



September 12, 2011

KENNETH L. MICKENS, ESQUIRE LLC  
LEGAL CONSULTING

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

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

Dear Secretary Chiavetta:

Enclosed please find an original and three (3) copies of the Comments of the Sustainable Energy Fund for filing in the above referenced proceeding. Please contact me if you have any questions concerning this filing.

Sincerely,

A handwritten signature in cursive script, reading "Kenneth L. Mickens".

Kenneth L. Mickens, Esquire  
Pa. Attorney I.D. #31255  
Attorney for the Sustainable  
Energy Fund

Enclosures

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**COMMENTS OF THE SUSTAINABLE ENERGY FUND**

The Sustainable Energy Fund (“SEF”) files the following Comments in response to the Public Utility Commission’s (“Commission”) July 28, 2011 Tentative Order (“*Tentative Order*”) at the above-captioned docket.<sup>1</sup>

**I. INTRODUCTION**

The Alternative Energy Portfolio Standards Act, Act 213 of 2004<sup>2</sup>, provides for net metering by third party operators. At the Commission’s Public Meeting on June 30, 2011, the Commissioners approved the *Tentative Order*, entitled Net Metering – Use of Third Party Operators. The *Tentative Order* interprets the term “operator” as including customer-generators with distributed alternative energy systems that contract with a third party to perform the operational functions of the system.<sup>3</sup>

<sup>1</sup> Net Metering – Use of Third Party Operators, Docket No. M-2011-22494441.

<sup>2</sup> 73 P.S. §§ 1648.1 – 1648.8 and 66 Pa. C.S. § 2814.

<sup>3</sup> *Tentative Order*, p. 4.

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## II. COMMENTS

SEF shares the Commission's belief that policies should support broad access to alternative energy systems<sup>4</sup>. However, although SEF supports the Commission's intent to broaden access, SEF believes that the interpretation of "operation" alone will not facilitate the removal of EDC prejudice towards consumers since the near term profit interests of EDCs would be inhibited by the wide-spread adoption of distributed alternative energy systems. For example, under current Commission policy, EDCs could provide net metering to customer-generators that utilize third party ownership models such as Power Purchase Agreements. Moreover, the interpretation of "operator" does not guarantee access to net metering for customers who choose to utilize special purpose entities to facilitate the construction and operation of distributed alternative energy systems.

Consequently, the broad adoption of alternative energy systems is essential to utilizing the Commonwealth's resources in such a manner as to provide for today's energy needs without compromising the needs of future Pennsylvanians. Just as EDCs may utilize many methods to finance their resources, such as equity and long-term debt, SEF believes that consumers should be enabled to utilize many methods to obtain energy from localized

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<sup>4</sup> *Tentative Order*, p. 4.

sustainable resources. Small projects are often directly financed by the non-utility owner but larger projects are often owned and operated by a third party. These third party ownership models can be as simple as a lease and as complex as an inverted flip, requiring the creation of a special purpose entity to own and operate the system. Each consumer should have the opportunity to choose the ownership and operating relationship that best fits their needs without undue prejudice by the local EDC. Any prejudice on behalf of the EDC would only serve to narrow the adoption of alternative energy systems and would be contrary to the public's interest.

Wide-spread adoption of alternative energy systems by today's energy consumers reduces our impact on the ability of future generations to meet their energy needs. Advances in science and technology have rendered the ability of future generations to meet their needs vulnerable to current policies and determinations. Consequently, net metering policies that support broad access to behind the meter, distributed, alternative energy systems, are in the public interest and are essential to utilizing the Commonwealth's natural resources in a manner designed to meet the energy needs of today's Pennsylvanians without compromising the ability of future generations of Pennsylvanians to meet their needs.

Energy resources used to meet today's need vary from coal to sunlight. Some energy resources such as oil and coal are easily stored, while sunlight and wind must be harnessed for conversion to electrical energy when such resources are available. Upon transformation, absent adequate energy storage facilities, if the energy generated by the consumer is greater than their need, the electrical energy could be wasted. However, net metering is a policy that allows for the use of that energy by another energy user. In fact, net metering provides for both a transfer of the energy and compensation for the customer-generator for the excess energy utilized by others. Broad access to net metering by customer-generators can be instrumental in the wide-spread adoption of distributed alternative energy systems that produce energy when resources are available as opposed to when energy is needed by the customer-generator. Moreover, the wide-spread adoption of systems that generate energy at the point of use would not only change the behavior of consumers but the structure of energy generation and delivery.

The increased generation of energy behind the meter would reduce the energy supplied by Electric Generation Suppliers' ("EGSs") and delivered by Electric Distribution Companies ("EDCs"). In this regard, since the fixed costs of EDCs exceed the variable cost to serve consumers, decreases in

energy consumption as measured at the meter, all else being equal, decreases revenues and, in turn, net profits. Therefore, the profit interests of EDCs dependent on volumetric charges are best served by the narrow adoption or elimination of *distributed* alternative energy systems.

The wide-spread adoption of distributed energy systems represents a significant paradigm shift for an industry traditionally based on centralized generation schemes. Thus, the wide-spread implementation of distributed alternative energy systems is arguably the most significant long-term threat to traditional profit motive interests of EDCs. In this regard, the interests of EDCs are contrary to the interests of consumers. However, SEF submits that EDCs should not view this paradigm shift as an attack on their profit incentive. Instead, EDCs should embrace this change as a necessary step toward the development of an energy structure that maintains the *opportunity for EDC profits while improving the playing field for the development of distributed alternative energy systems.* In fact, EDCs would benefit from the paradigm change in that over the long-term wide-spread adoption of distributed alternative energy systems would open new business and revenue opportunities for EDCs that currently do not exist.

In summary, SEF supports the Commission's desire to "prevent prejudice"<sup>5</sup> (by EDCs) against consumers who desire to utilize alternative financial structures to provide for their energy, but believe that the interpretation of "operator" will not entirely eliminate the prejudice. Consequently, SEF recommends that the Commission develop a standardized net metering tariff; a tariff that can be understood by the average consumer and establishes policies designed to encourage the widespread adoption of distributed alternative energy systems. As discussed above, such a result will ultimately benefit both consumers and EDCs.

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<sup>5</sup> *Tentative Order*, p. 4.