



800 North Third Street, Suite 205, Harrisburg, Pennsylvania 17102
Telephone (717) 901-0600 • Fax (717) 901-0611 • www.energypa.org

September 12, 2011

Via Hand Delivery

Rosemary Chiavetta, Esq.
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

**RE: NET METERING – USE OF THIRD PARTY OPERATORS
TENTATIVE ORDER at DOCKET NO. M-2011-2249441**

Dear Secretary Chiavetta,

Enclosed for filing, please find an original and three (3) copies of the Energy Association of Pennsylvania's written comments in the above-referenced Docket Number.

Very truly yours,

A handwritten signature in black ink, appearing to read "Donna M. J. Clark", is written over a horizontal line.

Donna M. J. Clark
Vice President & General Counsel

cc: Hon. Robert F. Powelson, Chairman
Hon. John F. Coleman, Jr., Vice Chairman
Hon. James H. Cawley, Commissioner
Hon. Wayne E. Gardner, Commission
Hon. Pamela Witmer, Commissioner
Scott Gebhardt (electronic copy)
Kriss Brown, Assistant Counsel (electronic copy)

RECEIVED
2011 SEP 12 PM 2:17
PA PUC
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Net Metering –
Use of Third Party Operators** : **Docket No. M-2011-2249441**

RECEIVED
2011 SEP 12 PM 2:17
PA PUC
SECRETARY'S BUREAU

**COMMENTS OF THE
ENERGY ASSOCIATION OF PENNSYLVANIA
TO TENTATIVE ORDER**

I. Introduction

The Alternative Energy Portfolio Standards Act of 2004 (“AEPS Act”) promotes the development of alternative energy in Pennsylvania in two fundamental ways. First, the AEPS Act establishes a 15 year schedule pursuant to which electric distribution companies (“EDCs”) and electric generation suppliers (“EGSs”) must purchase discrete amounts of electric energy generated by alternative energy sources for resale to retail customers. 73 P.S. §1648(b) and (c). Second, the AEPS Act encourages customer-generators to obtain electric power through small onsite alternative energy systems which can be net-metered and interconnected to the electric utility grid. 73 P.S. §1648.5. The Pennsylvania Public Utility Commission (“PUC” or “Commission”), which is charged with implementing the AEPS Act, has promulgated interconnection and net metering regulations at 52 Pa. Code §§ 75.11 and 75.21 and has issued a

number of policy statements aimed at promoting alternative energy. See, e.g. Policy Statements at 52 Pa. Code §§ 69.31-69.44, §§ 69.2101-2104, and §§ 69.2901-2904.

On July 28, 2011, the PUC entered a Tentative Order proposing the adoption of a policy which would further encourage development of renewable generation sources through a business model employed in other states. That business model permits a developer/operator to retain ownership of and responsibility for an alternative energy system installed on the site of a utility customer and to sell the electricity generated by that system to the customer under a power purchase agreement. The proposed policy treats the developer/operator as a customer-generator for the purposes of net-metering and interconnection. Additionally, the proposed policy would limit applicability of this business model to a system which does not exceed the nameplate capacity set forth in the definition of customer-generator at 73 P.S. § 1648.2 and is no more than 110% of the “customer-generator’s prior year electricity consumption to prevent the installation of oversized alternative energy systems that are more accurately described as merchant generation posing as customer-generators.” Tentative Order at p. 5. Through this policy, the Commission aims to help facilitate opportunities for residential and small business customer-generators to install small-scale alternative energy systems onsite that otherwise may not be possible because of the significant upfront and ongoing expense associated with the purchase, installation and maintenance of such a system.

The Energy Association of Pennsylvania (“EAP” or “Association”) and its member EDCs support the growth of renewable energy in Pennsylvania and the efforts of the Commission to facilitate opportunities for continued development of alternative energy systems that provide an individual customer with the ability to generate electricity onsite for its consumption with the benefits of net-metering. EAP further shares the Commission’s concern

that the proposed policy set forth in this Tentative Order not be expanded to allow merchant generation to net meter and thereby “circumvent the wholesale electric market in an attempt to avoid Federal Energy Regulatory Commission jurisdiction.” Tentative Order at p. 5. Moreover, the Association firmly agrees that the AEPS Act was not intended to provide retail rate subsidies to merchant generation facilities.

EAP files the instant comments on behalf of its member EDCs¹ in substantial support of the proposed policy that would equate the term “operator” in the above described business model with the term “customer-generator” under the AEPS Act. EAP seeks clarification and makes recommendations below to ensure that the proposed policy will apply, as intended, to individual customers which contract with third party operators who will own, install and maintain an alternative energy system on the customer’s site for the generation of electric energy which will then be sold to the customer through a power purchase agreement and which system will be net metered to the electric grid. EAP recommends that any final policy clearly state that it is not intended to apply to oversized or community systems nor is it intended to provide a means for merchant generation facilities to receive full retail value for excess energy produced on an annual basis pursuant to Section 5 of the AEPS Act, 73 P.S. §1648.5. Finally, given the complexity of the issues being considered in the context of this Tentative Order, EAP respectfully requests that the Commission consider providing an opportunity for reply comments in this proceeding.

II. Comments

¹ The Energy Association of Pennsylvania’s electric distribution members include Citizens’ Electric Company; West Penn Power Company, *A FirstEnergy Company*; Duquesne Light Company; Metropolitan Edison Company, *A FirstEnergy Company*; PECO Energy Company; Pennsylvania Electric Co., *A FirstEnergy Company*; Pennsylvania Power Co., *A FirstEnergy Company*; Pike County Light & Power Company; PPL Electric Utilities Corporation; UGI Utilities, Inc.; and Wellsboro Electric Company.

First, EAP acknowledges that currently the AEPS Act permits limited cost-shifting in providing for the payment of full retail value to net-metered customer-generators under Section 5 of the AEPS Act, 73 P.S. §1648.5 and applauds the expressed Commission intent at page 5 of the Tentative Order to not expand or permit further customer-generator subsidization under this new policy. Accordingly, EAP requests that any final order clearly provide that this new policy does not apply to community energy systems wherein multiple customers with individual meters on separate properties are connected to a single alternative energy system owned and operated by a third party. In the above-described situation, EAP contends that the owner/operator is standing in the role of a public utility or electric generation supplier without proper certification. EAP believes that such community energy systems neither comply with the statute for the purposes of net-metering nor meet the spirit of the proposed policy.

On the other hand, EAP does not seek to prevent the application of this proposed policy in a situation involving virtual meter aggregation where the customer-generator, not the third party operator, owns or leases property within a two mile radius of the site whereon the alternative energy system is situated and within a single EDC service territory. See definition of net-metering at Section 2 of the AEPS Act, 73 P.S. §1648.2. EAP seeks clarification in the final policy statement with respect to which situations involving virtual meter aggregation under a third party operator scenario will be eligible for net-metering and suggests that the proposed policy be limited in such situations to circumstances where the properties within the two mile radius are owned or leased by a single customer not the third party operator.

Second, EAP suggests that, in addition to using the system size limitation of 110% of a customer-generator's prior year electricity consumption to prevent the expansion of the proposed policy to oversized alternative energy systems, the Commission consider strengthening the system size limitation by identifying a cap on KWH output. Such a cap would serve to avoid additional cost-shifting, discourage an expansive reading of the policy so as to permit community energy systems, and encourage the developer/operator to align the size of the system to the actual load of the customer.

Third, EAP suggests that the final order clarify that the 110% cap is to be set during the system design phase and is established to limit the size of the system that can be installed “[a]s measured by the customer-generator’s total electric usage in the 12 full months immediately preceding submission of the interconnection application.” Tentative Order at n. 11 p. 5. Limiting the size of the system through application of the 110% cap will avoid installation of an oversized system and avoid circumstances leading to increased cost-shifting to customers within the class who do not participate in net metering scenarios. Further, establishing the size of the alternative energy system upfront where a third party owner/operator is treated as a customer-generator for purposes of net metering will simplify the role of the EDC in monitoring generation and will limit the opportunity for abuse wherein the third party operator is in effect a merchant generator obtaining retail rate subsidies for annual excess generation contrary to the intent of the AEPS Act. See, Tentative Order at p. 5. On the other hand, if the 110% cap is used only to limit the amount of generation eligible for net metering rather than the size of the system installed, EAP suggests that a final order recognize the need for EDCs to implement billing system changes to identify the generation which exceeds the 110% cap and to recover costs for that implementation.

Fourth, in situations involving customers without adequate consumption history (i.e., a new customer or one with less than a full 12 month period of electric usage), EAP suggests that the third party operator be responsible for providing an estimate of the projected usage and design the size of the system based on 110% of that estimate. EAP believes addressing this circumstance in any final policy statement could avoid potential disputes and provide clarity to the third party operator, the customer generator and the EDC in the interconnection application process.

Fifth, EAP suggests that the final order address how a customer seeking to expand an existing alternative energy system owned and operated by a third party under the proposed policy establish that the expansion is based on increased usage over the immediately preceding 12 month period and require the customer to amend the existing application for interconnection.

Finally, EAP suggests that a process or method for determining ongoing compliance may become necessary as the number of third party operator alternative energy systems are installed on a customer sites pursuant to this policy increases. Monitoring total production will be important to limit excessive cost-shifting and balance the benefits of promoting development of alternative energy against the inevitable customer-generator subsidization. EAP believes that the third party operator or customer generator must be the starting point for determining compliance with the 110% cap. The third party operator can submit data to the Commission and the EDCs to assure that the system is not oversized or the third party operator has not in effect assumed the role of a merchant generator.

III. Conclusion

EAP appreciates the opportunity to submit comments to the Commission's Tentative Order proposing a policy for net-metering customers using a third party operator business model. The EAP reiterates its earlier suggestion that a Reply Comment period to be established considering the infancy and complexity of net metering in Pennsylvania.

Respectfully Submitted,


Donna M. J. Clark
Vice President & General Counsel
dclark@energyva.org

Energy Association of Pennsylvania
800 North Third Street, Suite 205
Harrisburg, PA 17102

Date: September 12, 2011

RECEIVED
2011 SEP 12 PM 2:11
PA PUC
SECRETARY'S BUREAU