



Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Docket #L-2014-2404361

October 24, 2016

Dear PUC Commissioners:

We appear to be closing in on the final chapter of the new regulation pertaining to net metering and related issues that was originally proposed in February of 2014. I recently learned (via an RTK request) that on October 5, 2016, the Attorney General gave approval for form and legality of the regulation, assuming the Commission implements a change mandated in the approval. It is our assumption that the Commissioners will be voting to make this change to the regulation in the near future, which is the reason for this letter.

As you are no doubt aware, less than 10 days after the Attorney General's Office approval, the Commonwealth Court ruled on October 14, 2016 in our favor in *Sunrise v. First Energy / West Penn* (see attached) that the PUC's authority regarding the AEPS Act is narrow; in fact, much more narrow than the Commission believed prior to that decision. Essentially, they held that it is limited to matters dealing with technical rules governing interconnection and the establishment and management of an alternative energy credit market. Specifically, the court held that the PUC does not have statutory authority to determine who is a customer-generator and who qualifies for net metering. These two issues are at the heart of your new regulation.

I write this letter with the hope that you will thoughtfully consider the implications of this case on the new regulation. It is safe to assume that the Attorney General's Office would very likely have come to a different conclusion regarding the legality of the new regulation had the decision been available for their review at the time of their determination. Unlike the Attorney General's Office, you do have the benefit of reviewing the decision before you make your final decision. Two of you previously opposed this regulation based on concerns regarding the limits of the PUC's authority. And now Commonwealth Court has indicated that the Commission's authority is even more constrained than was believed at the time of your opposition. While the elimination of the cap on production appears to have resolved the issue to your satisfaction, I'm asking that you consider your vote again in light of what the full Commonwealth Court panel decided. In a 5-2 vote, they reached the same conclusions that the IRRC reached (not once, but twice), that the PUC is exceeding their statutory authority with much of the content in this new regulation. The happenstance that the Attorney General's Office made its determination just prior to issuance of the Sunrise decision will not shield the new regulation from application of the Sunrise decision.



I realize that your staff has invested a lot of time and effort to date with development of this regulation. Frankly, my industry has too. But this precedential case surely should be considered as you decide how to vote for two reasons. First, although we may all differ on whether the legislature “got it right” when it amended the AEPS Act to expand net metering, we all have an obligation to follow and uphold the law, especially the Constitution and its separation of powers. Secondly, given the very direct bearing the holding in this case has on the new regulation, it is likely that should you approve the new regulation, it will fare very poorly before the exact same Commonwealth Court that just decided Sunrise. In essence, I am saying that if we are to be governed by the rule of law, shouldn’t you seriously consider what our courts have to say about your regulation?

The PUC has always had the options of simply requesting that the legislature change the AEPS Act. We live in a representative democracy here in Pennsylvania. We elect legislators, and then we empower them to create the laws that govern our state. If our legislature shares your staff’s belief about ratepayer harm, then the Commission should easily get the outcome you are looking for. In fact, had the Commission’s staff investigated the magnitude of ratepayer harm—if any at all—and documented it, we might not even be having this discussion. On the other hand, if you are fearful that the General Assembly would not agree with the staff’s (to this day, unsubstantiated) belief of harm, then I would ask that you reflect on that fact.

Please consider voting against your new AEPS Act regulation.

Regards,

A handwritten signature in black ink, appearing to read "D. Hommrich", written in a cursive style.

David N. Hommrich
President
Sunrise Energy, LLC