial applications or as a fuel to generate electricity.

Granger is a customer-generator using, and intending to use, net metering in PPL's service territory. Specifically, Granger Energy of Honey Brook LLC is located at the Chester County Solid Waste Authority Lanchester Landfill in Chester County, Pennsylvania, and provides landfill gas to industrial customers.³ Granger Energy of Honey Brook LLC also owns and operates generation facilities that use landfill gas to generate electricity (currently 3.2 MW) which is delivered to the distribution system of PPL Electric Utilities ("PPL"), consistent with current law, rules and regulations. This Landfill Gas Generation Facility generates sufficient electric energy to satisfy the annual energy usage at the landfill gas processing plant. Each year it also generates excess electric energy. Granger Energy of Honey Brook LLC has plans to expand these existing generation facilities (up to 5 MW as currently allowed) and to continue to

³ *Petition of Granger Energy of Honey Brook, LLC for a Declaratory Order Concluding that the Provision of Landfill Gas by Granger Energy of Honey Brook, LLC to Four Industrial Customers Constitutes Neither the Provision of Public Utility Service under 66 Pa. C.S. § 102 nor Natural Gas Distribution Service or Natural Gas Supply Services under 66 Pa. C.S. § 2202*, PUC Docket No. P-00032043, Order entered September 8, 2004, 2004 Pa. PUC LEXIS 33.

deliver electricity to the PPL system under the AEPS Act, the Commission's Regulations, and PPL's net metering tariff provisions. In fact, Granger Energy of Honey Brook LLC has a Method of Accommodation from PPL for the expansion from 3.2 MW to 4.8 MW.

Granger Energy of Morgantown LLC is located at the Conestoga Landfill in Berks County, Pennsylvania. It provides landfill gas to industrial customers.⁴ It is in the process of planning and permitting generators, which it will own and operate, to generate electricity (up to 5 MW as currently allowed under the AEPS Act) that will be delivered to the PPL distribution system under the AEPS Act, the Commission's Regulations, and PPL's net metering tariff provisions. In fact, Granger Energy of Morgantown LLC has a Method of Accommodation from PPL for the project at 3.2 MW, and an application is currently in process for a revised method of accommodation for the project for 4.8 MW. This Landfill Gas Generation Facility will be sized to satisfy the annual electrical consumption at the landfill and to generate excess electric energy.

In addition, Granger has also assisted others to design and construct an alternative energy generating system using landfill gas. Granger teamed up with L&S Sweeteners ("L&S"), a division of Zook Molasses Company, to produce renewable energy. L&S is an electric distribution customer of PPL. L&S and Granger created a special purpose entity ("SPE"), Zook Generation LLC, so that they could share the ownership and benefits of the energy project. The energy project uses landfill gas supplied by Granger to generate electricity for use by L&S and to use net metering to sell the excess electricity to PPL. The project's current alternative energy generating system is 3.2 MW, but there are plans to expand it up to 4.8 MW. The project was sized to satisfy the annual energy usage at the L&S' manufacturing plant and to generate excess

⁴ See *Granger Energy of Morgantown, LLC*; PUC Docket No. M-00051865F0002, Notice and Disclosure Statement, published on July 12, 2008. That Notice and Disclosure Statement is available at <http://www.pabulletin.com/secure/data/vol38/38-28/1309.html>.

electric energy. Presently, L&S uses electricity from the project to power roughly 80 percent of its operations. So, expansion is necessary for L&S to fully self-supply its own requirements for electricity.

Other current landfill gas customers of Granger are also interested in owning and operating facilities that use landfill gas to generate electricity and in selling any excess electricity to PPL (or an EGS) under the AEPS Act, the Commission's Regulations, and PPL's net metering tariff provisions.

III. COMMENTS ON THE PROPOSED REGULATIONS

The Commission has been charged by the Pennsylvania General Assembly ("General Assembly" or "Legislature") with carrying out the provisions of the AEPS Act. Among other things, the AEPS Act guarantees the right of customer-generators to interconnect and net meter alternative energy systems.⁵

Granger opposes any new or additional restrictions on the eligibility of customer-generators and energy projects for net metering in Pennsylvania. Granger submits that the proposed revisions to the Commission's net metering and interconnection regulations, which implement the AEPS Act, will severely limit the eligibility of both customer-generators and energy projects for net metering in Pennsylvania. Such changes are inconsistent with the text and spirit of the AEPS Act and should be rejected.

⁵ See 73 P.S. §§ 1648.2 (definition of "net metering" and "customer-generator"), 1648.5 (relating to interconnection standards for customer-generator facilities).

A. Legislative Intent Behind The AEPS Act

The legislative intent behind the AEPS Act is to encourage the use of alternative energy systems.⁶ The intent and the clear language of the AEPS Act itself show an effort to remove the burdens and barriers for using alternative energy sources. As noted, the AEPS Act provides for the right of customer-generators⁷ to interconnect and net meter⁸ alternative energy systems.⁹ The AEPS Act specifies the eligibility and design criteria for the alternative energy systems:¹⁰ It lays

⁶ See *Final Rulemaking Re Net Metering for Customer-generators pursuant to Section 5 of the Alternative Energy Portfolio Standards Act*, 73 P.S. § 1648.5; *Implementation of the Alternative Energy Portfolio Standards Act of 2004: Net Metering*, PUC Docket No. L-00050174; M-00051865, Final Rulemaking Order entered June 23, 2006 ; 2006 Pa. PUC LEXIS 20 (“Final Rulemaking Order – June 2006”)(which provides that the AEPS Act’s intent is to remove barriers to net metering and provide appropriate treatment to customer-generators who wish to net meter); *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, PUC Docket No. M-00051865, *Implementation Order entered March 25, 2005* 2005 Pa. PUC LEXIS 35 (“Implementation Order”) (which notes that distributed resources will play an important role in the alternative energy market and that the Commission intends to develop net metering and interconnection rules that will facilitate the participation of these resources in this market).

⁷ 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.” 73 P. S. § 1648.2.

⁸ 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.” 73 P. S. § 1648.2.

⁹ See footnote 5, *supra*.

¹⁰ See footnotes 11 to 14, *infra*. In comparison, the technical requirements and the requirements for interconnection were left open for promulgation by the Commission. See 73 P.S. § 1648.5.

out the power sources that quality,¹¹ the allowance size of individual systems,¹² the rate at which excess generation from customer-generators is credited,¹³ and the period over which credits may accrue.¹⁴

This right was expanded by Act 35 of 2007 which amended a number of provisions in AEPS Act.¹⁵ These changes included (a) revising the statutory definition of “customer-generator” to increase the capacity limit on non-residential projects from 1 to 3 MWs generally, and from 2 to 5 MWs for those projects that operate in parallel with the grid; (b) revising the statutory definition of “net metering to delete the requirement that the primary purpose of the generation system must be to offset part or all of the customer-generator’s electricity needs; and (c) revising the AEPS Act to require that customer-generators be compensated for excess generation on an annual basis at the full retail value for energy, as opposed to the current monthly standard at the avoided cost of wholesale power.¹⁶

¹¹ Net metering is available for alternative energy systems that use Tier I or Tier II alternative energy sources. *See* 52 Pa. Code § 75.13(a). Alternative energy sources, including (but are not limited to) landfill methane gas. 73 P.S. § 1648.2 (definition of “alternative energy sources” at subparagraph 8).

¹² The General Assembly expressly stated that, to qualify for net metering, the customer-generator have an alternative energy system must have a nameplate capacity of (a) not greater than 50 kilowatts if installed at a residential service location; (b) not larger than 3 MWs at other customer service locations; or (c) not larger than 5 MWs and meets the other conditions set forth the AEPS Act. 73 P.S. §§ 1648.2.

¹³ 73 P.S. § 1648.5 (“Excess generation from net-metered customer-generators shall receive full retail value for all energy produced on an annual basis.”).

¹⁴ *Id.*

¹⁵ *See* footnote 2, *supra*.

¹⁶ The Commission revised the net metering regulations to be consistent with the Act 35 of 2007 amendments to AEPS through a final omitted rulemaking. *Implementation of Act 35 of 2007; Net Metering and Interconnection*, PUC Docket No. L-00050174, Final Omitted Rulemaking Order entered July 2, 2008; 2008 Pa. PUC LEXIS 724 (“Final Omitted Rulemaking Order – July 2008”). These revisions were approved by IRRC and became effective November 29, 2008. 38 Pa.B. 6445, 6473 (November 29, 2008).

There are good reasons for reading the AEPS Act as providing the maximum development of alternative energy sources. For example, converting landfill gas to energy has many benefits: Landfill gas is a reliable source of energy because it is generated 24 hours a day, seven days a week. By using landfill gas to produce energy, landfills can significantly reduce emissions of methane and decrease the need to generate energy from fossil fuels.¹⁷ And, according to the Environmental Protection Agency's ("EPA") Landfill Methane Outreach Program, landfill gas projects also provide an array of benefits in the local economy:¹⁸

- Landfill gas use can create jobs associated with the design, construction and operation of energy recovery systems.
- Landfill gas projects involve engineers, construction firms, equipment vendors and utilities or end-users of the power produced.
- Businesses are also realizing the cost savings associated with using landfill gas as a replacement for fossil fuels, such as natural gas.

B. Section 75.13(a)(3); The 110% Consumption Limit

Granger submits that the proposed 110% consumption limitation should be rejected as inconsistent with the text and spirit of the AEPS Act. Granger further submits - if consumption limits are accepted, the grandfathering of existing and proposed customer-generator facilities is absolutely required in order to avoid interfering with the reasonable business and operational expectations of the customer-generators who are either already on line or have taken substantial steps to become so.

¹⁷ <http://www.epa.gov/lmop/basic-info/index.html>.

¹⁸ *Id.*

1. Consumption Limits Should Be Rejected

The AEPS Act provides for the right of customer-generators to interconnect and net meter alternative energy systems.¹⁹ There are no consumption limits within the AEPS Act on the size of customer-generator facility.²⁰ But, the AEPS provides that customer-generators may design, build and operate a facility up to a specified nameplate capacity. For a residential property, the nameplate capacity limit is 50 kilowatts.²¹ For non-residential properties as business or industry), the nameplate capacity limit is 3,000 kilowatts or 3 MWs.²² But, if certain design criteria are satisfied,²³ a non-residential facility can have a nameplate capacity of up to 5,000 kilowatts or 5 MWs.²⁴

The current regulation tracks the statutory design criteria.²⁵ But, in the Proposed Rulemaking, the Commission has proposed a consumption limit for all customer-generator facilities.²⁶ This consumption limit would be in addition to the nameplate capacity limits in the AEPS Act.²⁷ Stated otherwise, a customer-generator facility must be designed to generate no more than 110% of the customer-generator's annual electric consumption, provided that its nameplate capacity does not exceed the nameplate capacity limit defined in the AEPS Act.

¹⁹ See footnote 5, *supra*.

²⁰ See footnotes 7 to 14 , *supra*, and the accompanying text.

²¹ 73 P.S. § 1648.2 (definition of customer-generator). See footnotes 7 , *supra*.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ See footnotes 7 to 14 , *supra*, and the accompanying text.

²⁶ Proposed Regulations, at Section 75.13(a)(3).

²⁷ Proposed Rulemaking Order, at p. 13.