



L-2014 2404361

May 29, 2015

Pennsylvania Public Utility Commission
Attn: Rosemary Chiavetta, Secretary
P.O. Box 3265
Harrisburg, PA 17105-3265

Dear Secretary Chiavetta:

The Pennsylvania Department of Environmental Protection (DEP) appreciates the opportunity to comment on the Pennsylvania Public Utility Commission's Implementation of the Alternative Energy Portfolio Standards Act of 2004 Advanced Notice of Final Rulemaking (L-2014-2404361). Please find DEP's comments enclosed.

If you have any questions, please feel free to contact Patrick McDonnell, Policy Director, by e-mail at pmcdonnell@pa.gov or by telephone at 717.783.8727.

Sincerely,

John Quigley
Acting Secretary

Enclosure

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May 29, 2015

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of the Alternative Energy Portfolio Standards Act of 2004
Advanced Notice of Final Rulemaking
L-2014-2404361

**COMMENTS OF THE
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

The Pennsylvania Department of Environmental Protection (DEP) appreciates the opportunity to comment on the Pennsylvania Public Utility Commission's (PUC) Implementation of the Alternative Energy Portfolio Standards Act of 2004 Advanced Notice of Final Rulemaking (AEPS ANOFR). While the draft final regulation offers significant improvements over the proposed rulemaking, DEP believes there are still issues that must be addressed within the AEPS ANOFR.

75.1 – Definition of Customer-Generator

The definition proposed under the AEPS ANOFR states that the "retail electric customer" must be "a nonutility owner or operator of a net metered distributed energy generation system." As the alternative energy marketplace has advanced, a variety of new ownership structures are being developed to facilitate the deployment of new systems. For example, at the residential level, retail electric customers may lease solar equipment from a solar company and allow the company to own and operate the equipment. In other instances, a farm operating a biodigester may choose to establish a separate legal entity to operate the distributed generation system. In situations like these, DEP urges PUC to maintain net metering rules which are flexible enough to encourage innovation in the deployment of new technologies.

75.13(a)(3) – Cap of 200 Percent of Customer-Generator's Annual Electric Consumption

The Alternative Energy Portfolio Standards Act mandates that excess electric generation produced by "customer-generators shall receive full retail value for all energy produced on an annual basis." 73 P.S. § 1648.5. This requirement is limited by the definition of "customer-generator," which includes distributed generation systems 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." 73 P.S. § 1648.2. In certain other limited instances, systems of up to 5,000 kilowatts may also qualify as customer-generators.

Secretary

The AEPS ANOFR requires that net metered distributed generation systems “be sized to generate no more than 200% of the customer generator’s annual electric consumption.” The 200% limit represents an increase from the 110% limit proposed in the initial rulemaking. The goal of either limit appears to be preventing merchant-generators from receiving the benefits of net metering under the guise of being customer-generators.

While we appreciate the concerns raised by the PUC in this regard, we believe that the system size limitations in the Alternative Energy Portfolio Standards Act were selected by the legislature for this very purpose, and provide the necessary backstop to prevent merchant generators from taking advantage of the program. A further limit on the ability to benefit from net metering is not authorized by law.

Under the AEPS ANOFR, customer-generators who generate more than 200% of their annual consumption will not “receive full retail value” as required by the Act for the portion of generation exceeding the 200% limit, despite complying with the Act’s capacity limits. This is a contravention of the clear text of the AEPS, and is unsupported by any other provision of that Act. The PUC is not the Legislature and has no power to rewrite the AEPS by forming the 200% limitation.

In the preamble to the proposed rulemaking setting the original 110% limit, the PUC paraphrases the definition of net metering in the Act, stating “we point out that the AEPS Act defines net metering as a means for a customer-generator to offset part or all of the customer-generator’s requirements for electricity.” (published July 5, 2014 at 44 Pa.B. 4179). This is a misreading of the AEPS. It is instructive to quote the actual definition from the Act:

“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.” (Emphasis added)

73 P.S. § 1648.2

A clear reading of the definition above requires only that a portion of the electricity generated offsets the customer-generator’s requirements for electricity. It does not authorize a cap on the amount of electricity that may be generated under net metering, beyond those specified in the statute. A determination by the PUC to set such a limit is arbitrary, contravenes the clear language of the Act, and will have a negative impact on alternative energy deployment in Pennsylvania.

If further safeguards are needed to ensure that merchant-generators are not taking advantage of the benefits of net-metering by posing as customer-generators, and we have seen scant evidence this is the case, these limits should be implemented through the legislative process, and not written into the AEPS by regulation.

75.13(a)(3)(iv) – Exempting Certain Systems from the 200 Percent Limitation

In response to concerns raised by DEP and others under the proposed rulemaking, the PUC has added language that would provide an exemption from the 200 percent limit for systems when DEP confirms that the system “is used to comply with the Department's Pennsylvania Chesapeake Watershed Implementation Plan in compliance with section 303 of the Federal Clean Water Act at 33 USC § 1313 or is an integral element for compliance with the Nutrient Management Act at 3 Pa.C.S. §§ 501, *et seq.*” Notwithstanding the strong objection to the 200% limit noted above, should the PUC proceed with that section, DEP offers the following additional clarification of section 75.13(a)(3)(iv).

The language above is intended to ensure that the net metering regulations 200 percent limit does not unnecessarily exclude biodigesters used by agricultural operations as part of their process for managing nutrients. These biodigesters are sized not to any customer-generator's load, but to the amount of manure that needs to be processed. However, under the Nutrient Management Act, biodigesters are not necessarily an “integral element of compliance.” To avoid confusion or the potential for misinterpretation, we recommend the language be amended to state:

“(IV) THE 200% OF THE CUSTOMER-GENERATOR'S ANNUAL ELECTRIC CONSUMPTION LIMITATION ~~MAY~~ shall NOT APPLY TO ALTERNATIVE ENERGY SYSTEMS WHEN THE DEPARTMENT PROVIDES CONFIRMATION TO THE COMMISSION THAT A CUSTOMER-GENERATOR'S ALTERNATIVE ENERGY SYSTEM IS ~~USED TO COMPLY~~ consistent WITH THE DEPARTMENT'S PENNSYLVANIA CHESAPEAKE WATERSHED IMPLEMENTATION PLAN IN COMPLIANCE WITH SECTION 303 OF THE FEDERAL CLEAN WATER ACT AT 33 USC § 1313 OR IS AN ~~INTEGRAL~~ ELEMENT of a farm's approved Nutrient Management Plan in compliance WITH THE NUTRIENT MANAGEMENT ACT AT 3 PA. C.S. §§ 501, *ET SEQ.*”

75.13(k) – Ability of PUC to Authorize Fees or Charges by Order

The AEPS ANOFR amends the language prohibiting electric distribution companies (EDCs) from charging fees or other types of charges for net metering by adding an exception for fees or charges “specifically authorized by this chapter or by order of the Commission.” The preamble of the proposed regulation explains that this language was added in order to resolve an inconsistency in the regulations. Specifically, in 75.14(e), the PUC permits EDCs to charge fees for incremental expenses related to the processing of an account in order to provide virtual meter aggregation.

While DEP agrees that it is appropriate for customer-generators to pay for the costs related to virtual meter aggregation as outlined in the AEPS ANOFR, inclusion of the phrase “or by order of the Commission” is unnecessary and unsupported by statutory authority. The inconsistency identified by the PUC is fully resolved by the inclusion of the phrase “specifically authorized by this chapter” which clearly would include the fees in 75.14(e). A blanket authorization to impose fees as the PUC may see fit goes far further than needed to address the inconsistency, and opens the door for the future imposition of fees not intended under the AEPS. As with the

virtual meter aggregation fees, any future additional fees should be properly vetted within the context of the Regulatory Review Act, and consistent with the intent of the AEPS.

75.14(e) – Virtual Meter Aggregation

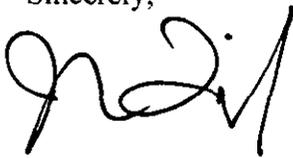
Under the AEPS ANOFR, customer-generators can aggregate generation and load at different locations subject to certain conditions. One of these conditions is that “all service locations to be aggregated must . . . have measurable load independent of any alternative energy system.”

The PUC identifies as a problem “fact patterns where distributed generation is proposed to be installed at a location with no load, but then virtually aggregated with another location that has no distributed generation.” The PUC seemingly intends the identification of this issue as a problem to be self-evident. DEP disagrees.

It would not be unreasonable, for example, for a property owner with multiple acres to install solar panels on a remote corner of their property. If it makes more economic sense to interconnect this generation to a nearby distribution line instead of connecting the system back to the customer-generator’s meter, that option should remain available to both the customer-generator and the electric distribution company. The result of requiring load independent of the distributed generation system will add additional costs or disqualify systems unnecessarily. The PUC proposed limitations requiring that service location accounts be held by the same entity provides an adequate safeguard against the merchant generator concerns that the language related to independent load at the distributed generation site seems intended to address.

Ultimately, the intent of the net-metering and virtual metering provisions of the AEPS is to encourage the installation of distributed alternative energy generation and we urge the PUC not to impose requirements that make that goal more difficult.

Sincerely,



John Quigley
Acting Secretary

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