

# EMBARGOED MATERIAL

#2724

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## PWIA

Pennsylvania Waste Industries Association  
A chapter of the National Solid Waste Management Association

INDEPENDENT REGULATORY  
REVIEW COMMISSION

*Via electronic mail and facsimile*

November 4, 2008

Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101

**RE:   *Comments of Pennsylvania Waste Industries Association  
For IRRC Public Meeting November 6, 2008  
Agenda Item No. 2724 Pennsylvania Utility Commission No. 57-264  
Final Omitted Rulemaking Net Metering and Interconnection***

Dear Commissioners:

The Pennsylvania Waste Industries Association ("PWIA")<sup>1</sup> appreciates the opportunity to submit these written comments concerning the Final Omitted Rulemaking Order ("Order") entered by the Pennsylvania Public Utilities Commission ("PUC") on July 2, 2008. The Order was adopted for the purpose of amending 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.

The Order revises the definition of "customer-generator" to increase the capacity limit on non-residential systems to three megawatts generally, and to a range of three to five megawatts for systems that operate in parallel with the grid during emergencies or that maintain critical infrastructure. In addition, the Order provides that excess generation is credited hour per hour in the next billing period at the full rate, and changes the level of compensation of customer-generators for credits remaining at the end of the annual period from the avoided cost of wholesale power to a retail price-to-compare rate, which includes the full unbundled retail generation and transmission rates. PWIA is wholly supportive of the Order and the alternative energy goals it furthers, and urges the Commission to approve it. Our specific comments are

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<sup>1</sup> PWIA is the Pennsylvania chapter of the National Solid Wastes Management Association, a non-profit organization that represents the interests of the North American waste services industry. PWIA members include both privately held and publicly traded companies, and own and operate numerous commercial solid waste facilities throughout the Commonwealth. In addition to solid waste landfills, our members operate resource recovery facilities, recycling facilities, transfer stations and collection operations. One of PWIA's primary missions is to advance the safe, efficient, and environmentally responsible management of solid waste, and to promote sound public policy affecting the management of solid waste.

limited to an anticipated argument from Electric Distribution Companies (“EDCs” or “utilities”) that the compensation structure established by the Order is unfair and economically burdensome.

PWIA anticipates that the EDCs will advance an argument that the compensation scheme set forth in the Order will have an adverse economic and fiscal impact on them and on non-customer-generator consumers of electricity and that it is unfair that they be required to compensate customer-generators at anything higher than the avoided cost of wholesale power.

In response to the October 4, 2007 Secretarial Letter seeking comments on the alignment of Act 35 with the regulatory scheme, several entities in the utility/EDC sector, including PECO, the Energy Association of Pennsylvania (“EAP”) and Industrial Energy Consumers of Pennsylvania (“IECPA”), argued that “full retail value for all energy produced on an annual basis”<sup>2</sup> should be interpreted to mean only the generation component of a full retail rate and that “fairness” somehow dictates that customer-generators should be paid only for one of four components of the retail price of power generation. Moreover, despite the express language of the Act, which replaces the phrase “avoided cost of wholesale power” with the “full retail value” phrase cited above, some commentators, including PennFuture and DEP, argued that customer-generators should be compensated for excess generation at the avoided cost of wholesale power.

Other commentators in the customer-generator sector, including PWIA, contended that the plain language of Act 35 demanded that full retail value should be defined as the fully-bundled rate including generation, transmission, distribution and transition costs. These entities argued that economies of scale generally were in the utilities’ favor, and that compensation at the fully-bundled retail rate would provide the additional economic incentives necessary to increase research and development as well as the generation of alternative energy.

In promulgating the Order, the PUC took the middle ground on the issue of payment for excess electricity generated by facilities participating in net metering programs. The PUC recognized that the compensation scheme must promote the clear intent of the AEPS Act by encouraging research, development and deployment of alternative energy systems. The PUC further acknowledged that the compensation system proposed by the utilities would unreasonably frustrate that intent and, on the other hand, to allow customer-generators to be compensated for distribution and transition costs would unreasonably allow them to use the distribution systems free of charge. After reviewing all the comments, the PUC determined that “compensating customer-generators for any unused credits at the end of the compliance year at the price-to-compare rate...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 [sic] by the ratepayers.” *Final Omitted Rulemaking Order*, p. 15.

PWIA fully supports the PUC’s interpretation of the Act 35 amendments and its revision of the net metering regulations to incorporate language directing EDCs to compensate customer-generators at the price-to-compare rate for credits remaining at the end of the year. Any argument that the utilities might raise that “fairness” requires compensation of only the generation costs should be rejected. The Legislature has made no indication of any intent to link

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<sup>2</sup> Act 35, § 3

the term "full retail value for all energy produced on an annual basis" to the concept of "fairness" introduced and defined by the utilities. Rather, in passing Act 35, the Legislature recognized that the costs of alternative energy production by customer-generators are, on whole, significantly higher than costs to utilities, so compensating customer-generators at full retail value (as explicitly required in Act 35) provides economic incentives necessary to promote the development and deployment of alternative energy. One of the main purposes of Act 35 is to encourage alternative energy development and deployment beyond Act 213 by increasing the economic incentives for participation in net metering programs. The PUC's Order simply implements the Legislature's express policy decision.

Thank you for the opportunity to comment on the Final Omitted Rulemaking Order. Please feel free to contact me directly should you wish to discuss our comments in more detail.

A handwritten signature in black ink, appearing to read "Tim O'Donnell" followed by a stylized flourish or set of initials.

Tim O'Donnell  
President  
Pennsylvania Waste Industries Association

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## EMBARGOED MATERIAL

**From:** Flynn, Tara L. [Tara.Flynn@dbr.com]  
**Sent:** Tuesday, November 04, 2008 10:49 AM  
**To:** IRRC  
**Subject:** Comments on PUC Final Omitted Rulemaking  
**Attachments:** 20081104104230.pdf

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REVIEW COMMISSION

Attached please find comments of the Pennsylvania Waste Industries Association on the PUC Final Omitted Rulemaking Order of July 2, 2008. We understand this item is on the agenda of the IRRC's meeting scheduled for November 6, 2008.

Thank you.

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Thank you very much.

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