RECEIVED

2006 APR 21 PM 3:11

INDEPENDENT REGULATORY
REVIEW COMMISSION

Original: 2519

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Proposed Rulemaking Re Net Metering for Customer-Generators pursuant to Section 5 of the Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.5	:	Docket No. L-00050174
Implementation of the Alternative Energy Portfolio Standards Act of 2004: Net Metering	:	Docket No. M-00051865

**COMMENTS ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE
ON PROPOSED NET METERING REGULATIONS**

The act of November 30, 2004 (P.L. 1672, No. 213), known as the Alternative Energy Portfolio Standards Act ("Act"), requires that increasing percentages of the electricity sold in the Commonwealth be generated from designated alternative energy sources.

By Notice dated January 7, 2005, the Pennsylvania Public Utility Commission ("PUC" or "Commission") announced a January 19, 2005, technical conference to facilitate the implementation of the Act. The Office of Small Business Advocate ("OSBA") submitted written comments prior to the conference, made an oral presentation at the conference, and subsequently filed written reply comments.

By Notice dated February 14, 2005, the Commission convened the Alternative Energy Portfolio Standards Working Group ("Working Group"). The OSBA has submitted written comments and has participated in meetings as a member of the Working Group.

On June 2, 2005, the Commission Staff released an Issues List for Net Metering and invited comments from the Working Group. On June 17, 2005, the OSBA submitted comments in response to the Commission Staff's invitation.

On August 3, 2005, the Commission Staff released a Net Metering Regulation Draft Proposal and invited comments and proposed amendments from the Working Group. On August 26, 2005, the OSBA submitted comments and proposed amendments in response to the Commission Staff's invitation.

By Proposed Rulemaking Order entered November 16, 2005, the Commission initiated the formal process for promulgating Net Metering Regulations. Ordering paragraph 5 provides that comments on the proposed regulations are due within 60 days of publication in the *Pennsylvania Bulletin*. The proposed regulations were published on February 4, 2006.

COMMENTS

§75.13. Net metering general provisions.

A. Clarifying Language

Subsection (c) requires the electric distribution company ("EDC") to reduce the customer-generator's bill for the next month to compensate for the excess electricity on a kilowatt-hour for kilowatt-hour basis. The OSBA recommends the addition of language to make clear that such compensation is to take the form of a reduction in the customer-generator's billed kWh for the succeeding month.

Subsection (j) requires an EDC to bill a customer-generator at the same transmission, distribution, and generation rates which would be charged if the customer were not generating electricity. Presumably, the customer-generator would pay on a billed-kWh basis for only the amount of net electricity the customer receives from the EDC. Although a customer-generator might provide more electricity to the EDC in a billing period than the customer-generator receives from the EDC, the customer-generator would presumably not be entitled to a credit toward any charges other than those based upon billed kWh on a subsequent monthly bill. However, to assure clarity, the OSBA recommends the insertion of language to the effect that any subsequent bill credit should be limited to kWh-based charges.

B. Net metering applications in farming situations

During the January 19, 2005, technical conference, witnesses on behalf of the Pennsylvania Farm Bureau ("PFB"); RCM Digesters, Inc.; *Native*Energy; and Environomics LLC commented that PPL Electric Utilities Corporation ("PPL") is not paying enough for electricity generated from methane digesters to make it worthwhile for farmers to invest in such digesters. The PFB and these other entities also identified certain administrative requirements and fees as significant impediments to utilizing methane digesters.

Methane digesters have the potential to provide a "double" environmental benefit. First, methane digesters would be a source of alternative energy to comply with the Act. Second, digesters would help reduce the odor and nutrient runoff problems associated with intensive agricultural operations. However, nothing in Act 213 states or implies that a farm-based net metering customer is to be subsidized by rates paid by other customers. Therefore, to the extent that utilization of methane digesters might be constrained by capital and operating costs, the Commission should enlist the financial help of the sustainable energy funds ("SEFs").

Separate SEFs exist in the service territories of PPL, the Metropolitan Edison Company ("MetEd"), the Pennsylvania Electric Company ("Penelec"), PECO Energy Company ("PECO"), and the West Penn Power Company ("West Penn"). These SEFs have budget surpluses, derived principally from payments by EDC stockholders, EDC ratepayers, or both.

SEF contributions could include the following: (1) grants or loans to cover capital costs, (2) production payments to bridge the gap between the amount farm generators would receive under the proposed regulations and the amount needed to make projects economically viable, and (3) payments to energy brokers to cover administrative costs which would otherwise have to be borne by the farm generators.

§75.14. Meters and metering.

Subsection (a) would require the use of "a single bi-directional meter that can measure and record the flow of electricity in both directions at the same rate." It is unclear whether the meter must be capable of *separately* recording the flow of electricity in each direction. As part of its recommendation on the recovery of stranded cost (set forth below), the OSBA recommends the insertion of language to make clear that the metering equipment must make a *separate* recording of the flow of electricity in each direction.

Subsection (b) would require the EDC to bear the cost of installing whatever metering equipment is required by Subsection (a). The EDC, in turn, would likely attempt to recover that cost from all customers, including customers not participating in net metering. If the Commission were to approve such recovery, distributed generation would receive a subsidy, thereby providing a competitive advantage over the other six categories of Tier II alternative energy sources. Nothing in the Act states or implies that distributed generation is to receive a subsidy or other competitive advantage. Therefore, consistent with the principle that alternative energy credits ("AECs") should be awarded to Tier II alternative energy sources on the basis of market competition, the OSBA recommends that Subsection (b) be amended to specify that all additional metering costs are to be borne by the customer-generator.

§75.15. Treatment of Stranded Costs.

This section recognizes that net metering has the potential to create a shortfall in the recovery of stranded cost. Put simply, stranded cost is recovered on a volumetric basis via a Competitive Transition Charge ("CTC") or an Intangible Transition Charge ("ITC"). Without a billing adjustment of some type, a customer who begins net metering presumably would pay the CTC or ITC only on the *difference* between the kWh delivered to the customer-generator by the EDC and the kWh sent by the customer-generator over the EDC's distribution system. Because the customer-generator would pay CTC or ITC on too few kWhs, the EDC would experience a shortfall in CTC or ITC revenue. In theory, the shortfall in CTC or ITC revenue would have to be recovered by raising rates.

Section 2808(a) of the Public Utility Code, 66 Pa. C. S. § 2808(a), provides as follows:

> If a customer installs on-site generation which operates in parallel with other generation on the public utility's system and which significantly reduces the

> customer's purchases of electricity through the transmission and distribution network, the customer's fully allocated share of transition or stranded costs shall be recovered from the customer through a competitive transition charge.

Because of Section 2808(a), a customer-generator must pay the CTC or ITC in the same amount the customer would owe if the customer were not on net metering. However, because the statute mandates such a payment only in the case of a *significant* reduction in usage, it might be appropriate for an EDC to waive recovery of the shortfall if the customer-generator's purchase of electricity from the EDC does not decline by more than a *de minimis* amount. However, 10% is more than a *de minimis* amount, especially in view of the fact that the proposed regulations would relieve customer-generators of certain metering costs, compensate them for some electricity at retail rates, enable them to send out electricity over the EDC's system while paying for transmission and distribution service on a net basis, and allow them to sell AECs without any offset for the value of the subsidies provided by ratepayers who are not customer-generators.

Section 75.15 does not make clear if the EDC would be permitted to recover from those customers who are not customer-generators, any shortfall in CTC or ITC revenue attributable to customer-generators whose purchase of electricity from the EDC declines by less than 10%. Such recovery would amount to yet another subsidy for distributed generation at the expense of ratepayers who are not customer-generators. Therefore, the OSBA recommends that Section 75.15 be amended to require *all* customer-generators to pay the CTC or the ITC in an amount no less than the amount owed for the Base Year. In the alternative, the OSBA recommends that language be inserted to forbid an EDC from recovering from non-customer-generators any shortfall in CTC or ITC revenue attributable to customer-generators.

AMENDMENTS

§75.13. Net metering general provisions.

* * *

(c) If a customer-generator is a generation customer of an EDC and supplies more electricity to the electric distribution system than the EDC delivers to the customer-generator in a given billing month, the EDC shall credit the customer-generator for the excess on a kilowatt-hour for kilowatt-hour basis. The EDC shall reduce the customer generator's [bill] <u>billed kWh</u> for the next billing month to compensate for the excess electricity produced by the customer-generator in the previous billing period.

* * *

(j) An EDC shall provide net metering at nondiscriminatory rates identical with respect to rate structure, retail rate components and any monthly charges to the rates charged to other customers that are not customer-generators. <u>In the event that a customer-generator supplies more electricity to an EDC in a billing period than the EDC delivers to the customer-generator, the bill credit received by the customer-generator in a subsequent billing period shall be limited to kWh-based charges.</u> An EDC may use a special load profile for the customer-generator which incorporates the customer-generator's real time generation if the special load profile is approved by the Commission.

§75.14. Meters and Metering.

(a) A customer-generator facility used for net metering shall be equipped with a single bi-directional meter that can measure and <u>separately</u> record the flow of electricity in both directions at the same rate. If the customer-generator agrees, a dual meter arrangement may be substituted for a single bi-directional meter.

(b) If the customer-generator's existing electric metering equipment does not meet the requirements in subsection (a), the EDC shall install new metering equipment for the customer-generator at the [EDC's] <u>customer-generator's</u> expense. Any subsequent metering equipment change necessitated by the customer-generator shall be paid for by the customer-generator.

* * *

§75.15. Treatment of Stranded Costs.

[If a net metering small commercial, commercial or industrial customer's self-generation results in a 10 % or more reduction in] <u>Unless the customer-generator's meter measures and separately records</u> the customer's purchase of electricity through the EDC's transmission and distribution network [for an annualized period when compared to the prior annualized period, the net-metering small commercial, commercial or industrial customer shall be responsible for its share of stranded costs to prevent interclass or intraclass cost shifting pursuant to the Public Utility Code at 66 Pa. C.S. § 2808(a)(relating to competitive transition charge). The] <u>, the</u> net metering small commercial, commercial or industrial customer's stranded cost obligation shall be calculated based upon the applicable "base year" as defined in this chapter.

CONCLUSION

WHEREFORE, the OSBA respectfully requests that the Commission revise the proposed regulations to incorporate the aforementioned amendments.

Respectfully submitted,

William R. Lloyd, Jr.
Small Business Advocate

Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101
(717) 783-2525

Dated: March 27, 2006