



3061

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Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

IRRC #3061
PUC Docket #L-2014-2404361

May 15, 2016

IRRC Commissioners:

This letter is a follow-on to comments that were filed by Sunrise Energy on May 9, 2016. As a result of an open records request, new information has become available that we believe the IRRC should review prior to voting on the PUC rulemaking.

From the beginning of this rulemaking process, the renewable energy industry has tried to compel the PUC to produce evidence of the ratepayer harm that they claim occurs from net metering. The PUC has steadfastly refused to provide any evidence, even when the IRRC themselves asked. Finally, when submitting their final rulemaking, the PUC submitted an RAF with data that they claimed supported their argument. Unfortunately it was immediately called into question because the information did not match up with published 1307(e) reports from the same time period. The 1307(e) is a report that is filed annually by EDCs, and it contains cost recovery data, including all AEPS cost recovery. This is the only place where AEPS cost recovery is reported. In an effort to track down the source of the discrepancy, Sunrise Energy filed an open records request. The PUC partially denied the open record request (they redacted a great deal of the information in the report).

That denial is under appeal, and is not relevant to this proceeding. However, the statements made to the Office of Open Records Appeals Officer are. (see attached PUC appeal brief). The PUC made the following statements to the OOR about the nature / quality of the data in question. They cast doubt on the credibility of the information provided. These statements were in opposition to Sunrise being allowed to see the PUC report in its entirety.

The sample aggregate customer billing data provides an approximate illustrative overview of the problem of excessive net metering, nothing more. See, Affidavits of Gebhardt and Brown. The PUC's anecdotal reference to aggregate data does not elevate the data to information subject to disclosure in the same manner as information relied upon by the Commission in issuing an order or determination. (emphasis added)

The aggregate illustration was not referenced in the Commission's order adopting the proposed regulation, and was not relied upon in the Commission's consideration of the proposed regulation. (See, exhibit of Hommrich, Commission Order, entered February 11, 2016). The aggregate illustration did not form the foundation of any part of the proposed regulation. Further, the individual customer billing information which Hommrich seeks was completely irrelevant for illustrative purposes. (emphasis added).

The PUC states that the data they submitted to the IRRC is anecdotal, and that they did not rely on it for their rulemaking. If that is the case, then what purpose was served by including it in the RAF? More importantly, why wasn't the IRRC informed that the data in question is anecdotal, and should not be relied upon? Isn't this the opposite of "acceptable data", which is the mandate of the Regulatory Review Act?

The information regarding net metering costs was provided after repeated requests, including one directly from the IRRC. The PUC says in their letter to the OOR Appeals Officer that...

The information requested by Hommrich was gathered by the PUC staff in response to questions & comments by IRRC and others related to the net metering proposed regulations.

Yet elsewhere they claim that the information was only collected recently, and was not used by the PUC in formulating their regulations. We are left with a puzzle. The PUC was asked to provide data in support of the need for their new regulation. They provided the data in their RAF, but now they are distancing themselves from it, calling it anecdotal and illustrative. Moreover, they claim not to have used the data anyway.

It seems plain that the PUC does not take the regulatory review process seriously. In order to maintain the integrity of the IRRC mission, agencies must participate and provide evidence when requested. The PUC cannot seem to muster up the energy to actually provide what is asked for, and when they do we discover that it should not be relied upon. This is still further evidence that the rulemaking should be disapproved in its entirety.

Regards,

A handwritten signature in blue ink, appearing to read 'DNH', is written over a faint, light blue circular stamp or watermark.

David N. Hommrich
President
Sunrise Energy, LLC



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

May 13, 2016

Via E-Mail: kahiggins@pa.gov

Kathleen Higgins, Esquire
Appeals Officer
Commonwealth of Pennsylvania
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

Re: *David N. Hommrich, Sunrise Energy LLC, v. Pennsylvania Public Utility Commission*, AP 2016-0768

Dear Appeals Officer Higgins:

I am counsel for the Pennsylvania Public Utility Commission in the above-captioned appeal of the portion of the final determination of the Commission, denying in part the request for records of David N. Hommrich ("Hommrich"), pursuant to the Pennsylvania Right to Know Law, 65 P.S. §§ 67.101 *et seq.* This letter and attached affidavits are offered in support of the Commission's final determination in this matter, dated May 2, 2016. *See* attached, "A" (Final determination of the Commission), "B" (Affidavit of Rosemary Chiavetta), "C" (Affidavit of Scott Gebhardt), and "D" (Affidavit of Kriss Brown).

In the present case, aggregate customer billing information was compiled by the Commission pursuant to the PUC's investigative authority. (*See*, attached affidavits of Scott Gebhardt and Kriss Brown.) The redaction of the record provided was restricted to customer billing data gathered in the course of a noncriminal investigation of customer billing related to net metering proposed regulations. This information is exempt pursuant to 65 P.S. §67.708(b)(17)(ii). Further, the redacted customer billing information is made confidential by PUC statute and regulation, and exempt from disclosure pursuant to 65 P.S. § 67.708(b)(17)(iv). *Id.*

As required by the RTK Law, 65 P.S. § 67.708 (b)(28) (pertaining to disclosure of aggregate data maintained by the agency) the Commission provided Hommrich the aggregate customer billing information. Further, the Commission voluntarily provided Hommrich the PUC staff investigative record compiling customer billing information on net metering redacting the individual customer information as required by statute and regulation. (*See*, affidavits of Chiavetta, Brown and Gebhardt.)

In this appeal, Hommrich now seeks disclosure of the individual electric customers' billing information. The individual customer billing information redacted was identified on the investigative record as follows: the customer's name, the name of the customer's Electric Distribution Company (EDC), amount of energy generated by the customer, the rate charged the customer pursuant to the EDC's approved tariff, the EDC's price to compare (PTC), each

customer's calculated cashout at the wholesale cost of power, the calculated incremental advantage of PTC payout for each customer, and the dollar amount the customer was paid by the EDC for the excess energy generated by the customer. (*See*, affidavit of Chiavetta).

Essentially, Hommrich's position is that of a retail electric customer, who would like to see the details of the bills of other retail electric customers. However, under the PUC's statute and regulations, retail electric customers have a right privacy in the details of their electric bill, including, how much energy they used, the rate they paid, and what if any compensation is due them. (*See*, affidavits of Chiavetta, Brown and Gebhardt). As a practical and legal matter, Hommrich's request can be understood as a request by your neighbor, to review the details of your electric bill, without your permission.

INTRODUCTION

The basis for the Commission's grant in part, denial in part of Hommrich's request for access to records was set forth in the final response. *See*, Attached "A." On appeal, the Commission offers affidavits to support the claimed exemptions for noncriminal investigative records pursuant to §708 (b)(17). *See*, Attached "B", "C" and "D".

Specifically, the Commission withheld disclosure of the customer billing information as it was compiled in aggregate pursuant to the Commission's investigative authority and therefore constitutes investigative "materials, notes and reports," under §708 (b)(17) (ii). Further, the redacted customer billing information is confidential pursuant to the PUC statute and regulation, and is therefore, expressly made confidential by law, under §708 (b)(17)(iv).

Hommrich challenges the Commission's denial based upon the investigative exemptions and asserts that the redacted information must be provided to support the aggregate figures the Commission referenced in the Regulatory Analysis Form (RAF) submitted to IIRC (*See*, p. 3, of the PUC's RAF).

I. Hommrich's appeal should be dismissed as Hommrich asserts no legal basis which requires the Commission to disclose confidential customer billing information gathered by the Commission pursuant to its investigative powers under the Public Utility Code due to referencing the aggregate billing data in a regulatory analysis.

Without asserting any legal authority for the premise, Hommrich argues that the PUC must offer the details of the customers billing information to support the aggregate figures referenced in the RAF before IIRC, because the Commission "relied upon the numbers" to support the proposed regulations. However, the Commission did not rely upon the aggregate billing information in adoption of the proposed regulation. In fact, the proposed regulations and the underlying rational supporting the regulations were adopted by order of the Commission *prior to the compilation* of the aggregate customer billing information in question. (*See*, attached affidavits of Gebhardt and Brown).

The net metering regulations propose a reasonable limit on the amount of customer energy generation to alleviate the resulting subsidization of net metering by other commercial retail customers. The sample aggregate customer billing data provides an approximate illustrative overview of the problem of excessive net metering, nothing more. *See*, Affidavits of Gebhardt

and Brown. The PUC's anecdotal reference to aggregate data does not elevate the data to information subject to disclosure in the same manner as information relied upon by the Commission in issuing an order or determination. *Id.*

The aggregate illustration was not referenced in the Commission's order adopting the proposed regulation, and was not relied upon in the Commission's consideration of the proposed regulation. (See, exhibit of Hommrich, Commission Order entered February 11, 2016). The proposed regulation is not premised upon the aggregate illustration for any purpose. The aggregate illustration did not form the foundation of any part of the proposed regulation. Further, the individual customer billing information which Hommrich seeks was completely irrelevant for illustrative purposes. *Id.*

Since Hommrich's assertion that the Commission relied upon the aggregate data in adoption of the proposed regulation is incorrect, and, in any event, the mere reference to sample aggregate data by an agency for illustrative purposes is anecdotal and does not supersede the protections of law rendering the information confidential, Hommrich's appeal is without basis and should be denied.

II. The Commission properly claimed exemption from disclosure for electric customer billing information made confidential by statute and regulation which was compiled in aggregate by the PUC pursuant to investigative powers under the Public Utility Code.

A. The Commission gathers information pursuant to its investigative authority as necessary for oversight of electric generation.

A recent order of the Office of Open Records ("OOR"), *Rubin v. PA PUC and Verizon North, LLC and Verizon Pennsylvania, LLC*, Appeal Docket No. 2015-1438 (Order entered September 29, 2015), recognized that the Commission gathers information pursuant to its investigative powers for purposes of regulatory oversight of the public utilities in the Commonwealth. In pertinent part, in *Rubin* the OOR found:

[t]he Commission is empowered to regulate and supervise all public utilities doing business in the Commonwealth. 66 Pa.C.S. § 501(b). In addition, the Commission is authorized to require regulated utilities to file reports concerning utility operations, 66 Pa.C.S. § 504, and may investigate the condition and management of any public utility. 66 Pa.C.S. § 331(a)... Thus, the Public Utility Code specifically invests the Commission with fact-finding powers regarding its duty to regulate public utilities.

Id. at p. 5-6

The OOR's Appeals Officer found in *Rubin* that pursuant to the PUC's jurisdiction over the public utilities, the gathering of information for regulatory oversight generally is an exercise of the Commission's noncriminal investigative powers. *Id.* at 6.

The right-to-know law exempts from disclosure agency records “relating to a noncriminal investigation” of the agency. 65 P.S. § 708(b)(17). This section exempts documents gathered as part of a “a systematic or searching inquiry, a detailed examination, or an official probe” conducted “as part of the agency’s official duties” regarding a noncriminal matter. *Pa. Dep’t of Health v. Office of Open Records*, 4 A.3d 803, 810-14 (Pa. Commw. Ct. 2010). It also exempts records “that include[] information made confidential by law.” 65 P.S. § 67.708(b)(17)(iv) .

The PUC staff gathered the customer data and compiled it in aggregate in furtherance of the PUC’s regulatory authority concerning electric generation. The staff investigation of customer billing information was relevant to the PUC’s promulgation of regulations in exercise of the Commission’s regulatory oversight.

The PUC voluntarily provided Hommrich with the investigative record of the compiled aggregate customer billing data relevant to net metering. The individual customer billing information was required to be redacted pursuant to statute and regulation. (*See*, affidavits of Chiavetta, Gebhardt and Brown). The detail of the individual customer’s billing information is in no way relevant to the Commission’s adoption of the proposed regulations. (*See*, affidavits of Gebhardt and Brown).

Accordingly, the PUC correctly withheld the electric customers’ billing information under 65 P.S. § 67.708(b)(17)(ii) and (iv).

B. The Commission properly applied the RTK Law’s investigative exemption for investigative records, 65 P.S. § 67.708(b)(17)(ii)

In order for the investigative exemption to apply, the Court has stated that a “systematic or searching inquiry, a detailed examination, or an official probe” constitutes an investigation for purposes of the exemption. *Dep’t of Health v. Office of Open Records*, 4 A.3d 803, 811. Specifically, where the agency charged with the duty of regulatory oversight gathers data in connection with ongoing performance of that oversight, the investigative exemption has been held to apply. *See, Department of Environmental Protection v. Delaware Riverkeeper Network*, 113 A. 3d 869, 873 (*Pa. Commwlth.* 2015). Therefore, all records obtained or created and reviewed by an agency in furtherance of regulatory oversight satisfy the definition of “noncriminal investigative” records and are entitled to the exemption.

In the present case, based upon the affidavit of Scott Gebhardt Utility Energy & Conservation Analyst for the Technical Utility Services Division of the PUC, it is clear that the electric customers’ information was gathered pursuant to the searching inquiry necessary to inform the formation of regulations to implement electric generation policy by the PUC. In the context of reviewing proposed regulations, it is necessary for the PUC’s staff to be informed by a detailed examination of the data relevant to the subject of the regulations, net metering. *See*, attached affidavits of Brown and Gebhardt. Staff’s review of electric customers’ billing information constitutes a “systematic and searching inquiry” and “detailed examination” conducted by PUC staff for purposes of reviewing proposed regulations and making any policy recommendation regarding net metering. The process of compiling electric customer data on net metering constitutes a non-criminal investigation conducted by the Commission. *See*, attached affidavits of Brown and Gebhardt.

It is clear that the Commission's mandated duty of regulatory oversight and the information gathered and reviewed in the process of performing that duty constitute precisely the type of probing inquiry conducted by a state agency which the Commonwealth Court concluded in *Pennsylvania Public Utility Commission v. Gilbert*, *Dep't of Health v. Office of Open Records*, and *Department of Environmental Protection v. Delaware Riverkeeper Network* is entitled to the noncriminal investigation exemption of the RTK Law. Accordingly, the Commission's claim for exemption from disclosure of non-criminal investigative records related to the ongoing regulatory oversight of the electric generation should be upheld.

C. The Commission properly applied the RTK Law's exemption for records made confidential by law 65 P.S. § 67.708(b)(17)(iv)

The Commission's ORO properly redacted the customer billing information made confidential by PUC regulation, pursuant to the RTK Law's exemption from disclosure for records made confidential by law, 65 P.S. § 67.708(b)(17)(iv). The Commission routinely gathers data for purposes of policy and regulatory analysis pursuant to the Commission's authority under the Public Utility Code. The customer data sought by Hommrich is confidential pursuant to regulation at 52 PA Code §54.8 (privacy of customer information). (*See*, affidavits of Brown and Gebhardt).

The information requested by Hommrich was gathered by PUC staff in response to questions & comments by IRRRC and others related to the net metering proposed regulations. Staff gathered otherwise private customer billing information from EDCs, as stakeholders. The customer billing information gathered was compiled in the aggregate as a sample of the private customer information obtained by the PUC staff from the utilities' customer base pursuant to the PUC investigative powers authorized under the Public Utility Code. *Id.*

The customer billing information sample was compiled in aggregate, to provide an approximated illustration of the effect of net metering where customer-generators with alternative energy generation produced excess energy to a degree which, if unchecked, could result in the rate paid by other default service customers being unjust and reasonable as the costs for the purchase of the excess generation is passed onto other default service customers. *Id.*

The customers' billing data was referenced in the PUC's Regulatory Analysis in the aggregate to illustrate the potential impact on default service rates by net metering if no reasonable parameters are put in place. The reference was anecdotal. The individual customer billing data was not relevant for any purpose. *Id.*

In response to Hommrich's request for the data referenced in the PUC's Regulatory Analysis submitted March 22, 2016, the Commission's ORO properly redacted the individual customers' billing information which remains confidential under PUC regulation at 52 PA Code §54.8. In the present case, the ORO's redaction was appropriate for records made confidential by law, and Hommrich's appeal from the Commission's partial denial should be denied.

CONCLUSION

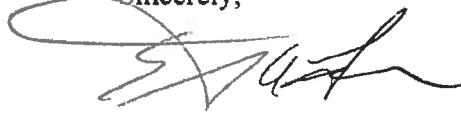
Based upon the forgoing and the attached documentation and affidavits, the final decision of the Commission's ORO denying in part David N. Hommrich's request for access to customers' private billing information should be affirmed.

HEARING REQUESTED

Section 708 of the RTKL places the burden of proof on the agency to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: "(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence." 65 P.S. § 67.708(a). Preponderance of the evidence has been defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (8th ed.); *see also Commonwealth v. Williams*, 567 Pa. 272, 786 A.2d 961 (2001).

In the event the Appeals Officer determines that the Commission's burden of proof in this matter is not satisfied by the facts and evidence presented, **A HEARING IS REQUESTED**. The Commission is prepared to offer additional evidence at hearing in support of the claimed exemptions from disclosure.

Sincerely,

A handwritten signature in black ink, appearing to read 'Elizabeth Lion Januzzi', written over a horizontal line.

Elizabeth Lion Januzzi
Assistant Counsel
Email: elionjanuz@pa.gov
Telephone: (717) 772-0696

cc: David Hommrich
via Email: dhommrich@sunrise-energy.net

A



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

March 29, 2016

PUC RTK 2016-0024

David N. Hommrich, President
Sunrise Energy, LLC
151 Evandale Drive
Pittsburgh, PA 15220

Interim response sent via email only:
dhommrich@sunrise-energy.net

Dear Mr. Hommrich:

We are in receipt of your Right to Know request, filed pursuant to the provisions of the Right to Know Law, 65 P.S. Section 67.101 et seq., *as amended*. In your Right to Know request received via email on March 24, 2016, you stated:

"The PUC recently submitted a Regulatory Analysis Form in support of their final rulemaking order (PUC Docket #L-2014-2404361). In the document (on page 3), a reference is made to an EDC with 10 renewable energy facilities that in total received \$8.6 million in excess energy payments in 2015. I would like to receive any reports or other forms of data that the PUC has received to corroborate this statement."

Pursuant to Section 902(4) of the Act, you are hereby advised that a legal review is necessary to determine whether the record is a record subject to access under this act. In addition, pursuant to Section 902(7) of the Act, you are hereby advised that due to the nature and extent of the request, a response within the five (5) day statutorily required period is precluded.

A response is expected to be provided to you on or about Monday, May 2, 2016.

Sincerely,

Rosemary Chiavetta
Secretary and Right to Know Officer
Pa Public Utility Commission
400 North Street
Commonwealth Keystone Building
Harrisburg, PA 17120
717-787-8009

cc: Elizabeth Lion Januzzi, Assistant Counsel
Right to Know File PUC RTK 2016-0024



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
400 NORTH STREET, HARRISBURG, PA 17120

IN REPLY PLEASE
REFER TO OUR FILE

May 2, 2016

PUC RTK 2016-0024

2016-0027

David N. Hommrich
Sunrise Energy LLC
151 Evandale Drive
Pittsburgh, PA 15220

Final response sent via email only:
dhommrich@sunrise-energy.net

Dear Mr. Hommrich:

Your recent request for information from the Pennsylvania Public Utility Commission officially received via email on March 24, 2016, filed pursuant to Pennsylvania's *Right-to-Know Law*, 65 P.S. §§ 67.101, *et seq.*, as amended, has been reviewed. In your RTK email, you requested:

"The PUC recently submitted a Regulatory Analysis Form in support of their final rulemaking order (PUC Docket #L-2014-2404361). In the document (on page 3), a reference is made to an EDC with 10 renewable energy facilities that in total received \$8.6 million in excess energy payments in 2015. I would like to receive any reports or other forms of data that the PUC has received to corroborate this statement."

Your request is granted in part; denied in part. *See*, attached "A".

To the extent your request seeks the identifying criteria including the disaggregated data and the company names for the 10 renewable energy facilities your request is denied. The Commission's Bureau for Technical Utility Services (TUS) gathered and compiled the competitive market data from renewable energy facilities pursuant to the Commission's investigative authority under the Public Utility Code, to aid and inform the development of policy and the Commission's proposed regulations. The Commission published the aggregate data in the Regulatory Analysis Form to illustrate regulation's intent while protecting the companies' competitive financial and service data.

To the extent your request seeks the disaggregated data your request is granted in part and denied in part. The attached spread sheet provides the data compiled to calculate the 10 largest commercial customers. The detail provided includes the facility type and the Nameplate (KW). The company names and competitive financial and kwh data has been redacted.

Your second request, improperly filed on March 28, 2016, and re-filed on April 27, 2016, requesting:

"At the bottom of Page 5 of the recently submitted Regulatory Analysis Form (Docket #L-2014-2404361) the PUC makes the following reference, "Commission staff met with representatives of the Farm Bureau, DEP, EDCs and solar developers during which these representatives provided input and perspective on the regulations." Please provide all documentation from these meetings, including agendas, minutes, dates/times of meetings and attendees. I would prefer to receive these documents electronically."

Your request is granted in part and denied in part.

Please note that meetings conducted by the Commission staff with interested parties are for informational purposes to assist with policy development in drafting the regulation and do not constitute meetings held by the Commissioners and or public meetings subject to the provisions of the Pennsylvania Sunshine Act and/or subject rules regarding ex parte communication. Staff notes from such meetings, if any, are investigative records/working papers for purposes of energy policy development and or development of draft regulations, and are not subject to disclosure. The Commission gathers input from diverse sources in the process of developing energy policy; however, the proposed regulations do not necessarily reflect the views of any individual stakeholder.

As a courtesy, I have asked staff for the Bureau of TUS to compile a list of the meetings held for purposes of the proposed regulations. See attached "B". Between March 12, 2014, and January 7, 2016, stakeholder meetings were held with Commission staff. Please note you were identified as a participant twice, and perhaps a third time, during this time period. The list was compiled and provided as a courtesy based upon staff review of internal calendars and is not an official record or intended for official use in any context.

This response constitutes the final response of the Commission to your RTK Law Request.

NOTICE OF RIGHT TO APPEAL

If you believe the PUC has wrongfully denied any part of your request, you may appeal within 15 business days from the date of this letter to:

Office of Open Records
Commonwealth Keystone Building
400 North Street
4th Floor
Harrisburg, PA 17120

If you choose to file an appeal you must do so within 15 business days of the mailing date of the agency's response. Section 67.1101. Please note that a copy of your original Right-to-Know request and this denial letter must be included when filing an appeal. The law also requires that you state the reasons why the record is a public record and address the reasons the Agency denied your request. Visit the Office of Open Records website at <http://openrecords.state.pa.us> for further information on filing an appeal.

Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Sincerely,



Rosemary Chiavetta, Secretary
Right to Know Officer
Pa Public Utility Commission
400 North Street
Commonwealth Keystone Building
Harrisburg PA 17120

cc: Elizabeth Lion Januzzi - Assistant Counsel
Right to Know File: PUC RTK 2016-0024 and 2016-0027

△

[illegible]

Consumers' responses to the "typical" card for the 100 sector, lead to the interesting observation that the average consumer is more likely to

LEWIS CARDINGTON WITH FORMER CHIEF OF BUREAU OF LANDS

[illegible]

"B"

Dates and Times when we met with Stakeholders regarding AEPS NOPR

Hommrich	3/12/14	2-3 pm
Zook Open House	5/1/14	11-2
CHP En Banc Hearing	5/5/14	9:30-6:30
Hommrich/Sen. Solobay	6/16/14	11-12
Senator Alloway (phone)	7/28/14	
Dairy Farmers Association/DEP	7/29/14	1:30-2:30
Farm Bureau Committee	8/27/14	2-3:30
Pocono Raceway	9/24/14	11-12
Knouse Foods	10/2/14	11-11:30
maybe Hommrich	11/6/14	2:30-4
PJM	1/12/15	10-11
Rep. Neuman & Daley	2/10/15	1-2
Senator's Tomlinson, Corman, Yaw and Vogel (Staffers Travis, Kathy Eakin, Adam Pankake, Mike Rader)	2/11/15	2-3
Senator's Costa and Boscola (Staffers Stephen Bruder/Shannon Sargent)	2/19/15	10-10:30
DEP & PDA (phone)	4/9/15 & 4/10/15	
Senator Yaw	5/11/15	1:45-3:15
John Hanger	8/27/15	9:30-11
House Committee Hearing	9/2/15	9:30-12
Pocono Raceway	12/7/15	10-11
Solar City	12/7/15	11:30-12:30
RCM Digesters & TeamAg	1/7/16	12-2

B

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS

David. N. Hommrich,
Sunrise Energy LLC

v.

Pennsylvania Public Utility Commission

AP 2016-0768

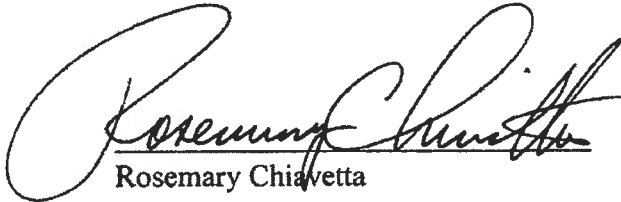
AFFIDAVIT OF
ROSEMARY CHIAVETTA, SECRETARY
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Before me, the undersigned notary public, this day, May 13, 2016, personally appeared Rosemary Chiavetta, Secretary of the Pennsylvania Public Utility Commission, to me known, who being duly sworn according to law, deposes the following:

I, Rosemary Chiavetta, being duly sworn according to law, depose and say that I am authorized to make this affidavit on behalf of the Pennsylvania Public Utility Commission, being an employee of the Commission as Secretary, and having the duty as records custodian for the Commission of maintaining all records for the Commission, and having knowledge of the facts relevant to the present matter, the facts set forth are true and correct to the best of my knowledge information and belief and I expect to be able to prove the same at any hearing hereof, attest as follows:

- 1) As Secretary for the Pennsylvania Public Utility Commission (Commission), my duties include being custodian of all Commission records.
- 2) As part of my duties, my staff maintains the files of the Commission, including all records retained in public access files, and internal access only files. Further, I am custodian of all records including internal and external communication whether in hard copy or electronic format.
- 3) As part of my duties, I am the Commission's Open Records Officer (ORO).
- 4) In performance of my duties as ORO, I replied to the March 28, 2016, request for records filed by David N. Hommrich (Hommrich) setting forth the Commission's basis for granting in part, and denying in part, the records requested by Hommrich.
- 5) In this appeal, Hommrich seeks disclosure of electric customers' billing information.

- 6) As required by the RTK Law, 65 P.S. § 67.708(b)(28) (pertaining to disclosure of aggregate data maintained by the agency), the Commission provided Hommrich the aggregate compiled customer billing information.
- 7) Further, the Commission voluntarily provided Hommrich the PUC staff's investigative record compiling aggregate customer billing information on net metering, redacting the individual customer billing information as required by statute and regulation At 73 P.S. § 1648 (customer-generator excess generation information is confidential), and 52 PA Code § 54.8 (privacy of customer information).
- 8) The individual customer billing information redacted was identified on the investigative record as follows: the customer's name, the name of the customer's Electric Distribution Company (EDC), amount of energy generated by the customer, the rate charged the customer pursuant to the EDC's approved tariff, the EDC's price to compare (PTC), each customer's calculated cashout at the wholesale cost of power, the calculated incremental advantage of PTC payout for each customer, and the dollar amount the customer was paid by the EDC for the excess energy generated by the customer.
- 9) The customer billing information at issue was gathered and aggregated by Scott Gebhardt, Utility Energy & Conservation Analyst, Bureau of Technical Utility Services (TUS), pursuant to the PUC's investigative authority to aid the PUC's staff charged with promulgating proposed regulations for the oversight of the statutory process of "net metering" and electric energy generation in the Commonwealth.



Rosemary Chiavetta

Secretary

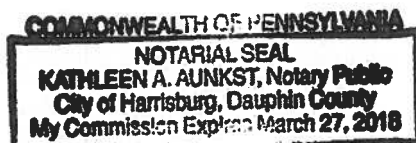
Pennsylvania Public Utility Commission

Subscribed and sworn to before me this

13th day of May, 2016.

Kathleen A. Aunkst

Notary Public



C

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS

David N. Hommrich
Sunrise Energy, LLC

v.

Pennsylvania Public Utility Commission

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AP 2016-0768

AFFIDAVIT OF SCOTT GEBHARDT
UTILITY ENERGY & CONSERVATION ANALYST, POLICY & PLANNING
BUREAU OF TECHNICAL UTILITY SERVICES
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Before me, the undersigned notary public, this day, May 13, 2016, personally appeared Scott Gebhardt, Utility Energy & Conservation Analyst, Bureau of Technical Utility Services (TUS) of the Pennsylvania Public Utility Commission, to me known, who being duly sworn according to law, deposes the following:

I, Scott Gebhardt, being duly sworn according to law, depose and say that I am authorized to make this affidavit on behalf of the Pennsylvania Public Utility Commission, being a Utility Energy & Conservation Analyst, for the Commission's Bureau of Technical Utility Services (TUS), and having personal knowledge of Commission investigative powers and duties associated with the Commission's regulatory oversight and knowledge of the facts relevant to the present matter, the facts set forth are true and correct to the best of my knowledge, information and belief, and I expect to be able to prove the same at any hearing hereof, attest as follows:

- 1) As Utility Energy & Conservation Analyst, Bureau of Technical Utility Services (TUS) for the Pennsylvania Public Utility Commission, (PUC or Commission), my duties include a wide variety of administrative and regulatory oversight and compliance functions which involve the collection of Electric utilities' data.

- 2) Pursuant to the Pennsylvania Public Utility Code, the Pennsylvania Public Utility Commission is mandated to develop policy, adopt and enforce regulations, related to the Alternative Energy Portfolio Standards Act of 2004.
 - 3) As an exercise of the PUC's oversight powers and duties over the Alternative Energy Portfolio Standards Act of 2004, the PUC proposed regulations at 52 Pa. Code Chapter 75 to comply with Act 129 of 2008, and Act 35 of 2007, and to clarify certain issues of law. These proposed regulations are currently pending before the Independent Regulatory Review Commission (IRRC).
 - 4) The process called "net metering", is governed by statute and regulation, but is essentially a private transaction between the utility and their customers who meet the statutory and regulatory requirements.
 - 5) Customers of an electric distribution company (EDC or electric utility) may produce their own electricity from an alternative energy system (i.e., solar, wind, and other...) for their own use. Where the customer's own alternative energy source generates excess electricity, the customer may use the electric grid of the utility to, in essence, store excess energy.
 - 6) Where all the regulatory requirements are met, a customer is entitled to be compensated by the utility for the energy in excess of the customer's own consumption, which is sent to the grid during the year.
 - 7) In my capacity as Utility Energy & Conservation Analyst, in the Policy & Planning section of TUS, in order to inform the response to stakeholders' and the IRRC's comments regarding the Commission's Notice of Proposed Rulemaking and the accompanying Regulatory Analysis Form delivered June 23, 2015, Advanced Notice of Final Rule Making issued on April 23, 2015, and following the Final Rulemaking Order Entered February 11, 2016, I investigated, gathered and compiled an aggregate sample of electric customers' billing data from utilities regarding the customers' private commercial transactions with the EDCs.
- 8) The Commission's Order Entered February 11, 2016 at Docket No. L-2014-2404361, does not rely upon or reference the aggregate sample data, which was compiled *subsequent* to the Commission's order.
 - 9) The aggregate sample was anecdotal and referenced for illustrative purposes only in the Regulatory Analysis Form delivered on March 22, 2016.
- 10) The aggregate customer billing information details the private commercial transactions between the customers and the EDCs.

- 11) I investigated and compiled the sample in the aggregate and created an internal investigative document which documented the sample. *See, Attached "A"*.
- 12) Hommrich was provided a copy of my internal investigative record which redacted the individual customers' billing information.
- 13) The customer billing sample data was referenced only in aggregate in the Regulatory Summary to illustrate the impact of excess generation from systems sized beyond the load requirements of the customer where the generation is located. The result is payments, subsidized by other default customers that were realized by the customer-generators.
- 14) Individual customer billing information sought by Hommrich is irrelevant to the PUC's proposed regulations.
- 15) Further, individual customer billing information is confidential pursuant to statute and regulation, at 73 P.S. § 1648 (customer-generator excess generation information is confidential), and 52 PA Code § 54.8 (privacy of customer information).

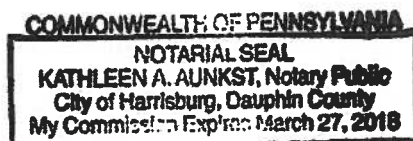


Scott Gebhardt
Utility Energy & Conservation Analyst
Bureau of Technical Utility Services
Pennsylvania Public Utility Commission

Subscribed and sworn to before me this
13th day of May, 2016.



Notary Public



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COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS

David N. Hommrich
Sunrise Energy, LLC

v.

Pennsylvania Public Utility Commission

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AP 2016-0768

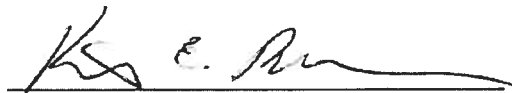
AFFIDAVIT OF KRISS BROWN
ASSISTANT COUNSEL, LAW BUREAU
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Before me, the undersigned notary public, this day, May 13, 2016, personally appeared Kriss Brown, Assistant Counsel of the Pennsylvania Public Utility Commission, to me known, who being duly sworn according to law, deposes the following:

I, Kriss Brown, being duly sworn according to law, depose and say that I am authorized to make this affidavit on behalf of the Pennsylvania Public Utility Commission, being Assistant Counsel for the Commission's Law Bureau, and having personal knowledge of Commission investigative powers and duties associated with the Commission's regulatory oversight and knowledge of the facts relevant to the present matter, the facts set forth are true and correct to the best of my knowledge, information and belief, and I expect to be able to prove the same at any hearing hereof, attest as follows:

- 1) As part of the process of drafting proposed regulations, the PUC staff met with and contacted various stakeholders and interested parties to gather input and relevant information on the proposed regulation.
- 2) The aggregate customer information requested by Hommrich was compiled subsequent to the Commission's order adopting the proposed regulation. (*See*, Hommrich attachment, Order Entered February 11, 2016).
- 3) The Commission gathers data for purposes of policy and regulatory analysis pursuant to the Commission's authority under the Public Utility Code.

- 4) The Customer data sought by Hommrich is confidential pursuant to regulation at 52 PA Code 54.8 (privacy of customer information).
- 5) In response to questions & comments by IRRC and others, staff gathered otherwise private customer billing information from EDCs, as stakeholders.
- 6) The customer billing information gathered was a sample of the private customer information obtained by the PUC staff from the utilities' customer base pursuant to the PUC investigative powers authorized under the Public Utility Code.
- 7) The customer billing information sample was compiled in aggregate, related to the proposed net metering regulations, to provide an approximated illustration of the effect of net metering where customer-generators with alternative energy generation produced excess energy to a degree which, if unchecked, could result in the rate paid by other default service customers being unjust and reasonable as the costs for the purchase of the excess generation is passed onto other default service customers.
- 8) The customers' billing data was referenced only in the aggregate to illustrate the potential impact on default service rates by net metering if no reasonable parameters are put in place.
- 9) The individual customer billing data was not relevant for any purpose.



Kriss Brown
Assistant Counsel, Law Bureau
Pennsylvania Public Utility Commission

Subscribed and sworn to before me this

13th day of May, 2016.



Notary Public

