



COMMONWEALTH OF PENNSYLVANIA

August 4, 2014

**E-FILED**

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

**Re: Implementation of the Alternative Energy Portfolio Standards Act of 2004  
Docket No. L-2014-2404361**

Dear Secretary Chiavetta:

I am delivering for filing today the Comments on the Proposed Rulemaking Order, on behalf of the Office of Small Business Advocate in the above-captioned matter.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth Rose Triscari".

Elizabeth Rose Triscari  
Deputy Small Business Advocate  
Attorney ID #306921

Enclosure

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Implementation of the Alternative Energy Portfolio Standards Act of 2004** : **Docket No. L-2014-2404361**  
:

**COMMENTS OF THE OFFICE OF SMALL BUSINESS  
ADVOCATE ON PROPOSED RULEMAKING ORDER**

**I. INTRODUCTION**

On February 20, 2014, the Pennsylvania Public Utility Commission (“Commission”) issued a Proposed Rulemaking Order (“Order”) in the above-captioned proceeding, which proposes revisions to regulations pertaining to the net metering, interconnection, and portfolio standard provisions of the Alternative Energy Portfolio Standards Act of 2004 (“AEPS Act”). The Order issued the proposed revisions for public comment and directed comments from interested parties to be filed within 30 days of its publication in the *Pennsylvania Bulletin*. On July 5, 2014, the Order was published accordingly. The Office of Small Business Advocate (“OSBA”) submits the following comments pursuant to the Order.

**II. COMMENTS**

1. The OSBA is primarily concerned with the proposed revisions with respect to net metering. Specifically, based on the representations of at least one electric distribution company (“EDC”), PPL Electric Utilities Corporation (“PPL Electric”), in *Pennsylvania Office of Small Business Advocate v. PPL Electric Utilities Corp.*, Docket No. C-2013-2367475, the OSBA is concerned that net metering can have (and has had) a deleterious impact on default service customers in general and small business default service customers in particular. While the AEPS Act certainly anticipated that ratepayers must bear some costs associated with net generation, the

General Assembly did not expect that customer generator status would apply to entities whose generating capacity far exceeds their loads. Thus, the OSBA supports the Commission's proposal to limit net metering by clarifying the conditions that customers must meet in order to be considered a customer-generator eligible for net metering. These conditions are necessary to fulfill the legislative intent of the AEPS Act that net metering customers be customer-generators with "native" load and not merchant-generators posing as customer-generators. Given the apparent negative impacts of net metering on regular default service customers, limiting the practice to only customer-generators who meet these conditions is recommended. Any net metering customers that do not meet the Commission's proposed conditions should be re-classified upon entry of a Final Rulemaking Order in this proceeding and sell their excess load in the wholesale market.

2. EDCs and default service providers ("DSPs") are required to allow net generation from net metered customers to offset net load from those customers, and are obligated to cash out any annual excess net generation at the end of the year. The excess generation, in effect, becomes part of the default service supply, as it implicitly offsets the purchases that the DSP must make. However, this type of default service supply has a negative impact on regular default service customers in a number of ways.

- a. First, the net flows of energy to and from net generating customers are difficult to predict, distorting the normal load shape faced by wholesale suppliers and increasing uncertainty. This effect increases the risk faced by wholesale suppliers, and thus the supply price is likely increased. Moreover, as both net generation and shopping increases, the effect of net generation fluctuations on the remaining default service customers increases.

- b. Second, the net generator is compensated at the full Price To Compare (“PTC”), which includes transmission service charges, but it is unclear that the customer-generator provides transmission cost benefits that are commensurate with the credits it receives. It is equally unclear that, to the extent that any transmission cost offsets are realized, those benefits are assigned only to the customer class that is paying for the net generation.
- c. Third, the PTC includes E-Factor charges. Where EDCs’ small business customer E-Factor charges have generally been high and positive (such as at PPL Electric), the net generators are being paid rates that exceed current market prices.

3. The AEPS Act seemed to envision net metering generating capacity as being either commensurate with or below normal customer load. By establishing an annual cash out mechanism, the Act did not appear to anticipate that net metering customer-generators would have generation far in excess of their load levels, or that such a cash out mechanism would put upward pressure on default service rates. Therefore, the Commission’s proposal to limit excess generation to 110% of annual electric consumption is consistent with the intent of the Act.

4. The cost of purchasing net metering customer excess generation falls on default service customers. Therefore, merchant-generators posing as customer-generators should not be able to circumvent the wholesale markets and sell generation at excessive rates at the expense of default service customers. For example, due to the “debacle” that is the PPL Electric Time-of-Use (“TOU”) program, a large generator with some 2,000 kW of capacity was deemed eligible for net metering status with little or no native load, and then was able to shrewdly opt for TOU service, thereby allowing it to earn above-market PTC-based revenues for net generation that far

exceeded the actual cost of default service. Unfortunately, this benefit to the net generator came at the expense of other small business default service customers, who were required to pay above-market prices for the excess generation.<sup>1</sup>

5. In addition to the eligibility rules for customer generator status, the OSBA has a concern with respect to how compensation to net metering customers is calculated. The Order modifies §75.13(d) to include the following: *“In computing the compensation, the DSP shall use a weighted average of the price to compare rate, with the weighting based on the rate in effect when the excess generation was actually delivered by the customer-generator to the DSP.”*

6. Conceptually, the OSBA agrees that the payment for net generation should reflect the timing of that net generation. However, it must be recognized that any net generation involves periods of “exports” to the grid and “imports” from the grid. While the proposed language makes it clear that it is the Commission’s intent to use a more representative PTC, it is unclear how this will work in practice. In particular, it is unclear whether the PTC will be based only on prices in effect when the customer generator is selling to the grid, or whether the prices in effect when the customer is a net consumer will also be recognized. For example, suppose that a large solar net generator takes default service at an hourly default service rate. For that customer, will the net compensation be based on applying daytime prices to net generation amounts, or will it be based on applying daytime prices to all generation delivered to the grid less nighttime prices for all energy consumed from the grid? Similarly, for a smaller customer who is a net consumer in the summer and a net generator in the other seasons, will the summer PTCs be reflected in the calculation of the cash out price, or will the cash out price be based only on the non-summer months?

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<sup>1</sup> *Petition of PPL Electric Utilities Corporation for Approval of a New Pilot Time-of-Use Program*, Docket No. P-2013-2389572, OSBA Statement No. 2 at 8-10.

7. From a theoretical standpoint, it would be best to calculate the cash out price with the most detail, namely by applying a credit equal to the PTC for all hours in which the net generator is exporting to the grid, and deducting a charge equal to the PTC for all hours in which the customer generator is importing from the grid. However, from a practical standpoint, the OSBA acknowledges that all EDCs' information systems may not be able to accommodate such a procedure. Thus, while the OSBA generally concludes that reflecting the timing of both exports and imports in the cash out price is preferred to reflecting only the timing of exports, the OSBA respectfully requests that the Commission clarify its intent in this respect.

### **III. CONCLUSION**

In view of the foregoing, the OSBA respectfully requests that the Commission enter a Final Rulemaking Order consistent with the OSBA's comments above.

Respectfully submitted,



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For:

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Dated: August 4, 2014