

Prepared Testimony of
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before the

Pennsylvania House of Representatives
Consumer Affairs Committee

Net Metering

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Chairman Godshall, Chairman Daley, and Members of the Committee:

Thank you for the opportunity to present testimony on a topic of significant importance to the Public Utility Commission (Commission or PUC); Net Metering.

The Evolution of Net Metering Since 2004

The Alternative Energy Portfolio Standards (AEPS) Act, Act 213 of 2004, establishing an alternative energy portfolio standard for Pennsylvania, became effective on February 28, 2005. In this Act, the Pennsylvania General Assembly charged the Commission with implementing and enforcing this mandate in cooperation with the Pennsylvania Department of Environmental Protection (DEP). 73 P.S. §§ 1648.7(a) and (b). The Commission determined that the Act is in *pari materia* with the Public Utility Code and that we would develop the necessary regulations to be codified at Title 52 of the Pennsylvania Code. 1 Pa. C.S. § 1932.

The AEPS Act has been amended on two occasions. Act 35 of 2007, which took effect July 19, 2007, amended certain definitions and provisions for net metering and interconnection. Act 129 of 2008, which became effective on November 14, 2008, amended the AEPS Act by modifying the scope of eligible Tier I alternative energy sources and the Tier I compliance obligation. See 66 Pa. C.S. § 2814.

The Commission has issued the following rulemakings to implement the AEPS Act and its subsequent amendments:

- The Commission issued final, uniform net metering regulations for customer-generators. See *Final Rulemaking Re Net Metering for Customer-generators pursuant to Section 5 of the Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.5*, L-00050174 (Final Rulemaking Order entered June 23, 2006). These regulations were approved by the Independent Regulatory Review Commission (IRRC) and became effective on December 16, 2006.
- The Commission issued final, uniform interconnection regulations for customer-generators. See *Final Rulemaking Re Interconnection Standards for Customer-generators pursuant to Section 5 of the*

Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.5, L-00050175 (Final Rulemaking Order entered August 22, 2006, as modified on Reconsideration September 19, 2006). These regulations were approved by the IRRC and became effective on December 16, 2006.

- The Commission revised the net metering regulations and certain definitions to be consistent with the Act 35 of 2007 amendments through a final omitted rulemaking. *See Implementation of Act 35 of 2007; Net Metering and Interconnection, Docket No. L-00050174* (Final Omitted Rulemaking Order entered July 2, 2008). These revisions were approved by IRRC and became effective November 29, 2008.
- The Commission issued final regulations governing the portfolio standard obligation. *See Implementation of the Alternative Energy Portfolio Standards Act of 2004, L-00060180* (Final Rulemaking Order entered September 29, 2008). These regulations were approved by IRRC and became legally effective December 20, 2008.

The above-referenced regulations are codified in the Commission's regulations in Chapter 75 of the Pennsylvania Code, 52 Pa. Code §§ 75.1, et seq.

The Commission issued an Order to implement the AEPS related provisions of Act 129 in 2009. *See Implementation of Act 129 of 2008 Phase 4 – Relating to the Alternative Energy Portfolio Standards Act, Docket M-2009-2093383* (Order entered May 28, 2009). In addition to the creation of an energy efficiency and conservation program, Act 129 expanded the definition of alternative energy sources in the AEPS Act that qualify as Tier I alternative energy resources. The General Assembly also charged the Commission with increasing, at least quarterly, the percentage share of Tier I resources to be sold by electric distribution companies (EDCs) and electric generation suppliers to reflect the new Tier I resources. The May 28, 2009 Order established guidelines for qualifying the additional Tier I resources, reporting requirements and related procedures for the Commission to follow

when making the required adjustments to the Tier I percentage requirements.

On March 29, 2012, the Commission adopted a Policy Statement (at Docket No. M-2011-2249441) which provided guidelines regarding the availability of net metering for alternative energy systems owned by third-parties. In that Policy Statement, we stated that the term “operator,” as found in the definition of “customer-generator” in Section 2 the AEPS Act (73 P.S. § 1648.2), shall be interpreted to include customer-generators with distributed alternative energy systems that contract with third-parties to perform the operational functions of the alternative energy system. That Policy Statement also provided that net metered alternative energy systems, owned and operated by third-parties which are interconnected and placed on property owned or leased and operated by an electric utility customer, be designed to generate no more than 110% of that utility customer’s annual electricity consumption, at the interconnection meter location and all qualifying virtual meter locations.

On February 20, 2014, the Commission issued a Notice of Proposed Rulemaking seeking comment on our proposed updates to our regulations pertaining to the net metering, interconnection and portfolio standard provisions of the AEPS Act. *See Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Proposed Rulemaking Order, Docket No. L-2014-2404361 (Order entered February 20, 2014). In response to the Proposed Rulemaking Order, IRRC specifically suggested that the Commission issue an Advance Notice of Final Rulemaking “to engage the regulated community in meaningful dialogue as it develops the final-form rulemaking.” As such, on April 23, 2015, the Commission issued an Advanced Notice of Final Rulemaking to receive additional comments on the proposed revisions to the AEPS regulations. *See Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Advance Notice of Final Rulemaking Order, Docket No. L-2014-2404361 (Order entered April 23, 2015).

The April 23, 2015 Advance Notice of Final Rulemaking Order and proposed rules were published in the *Pennsylvania Bulletin* on May 9, 2015, at 45 Pa.B. 2242. Comments were due within 30 days of the publication

of the proposed rules in the *Pennsylvania Bulletin*. Presently, Commission staff is reviewing the comments submitted in response to the Advance Notice of Final Rulemaking and is preparing a Final Rulemaking Order regarding our revised AEPS regulations.

Present Status of Net-Metering

Presently Pennsylvania has over 8,700 net-metered facilities. This number represents an almost two-fold increase from 2011 when the state had 4,500 facilities. The vast majority of these facilities are solar. The state's entire net-meter fleet cumulates to a total estimated nameplate capacity of just over 200 MWs.

Need for Changes to Commission Net Metering Regulations

Based on our experience in implementing our current net metering regulations, the Commission believes it is necessary to: (1) update and revise these regulations to comply with Act 35 of 2007 and Act 129 of 2008 and (2) clarify certain issues of law, administrative procedure and policy that have come to our attention through informal inquiries or formal complaint proceedings regarding these regulations.

Many of these inquiries and complaints regarding our regulations seek clarification as to who may qualify as a "customer-generator" and obtain net metering. While the AEPS Act defines "customer-generator" as "a nonutility owner or operator of a net metered distribution generating system with a nameplate capacity of not greater than 50 kilowatts if installed at a residential service or not larger than 3,000 kilowatts at other customer service locations", the AEPS Act does not define what a "nonutility" is or what constitutes a "service location." In addition, while the AEPS Act permits systems up to five megawatts to net meter, provided they "make their systems available to operate in parallel with the electric utility grid during grid emergencies as defined by the regional transmission organization", the AEPS Act does not specify: (1) the type of "grid emergencies" contemplated by the Act or (2) what qualifies as "making an alternative energy system available to operate in parallel with the electric utility grid." Furthermore, the Commission has received inquiries into what

constitutes properties owned or leased and operated by a customer-generator that may qualify for virtual meter aggregation.

The EDCs and stakeholders have interpreted these terms in their net metering application processes with some seeking informal guidance from Commission staff and others interpreting the terms themselves. The absence of regulations has, unfortunately, lead to inconsistent application of these net metering provisions across the various EDC service territories. To provide regulatory certainty, the Commission proposed to define these various terms and set conditions that all EDCs are to apply in processing net metering applications. These definitions and conditions will also serve to inform potential customer-generators when and how to qualify for net metering. Most importantly, the proposed regulations will ensure that the net metering rules are consistent throughout the Commonwealth. The Commission has also proposed some limits on the qualifications of systems eligible for net metering payments to ensure that the rates paid by ratepayers to subsidize customer-generators are just and reasonable.

House Bill 1349

On May 14, 2015, State Representative David Zimmerman submitted a memorandum to all House members regarding his intent to introduce legislation addressing a key aspect of the Commission's proposed AEPS rulemaking. Unfortunately, that memo incorrectly refers to the Commission's proposed rulemaking as an attempt to limit the size (nameplate capacity) of electric generating systems that burn methane from the process of anaerobic digestion. In fact, the Commission's proposed rulemaking, in part, only seeks to limit the size of systems that seek to take advantage of the public subsidy provided via net metering. No limitations in size are proposed for any systems whereby the system owner intends to interconnect to the electric grid without availing themselves to the net metering subsidy. Further, the referenced memo and ensuing legislative language is extended beyond just farm digesters to also include all anaerobic digesters, such as from sewage treatment plants and also including landfill methane gas projects.

On June 24, 2015, Representative Zimmerman introduced his bill, House Bill 1349 into the Consumer Affairs Committee for consideration.

As previously explained, the Commission's proposed rulemaking does not impact the size of systems being designed or built but does effect the size of systems wishing to take full advantage of the net metering subsidy. However, HB 1349 makes no specific reference to net metering and thusly, as written, the bill may be interpreted as having no impact on the Commission's proposed rulemaking. However, due to certain ambiguities within the language of this bill, there exists the potential for an interpretation that this bill removes all nameplate capacity limits on biologically derived methane gas generation facilities, including landfill gas facilities such that the net metering subsidy could be applied to biologically derived methane gas systems of an unrestricted size, beyond even the upper-most threshold of 5 megawatts of capacity currently allowed under statute. Under this interpretation, when considering only current and some planned landfill methane gas projects, the costs currently borne by consumers for net metering subsidies could increase by approximately \$87 million per year.

By contrast, the Commission's proposed rulemaking for net metering, in part, seeks to limit new customer-generator systems that qualify for net metering subsidies to a nameplate capacity that produces no more than 200% of their historical load (energy consumption). This proposed qualifying limit applies to all new systems seeking to net meter, with the specific exception of systems that utilize biologically derived methane gas when that system is used to comply with the Department's Pennsylvania Chesapeake Watershed Implementation Plan or is an element for compliance with the Nutrient Management Act. This exceptional language was crafted with input from the Pennsylvania Departments of Agriculture and Environmental Protection in recognition of the comments received from the agricultural community during our initial public comment period.

I thank you all for your time and look forward to any questions you may have.