Regulatory Analysis Form

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INDEPENDENT REGULATORY REVIEW COMMISSION

IRRC Number: 2724

(1) Agency

Pennsylvania Public Utility Commission

(2) I.D. Number (Governor*s Office Use)

L-00050174/57-264

(3) Short Title

Final Omitted Rulemaking Amending Net Metering Regulations

(4) PA Code Cite

52 Pa. Code Chapter 75

(5) Agency Contacts & Telephone Numbers

Primary Contact: Kriss E. Brown (legal), 717-787-4518

Secondary Contact:

(6) Type of Rulemaking (check one)

- ☐ Proposed Rulemaking
- ☐ Final Order Adopting Regulation
- ☒ Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- ☒ No
- ☐ Yes: By the Attorney General
- ☐ Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The Commission adopted amendments to its existing Alternative Energy Portfolio Standards and Net Metering regulations so that they conform to the Act 35 of 2007 amendments to the Alterative Energy Portfolio Standards Act. This regulation determines the type and size of customer owned electric generators that can be interconnected with an electric distribution company's distribution grid and the compensation these customers receive for energy they supply to the grid.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

66 Pa.C.S. §§501, 504-506, 1301 and 1501, the Commonwealth Documents Law, 45 P.S. §§1201, et seq., and the regulations promulgated thereunder at 1 Pa. Code §§7.1, 7.2, and 7.5.

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes, Section 5 of the Alternative Energy Portfolio Standards Act, 73 P.S. §1648.5.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The adoption of these regulations will facilitate the research, development and deployment of small alternative energy resources, which was the clear intent of the Alternative Energy Portfolio Standards Act, as amended.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no specific public health, safety, environmental, or general welfare risks associated with nonregulation. However, these amendments to the existing regulations revise the language of the regulations such that they conform to the language of the Alternative Energy Portfolio Standards Act, as amended by Act 35 of 2007. Furthermore, these amendments to the regulations encourage and facilitate the development and deployment of renewable electric generation resources in a manner that enables Pennsylvania to attract developers of alternative energy systems to the Commonwealth.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Consumers, utilities, and developers of alternaitive energy systems will benefit as these amendments to the existing regulations will provide a reasonable return on energy produced by customer owned alternative energy systems. Providing this reasonable return will facilitate the research, development and deployment of these small alternative energy resources, that will in turn help consumers fund alternative sources of energy and utilities meet the requirments of the Alternative Energy Protfolio Standards Act, as amended.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No one should be adversely affected by these amendments to existing regulations. These amendments merely make changes to the existing regulations such that the regulations are consistent with the Alternative Energy Portfolio Standards Act, as amended by Act 35 of 2007.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Customer-generators, utilities, and developers of alternative energy systems as defined by the Alternative Energy Portfolio Standards Act.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

In place of an advance notice of proposed rulemaking, the Commission engaged in a stakeholder process in order to solicit input from interested parties prior to drafting the amendments to existing regulations. The regulations reflect the detailed comments the Commission received from utilities, consumer advocacy groups, alternative energy developers and generators, and other government entities. A Commission issued Secretarial Letter seeking comments was published in the Pennsylvania Bulletin on October 20, 2007, and distributed to all parties who previously commented on the existing regulations. This Secretarial Letter provided interested parties with an opportunity to provide input before the amendments to existing regulations were drafted and finalized. Twenty parties filed comments, which were addressed in the PUC order finalizing the amended regulations.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Although a specific cost study was not conducted, any costs associated with these amended regulations were dictated by the Alternative Energy Portfolio Standards Act, as amended by Act 35 of 2007.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required. None.
(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. None.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	$ N/A	$	$	$	$	$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community	minimal	minimal	minimal	minimal	minimal	minimal
Local Government	N/A					
State Government	minimal	minimal	minimal	minimal	minimal	minimal
Total Costs						
REVENUE LOSSES:	N/A					
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

Not applicable.

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(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A				

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Not applicable.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Not applicable.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Not applicable.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

Not applicable.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

As the Commission is merely revising the existing regulations such that they are consistent with the Act 35 of 2007 amendments to the Alternative Energy Portfolio Standards Act these regulations will not put Pennsylvania at a competitive disadvantage with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

Yes. The Act 35 of 2007 amendments to the Alternative Energy Portfolio Standards Act modified the size of and incentives given to alternative energy systems that connect to an electric distribution company's distribution grid. Thus, certain portions of the Commission's rules related to the net metering of alternative energy systems in Chapter 75 of 52 Pa. Code were amended to make them consistent with the statutory amendments.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Not applicable.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulations will become final following publication in the Pennsylvania Bulletin and approval by the IRRC. The Commission would like to have final form regulations in place as soon as possible as all affected are currently required to comply with the Alternative Energy Portfolio Standards Act, as amended, and as the Commission is merely amending the existing regulations such that they are consistent with the amended statute.

(31) Provide the schedule for continual review of the regulation.

After taking effect, the final regulations will be reviewed and revised as necessary and, particularly, once the Commission and other interested parties have experience implementing the amended regulations.

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FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

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Copy below is hereby approved as to form and legality. Attorney General.	Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:	Copy below is hereby approved as to form and legality. Executive or independent Agencies.
BY _____ (DEPUTY ATTORNEY GENERAL)	Pennsylvania Public Utility Commission (AGENCY)	BY Bohdan R. Pankiw Bohdan R. Pankiw Chief Counsel
_____ DATE OF APPROVAL	DOCUMENT/FISCAL NOTE NO. L-00050174/57-264	5-22-08 DATE OF APPROVAL
☐ Check if applicable Copy not approved. Objections attached	DATE OF ADOPTION May 22, 2008	☐ Check if applicable. No Attorney General approval or objection within 30 days after submission.
	BY James J. McNulty James J. McNulty	
	TITLE Secy (SECRETARY)	

L-00050174/57-264
Final-Omitted Rulemaking
Implementation of Act 35 of 2007; Net Metering and Interconnection
52 Pa. Code, Chapter 75

The Pennsylvania Public Utility Commission on May 22, 2008, adopted a final-omitted rulemaking order which amends the net metering regulations required by the Alternative Energy Portfolio Standards Act to be consistent with Act 35 of 2007. The contact person is Kriss E. Brown, Law Bureau, 717 787-4518

EXECUTIVE SUMMARY
L-00050174/57-264
Final Omitted Rulemaking Amending the Net Metering Regulations
52 Pa. Code Chapter 75

On June 23, 2006, at Docket No. L-00050174, the PUC entered a final rulemaking order regarding net metering of customer-generators. This final form rulemaking became effective upon publication in the *Pennsylvania Bulletin* on December 16, 2006. On July 17, 2007, Governor Edward Rendell signed Act 35 of 2007 into law, which became effective immediately. This law amended portions of the Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1—1648.8. On October 4, 2007, the PUC issued a Secretarial Letter seeking comments on how the Act 35 amendments should be reflected in the PUC's regulations at 52 Pa. Code §§ 75.1—75.51. Thirteen comments and six reply comments were submitted. On July 2, 2008, the PUC entered an order at the above-captioned docket finalizing the amendments to the regulations.

The PUC has adopted amendments to its Alternative Energy Portfolio Standards regulations, at 52 Pa. Code Chapter 75, to make the regulations consistent with Alternative Energy Portfolio Standards Act, as amended by Act 35 of 2007. Specifically, under the general provisions of Chapter 75, 52 Pa. Code § 75.1, the PUC revised the definitions of "alternative energy credit," "customer-generator," "force majeure," and "tier I alternative energy source" to mirror the same definitions contained in the amended Act.

In addition, the PUC amended portions of the net metering provisions in Subpart B of Chapter 75, to make them consistent with the language of the Act as amended by Act 35 of 2007. Specifically, the PUC revised the definitions "net metering," and "virtual meter aggregation," contained in 52 Pa. Code § 75.12, so that they reflect the changes contained in the Act 35 of 2007's amendments. The PUC also deleted the definition of "avoided cost of wholesale power" as that term is no longer used in the regulations and added "year and yearly" to provide clarity. The PUC also revised Subsections 75.13(c), (d) and (f), 52 Pa. Code §§ 75.13(c), (d) and (f), to reflect the Act 35 of 2007 amendment's requirement that customer-generators be compensated at

the full retail value for excess generation produced on an annual basis, as opposed to compensation at the avoided cost of wholesale power on a monthly basis. Finally, the PUC revised Subsection 75.14(e), 52 Pa. Code § 75.14(e), such that this regulation matches the definition of virtual meter aggregation contained in the Act 35 of 2007 amendments.

The contact person for this rulemaking is Kriss Brown, 717-787-4518 (legal).

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held May 22, 2008

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Tyrone J. Christy
Kim Pizzingrilli, Dissenting Statement attached

Implementation of Act 35 of 2007; L-00050174
Net Metering and Interconnection

FINAL OMITTED RULEMAKING ORDER

BY THE COMMISSION:

The Commission is adopting this Final Omitted Rulemaking Order in order to amend the net metering regulations required by Section 1648.5 of the Alternative Energy Portfolio Standards Act. 73 P.S. § 1648.1, *et seq.* to be consistent with Act 35 of 2007. A final form net metering rulemaking was approved by the Commission in 2006, and delivered to the Independent Regulatory Review Commission ("IRRC"). *Final Rulemaking Re Net Metering for Customer-generators pursuant to Section 5 of the Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.5* ("AEPS Act"), Docket L-00050174 (Order entered June 23, 2006). The rulemaking was approved by IRRC on November 2, 2006, and was then approved by the Pennsylvania Attorney General on December 1, 2006. The final form rulemaking was legally effective upon publication in the *Pennsylvania Bulletin* on December 16, 2006.

On July 17, 2007, Governor Edward Rendell signed Act 35 of 2007 into law. Act 35 became effective immediately. Act 35, § 4. This law amends a number of provisions of the aforementioned AEPS Act, including those relating to the definition of customer-generators, the reconciliation mechanism for surplus energy supplied through net metering and the price to be paid for such surplus energy. These changes include:

- Revising the definition of "customer-generator" to increase the capacity limit on non-residential projects from 1 to 3 megawatts generally, and from 2 to 5 megawatts for those projects that operate in parallel with the grid;

- Revising the definition of "net metering" to include a restriction on virtual meter aggregation; and,

- Revising Section 1648.5 to require that customer-generators be compensated for excess generation on an annual basis at the full retail value for energy, as opposed to the current monthly standard at the avoided cost of wholesale power.

These statutory changes require corresponding revisions to the following sections of our Alternative Energy Portfolio Standard regulations.[1] The definitions in Section 75.1 of "Act," "Alternative energy credit," "Customer-generator," "Force majeure" and "Tier I alternative energy source" will be revised to reflect Act 35's amendments of those terms. The definitions in Section 75.12 of "Net metering" and "Virtual metering aggregation" will be revised to conform to Act 35's amendment of the term "Net metering." Section 75.13, subsections (c), (d) and (f), will be revised to conform to Act 35's amendment of Section 5 of the AEPS Act , 73 P.S. § 1648.5. The amendment to Section 5 also requires deletion of the term "Avoided cost of wholesale power" in Section 75.12. The definition for the terms "Year and Yearly" was added to Section 75.12 to clarify that these terms correspond with the planning year as determined by the PJM Interconnection, L.L.C. regional transmission organization. Additionally, Sections 75.12 dealing with "physical meter aggregation" and 72.13(c) will be revised to correct printing errors.

[1] We are also taking the opportunity to make several non-substantive changes to the regulations such as correcting capitalization errors in Sections 75.12 and 75.13(c). In addition we are adding a definition of "year and yearly" to reinforce that those terms refer to the planning year of PJM Interconnection, L.L.C.

On October 4, 2007, the Commission issued a Secretarial Letter seeking comments on how the Act 35 amendments to AEPS should be reflected in the regulations at 52 Pa. Code §§ 75.1, *et seq*. This Secretarial Letter noted that while a majority of the changes merely involve replacing existing language with language contained in Act 35, some of the amendments raise new issues that had not been previously considered. The Secretarial Letter specifically pointed out several issues related to the requirement that "excess generation from net-metered customer-generators shall receive full retail value for all energy produced on an annual basis." The Commission requested comments on the following issues:

- What is the meaning of "full retail value for all energy produced"? Act 35 does not specifically define this term. The term could be interpreted as meaning the fully bundled retail rate for generation, transmission, distribution, and any applicable transition charges. Alternatively, given the Legislature's use of the terms "excess generation" and "energy" it also could be interpreted as being limited to the generation component of the retail rate.
- What are the projected costs associated with these competing interpretations, i.e., given a projected level of net metered generation (kwh), what are the projected costs to the remaining customers of an EDC if net-metered customer-generators receive x cents per kwh versus y cents per kwh?
- How should any residual stranded cost charges be treated in the annual reconciliation?
- Are there any additional issues to be addressed by moving the reconciliation of excess energy from a monthly to an annual basis?
- Act 35 does not define the phrase "annual basis." Does this phrase mean a calendar year, fiscal year or does it correspond with the AEPS compliance period of June 1 through May 31?
- Should demand charges for distribution, transmission and generation services paid by net metered customers be adjusted? If so, should each component of the demand charge be adjusted to reflect the net flow of energy through a net meter? How should the adjustment(s) be calculated?
- Should the Commission provide monthly credits for net metered accounts, and carry over monthly excess generation to the next billing month, with any remaining excess energy (where total annual

generation of energy exceeds total annual usage) cashed out at the end of the year? Alternatively, do the metering regulations only provide for annual compensation for excess generation in any month?

The Commission received comments and reply comments related to these and other issues regarding the effect Act 35 amendments have on the Commission's existing regulations. Comments have been filed by the following parties: the Citizens for Pennsylvania's Future (PennFuture); the Energy Association of Pennsylvania (EAP); Heat Shed, Inc. (Heat Shed); the Industrial Energy Consumers of Pennsylvania, Duquesne Industrial Interveners, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Philadelphia Area Industrial Energy Users Group, Penn Power Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Interveners (collectively, IECPA, *et al.*); the Mid-Atlantic Solar Energy Association and Solar Alliance (collectively MSEIA); the Office of Consumer Advocate (OCA); the Office of Small Business Advocate (OSBA); the Pennsylvania Department of Environmental Protection (DEP); PECO Energy Company (PECO); the Pennsylvania Farm Bureau (Farm Bureau); the Pennsylvania Waste Industries Association (PWIA); the Retail Energy Supply Association (RESA); and Vogel Holding, Inc. (Vogel). Reply comments were filed by the following parties: PennFuture; EAP; IECPA, *et al.*; DEP; PWIA; and Vogel.

DISCUSSION

The Commission has reviewed each of the comments filed in this proceeding. We will address each of them *in seriatim*.

Section 75.1. Definitions.

The definitions revised by this rulemaking merely mirror the changes in the same definitions contained in Act 35. As indicated above, the specific definitions in Section 75.1 that were revised are "Act," "Alternative energy credit," "Customer-generator," "Force majeure" and "Tier I alternative energy source."

Position of the Parties

The Commission received few comments regarding the definitions in this section. PWIA supported the change in the definition of customer-generator, as it would allow more customer-generators to participate in net metering. PWIA requested that the Commission add wastewater treatment systems used to treat landfill leachate to the list of critical infrastructure that permits generators with a nameplate capacity of between three megawatts and five megawatts to participate in net metering.

DEP asserts that the definition of alternative energy credit should be amended to be consistent with the amendment in Act 35 relating to ownership of the credits. DEP also asserts that the amendments in Act 35 to the definitions of "customer-generator" and "net metering" delete the requirement that the primary purpose of the generation system must be to offset part or all of the customer-generator's electricity needs. DEP also notes that the amendments raised the capacity limits for generation systems at non-residential customer service locations.

Disposition

The Commission declines to expand the definition for customer-generator as requested by PWIA. The Act 35 amendments did not change or expand the list of critical infrastructure facilities that qualify as distributed generation systems with a nameplate capacity between three megawatts and five megawatts for net metering; as such, this Commission declines to change or expand the list of qualifying facilities in this proceeding. The Commission agrees with DEP that the definition of "alternative energy credit" must be revised to conform to the Act 35 amendments and has done so. Finally, the Commission agrees with DEP that the definitions of "customer-generator" and "net metering" must also be revised to conform to the Act 35 amendments and has done so.

Section 75.12. Definitions.

Avoided Cost of Wholesale Power

The amendment to Section 5 of the AEPS Act, 73 P.S. § 1684.5, adds the following sentence at the beginning of the section: "Excess generation from net-metered customer-generators shall receive full retail value for all energy produced on an annual basis." This language clearly changes the Commission's present net metering regulation, which states as follows:

> At the end of each billing period, the EDC shall compensate the customer-generator for kilowatt-hours generated by the customer-generator over the amount of kilowatt hours delivered by the EDC during the billing period at the EDC's avoided cost of wholesale power.

52 Pa. Code § 75.13(d). As there being no other reason for the phrase "avoided cost of wholesale power" within these regulations, the Commission is deleting this definition from these regulations.

Position of the Parties

PennFuture believes that customer-generators should be compensated for excess generation at the end of the annualized year at the avoided cost of wholesale power as currently defined in these regulations. They assert that any excess power at the end of the annualized period should be treated as power sold to the grid by an independent power producer. PennFuture references New Jersey's net metering regulation at N.J.A.C. 14:4-9.2, as a model.

DEP asserts that the Commission should follow New Jersey's lead and require EDC's to compensate customer-generators at the avoided cost of wholesale power. DEP supports this assertion by noting that Act 35 did not change the requirement that Pennsylvania's net metering rules must be consistent with the net metering rules in other MISO and PJM states.

OCA submits that the Commission should follow the New Jersey rules and compensate customer-generators for excess generation at the end of the annual period at the avoided cost of wholesale power. RESA submits that customer-generators should be credited at the locational marginal price (LMP) for generation sales and charged the bundled full retail price for electricity consumed.

Disposition

We disagree with PennFuture, DEP, and RESA. The language found in Section 5 of Act 35 clearly addresses the compensation to be paid to customer-generators for any excess generation produced over a one-year period. This language directly addresses the Commission's current regulation regarding compensation on a monthly basis for excess generation at 52 Pa. Code § 75.13(d). It specifically directs that "[e]xcess generation from net-metered customer-generators shall receive full retail value for all energy

produced on an annual basis," not the avoided cost of wholesale power or the LMP on a monthly basis. While the Act also directs this Commission to develop net metering interconnection rules consistent with the rules defined in other states served by PJM and MISO, 73 P.S. § 1648.5, the Commission cannot disregard the clear words of the statute, 1 Pa.C.S. § 1921(b), and must, if possible, interpret the statute in a way to give effect to all provisions of the statute, 1 Pa.C.S. § 1921(a). The application of the phrase "full retail value for all energy produced on an annual basis" within these regulations is addressed later in this Order when we discuss changes to Section 75.13.

Net Metering

The definition of net metering in these regulations has been revised to conform to the definition as amended by Act 35. Specifically, the Commission has deleted the requirement that the system be intended to primarily offset the customer's electricity requirements and added language noting that net metering is available when any portion of the electricity generated is used to offset the customer's electricity requirements.

Position of the Parties

DEP noted that the Act 35 amendment to the definition of net metering deleted the requirement that the primary purpose of the generation system must be to offset part or all of the generator's need for electricity. DEP asserts that while these changes will increase the number of customer-generators eligible to participate in net metering, and resolve disputes between customers and EDCs, they do not believe that any other changes are required in relation to the definitions.

Disposition

The Commission agrees with DEP that the Act 35 amendments only require a change to the definition of net metering in the regulation such that it conforms to the language in the amended statutory definition.

Physical Meter Aggregation

The Commission is simply correcting a capitalization error in this definition. The current definition capitalizes OF in the phrase "all meters regardless OF rate class...." This phrase should now be as follows: "all meters regardless of rate class...."

Virtual Meter Aggregation

Again the definition of virtual meter aggregation in these regulations has been revised to conform to the definition as amended by Act 35. Specifically, the Act 35 amendments added language limiting the geographic boundary for virtual meter aggregation to properties owned or leased and operated by customer-generators that are within two miles of the boundaries of that customer-generator's property and within a single EDC's service territory. The Commission added similar language to the definition of virtual meter aggregation in this section.

Position of the Parties

MSEIA agrees that the virtual net metering application should stay within the bounds of a given EDC, but were puzzled as to why there is a two mile radius limit. MSEIA states that this two mile restriction limits the ability of customer-generators in less developed areas to take advantage of virtual net metering. MSEIA asks this Commission to extend the virtual net metering boundary to the full extent of the EDC's

regional boundary. DEP simply notes that the Act 35 amendments codify the concept of virtual meter aggregation found in this Commission's regulations.

Disposition

The Commission must decline to adopt MSEIA's request as this Commission is bound by the requirement to promulgate regulations that do not conflict with the statute the regulations are implementing. See *Popowsky v. Pa. PUC*, 589 Pa. 605, 910 A.2d 38 (2006) and *Commonwealth v. Colonial Nissan, Inc.*, 691 A.2d 1005, 1009 (Pa. Commw. Ct. 2007). The Pennsylvania General Assembly specifically directed that for a customer to be eligible for virtual meter aggregation, the generator must be "located within two miles of the boundaries of the customer-generator's property..." 73 P.S. §1648.2. We cannot disregard the Legislature's clear direction under the pretext of pursuing its spirit, 1 Pa.C.S. § 1921(b).

Furthermore, as this Commission indicated in its previous final rulemaking order for net metering, we modified "the language in Section 75.14(e) from 'contiguous and adjacent properties owned and operated by the customer-generator' to owned and/or leased parcels within two miles of the customer-generator's property lines to allow customer-generators to participate in net metering on a better economic footing." See p. 22 of Final Rulemaking Order at L-00050174 entered on June 23, 2006. This change was prompted by the Farm Bureau's comment indicating that the proposed definition did not fit the reality of a typical farm operation that would operate an anaerobic digester.

Thus, this Commission had previously adopted this definition for meter aggregation by specifically considering the ability of customer-generators in less-developed areas to take advantage of net metering. As pointed out by DEP, the Act 35 amendment simply codifies this Commission's previous rulemaking. As such, this

Commission is unable to expand the definition of virtual meter aggregation as requested by MSEIA.

Year and Yearly

The AEPS Act and the Act 35 amendments reference annual requirements but do not define what these annual periods consist of. As these regulations relate to the AEPS Act, this Commission has added a definition for year and yearly to clarify the time period covered where the statute uses the term "annual." This Commission has defined year and yearly as being the PJM planning year as it corresponds with the AEPS compliance reporting year.

Position of the Parties

EAP, OSBA, and PECO all agree that the term "annual basis" should conform to the AEPS compliance reporting period, which is based on the PJM planning year. DEP, MSEIA and PennFuture all agree that the term "annual basis" should be defined as a calendar year as it provides a simple and uniform tracking mechanism for EDCs and customer-generators. PennFuture and MSEIA further indicate that they would support an alternative definition as long as it was fair and convenient to customer-generators and consistent throughout the state. OCA also comments that this term should be defined in a way that provides the greatest administrative ease for customer-generators and EDCs.

Disposition

The Commission agrees with EAP, OSBA and PECO that since these regulations are intended to implement portions of the AEPS Act, as amended, any reference to an annual period should conform to the AEPS compliance reporting period of June 1 through May 31, which is the PJM planning year. This Commission believes that

keeping any references to annual periods consistent throughout these regulations will eliminate confusion and provide the greatest administrative ease for all involved.

Section 75.13. General provisions.

Section 75.13(c)

The Commission is modifying the language in this section to clarify the meaning of "full retail rate." The Commission is also adding language to establish an appropriate monthly billing period credit system for excess generation to meet the Act 35 amendment's requirement for compensation of excess generation on an annual basis. In addition, the Commission is correcting capitalization errors in this subsection. The current subsection of this regulation has the following phrase in the first sentence: "Tier I or tier ii resource...." The capitalization in this phrase is changed as follows: "Tier I or Tier II resource...."

Monthly Credits

With these amendments to Section 75.13(c), the Commission is reiterating that customer-generators are to be credited at the fully bundled rate, to include generation, transmission and distribution, for all energy produced up to the level of energy used during a billing period. Furthermore, the Commission believes that, due to the Act 35 amendment's requirement for annual compensation for excess generation, customer-generators should receive a kilowatt-hour per kilowatt-hour credit applied to their next billing period, for any excess energy produced by the customer-generator during any billing period. These credits are to continue to accumulate until they are exhausted or the end of the year, as defined above.

Position of the Parties

EAP and PECO comment that in order to be consistent with the plain language of the amendments, the regulations should only provide for annual compensation of excess monthly generation. EAP and PECO further assert that the value of excess energy should be carried forward and any excess value at the end of the annual period is to be paid to the customer. IECPA also comments that there should be monthly credits based on the retail generation component with any excess generation compensated based upon the EDC's avoided cost of power. OSBA comments that under the Act 35 amendments, compensation is no longer to be paid on a monthly basis. OSBA further comments that applying a kilowatt-hour credit to the next billing period would in effect compensate the customer-generator at the fully bundled retail generation rate. OSBA asserts that such a crediting scheme would be contrary to the apparent intent of Act 35, which they assert was to require compensation for excess generation at the retail rate rather than the wholesale generation rate.

PWIA and Vogel suggest that any excess generation in a billing period should be credited on a kilowatt-hour per kilowatt-hour basis at the full retail rate and carried over in successive billing periods. The customer-generator is then compensated at the full retail rate for any remaining credits at the end of the annual period. PWIA and Vogel both point out that the purpose of the AEPS Act is to increase the use of alternative energy sources. PWIA and Vogel both assert that by compensating the customer-generator at the fully bundled retail rate will further the intent of the AEPS Act.

DEP, OCA and PennFuture comment that the language of the Act 35 amendment clearly dictates that customer-generators are to be credited at the fully bundled rate during each monthly billing period and that any excess credits are to be carried forward to subsequent monthly billing periods. DEP, OCA and PennFuture assert that such a crediting scheme furthers the goal of the AEPS Act to promote alternative energy

sources. PennFuture further asserts that most alternative energy projects must reduce their monthly electric bills to cover debt servicing and achieve a rate of return that will encourage further investment in developing alternative energy sources.

MSEIA comments that the preferred method would be to automatically carrying over monthly excess generation as a full retail value credit into the next billing period. The Farm Bureau stated that customer-generators should be compensated at the full retail value, meaning that if it costs 10 cents to buy electricity from a utility they should be credited 10 cents for excess energy. RESA comments that customer-generators should be credited for their generation in a timely manner and not have to wait for an annual true-up. RESA asserts that such a mechanism would further the intent of the AEPS Act to encourage the use of alternative energy sources.

Disposition

The Commission agrees with DEP, OCA, MSEIA, PennFuture, PWIA and Vogel in that the clear intent of the Act 35 amendment was to facilitate the research, development and deployment of small alternative energy resources by providing monthly credits consistent with the full *retail* value for the kilowatt-hours generated by the renewable resource. As such, this Commission believes that for energy produced from a renewable resource up to the level of monthly energy usage by a customer-generator should include the fully bundled charges for generation, transmission and distribution service. To be consistent, any excess kilowatt-hours from any monthly billing period is to be carried forward and credited against the customer-generator's usage during subsequent billing periods at the full retail rate then-in-effect, until the excess kilowatt-hours are exhausted or the end of the compliance year. The Commission further agrees with PennFuture's observation that adoption of the model advocated by EAP, IECPA, OSBA and PECO would create a financial impediment to further investment in

research, development and deployment of alternative energy sources, thus frustrating the intent of the AEPS Act.

To properly implement the above conclusions, the Commission has added language to Section 75.13(c) that clarifies that the phrase "full retail rate" shall include generation, transmission and distribution charges. In addition, language was added that provides for giving a kilowatt-hour credit to the customer's next billing cycle for any excess generation, in any one billing cycle, at the same full retail rate. Finally, language was added noting that these excess kilowatt-hours shall continue to accumulate until the end of the compliance year.

Full Retail Value for all Energy Produced on an Annual Basis

This Commission believes that by adding the sentence "Excess generation from net-metered customer-generators shall receive full retail value for all energy produced on an annual basis," the Act 35 amendments intended to shift compensation for excess energy from a monthly to an annual basis. While this added language did not define what rate customer-generators should receive, this Commission believes that compensating customer-generators for any unused credits at the end of the compliance year at the price-to-compare rate, as defined in 52 Pa. Code § 54.182, is the most reasonable approach to achieve the intent of the AEPS Act as amended. Such an approach is also in the public interest as it balances the laudable goal of increasing the research, development and deployment of alternative energy with the costs to be born by the ratepayers. Consequently, this Commission has revised Section 75.13(d) such that it conforms to this interpretation of the Act 35 amendments. Specifically, language was added directing EDCs to compensate customer-generators at the price-to-compare rate for any credits remaining at the end of the compliance year.

Position of the Parties

Heat Shed, MSEIA, PWIA and Vogel all advocate for defining full retail value as the fully bundled rate that includes generation, transmission, distribution and transition charges. Heat Shed supports this position by asserting that solar production would provide a savings to utilities as solar generators would be producing energy during the utilities' highest peak demand periods. MSEIA asserts that by using the term "full" the Legislature intended to include the fully bundled rate. MSEIA also asserts that no state defines excess generation as only the decoupled generation component. PWIA and Vogel assert that because the legislature replaced avoided cost of wholesale power with full retail value, the customer-generator must be paid a complete retail price that contains all of the possible components. PWIA and Vogel further assert that the Act requires compensation at the fully-bundled retail rate for excess generation regardless of whether the customer-generator is compensated on a month-to-month or annual basis.

DEP, PennFuture, OCA and RESA all assert that customer-generators should be compensated at the avoided cost of wholesale power or LMP for any excess generation credits remaining at the end of the year. DEP asserts that the legislature did not intend to compensate customer-generators at the fully bundled retail rate because there would have been no need to codify virtual meter aggregation, as compensating credits remaining at the fully bundled retail rate would have accomplished the same purpose. DEP and OCA assert that the Act 35 amendments did not alter the requirement that our regulations conform to net metering rules of other states within PJM. PennFuture asserts that the intent of net metering was to promote the development of technologies such as solar, biodigesters and small-scale wind. RESA asserts that the term full retail value should be interpreted to mean the customer-generator is credited at the LMP for excess generation and charged the full retail price, to include generation, transmission and distribution, for electricity consumed. RESA supports this argument by noting that the customer-generator is basically selling its electricity into the wholesale spot market; as

such, the customer-generator should be compensated for excess generation at the LMP grossed-up for losses.

EAP, IECPA, OSBA and PECO all contend that full retail value should be interpreted to mean only the generation component of a retail rate. EAP and PECO believe that the use of the terms "excess generation" and "energy produced" define the words "full retail value." EAP also notes that the Act 35 amendments use the term value instead of full retail price or rate. EAP and PECO further comment that EDCs should be fully compensated for the use of their system; pointing out that customer-generators use the EDC's system to receive electricity and to distribute excess generation. IECPA supports its assertion by noting that EDCs will not avoid distribution nor transition costs associated with customer-generators. IECPA further notes that including charges other than the generation component could result in unjust and unreasonable cost shifts to other customers of the EDC.

OSBA comments that as the legislature is presumed to have been aware of the use of avoided cost of wholesale power in the current regulation, its use of full retail value evidences its intent that customer-generators be compensated at a retail rate rather than a wholesale rate. OSBA further notes that by substantially increasing the eligible output of qualifying customer-generators, the legislature was aware that such a change would increase the potential compensation afforded customer-generators and the corresponding costs to non-customer-generators. OSBA asserts that without clear statutory language to the contrary, the lesser cost alternative should be adopted. Finally, EAP, IECPA, OSBA and PECO note that allowing customer-generators to bypass transition charges directly contradicts the Electric Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2808.

Disposition

The Commission agrees with DEP, Heat Shed, MSEIA, OCA, PennFuture, PWIA, RESA and Vogel to the extent that customer-generators must receive annual compensation for excess generation in a manner that encourages research, development and deployment of alternative energy systems, which is the clear intent of the AEPS Act, as amended. However, the Commission disagrees with the above-referenced parties as to the amount of such compensation.

Specifically, the Commission must disagree with DEP, OCA, PennFuture and RESA that these regulations must follow other PJM state regulations and compensate customer-generators at the avoided cost of wholesale power rate for any remaining generation credits at the end of the compliance year. It is clear that the Act 35 amendments replaced the Commission's use of avoided cost of wholesale power with full retail value in relation to EDC compensation for excess generation.

Furthermore, the Commission must also disagree with Heat Shed, MSEIA, PWIA and Vogel, all of whom assert that customer-generators must be compensated at the fully bundled rate for any excess generation credits remaining at the end of the compliance year. MSEIA's assertion that no state defines excess generation as only the decoupled generation component, implying that they receive greater compensation, is less than accurate. This Commission is aware of three states that provide compensation for excess energy at the generation rate.[2] This Commission is also aware of three states, Arizona,[3] Massachusetts[4] and New Jersey,[5] that provide for compensation at the avoided cost of

[2] Colorado, 4 C.C.R. 723-3, rule 3664(b) (any excess energy at the end of the calendar year is to be compensated at the EDC's average hourly incremental cost of electricity supply); Ohio, O.A.C. Ann. 4901:1-10-28(e)(3) (only the excess generation component can be accumulated as a credit); and New Mexico, 17.9.570.10 N.M.A.C. (energy delivered by a customer-generator is to be purchased at the EDC's applicable time-of-use or single period energy rate) and 17.9.571.11 N.M.A.C. (when a customer leaves the system the customer-generator is compensated for excess energy at the EDC's energy rate).
[3] A.A.C. § R14-2-1801
[4] 220 C.M.R. 8.05(2)(d)
[5] N.J.A.C. 14:8-1.2

wholesale power or equivalent rate, which only involves the energy component. Furthermore, this Commission is aware of eleven states[6] that do not compensate customer-generators for excess energy. As such, this Commission believes that providing compensation equal to the price-to-compare rate, which includes the unbundled generation and transmission rates, is more than reasonable in that it provides greater compensation than the states listed above.

The Commission must disagree with EAP, IECPA, OSBA and PECO that full retail value should be interpreted to mean only the generation component of a retail rate. This Commission believes that such an interpretation would unreasonably frustrate the clear intent of the AEPS Act, which is to promote the research, development and deployment of distributed alternative energy systems. Under these circumstances, it would be unreasonable to limit customer-generator's annual compensation to just the unbundled generation rate.

Furthermore, this Commission does not agree with EAP, IECPA, OSBA and PECO who assert that compensation at any rate other than the unbundled generation rate would directly conflict with the Electric Generation Customer Choice and Competition Act. 66 Pa.C.S. § 2808. While the Commission agrees with IECPA's assertion that Section 2808(a) directs that customer-generators' share of transition or stranded costs be recovered through a competitive transition charge, the Commission does not agree that

[6] Arkansas, 126 03 C.A.R.R 023 Rule 2.04(c) (customer shall not receive any compensation for excess energy delivered during billing period); Delaware, 26 Del. C. §1014(e) (any unused credits at the end of the 12-month period shall be forfeited to EDC); Florida, 25-6.065, F.A.C. (in no event shall customer be paid for excess energy delivered to EDC at end of 12-month period); Illinois, 220 I.L.C.S. 5/16-107.5(d)(3) (at the end of the year any remaining credits shall expire); Indiana, 170 I.A.C. 4-4.2-7(3) (when customer leaves system any unused credits shall revert to the EDC); Maine, C.M.R. 65-407-313(d)(3) (customer will receive no compensation for unused kilowatt-hour credits); Maryland, Md. PUC Code Ann. § 7-306(6) (any remaining generation credits at the end of the 12-month period shall revert to the EDC); New Hampshire, N.H. Admin. Rules, PUC 903.02(j) (when customer leaves system there shall be no payment or credit to customer for any remaining excess generation); Oregon, Or. Admin. R. 860-39-0055 (unused kilowatt-hour credits at end of year will be transferred to customers enrolled in the low-income program); Vermont, C.V.R. 30-000-048, 5.104(A)(4) (any kilowatt-hour credits not used within 12 months shall revert to EDC without any compensation); and Virginia, V.A.C. 5-315-50 (customer shall receive no compensation unless they have a purchase power contract).

compensating these same customers at a rate equal to the price-to-compare rate conflicts with this provision. Section 2808(a) addresses the recovery of stranded costs, including the stranded costs from customers that install on-site generation which operates in parallel with the utility's system and which significantly reduces purchases of electricity from the grid. Section 2808 does not address in any way the rate at which customer-generators should be compensated for their excess generation.

However, the Commission does agree with IECPA that as customer-generators will continue to use an EDC's distribution systems, it would be unreasonable to allow them to use those systems free of charge by shifting the costs for their use of those systems onto other customers. Thus, this Commission believes that it would be unreasonable and not in the public interest to include distribution and transition charges within the compensation provided to customer-generators for any remaining excess generation credits at the end of the compliance year. It is presumed that the legislature intends to favor the public interest as opposed to private interest. 1 Pa.C.S. § 1922.

To summarize, the Commission is amending 52 Pa. Code § 75.13(d) such that, for any unused kilowatt-hours accumulated at the end of the annualized period, compensation to the customer-generator shall equal the price-to-compare rate, as defined in 52 Pa. Code § 54.182, which includes the retail generation and transmission components of the retail rate, and which consumers also utilize when choosing whether or not to obtain supply service from an EGS. Since the EDC's retail generation and transmission rates may fluctuate during a year, such compensation shall be calculated by using the weighted average generation and transmission rates, with the weighting based on the rates in effect when the monthly excess generation actually was delivered by the customer-generator to the EDC. If the transmission or generation rate designs incorporate time of use rates, the weighted average rates should reflect the rates in effect during the time that the customer-generator delivered its generation to the EDC.

Furthermore, this Commission believes that in interpreting the AEPS Act as amended by Act 35 of 2007, it is essential to capture the intent of Act 35 of 2007 by providing a reasonable value to customer-generators to encourage and facilitate the deployment of renewable distributed resources. These modifications should provide for the flexibility to enable customers to capture this value, and further to enable Pennsylvania to attract developers to the state for this purpose.

Section 1204 of Pennsylvania Statutes

The Commission has determined that a final-omitted rulemaking may be in its best interest for revising our regulations at 52 Pa. Code §§ 75.1 *et seq.* Section 1204 of the Pennsylvania Statutes, 45 P.S. § 1204, states:

> Except as otherwise provided by regulations promulgated by the joint committee, an agency may omit or modify the procedures specified in §§ 201 and 202, if:
>
> (1) The administrative regulation or change therein relates to: (i) military affairs; (ii) agency organization, management or personnel; (iii) agency procedure or practice; (iv) Commonwealth property, loans, grants, benefits or contracts; or (v) the interpretation of a self-executing act of Assembly or administrative regulation; or
>
> (2) All persons subject to the administrative regulation or change therein are named therein and are either personally served with notice of the proposed promulgation, amendment, or repeal or otherwise have actual notice thereof in accordance with law; or
>
> (3) The agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the order adopting the administrative regulation or change therein) that the procedures specified in §§ 201 and 202 are in the circumstances impracticable, unnecessary, or contrary to the public interest.

45 P.S. §1204.

Based upon the circumstances of this situation, specifically, that Act 35 of 2007 effectively amends the provisions of the Alternative Energy Portfolio Standards Act of 2004, 73 P.S. §§ 1648.1, *et seq.*, as well as our ensuing regulations at 52 Pa. Code §§ 75.1, *et seq.*, that were adopted to conform with the Act 213 of 2004, the exception at §1204(3) is, in our opinion, applicable. Indeed, §1204(3) provides that an exception to routine notice requirements is permissible if the agency finds for good cause that notice is, *inter alia*, "impracticable, unnecessary or contrary to the public interest." Clearly, good cause exists for the Commission to conform its regulations at 52 Pa. Code §§ 75.1 *et seq.*, to comply with a valid statutory amendment that substantively changes our regulations. This action by the Commission merely carries out the intention of Act 35 of 2007 by making changes to our regulation limited to those required to be consistent with the new act. To open a complete *de novo* rulemaking proceeding to effectuate a statutory amendment would be clearly redundant, unnecessary, and not in the public interest.

Furthermore, the Commission has sought and received comments and reply comments regarding the issues to be addressed to bring the regulations into conformity with the amendments. This modified rulemaking procedure ostensibly meets the intent of the *de novo* rulemaking procedure while expediting the process. The Commission believes that such an expedited proceeding is prudent based on the fact that certain of the amendment's provisions require immediate action by public utilities.

For the above reasons, the exceptions to the notice of proposed rulemaking requirements enunciated in §1204(3) are applicable in the instant case. Accordingly, under sections 501 and 1501 of the Public Utility Code, 66 Pa. C.S. §§ 501 and 1501, section 204 of the Act of July 31, 1968, PL 769, No. 240, as amended, 45 P.S. § 1204, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5, the Commission adopts the regulations at 52 Pa. Code § 75.1 *et seq.*, as set forth in Annex A; **THEREFORE,**

IT IS ORDERED:

1. That this order, together with Annex A, be published as final in the Pennsylvania Bulletin.

2. That the Secretary shall submit this order and Annex A to the Attorney General for review and approval and to the Governor's Budget Office for fiscal review.

3. That the Secretary shall submit this order and Annex A to the legislative standing committees and to the Independent Regulatory Review Commission for review and approval.

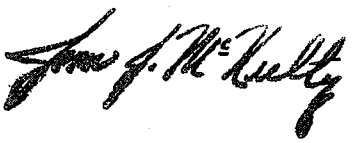
4. That the Secretary shall duly certify this order and Annex A and deposit them with the Legislative Reference Bureau for final publication upon approval by the Independent Regulatory Review Commission.

5. That a copy of this order and Annex A be served upon the Department of Environmental Protection, all jurisdictional electric distribution companies, licensed electric generation suppliers, the Office of Consumer Advocate, the Office of Small Business Advocate and all Parties who filed comments at this docket number.

6. That these regulations shall become effective upon publication in the *Pennsylvania Bulletin*.

7. That the contact person for this order is Kriss E. Brown, Law Bureau, 717-787-4518.

BY THE COMMISSION,



James J. McNulty,
Secretary

(SEAL)

ORDER ADOPTED: May 22, 2008

ORDER ENTERED: JUL 02 2008

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265

Implementation of Act 35 of 2007;
Net Metering and Interconnection

PUBLIC MEETING
MAY 22, 2008
MAY-2008-L-0038*
Docket No. L-00050174

DISSENTING STATEMENT OF COMMISSIONER KIM PIZZINGRILLI

The most significant and contentious issue addressed by the revision of the net metering rule is the compensation standard for excess generation at the end of each annual period. Act 35 of 2007 revised the Alternative Energy Portfolio Standards Act to require that:

> Excess generation from net-metered customer-generators shall receive full retail value for all energy produced on an annual basis.

73 P.S. § 1648.5.

The Commission requested comments and reply comments in 2007 regarding the implementation of this language.

Two different interpretations of this provision were provided by the commenting parties. Representatives of distributed generation interests asserted that customer-generators must be compensated at the fully bundled retail rate, including transmission, distribution and generation components, for all excess kilowatt hours at the end of the annual period. The other stakeholders, including the Office of Consumer Advocate, the Office of Small Business Advocate, the Department of Environmental Protection, the Energy Association of Pennsylvania and its member companies, commented that customer-generators may only be paid the generation component for their excess generation at the end of the annual period. There was a difference of opinion among the second group of stakeholders as to whether the generation component should be the unbundled, retail generation rate as reflected in the tariff, or alternatively, based on the avoided wholesale cost of power.

Instead of adopting one of these positions, the majority finds that customer-generators should be compensated at the price-to-compare, which is defined as the sum of all unbundled transmission and generation related charges associated with providing default service to retail customers. While I appreciate the public policy argument advanced to support this interpretation, I do not believe it is reasonably consistent with the plain language of the statute. Legislative intent should control. 1 Pa.C.S. § 1921.

Therefore, I dissent.

May 22, 2008
Date

KIM PIZZINGRILLI, COMMISSIONER

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Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 75. ALTERNATIVE ENERGY PORTFOLIO STANDARDS

Subchapter A. GENERAL PROVISIONS

§ 75.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

Act—The Alternative Energy Portfolio Standards Act (73 P. S. § § 1648.1—1648.8), AS AMENDED.

Alternative energy credit—A tradable instrument that is used to establish, verify and monitor compliance with the act. A unit of credit must equal 1 megawatt hour of electricity from an alternative energy source. AN ALTERNATIVE ENERGY CREDIT SHALL REMAIN THE PROPERTY OF THE ALTERNATIVE ENERGY SYSTEM UNTIL THE ALTERNATIVE ENERGY CREDIT IS VOLUNTARILY TRANSFERRED BY THE ALTERNATIVE ENERGY SYSTEM.

* * * * *

Customer-generator—A nonutility owner or operator of a net metered distributed generation system with a nameplate capacity of not greater than 50 kilowatts if installed at a residential service or not larger than ~~1,000~~ **3,000** kilowatts at other customer service locations, except for customers whose systems are above ~~1~~ **3** ~~megawatt~~ MEGAWATTS and up to ~~2~~ **5** megawatts who make their systems available to operate in parallel with the electric utility during grid emergencies as defined by the regional transmission organization or where a microgrid is in place for the PRIMARY OR SECONDARY purpose of maintaining critical infrastructure, such as homeland security assignments, emergency services facilities, hospitals, traffic signals, wastewater treatment plants or telecommunications facilities, provided that technical rules for operating generators interconnected with facilities of an EDC, electric cooperative or municipal electric system have been promulgated by the institute of electrical and electronic engineers and the Commission.

* * * * *

Force majeure—

(I) Upon its own initiative or upon a request of an EDC or an EGS, the Commission, within 60 days, will determine if alternative energy resources are reasonably available in the marketplace in sufficient quantities for the EDCs and the EGSs to meet their obligations for that reporting period under the act. IN MAKING THIS DETERMINATION, THE COMMISSION WILL CONSIDER WHETHER EDCS OR EGSS HAVE MADE A GOOD FAITH EFFORT TO ACQUIRE SUFFICIENT ALTERNATIVE ENERGY TO COMPLY WITH THEIR OBLIGATIONS. EVIDENCE OF GOOD FAITH EFFORTS SHALL INCLUDE:

(A) BANKING ALTERNATIVE ENERGY CREDITS DURING TRANSITION PERIODS.
(B) SEEKING ALTERNATIVE ENERGY CREDITS THROUGH COMPETITIVE SOLICITATIONS.
(C) SEEKING TO PROCURE ALTERNATIVE ENERGY CREDITS OR ALTERNATIVE ENERGY THROUGH LONG-TERM CONTRACTS.
(D) OTHER COMPETENT EVIDENCE THE COMMISSION CREDITS AS DEMONSTRATING A GOOD FAITH EFFORT.

(II) IN FURTHER MAKING ITS DETERMINATION, THE COMMISSION WILL ASSESS THE AVAILABILITY OF ALTERNATIVE ENERGY CREDITS IN THE GENERATION ATTRIBUTES TRACKING SYSTEM (GATS) OR ITS SUCCESSOR, AND THE AVAILABILITY OF ALTERNATIVE ENERGY CREDITS GENERALLY IN THIS COMMONWEALTH AND OTHER JURISDICTIONS IN THE PJM INTERCONNECTION, L.L.C. REGIONAL TRANSMISSION ORGANIZATION (PJM) OR ITS SUCCESSOR. THE COMMISSION MAY ALSO REQUIRE SOLICITATIONS FOR ALTERNATIVE ENERGY CREDITS AS PART OF DEFAULT SERVICE BEFORE REQUESTS OF FORCE MAJEURE MAY BE MADE.

(III) If the Commission determines that alternative energy resources are not reasonably available in sufficient quantities in the marketplace for the EDCs and EGSs to meet their obligations under the act, the Commission will modify the underlying obligation of the EDC or EGS or recommend to the General Assembly that the underlying obligation be eliminated. COMMISSION MODIFICATION OF THE EDC OR EGS OBLIGATIONS UNDER THE ACT WILL BE FOR THAT COMPLIANCE PERIOD ONLY. COMMISSION MODIFICATION MAY NOT AUTOMATICALLY REDUCE THE OBLIGATION FOR SUBSEQUENT COMPLIANCE YEARS.

(IV) IF THE COMMISSION MODIFIES THE EDC OR EGS OBLIGATIONS UNDER THE ACT, THE COMMISSION MAY REQUIRE THE EDC OR EGS TO ACQUIRE ADDITIONAL ALTERNATIVE ENERGY CREDITS IN SUBSEQUENT YEARS EQUIVALENT TO THE OBLIGATION REDUCED BY A FORCE MAJEURE DECLARATION WHEN THE COMMISSION DETERMINES THAT SUFFICIENT ALTERNATIVE ENERGY CREDITS EXIST IN THE MARKETPLACE.

* * * * *

Tier I alternative energy source—Energy derived from:

(i) Solar photovoltaic AND SOLAR THERMAL energy.

* * * * *

Subchapter B. NET METERING

* * * * *

§ 75.12. Definitions.

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

~~*Avoided cost of wholesale power*—The actual cost of wholesale power avoided by the EDC, due to the operation of the customer-generator's facility, pursuant to binding, full-requirements, fixed rate contracts, or, at the EDC's option, the average locational marginal price (LMP) of energy, or its successor, over the billing period in the applicable EDC's transmission zone.~~

* * * * *

Net metering—The means of measuring the difference between the electricity supplied by an electric utility or EGS and the electricity generated by a customer-generator when ~~the alternative energy generating system is intended primarily~~ ANY PORTION OF THE ELECTRICITY GENERATED BY THE ALTERNATIVE ENERGY GENERATING SYSTEM IS USED to offset part or all of the customer-generator's requirements for electricity.

Physical meter aggregation—The physical rewiring of all meters regardless ~~OF~~ OF rate class on properties owned or leased and operated by a customer-generator to provide a single point of contact for a single meter to measure electric service for that customer-generator.

Virtual meter aggregation—The combination of readings and billing for all meters regardless of rate class on properties owned or leased and operated by a customer-generator by means of the EDC's billing process, rather than through physical rewiring of the customer-generator's property for a physical, single point of contact. VIRTUAL METER AGGREGATION ON PROPERTIES OWNED OR LEASED AND OPERATED BY A CUSTOMER-GENERATOR AND LOCATED WITHIN 2 MILES OF THE BOUNDARIES OF THE CUSTOMER-GENERATOR'S PROPERTY AND WITHIN A SINGLE ELECTRIC DISTRIBUTION COMPANY'S SERVICE TERRITORY SHALL BE ELIGIBLE FOR NET METERING.

YEAR AND YEARLY – PLANNING YEAR AS DETERMINED BY THE PJM INTERCONNECTION, L.L.C. REGIONAL TRANSMISSION ORGANIZATION.

§ 75.13. General provisions.

* * * * *

(c) The EDC shall credit a customer-generator at the full retail rate, WHICH SHALL INCLUDE GENERATION, TRANSMISSION AND DISTRIBUTION CHARGES, for each kilowatt-hour produced by a Tier I or ~~tier ii~~ TIER II resource installed on the customer-generator's side of the electric revenue meter, up to the total amount of electricity used by that customer during the billing period. IF A CUSTOMER-GENERATOR SUPPLIES MORE ELECTRICITY TO THE ELECTRIC DISTRIBUTION SYSTEM THAN THE EDC DELIVERS TO THE CUSTOMER-GENERATOR IN A GIVEN BILLING PERIOD, THE EXCESS KILOWATT-HOURS SHALL BE CARRIED FORWARD AND CREDITED AGAINST THE CUSTOMER-GENERATOR'S USAGE IN SUBSEQUENT BILLING PERIODS AT THE FULL RETAIL RATE. ANY EXCESS KILOWATT-HOURS SHALL CONTINUE TO ACCUMULATE UNTIL THE END OF THE YEAR. For customer-generators involved in virtual meter aggregation programs, a credit shall be applied first to the meter through which the generating facility supplies electricity to the distribution system, then through the remaining meters for the customer-generator's account equally at each meter's designated rate.

(d) At the end of each ~~billing period~~ YEAR, the EDC shall compensate the customer-generator for ANY EXCESS kilowatt-hours generated by the customer-generator over the amount of kilowatt hours delivered by the EDC during the ~~billing period~~ SAME YEAR at the EDC's ~~avoided cost of wholesale power~~ PRICE-TO-COMPARE.

* * * * *

(f) If a customer-generator switches electricity suppliers, the EDC shall treat the end of the service period as if it were the end of the ~~billing period~~ YEAR.

* * * * *

§ 75.14. Meters and metering.

* * * * *

(e) VIRTUAL ~~Meter~~ METER aggregation on properties owned or leased and operated by a customer-generator shall be allowed for purposes of net metering. VIRTUAL ~~Meter~~ METER aggregation shall be limited to meters located on properties OWNED OR LEASED AND OPERATED within 2 miles of the boundaries of the customer-generator's property AND~~. Meter aggregation shall only be available for properties located~~ within a single EDC's service territory. Physical meter aggregation shall be at the customer-generator's expense. The EDC shall provide the necessary equipment to complete physical aggregation. If the customer-generator requests virtual meter aggregation, it shall be provided by the EDC at the customer-generator's expense.

The customer-generator shall be responsible only for any incremental expense entailed in processing his account on a virtual meter aggregation basis.

* * * * *

PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG, PENNSYLVANIA

JAMES H. CAWLEY
CHAIRMAN

September 25, 2008

The Honorable Arthur Coccodrilli
Chairman
Independent Regulatory Review Commission
14th Floor, Harristown II
333 Market Street
Harrisburg, PA 17101

Re: L-00050174/57-264
Final-Omitted Rulemaking
Implementation of Act 35 of 2007;
Net Metering and Interconnection
52 Pa. Code Chapter 75

Dear Chairman Coccodrilli:

Enclosed please find one copy of the regulatory documents concerning the above-captioned rulemaking. Under Section 745.5(f) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15) the Commission today is serving a copy of this rulemaking on the Office of the Budget, the Office of Attorney General, IRRC and the legislative standing committees.

Very truly yours,

James J. Cawley

James H. Cawley
Chairman

Enclosures
cc: The Honorable Robert M. Tomlinson
The Honorable Lisa Boscola
The Honorable Robert Godshall
The Honorable Joseph Preston, Jr.
Legislative Affairs Director Perry
Chief Counsel Pankiw
Regulatory Coordinator DelBiondo
Assistant Counsel Brown
Judy Bailets, Governor's Policy Office

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE REGULATORY REVIEW ACT

ID Number: L-00050174/57-264

Subject: Implementation of Act 35 of 2007; Net Metering and Interconnection

Pennsylvania Public Utility Commission

TYPE OF REGULATION

_____ Proposed Regulation

X Final Regulation with Notice of Proposed Rulemaking Omitted.

_____ Final Regulation

_____ 120-day Emergency Certification of the Attorney General

_____ 120-day Emergency Certification of the Governor

FILING OF REPORT

Date	Signature	Designation
9/25/08		HOUSE COMMITTEE (Preston) Consumer Affairs
9-25-08		SENATE COMMITTEE (Tomlinson) Consumer Protection and Professional Licensure
9-25-08		Independent Regulatory Review Commission
		Attorney General
		Legislative Reference Bureau