L-2023-3044115

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INDEPENDENT REGULATORY REVIEW COMMISSION

555 WALNUT STREET, SUITE 804, HARRISBURG, PA 17101

August 10, 2026

Matthew L. Homsher, Secretary
Pennsylvania Public Utility Commission
Keystone Building, 400 North Street
2nd Floor, North Wing
Harrisburg, PA 17120

RCVD PUC SEC BUR
AUG 17 2026 AM10:52

Re: Regulation #57-346 (IRRC #3480)
Pennsylvania Public Utility Commission
Distributed Energy Resources Participation in Wholesale Markets

Dear Secretary Homsher:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me at 717-783-5506 or *dsumner@irrc.state.pa.us.*

Very truly yours,

David Sumner
Executive Director

MKB
Enclosure
cc: Honorable Patrick J. Stefano, Chair, Senate Consumer Protection and Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chair, Senate Consumer Protection and Professional Licensure Committee
Honorable Danilo Burgos, Chair, House Consumer Protection, Technology, and Utilities Committee
Honorable Carl Walker Metzgar, Republican Chair, House Consumer Protection, Technology, and Utilities Committee
Honorable Elizabeth Fiedler, Chair, House Energy Committee
Honorable Martin T. Causer, Republican Chair, House Energy Committee
Amy Elliott, Esq., Chief Deputy Attorney General, Office of Attorney General
Cynthia Montgomery, Esq., Deputy General Counsel, Office of General Counsel

Comments of the Independent Regulatory Review Commission

IRRC
Independent Regulatory Review Commission

Pennsylvania Public Utility Commission Regulation #57-346 (IRRC #3480)

Distributed Energy Resources Participation in Wholesale Markets

August 10, 2026

We submit for your consideration the following comments on the proposed rulemaking published in the April 11, 2026 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (RRA) (71 P.S. § 745.5a(a)) directs the Pennsylvania Public Utility Commission (PUC) to respond to all comments received from us or any other source.

1. Reaching consensus among this Commission, the standing committees, interested parties, and the agency.

According to the PUC, this proposed rulemaking will enable more comprehensive regulation of public utilities that provide distributed energy resources (DERs) in the Commonwealth. It adds rules for DERs participating as DER aggregators (DERAs) on electric distribution company (EDC) facilities, consistent with Federal Energy Regulatory Commission (FERC) Order 2222-B. The goal and potential benefits of Order 2222-B, according to FERC, include: lower costs for consumers through enhanced competition; more grid flexibility and resilience; and more innovation within the electric power industry.

This Commission appreciates the PUC's efforts to involve stakeholders in the development of this rulemaking through its meetings with EDCs, DERAs, and ratepayer advocates and also the issuance of an Advanced Notice of Proposed (ANOPR) rulemaking in March of 2024. The ideas, concepts, and comments received through the meetings and ANOPR provided the basis for this rulemaking. In the Preamble, the PUC has summarized the various issues raised during the development of the rulemaking and has provided its rationale for the language included in the Annex.

Many of the public comments received on this proceeding acknowledge the need for the proposed rulemaking and agree that DERs should not receive compensation from both the retail and wholesale energy markets (double counting). Many of the comments reiterate issues and perspectives raised during the development of this rulemaking. To address the issues, the PUC would need to make substantive amendments to the rulemaking, and in some instances, add new language that would broaden the scope of what has been proposed in the Annex. Examples of issues raised by commentators include:

- Stronger consumer protections should be included in the rulemaking, including the potential registration of DERAs and a Code of Conduct for DERAs;

- The rulemaking is missing opportunities to reduce costs for consumers;
- Provisions related to double counting need to be strengthened and clarified;
- The participation of EDCs with less than 100,000 customers in DER programs should be reconsidered;
- The role assigned to EDCs in the review, approval, and administration of DER programs should be reduced or expanded;
- Whether the imposition of a fee by EDCs for the review of DER applications is a sufficient and fair mechanism for cost recovery or if cost recovery should include more traditional PUC ratemaking proceedings;
- Whether the rules for data exchange between EDCs, DERs, and DERAs should be included in the final rulemaking or referred to the PUC's Electronic Date Exchange Working Group (EDEWG) for further discussion and another rulemaking on the issue; and
- Whether the authority of EDCs should be expanded as it relates to DER component dispatch override procedures.

Section 2 of the RRA relates to legislative intent. Subsection (a) states, in part, the following, "To the greatest extent possible, this act is intended to encourage the resolution of objections to a regulation ***and the reaching of consensus*** among the commission, the standing committees, interested parties and the agency." (Emphasis added.) (71 P.S. 745.2(a)). This Commission recognizes the task ahead of the PUC as it moves forward with final promulgation of this rulemaking prior to the February 2028 effective date established by FERC. The PUC must ensure compliance with Order 2222-B and revised rules and tariffs of PJM, the regional transmission organization that oversees the electric grid for 13 states and the District of Columbia. The PUC must also consider and respond to the suggestions of commentators on this proceeding and explain why changes to the final rulemaking will or will not made. Striking the proper balance between consumer protection and cost reduction, transparency, advancement of new and alternative energy, cost recovery and operational flexibility for EDCs, and the sharing and exchange of data is critical for DER participation in the wholesale electricity markets. To that end, if the PUC decides to adopt recommendations of commentators and expand the scope of this rulemaking, we encourage that an Advance Notice of Final Rulemaking, with specific regulatory language, be published in the *Pennsylvania Bulletin* for additional comment from the regulated community. This extra step could help build consensus amongst the interested parties, as envisioned by Section 2 of the RRA, and ensure the Commonwealth is prepared to implement Order 2222-B in a manner that allows for the full benefits of DER aggregation.

2. Compliance with the provisions of the Regulatory Review Act or the regulations of the Commission in promulgating the regulation; Fiscal impact.

When this Commission is reviewing a rulemaking to determine if it is in the public interest, we look at the proposed language in the Annex, the promulgating agency's description of the rulemaking in the Preamble, and the information provided by the promulgating agency in the Regulatory Analysis Form (RAF). The information requested in the RAF is required by the

RRA and this Commission's regulations. The RAF submitted by the PUC with this proposed rulemaking provides answers to all of the questions posed. However, answers to some of the questions do not provide sufficient information for this Commission to determine if the rulemaking is in the public interest. In the RAF submitted with the final-form rulemaking, we ask the PUC to provide more information in response to the following RAF questions:

- *Question #12, related to how this regulation compares to other states.* Specifically, we ask for more information on the status of what all the other states in the PJM are doing in terms of regulatory or statutory updates related to FERC Order 2222-B.
- *Questions #15 and #16, related to the number of persons, groups, entities, small businesses and businesses that will be affected by or will be required to comply with the regulation.* Specifically, we ask the PUC to quantify the number of DERs, anticipated DERAs, EDCs, and EDCs with under 100,000 customers in the Commonwealth. The PUC should also identify how many of those entities are small businesses as defined in Section 3 of the RRA.
- *Questions #17 and Question #19, related to the fiscal impact on businesses and the regulated community.* The PUC's response to these questions indicates that there will be costs to EDCs, and those costs could be recouped through a Commission-approved fee for DER applications. We ask the PUC to consult with the EDCs to determine an estimate of the number of DER applications there will be and an estimate of what the fee will be. Those estimates should be included in the RAF submitted with the final-form regulation.

3. Section 57.262. Definitions. – Clarity.

The following terms are defined in this section but are not used in the regulation:

Customer-generator facility; DER capacity aggregation resource; electric distribution system; and RPM auction – reliability pricing model auction. These terms should be deleted from the final-form regulation.

4. Section 57.263. General provisions. – Implementation procedures; Clarity.

Under this section, EDCs with 100,000 or more customers must allow DER aggregation resource participation under certain conditions and EDCs with less than 100,000 customers may allow it with PUC approval. The section also identifies under what conditions Component DERs can participate as a DER Aggregation Resource within an EDC's service territory. Finally, this section requires an EDC that allows DER Aggregation Resource participation within their service territory to file a tariff with the Commission that is consistent with the regulations.

Subsection (a) applies to EDCs with 100,000 or more customers. Subsection (a)(1) states, "Customer-generators receiving service under the EDC's net metering tariff are precluded from participating as a DER aggregator source in the PJM capacity and energy markets." Does this provision preclude customer-generators from participating as a DER aggregator source in the PJM ancillary markets as well? We ask the PUC to clarify this in the final-form regulation.

Subsection (b) applies to EDCs with less than 100,000 customers. Will EDCs that opt-in to DER aggregation resource participation have to meet the same requirements as larger EDCs as specified in Subsection (a)(1) and (2)? We again ask the PUC to clarify this in the final-form regulation.

Under Subsection (c), an EDC allowing DER aggregation resource participation must file a tariff with the PUC that provides for participation "consistent with this chapter." Commentators suggest that the final-form rulemaking provide more detail on what information should or should not be included in the tariff filing. We believe a more detailed description of what is required in a tariff filing under this subsection would provide clarity to EDCs as they implement this regulation and suggest such a description be added to the final-form regulation.

5. Section 57.264. Review of component DER applications. – Implementation procedures; Clarity.

Subsection (a) section establishes three requirements EDCs must follow in reviewing requests by a DERA, a DER operator, or PJM for approval of a Component DER to participate in the PJM wholesale energy, capacity, and/or ancillary services markets as a DER Aggregation Resource. The conditions are: the process must allow for electronic submission of requests; the review must be complete within 60 days of submission; and the EDC must describe in detail the reasons for any denial. However, it does not provide criteria that EDCs must use when reviewing requests for approval. Since there are several EDCs in the Commonwealth, this could lead to different standards of review. In addition, commentators have stated that the timelines for review in this section conflict with corresponding processes and timelines found in PJM protocols. To avoid possible conflict between this regulation and corresponding PJM timelines, processes, and standards for review, we ask the PUC provide more detail on how EDCs are to process DER applications. If appropriate, the changes should align with PJM timelines, processes, and standards for review.

Subsection (b) allows an EDC to establish a fee, approved by the PUC, to process a DER application. We believe the final regulation should include criteria that the PUC will use to review the appropriateness of fee requests.

6. Section 57.265. Component DER operations. – Implementation procedures; Clarity.

Subsection (a) requires EDCs to provide DERA access to component DER data upon consent of the DER operator in a format approved by the PUC. What process will the PUC use to approve the format for the exchange of data? We recommend the process be included in the final rulemaking.

In addition, the PUC states the following in the Preamble:

> Regarding data exchange between EDCs and DERAs, given the complexity of this issue, and the range perspectives of and proposed solutions concerning data exchange protocols related to DER Aggregation, we will refer this matter and related subtopics to the Electronic Data Exchange Working Group (EDEWG). We believe that the EDEWG process, which allows stakeholders to engage directly with one another to share their respective concerns and recommendations, will facilitate the development of reasonable best practices. We also note that, given the evolving

> technological and federal regulatory landscape in this area, the EDEWG provides greater flexibility for stakeholders to share developments that may affect data exchange protocols in real-time. We are, however, proposing in subsection 57.265(a), as set forth in the Annex, that EDC's shall provide DERA access to Component DER data upon consent of the DER operator in a format approved by the Commission. As each EDC's systems and capabilities vary, each EDC can propose a data access format for Commission approval in the EDC's tariff filing. This provides data access in the interim until a more standard format is developed based on experience through EDEWG.

If the final-form regulation does not include additional provisions related to the exchange of data, we ask that the PUC to include in the Preamble to the final-form regulation a timeline of when it expects the EDEWG to make its final recommendations and whether those recommendations will be promulgated as a future rulemaking.

Subsection (b) requires EDCs to establish DER component dispatch override procedures. We have two concerns. First, Subsection (b)(2)(iii) would allow an EDC to override dispatch procedures for "other conditions established by the EDC." This phrase is vague. We suggest that this provision be deleted or additional language be added to the final rulemaking to address other situations under which dispatch procedures could be overridden.

Second, Subsection (b)(3) requires an EDC to notify PJM, DERs, and DER operators about dispatch overrides. If this information is needed by the PUC in its oversight of EDCs, we suggest that the final regulation be amended to include the PUC as a party that should receive notice when a dispatch override occurs.

7. Section 57.266. Disputes. – Implementation procedures; Clarity.

Subsection (a) states the following, "A party shall attempt to resolve all disputes regarding DER interconnection and EDC actions as provided ***in this chapter*** promptly, equitably and in a good faith manner." (Emphasis added.) Chapter 57 relates to electric service. This proposed regulation adds Subchapter P, related to distributed energy resources, to Chapter 57. A commentator has suggested that the phrase "in this chapter" be amended to "in this subchapter." We ask the PUC to explain in the Preamble if this section applies to the entirety of Chapter 57 or specifically to Subchapter P of Chapter 57. If this section only relates to Subchapter P, then the final regulation should be amended accordingly.