

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

March 2, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
John F. Coleman, Jr., Vice Chairman
Ralph V. Yanora

Net Metering – Use of Third-Party Operators

Docket No. M-2011-2249441

ERRATA NOTICE

This is to advise all parties of record that an Order was entered on February 24, 2022, in the above-captioned proceeding. However, there was an incomplete Pennsylvania Commonwealth Court case cite on page three of the order that needed to be amended.

Please find the corrected page three, which you should use to replace the prior document received.

Also, the correct version of the Order on the PA PUC website will be displayed.

regulations in relation to the AEPS Act. The Commission added the definitions “customer-generator” and “utility” to Section 75.1 of the Commission’s regulations to limit the entities who qualified for net metering. 52 Pa. Code § 75.1. *See also Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Docket No. L-2014-2404361 at 11-20 (Order entered October 27, 2016). The Commission amended Section 75.12 to clarify the definition of virtual net metering by adding the requirement for independent load at each site where an AES is installed. The Commission also defined “independent load” in Section 75.13(a)(1) as electric load having a purpose other than to support the operation, maintenance, or administration of the AES. 52 Pa. Code § 75.13(a)(1).

B. Commonwealth Court’s Opinion

The Commonwealth Court declared the regulations at 52 Pa. Code §§ 75.12 (definition of virtual meter aggregation where we added references to independent load) and 75.13(a)(1) to be invalid and unenforceable. *Hommrich v. Pa. Pub. Util. Comm’n.*, 231 A.3d 1027 (Pa. Cmwlth. 2020). Further, the Court found the definitions of “customer-generator” and “utility” in 52 Pa. Code § 75.1 to be invalid and unenforceable. *Id.* at 1040. The Court found the three remaining regulations that were challenged—52 Pa. Code §§ 75.13(a)(5), 75.16, and 75.17—to be valid and enforceable. *Id.* at 1043-44.

The Court found that Section 5 of the AEPS Act, 73 P.S. § 1648.5, grants legislative rule-making authority to the Commission to establish “technical and net metering interconnection rules for customer-generators” intending to own and operate qualifying AESs. *Id.* at 1040. The Court noted that legislative rulemaking by an administrative agency—as opposed to interpretive rule-making—is an exercise of legislative power that has the effect of law when it is (1) within the legislative power granted by the General Assembly; (2) issued pursuant to proper procedure; and (3) reasonable. *Id.* at 1034 (*quoting Popowsky v. Pa. Pub. Util. Comm’n.*, 910 A.2d 38, 53 (Pa. 2006)). The Court further noted that all regulations “must be consistent with the