

PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG, PENNSYLVANIA

November 15, 2011

The Honorable Robert W. Godshall
Chairman, House Consumer Affairs Committee
PA House of Representatives
150 Main Capitol
Harrisburg, PA 17120

Dear Representative Godshall:

Thank you for the opportunity to comment on House Bill 1580. This legislation would accelerate the current solar requirement under Pennsylvania's Alternative Energy Portfolio Standard (AEPS) by several years. The Pennsylvania Public Utility Commission (PUC) opposes HB 1580 for the reasons discussed below.

The PUC believes that HB 1580 will increase electricity costs for consumers and undermine wholesale electric competition in the state. It is undisputed that solar generation is more expensive than almost every other source of electricity. By mandating that retail electric suppliers provide more of their power from expensive solar sources, HB 1580 will needlessly increase ratepayers' electricity bills at a time when consumers can least afford to pay for them. Due to an oversaturation of supply, solar energy credit prices have been steadily falling over the past few years. By advancing the current solar carve-out, which acts as a subsidy for the solar industry, HB 1580 would increase the price of solar renewable energy credits, therefore, increasing consumers' bills. This is simple supply and demand economics.

The PUC believes a better option is for the competitive market to set the price for solar credits. In passing Chapter 28 of the Public Utility Code, the General Assembly found that competition is the best way to control electricity prices and that "the cost of electricity is an important factor in decisions made by businesses concerning locating, expanding and retaining facilities in this Commonwealth."¹ The Commission urges the General Assembly to protect these principles and continue to foster and encourage the competitive wholesale electricity market in Pennsylvania. Enacting HB 1580 would do just the opposite. This bill undercuts the competitive market by providing an even greater subsidy for the solar industry to the detriment of other suppliers, most of whom do not receive any government-mandated subsidies.

¹ 66 Pa. C.S. § 2802(5),(6).

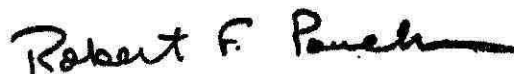
Additionally, the PUC believes the state should refrain from changing the rules under AEPS at this stage. Changing the requirements of AEPS creates uncertainty and raises the question of how often Pennsylvania will revise its renewable portfolio goals. Given the state of the economy and the desire to incentivize competition and investment in Pennsylvania, stability under mandates like AEPS should be the goal – not constant adjustment to play favorites for a single form of electric generation.

Finally, the PUC believes that the out-of-state restriction in HB 1580 is likely contrary to the Commerce Clause of the U.S. Constitution. This clause gives the U.S. Congress exclusive power over trade activities among the states and with foreign countries and Indian tribes. The U.S. Supreme Court has interpreted the Commerce Clause as prohibiting state legislative or regulatory measures that are designed to benefit in-state economic interest by placing a burden on out-of-state competitors, unless the measures are justified by valid factors not related to economic protectionism. See *New England Co. v. Limbach*, 486 U.S. 269, 273-74 (1988). Courts have held that any statute or regulation that creates a barrier to out-of-state participation must be narrowly tailored to address a non-economic concern and must be demonstrated to be the only reasonable method to effectuate that non-economic purpose in order to survive a Commerce Clause challenge. See *Chamber Medical Technologies v. Bryant*, 52 F.3d 1252, 1256 (4th Cir. 1995).

Because HB 1580 provides that the only solar systems that qualify under AEPS are those connected to a distribution system of a Pennsylvania electric utility, this legislation could be construed as designed to protect in-state economic interests by placing a burden on out-of-state competitors. Given this, the PUC is concerned that the out-of-state restriction in HB 1580 would subject AEPS to challenge under the Commerce Clause. Notably, in Massachusetts, a similar out-of-state restriction on a renewable portfolio program was challenged in court, resulting in suspension of the program until the case is resolved.

Given these problems with HB 1580, the PUC opposes this legislation. We appreciate the opportunity to express our opinion. Please let us know if you have any questions or would like to discuss this matter further.

Sincerely,



Chairman Robert F. Powelson

cc: PUC Commissioners
Director Perry