ORIGINAL: 2524

COMMONWEALTH OF PENNSYLVANIA

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April 4, 2006

HAND DELIVERED

COPY

James J. McNulty, 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. M-00051865

Proposed Rulemaking Re Interconnection Standards for Customer-generators Pursuant to Section 5 of the Alternative Energy Portfolio Standards Act, 73 P.S. §1648.5
Docket No. L-00050175

Dear Secretary McNulty:

I am delivering for filing today the original plus fifteen copies of the Comments of the Office of Small Business Advocate on Interconnection Regulations. I have also e-mailed the Comments to Carrie Beale.

If you have any questions, please contact me.

Sincerely,

William R. Lloyd, Jr.

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Small Business Advocate

Enclosure

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Proposed Rulemaking Re Interconnection Standards for Customer-generators pursuant to Section 5 of the Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.5	:	Docket No. L-00050175
Implementation of the Alternative Energy Portfolio Standards Act of 2004: Interconnection Standards	:	Docket No. M-00051865

COMMENTS ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE
ON PROPOSED INTERCONNECTION STANDARDS 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 August 29, 2005, the Commission Staff released a strawman draft of Interconnection Standards Proposed Regulations and invited comments from the

Working Group. On September 19, 2005, the OSBA submitted comments in response to the Commission Staff's invitation.

By Proposed Rulemaking Order entered November 16, 2005, the Commission initiated the formal process for promulgating regulations on interconnection standards. Under Ordering paragraph 5, comments on the proposed regulations are due within 60 days of publication in the Pennsylvania Bulletin. The proposed regulations were published on February 25, 2006.

At this time, the OSBA does not have the technical expertise to comment on the specific engineering and safety issues raised by the proposed regulations. Therefore, the OSBA's comments focus on who should bear the costs.

COMMENTS

1. Ratepayers should not be required to subsidize distributed generation.

The Proposed Rulemaking Order, at 16, indicates that the Commission will initiate a proceeding to establish fees for interconnection and net metering purposes. Consistent with that statement, proposed Section 75.33 states that "[t]he Commission will determine the appropriate interconnection fees for Levels 1, 2, 3, and 4." However, neither the Proposed Rulemaking Order nor proposed Section 75.33 states the Commission's intention with regard to what costs those fees will cover.

As an overriding principle, the costs to evaluate a requested interconnection and the costs to make that interconnection should be the responsibility of the customer-generator. Consistent with that principle, the OSBA recommends that the fees be set at levels which are adequate to recover all costs not otherwise borne by the customer-

generator. Allocating any portion of those costs to the electric distribution company ("EDC") would lead to a request from the EDC to recover the shortfall from ratepayers in a subsequent base rate proceeding. If distributed generation were to become widespread, the impact on ratepayers would likely be more than de minimis and the proper allocation of those costs among rate classes would likely be controversial.

Act 213 itself does not require that distributed generation receive preferential treatment relative to other alternative energy sources or that alternative energy sources be subsidized by ratepayers. Furthermore, the Commission has not articulated a policy argument to support preferential treatment or to support ratepayer subsidization. Unless the Commission is prepared to require permanent subsidization, the success of distributed generation over time will depend on the ability of distributed generation to compete in the market place.

2. Act 213 does not require or authorize subsidization.

Section 2 of the Act defines "alternative energy sources" to include 12 categories of energy production and one category of energy usage reduction. "Distributed generation system" is one of the 13 categories. Nothing in the definition of "alternative energy sources" states or implies that one of the 13 categories is to receive a subsidy or preferential treatment relative to the other categories.

Section 2 of the Act also defines "Tier II alternative energy source" to include six categories of energy production and one category of energy usage reduction. "Distributed generation systems" are but one of the seven categories included in Tier II. Nothing in the definition of "Tier II alternative energy source" states or implies that one

of the seven categories is to receive a subsidy or preferential treatment relative to the other categories.

Section 3(a)(3) of the Act provides that the EDC is to recover the cost of purchasing electricity generated from alternative energy sources "as a cost of generation supply under 66 Pa. C.S. § 2807." Section 2807(e)(3) requires the purchase of electricity to serve default customers "at prevailing market prices." Acquiring electricity at "market" prices is inconsistent with providing a subsidy or preferential treatment for distributed generation or any other alternative energy source.

Section 3(c) of the Act specifies the percentage "[o]f the electrical energy required to be sold from alternative energy sources identified in Tier II." Nothing in Section 3(c) states or implies that one of those sources is to receive a subsidy or preferential treatment relative to the other sources.

Section 5 of the Act requires the Commission to "develop technical and net metering interconnection rules for customer-generators." Nothing in Section 5 states or implies that interconnection is to receive a subsidy.

Section 7 of the Act requires the Commission to "conduct an ongoing alternative energy resources planning assessment" and specifies that the assessment is to "identify needed methods to maintain or increase the relative competitiveness of the alternative energy market." Nothing in Section 7 states that the Commission is to utilize ratepayer subsidies in order to maintain or increase the competitiveness of alternative energy with non-alternative energy or to give one alternative energy source a competitive advantage over other alternative energy sources. Furthermore, by requiring the annual report to the legislature to include "[c]urrent costs of alternative energy on a per kilowatt hour basis

for all alternative energy technology types," Section 7(c)(2) of the Act implies that alternative energy sources are to compete with each other, and with non-alternative energy sources, on the basis of actual cost rather than on the basis of some artificial, subsidized cost.

3. The proposed regulations require clarification.

Even if the Commission does not agree with the OSBA regarding subsidization, the OSBA recommends that the proposed regulations be amended to clarify whether certain costs are to be borne by the EDC (and, potentially, by ratepayers) or are to be borne by the customer-generator.

- Proposed Section 75.36(8) would give a customer-generator with more than one generating facility the option to choose (and pay the entire cost of) separate interconnection facilities. The language implies, but does not explicitly state, that the EDC is to bear the cost if the customer-generator chooses to use a Single Point of Interconnection. Consistent with the OSBA's views set forth above, the cost of the Single Point of Interconnection should be borne by the customer-generator and not by the EDC.

- Proposed Section 75.39(b)(3) provides that a request's position in the queue would determine the responsibility for certain costs. However, it is unclear to which specific costs the language refers. It is also unclear whether the EDC or the customer-generator would be responsible for those costs. Consistent with the OSBA's views set forth above, all costs should be borne by the customer-generator and not by the EDC.

- Proposed Section 75.39(b)(5), (6), and (7); (d)(1)(v) and (d)(2); and (e)(1) require the EDC to provide non-binding good faith estimates of certain costs, but the

language does not specify who is to be responsible for paying those costs. Consistent with the OSBA's views set forth above, the costs should be borne by the customer-generator and not by the EDC.

• Proposed Section 75.39(c)(4) and 75.39(e)(2)(ii) refer to estimates of engineering, equipment, and construction costs. However, the language does not indicate whether the EDC or the customer-generator would be responsible for those costs. Consistent with the OSBA's views set forth above, the costs should be borne by the customer-generator and not by the EDC.

• Under proposed Sections 75.40(c)(3)(iii) and 75.40(c)(7)(iii), the EDC is required to pay for an Area Network impact study of a proposed Small Generator Facility which is otherwise presumed by the Commission's rules to be appropriate for interconnecting. If a proposed facility satisfies the Commission's engineering and safety standards for interconnecting, the EDC should not be permitted to recover from ratepayers the costs of any additional study the EDC deems necessary. However, if the circumstances indicate that the study is necessary to assure that the facility actually satisfies engineering and safety standards, the cost of the study should be borne by the customer-generator and not by the EDC.

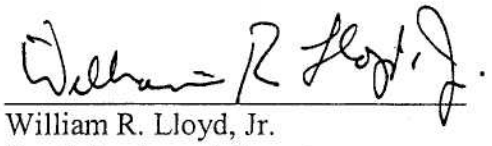
• Proposed Section 75.51(c) provides for determining the costs of dispute resolution but does not specify how those costs are to be allocated between the customer-generator and the EDC and whether the EDC may recover its share from ratepayers. Consistent with the OSBA's views set forth above, the costs should be borne by the customer-generator if the EDC prevails in the dispute resolution proceeding. The EDC should bear the costs only if the customer-generator prevails; but, even under those

circumstances, the EDC should not be permitted to recover those costs from ratepayers. Allowing the EDC to recover any dispute resolution costs from ratepayers would undermine the EDC's incentive to control those costs.

CONCLUSION

WHEREFORE, the OSBA respectfully requests that the Commission amend the proposed regulations in a manner consistent with the aforementioned comments.

Respectfully submitted,



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