

ALVIN C. BUSH, CHAIRMAN
ARTHUR COCCODRILLI
JOHN R. MCGINLEY, JR., ESQ.
JOHN F. MIZNER, ESQ.
KIM KAUFMAN, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL
LESLIE A. LEWIS JOHNSON, DEPUTY CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

May 26, 2006

Honorable Wendell Holland, Chairman
Pennsylvania Public Utility Commission
Keystone Building, 3rd Floor
400 North Street
Harrisburg, PA 17105

Re: Regulation #57-245 (IRRC #2524)
Pennsylvania Public Utility Commission
Alternative Energy Portfolio Standards; Interconnection Standards for Customer-Generators

Dear Chairman Holland:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable Robert M. Tomlinson, Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Robert J. Flick, Majority Chairman, House Consumer Affairs Committee
Honorable Joseph Preston, Jr., Democratic Chairman, House Consumer Affairs Committee

Comments of the Independent Regulatory Review Commission

on

Pennsylvania Public Utility Commission Regulation #57-245 (IRRC #2524)

Alternative Energy Portfolio Standards; Interconnection Standards for Customer-Generators

May 26, 2006

We submit for your consideration the following comments on the proposed rulemaking published in the February 25, 2006 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Pennsylvania Public Utility Commission (PUC) to respond to all comments received from us or any other source.

1. General – Consistency with statute; Economic impact; Reasonableness; Need; Feasibility.

Screening criteria

Under 73 P.S. §§ 1648.3(b) and (c), Electric Distribution Companies (EDC) are specifically directed to use progressive amounts of alternative energy sources. However, under “force majeure” (73 P.S. § 1648.2), the PUC must also make determinations on whether “alternative energy sources are reasonably available in the marketplace in sufficient quantities....”

Levels 1, 2, 3 and 4 each have criteria to screen out interconnection requests that may be incompatible with or cause problems in the electric system. While we agree that screening is appropriate, it is not clear what practical effect these criteria will impose. We note that the PUC is requesting comment on several of these criteria including the “5% of the spot network’s maximum load” and “an 85% fault current limit.” We are concerned that these criteria could serve as barriers to the development and use of alternative energy. In the final-form regulation submittal, the PUC should explain how these criteria strike the appropriate balance between the need to protect the electric grid and allowing alternative energy sources to be reasonably available in the marketplace in sufficient quantities.

Cost recovery

Although 73 P.S. § 1648.3(a) generally addresses cost recovery, commentators raised several questions regarding cost recovery and responsibility which are not explicitly addressed in this regulation. For example, the EDCs express a legitimate concern as to whether the language of this regulation would allow them to recover single point of interconnection costs through rates. Subsection 75.36(8) states an “EDC may propose to interconnect more than one small generator facility at a single point of interconnection to minimize costs to the customer generator....” On

the other hand, Subsection 75.37(b)(5) states “construction of facilities by the EDC on its own system is not required to accommodate the small generator facility.” If an EDC spends money to provide a single point of interconnection under Subsection 75.36(8), recovery of that investment could be jeopardized because Subsection 75.37(b)(5) states the investment was not required.

Commentators raised issues that are directly and unavoidably related to the development of alternative energy and, if left unaddressed, may hamper the development of alternative energy. Potential investors in new generation could encounter unexpected or unreasonable costs related to construction or litigation. EDCs could be hesitant to interconnect alternative energy or expend their resources if they are uncertain of whether the PUC will allow them to recover costs through rates. There are also questions raised by some commentators over inappropriate subsidization of alternative energy by ratepayers. Hence, this regulation should clearly specify what interconnection costs and alternative energy costs the EDC can recover through rates set by the PUC and what costs are the responsibility of the generator.

Insurance and indemnification

The PUC invited comment on requiring insurance. Based on the comments filed, insurance is a significant and contentious issue. We question how interconnections with alternative energy suppliers can be realistically done without insurance protection. However, since specific language was not provided in the proposed rulemaking, the PUC effectively circumvented review of regulatory language regarding insurance by the House Consumer Affairs Committee, the Senate Consumer Protection and Professional Licensure Committee and this Commission. Language added to the regulation to require insurance would have to be done in another proposed rulemaking.

Comments were submitted in favor of requiring insurance to protect the EDC from losses due to malfunctions and against requiring insurance because it would increase costs. Some commentators argue that insurance should not be required to be consistent with the Mid-Atlantic Distributed Resource Initiative and New Jersey on this issue. We note that Subsections 75.37(a) and 75.38(a) state an “EDC may not impose additional requirements...not specifically authorized under this subchapter.” Therefore, unless language is added to the regulation regarding insurance, the EDC would be prohibited from requiring insurance.

“Consistent with rules defined in other states within the service region”

Under 73 P.S. § 1648.5, the PUC must develop rules “...consistent with rules defined in other states within the service region...” Several commentators have cited inconsistency with rules in New Jersey. The PUC should explain how the final-form regulation meets the statutory directive in 73 P.S. § 1648.5 to be consistent with other states.

Timelines for interconnection review

Sections 75.37, 75.38, 75.39 and 75.40 specify timelines for interconnection review procedures. Several commentators suggested shorter timelines for review. The PUC should explain why the timelines chosen for the final-form regulation are appropriate.

Designated address

In Section 75.37(c)(2), the PUC has recognized potential problems with receipt of interconnection requests. Given the timelines for review of interconnection requests, the final-form regulation should require EDCs to establish a designated address for receipt of interconnection requests.

Inverter for interconnection

Sections 75.34, 75.37, 75.38, 75.39 and 75.40 make distinctions on inverter-based or noninverter-based equipment. We note that the definitions of “alternative energy sources,” “Tier I alternative energy source” and “Tier II alternative energy source” in 73 P.S. § 1648.2 list many broad categories of sources, but do not distinguish them by whether they require inverters or not. The PUC should explain why the distinction of inverter-based or noninverter-based equipment is needed.

Advanced Notice of Final Rulemaking

In the Preamble, the PUC requests comments on several issues and provisions. The PUC convened a stakeholder process for the proposed rulemaking consistent with 73 P.S. § 1648.5. We suggest continuing the stakeholder process. In addition, the PUC should publish an Advanced Notice of Final Rulemaking to provide an opportunity to resolve any controversy with these issues prior to submittal of a final-form regulation.

2. Section 75.22. Definitions. – Reasonableness; Clarity.

Substantive provisions in definitions

Substantive provisions in a definition cannot be enforced. The following definitions contain substantive provisions: “Certificate of completion,” “Interconnection system impact study” and “Queue position.” The substantive provisions in these definitions should be deleted and addressed in the appropriate sections of the regulation.

“As amended and supplemented”

The definition of “certified” refers to IEEE and UL standards “as amended and supplemented.” However the definitions of “IEEE standard 1547,” “IEEE standard 1547.1” and “UL standard 1741” are defined as “the most current official published version.” For consistency, the same phrase should be used in all of these definitions.

Affected system

A commentator has suggested adding this term to the definitions and use of the term throughout the regulation. We agree that any system that may be affected by the generator, including neighboring EDC, should be a party to the consideration of the impact of that generator on their system.

Electric nameplate capacity

This term is defined as the “net maximum or net instantaneous peak electric output capability measured in volt-amps of a small generator facility as designated by the manufacturer.” This term is used in Section 75.34 to determine whether an interconnection request is reviewed under Level 1, 2 or 3 procedures as well as evaluations under Sections 75.36(1) and (2). Some commentators believe that using a “net” output capability does not reflect the size of the generator connecting to the system and may allow review at an inappropriate level. The PUC should explain why the net electric output capability is appropriate.

Technical terms

By its nature, this regulation uses technical terms including “radial distribution circuit,” “draw-out type circuit breaker,” “secondary,” “center tap neutral” and “anti-islanding function.” These terms are used in making pivotal determinations in screening interconnection requests. The PUC should define these terms or reference technical standards where available so that there is no misunderstanding between parties in developing or reviewing an interconnection request. This would also potentially avoid the cost of proceedings under Section 75.51 relating to disputes.

3. Section 75.33. Fees and forms. – Economic impact; Reasonableness.

This provision states the PUC will determine appropriate interconnection fees. The regulation requires the EDC to designate a contact person, review interconnection requests, develop interconnection studies and provide good faith cost estimates. We again note that questions were raised by some commentators over inappropriate subsidization of alternative energy by ratepayers.

Since the fees are not specified or implemented, we are unable to evaluate this provision and what costs fees cover. In the final-form regulation, the PUC should provide detailed information on the fees and forms required in relation to our criteria of economic impact, reasonableness and clarity. Also, the PUC should either develop the fees through a rulemaking or in EDC tariffs.

4. Section 75.36. Additional general requirements. – Reasonableness; Economic impact; Clarity.

Paragraph (3) EDC records

Subparagraph (ii) requires records of “the times to complete interconnection request approvals and disapprovals.” If the records are envisioned to require the number of days, this subparagraph should state “the number of days” rather than “the times.”

Subparagraph (v) requires records of requests that were not processed within “established timelines.” This provision is vague. The regulation should state what specific timelines the EDC did not meet that have to be reported, or cross-reference the applicable provisions that establish timelines.

Paragraph (6) Interconnection request

This provision is not clear because the requirement is separated by three exceptions. This provision should be rewritten to improve clarity.

Paragraph (8) Single point of interconnection

There are four areas of concern.

First, the opening sentence is not clear. It begins with what the EDC may propose, but ends with what appears to be a separate circumstance the EDC may not refuse. For clarity, the opening sentence should be broken into two sentences.

Second, the EDC has obligations to many customer classes, investors and the PUC. While we agree that costs should be minimized, why is the EDC's ability to make a proposal for a single point of connection limited to the circumstance of minimizing costs to the customer-generator? Should other circumstances be allowed such as to minimize the EDC's costs or enhance system reliability and safety? How would the PUC evaluate the EDC's cost recovery under this circumstance?

Third, the requirement that an EDC "may not unreasonably refuse a request to do so" is vague. The regulation should provide clear guidance on what the PUC will consider to be "unreasonable." Also, what type of request is this requirement related to?

Finally, the provision that an EDC "may not unreasonably refuse a request to do so." appears to be inconsistent with Section 75.37(a)(5) which states "construction of facilities by the EDC on its own system is not required to accommodate the small generator facility." The PUC should reconcile these requirements.

Paragraph (9) Isolation device

Commentators believe the requirement for a "lockable, visible break isolation device" is not needed, expensive and redundant for equipment that meets IEEE 1547. The PUC should explain the need for this provision.

5. Section 75.37. Level 1 interconnection review. – Clarity.

Subsection (b) Level 1 screening criteria

Paragraph (b)(2) uses the undefined term "equipment package." In the PUC's proposed rulemaking published in the February 4, 2006 *Pennsylvania Bulletin* titled "Alternative Energy Portfolio Standards," the term "equipment package" is defined, but would only apply to Subchapter B Net Metering of Chapter 75. The definition of "equipment package" should be added to Subchapter C of Chapter 75.

Subsection (c) Level 1 interconnection review procedure

Paragraph (4) states, "...the EDC shall sign the interconnection request form..." This should state "approve" rather than "sign" to be consistent with Paragraph (5) which addresses new interconnection requests when a small generator facility is not "approved" under a Level 1 review.

6. Sections 75.38. Level 2 interconnection review and 75.39. Level 3 interconnection review. – Reasonableness; Clarity.

"May not be unreasonably denied"

Subsections 75.38(f) and 75.39(h) both state, "The request for extension may not be unreasonably denied by the EDC." The word "unreasonably" is not clear. What criteria must the EDC use to establish the reasonableness of a request for extension?

7. Section 75.40. Level 4 interconnection review. – Clarity.

Business days

Subparagraph (c)(7)(i) allows "...25 days to conduct an area network impact study..." Other provisions specify timeframes in "business days." For consistency this provision should specify business days also.

Facsimile Cover Sheet

Kristine M. Shomper
Administrative Officer



Phone: (717) 783-5419
Fax #: (717) 783-2664
E-mail: kriss@irrc.state.pa.us
Website: www.irrc.state.pa.us

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: Sherri A. DelBiondo
Regulatory Review Coordinator
Law Bureau

Agency: Pennsylvania Public Utility Commission

Phone: 2-4597

Fax: 3-3458

Date: May 26, 2006

Pages: 8

RECEIVED
MAY 26 AM 9:32
INDEPENDENT REGULATORY
REVIEW COMMISSION

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Pennsylvania Public Utility Commission's regulation #57-245 (IRRC #2524). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: *Ryan Morgan*

Date: May 26, 2006

Fax5