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May 16, 2016

Via E-mail (irrc@irrc.state.pa.us)

Chairman George D. Bedwick
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: Regulation #57-304 (IRRC #3061) (L-2014-2404361)
Pennsylvania Public Utility Commission
Implementation of the Alternative Energy Portfolio Standards Act of 2004

Dear Chairman Bedwick:

Please find enclosed the Comments of SRECTrade, Inc. ("SRECTrade") in Opposition to the Pennsylvania Public Utility Commission's Final Rulemaking Order Revising Regulations Implementing The Alternative Portfolio Standards Act of 2004 for consideration by the Independent Regulatory Review Commission.

Should you have any questions regarding these comments, you may contact me via Allyson Browne, our Director of Regulatory Affairs and General Counsel, at Allyson.Browne@srectrade.com.

Sincerely,

A handwritten signature in cursive script that reads "Steven Eisenberg".

Steven Eisenberg
Chief Executive Officer
SRECTrade, Inc.

// enclosures

II. COMMENTS ON THE FINAL REGULATIONS

A. Revised Language for 52 Pa. Code § 75.22 as it applies to § 75.63

In response to the Notice of Proposed Rulemaking for the *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Proposed Rulemaking Order, Docket No. L-2014-2404361 (Order entered February 20, 2014) (“NoPR”), SRECTrade submitted the following public comment in regards to the revised definition of “nameplate capacity”:

“Under § 75.22, the definition of “electric nameplate capacity” has been revised to be “measured in volt-amps of a small generator facility, **the inverter or the aggregated of multiple inverters at an alternative energy system[']s location** as designated by the manufacturer.” (emphasis in original).

SRECTrade urges the Commission to elaborate on this definition as to its applicability Alternative energy credit certification under § 75.63. As is, it is unclear whether the “nameplate capacity” as used in § 75.63 is subject to the revised definition under § 75.22, or if “nameplate capacity” as used in § 75.63 will continue to reference the facility’s direct current (DC) capacity. Given the weight of this distinction, it is vital that the definition of “nameplate capacity” as used in § 75.63 be distinguished, if necessary, from the definition of “nameplate capacity” of § 75.22.

Currently, the direct current (DC) capacity is used for alternative energy credit certification. Other SREC-certifying states in the PJM interconnection territory, including Ohio,³ Maryland,⁴ the District of Columbia,⁵ Delaware, and New Jersey,⁶ certify facilities based on the facility’s direct current (DC) capacity or a combination of both DC and AC capacity (that is, both are provided and taken into consideration by the state’s certifying agency). Moreover, the PJM-GATS tracking registry requires that facilities be registered by nameplate capacity in direct current (DC), as it defines Nameplate Capacity to mean “[t]he

³ ORC 4928.64 et seq., ORC 4901:1-40 et seq., *See also* Online Application for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility, Sections G.4 and I, *available at* http://www.puco.ohio.gov/puco/assets/File/REN_Sample_Application_5Jun2013.pdf.

⁴ COMAR 20.61.02.01 et seq. *See also* RPS Forms, Solar PV Certification Process, EN73 Solar REF Application and Instructions and Solar PV Frequently Asked Questions, *available at*

⁵ 59 DCR 2313, 2316 (March 23, 2012), *available at*

<http://www.dcregs.dc.gov/Gateway/FinalAdoptionHome.aspx?RuleVersionID=3901842>.

⁶ N.J.A.C. § 14:8-2.4(h)(2).

maximum rated output of a generator...”.⁷ Accordingly, it seems appropriate to distinguish the definition of “nameplate capacity” as it applies to § 75.63 to refer to the facility’s direct current (DC) capacity, in an effort to remain in sync with the registration and reporting requirements of the PJM-GATS tracking registry.”⁸

In its Final Regulations, the Commission found “that the proposed changes to the definition of electric nameplate capacity in Section 75.22 *does not conflict with the language relating to the alternative energy credit certification* under Section 75.63. Nameplate capacity refers to the maximum watt output the system is capable of generating at any given time. Section 75.63 refers to the certification of alternative energy credits, which represents one megawatt-hour of generation from the alternative energy system or the actual generation output over time. Any reference to nameplate capacity found in Section 75.63 has the same meaning as that being established in Section 75.22” (emphasis added) and adopted the language as proposed.⁹

Although we do not disagree that each AEC represents one megawatt-hour of generation from the alternative energy system, we do disagree with the Commission’s finding that the “definition of electric nameplate capacity in Section 75.22 *does not conflict with the language relating to the alternative energy credit certification* under Section 75.63.”¹⁰ As is emphasized in our NoPR comments, several other SREC states and the regional tracking registry all certify facilities based on the DC capacity. Pennsylvania should not frustrate this process by changing the definition as it applies to system’s certification to produce AECs simply because it seeks to change the definition as it applies to net metering credits. At a minimum, the change to the definition as it applies to a system’s certification to produce AECs would have a complicating and confusing impact on facilities that seek AEC or SREC certification in multiple states (for example, facilities that seek certification in Pennsylvania and Ohio), where, as a result of this changed definition, each state would have a different interpretation of “nameplate capacity”, which would force the PJM-GATS tracking registry to reconcile the difference when the system is registered in the registry. This reconciliation would require approval by both states, each of which will be disinclined to change its definition in the interest of consistency. The difference could also impact how generation is estimated for verification purposes and cause confusion for system owners and aggregators alike. The Commission’s retention of the definition of “nameplate capacity” as it applies to Section 75.63 as referring to the system’s DC capacity, or more generally referring to the system’s maximum output, which would allow use of a DC rating in certification and registration, would eliminate these potential negative consequences of the Final Regulations as currently drafted.

⁷ GATS Operating Rules, available at <http://www.pjm-eis.com/~media/pjm-eis/documents/gats-operating-rules.ashx>.

⁸ SRECTrade NoPR Comments at 5.

⁹ Final Rulemaking Order at 101.

¹⁰ Final Rulemaking Order at 101.

Of import, it is not unusual for states to recognize a distinct definition of “nameplate capacity” for each of its interconnection or net metering rules and SREC certification rules, or even to recognize that both DC and AC are acceptable, so long as the identifier (AC or DC) is provided with the nameplate capacity listed. For example, Maryland does not have an AC/DC identifier in its definition of nameplate capacity, specifying only that “Nameplate capacity” means the maximum rated output of a generator, prime mover, or other electric power production equipment under specific conditions designated by the manufacturer, and is usually listed on a nameplate physically attached to the power production equipment.”¹¹ As stated in our comments, PJM-GATS has an intentionally vague but similar “maximum rated output of a generator” definition, and relies on the states to provide consistently measured data. For many years, the states have agreed to provide data in both DC and AC capacity, or in DC capacity alone, so that all generators can register with a DC nameplate capacity, in the interest of consistency.

In light of the Commission’s disposition on this definition, it is evident that the implications of the change were not given fair consideration. The Final Regulations do not passably address the administrative, time and expense burdens that this changed definition and resulting confusion will impose on stakeholders involved in the development, investment, deployment, and ongoing management of alternative energy systems. Furthermore, the Commission failed to provide a demonstrated benefit to this changed definition in its Final Regulations, as it applies specifically to Section 75.63, rendering the change unsubstantiated and, conclusively, not in the public interest when weighed against the cost.

B. Revised Language for 52. Pa. Code § 75.63(g)

In response to the Notice of Proposed Rulemaking for the *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Proposed Rulemaking Order, Docket No. L-2014-2404361 (Order entered February 20, 2014) (“NoPR”), SRECTrade submitted the following public comment in regards to the proposed end to the use of estimates for AECs:

“Per 44 Pa.B. 4179, “Section 75.63(g) has been supplemented with a proposed end to the use of estimates for future small solar photovoltaic systems and to clarify when estimated readings may be used by existing small solar photovoltaic systems.” To this end, the Commission proposed the following revisions to § 75.63(g):

“(g) For solar photovoltaic alternative energy systems with a nameplate capacity of 15 [kilowatts] kW or less that are installed or that increase nameplate capacity on or after _____ [Editor’s Note omitted], alternative energy credit certification shall be verified by the administrator designated under § 75.64 using metered data. For solar photovoltaic alternative energy

¹¹ COMAR 20.50.09.02 (21).

systems with a nameplate capacity of 15 kW or less that are installed before _____ [Editor's Note omitted], alternative energy credit certification shall be verified by the administrator using either metered data or estimates. The use of estimates is subject to the following conditions..." (emphasis in original).

As it reads, this paragraph does not seem to address what will be used for facilities that are greater than 15 kW that seek certification after the date that this rule will become effective. Accordingly, it seems more appropriate that the first half of this paragraph read:

"(g) For solar photovoltaic alternative energy systems with a nameplate capacity GREATER THAN 15 [kilowatts] kW ~~or less that are installed or that increase nameplate capacity to surpass 15 kW~~ on or after _____ [Editor's Note omitted], alternative energy credit certification shall be verified by the administrator designated under § 75.64 using metered data." (suggested revisions underlined).

In sum, this correction will clarify that all facilities *greater than 15 kW* shall be verified using metered data, and that facilities 15 kW or less may be verified using either metered data or estimates. As the rule currently reads, there would be no rule for facilities over 15 kW that seek certification after the effective date. By adopting our proposed revisions, only a facility *greater than 15 kW* would require the use of metered data (unless otherwise required by the conditions set forth by §§ 75(g)(1)-(5)).

SRECTrade recognizes that the Commission intended to propose these revisions in an effort to require all new solar photovoltaic systems to have a revenue grade meter to measure system output for alternative energy credit certification,¹² but this requirement is far more burdensome than the cost of a revenue grade meter alone. While the cost a revenue grade meter may have decreased in recent years, the burden of requiring small systems to report their generation in lieu of utilizing estimates has not changed.

Requiring all new small systems, or any existing system that expands its facility after the effective date of the rule, to report their generation [omitted] will undoubtedly have the impact of discouraging small systems from obtaining alternative energy credit certification (or deterring existing facilities from expanding). It is unreasonable to expect customers who can only afford (or who only need) a small solar facility to be required to install a [omitted] meter and report for a 2 kW facility that only produces roughly 2.4 [AECs or] SRECs in an entire year, and they will likely be unwilling to seek this incentive if the burden would so strongly outweigh the benefit. In addition to the burden placed on the

¹² 44 Pa.B. 4179, p. 14.

customer, reporting burdens are also placed on the customer's aggregator (if applicable) and the tracking system, which must constantly audit that facility's reported generation. Rather, by permitting for these small facilities to continue using estimates, the tracking registry can rely on the system's estimated annual production, which was carefully calculated at the time of certification for the very purpose of being reliable data for [AEC- or] SREC-creation.

For these reasons, SRECTrade strongly opposes the Commission's proposed rule to discontinue the use of estimates for solar photovoltaic systems 15 kW or smaller, and strongly encourages the Commission to adopt the language proposed above (thereby maintaining the Revenue Grade meter cap at [systems greater than] 15 kW).

In the Final Regulations, the Commission did clarify that "inverter readings for these small systems are acceptable meter data", but failed to address the clarity sought by our comments. Moreover, the Commission failed to give adequate weight to the burden that its regulation would impose on small system owners, and ruled to adopt Section 75.63(g) as proposed. In support of its argument, the Commission noted that "owners of alternative energy systems are not required to participate in alternative energy credit (AEC) markets, and are free to pick and choose when to participate based on many reasons, including the effort involved in reporting system output and the price they get for the AECs they generate."¹³

SRECTrade strongly disagrees with the Commission's inference that the AEC program is inconsequential in a system owner's decision to purchase a solar system. On the contrary, the AEC program may be a substantial factor in a system owner's decision to invest in solar, in that AECs provide system owners with a source for a return on their investment ("ROI"). To argue that system owners are "not required to participate" in the program is to infer that the program is inconsequential and insignificant when, in fact, the financial viability of a small system owner's facility may depend heavily on the continued ROI that AECs provide. And, when the value¹⁴ of AECs is weighed against the burden of purchasing an inverter with readable output and reading and reporting those readings on a monthly basis, then potential investors may reconsider making an investment in solar entirely—which is extremely significant. In its disposition, the Commission fails to appropriately account for these soft costs associated with reporting generation, especially for small systems. As with the example provided in our comments, to require a 2 kW system to report their generation on a regular basis in order to receive 2.4 AECs/SRECs per year (for an ROI of less than \$45 per year) is hardly worth the time, energy, and administrative burden of reading, reporting, and verifying reported generation. And it is not just the system owner that bears this

¹³ Final Rulemaking Order at 111.

¹⁴ See Market Prices at http://www.srectrade.com/srec_markets/pennsylvania.

burden, but the system owner's aggregator (which a small system owner is very likely to have) and PJM-GATS (for generation verification and, in the event of errors in reporting, the follow-up required for rectifying reporting errors). In comparison, the AEPS Program Administrator can, at it has done for the life of the AEPS program, provide an upfront estimated production schedule for a system, and allow that system to recognize the full ROI without the added and unnecessary burden on the system owner, system manager or aggregator, and PJM-GATS.

In light of the Commission's disposition on this definition, it is clear that the implications of the change were not given thorough evaluation. Again, the Final Regulations do not passably address the administrative, time and expense burdens that this change will impose on stakeholders involved in the development, investment, deployment, and ongoing management of alternative energy systems. The undue burden imposed on prospective system owners obstructs the goals of the AEPS Act. In that the change would disincentive prospective system owners from investing in solar, the Final Regulations are not in the public interest, specifically in regards to encouraging solar investment and deployment in the Commonwealth of Pennsylvania.

III. CONCLUSION

For the reasons set forth herein, SRECTrade respectfully urges the IRRC to disapprove the Final Regulations on the grounds that the Final Regulations frustrate the intention of the AEPS Act and do not serve the public interest of the Commonwealth of Pennsylvania.

Respectfully submitted,



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Date: May 16, 2016