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An Exelon Company

Michael S. Swerling
Assistant General Counsel

Direct Dial: 215 841 4220

PECO Energy Company
2301 Market Street, 523-1
Philadelphia, PA 19103

May 17, 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

2016 MAY 17 AM 11:48

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Re: Implementation of the Alternative Energy Portfolio Standards Act of 2004
PUC Docket No. L-2014-2404361: IRRC# 3061

Dear Chairman Bedwick:

Enclosed please find the Comments of PECO Energy Company to the Final Form Regulation regarding *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, which was submitted to the Independent Regulatory Review Commission ("IRRC") by the Pennsylvania Public Utility Commission on March 22, 2016.

Please do not hesitate to contact me at 215-841-4220 should you have any questions regarding this filing.

Very Truly Yours,


Michael S. Swerling

Enclosure

size limitation).²

While PECO supports approval of the Final Form Regulation, the Company believes that, as the renewable marketplace continues to advance and mature, further review and regulation may be required to address key issues (related to the fair allocation of costs among customers), including net metering, rate design, distribution revenues, the impacts of distributed generation and customer cross-subsidization.

PECO believes that Commission policy should continue to ensure that, to the greatest extent possible, customers pay for the services they receive through rates designed to match cost causation. Put differently, no customer pays more than their fair share for use of the grid. Even with the changes proposed by the Commission in this proceeding, Pennsylvania's net metering framework continues to facilitate a shift of the costs of distribution service from net metering customers to other distribution customers, and the magnitude of this subsidization continues to increase. AEPS obligations continue to drive the development of new distributed generation and increase both the number of customer-generators and volume of customer-generated electricity. Specifically, PECO has over 3,300 net metering customers, representing over 63 MW of installed capacity. Additionally, approximately 1,500 installations are in the process of being interconnected.

As such, the legal framework in Pennsylvania must continue to appropriately balance support for alternative energy and distributed generation, allocation of costs between net-metering and non-net metering customers on a fair and reasonable basis, and rate designs that generate sufficient revenues for electric distribution companies to continue to develop

² The 200% size limitation for privately owned distributed generation systems is a constructive addition to the Commission's existing policy, which applies a 110% system limit to leased systems. This policy was adopted in *Net Metering-Use of Third Party Operators*, Docket No. M-2011-2249441 (Final Order entered March 29, 2012).

and operate the reliable electric distribution networks on which all customers rely.

III. CONCLUSION

PECO appreciates the opportunity to comment on the Final Rulemaking Order and asks that IRRC favorably consider its comments and approve the Commission's Final Form Regulation.

Respectfully submitted,



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Date: May 17, 2016

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Lego V, LP

121 Brickyard Rd.
Mars, PA 16046

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(724) 625-1511
Fax (724) 625-3750

May 16, 2016

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

RE: Implementation of the Alternative Energy Portfolio Standards ("AEPS") Act of 2004
Pennsylvania Public Utility Commission ("PUC") Regulation No. 57-304
Independent Regulatory Review Commission ("IRRC") No. 3061

Chairman Bedwick:

Lego V, LP operates a landfill gas recovery system and bio-gas processing plant at Seneca Landfill in Jackson Township in Butler County near Evans City, PA. Both companies are owned and controlled by members of the Vogel family who own and operate the largest independent waste disposal company in western Pennsylvania employing over 500 people. The hauling divisions have begun the process of converting the various truck fleets to compressed natural gas as new trucks are purchased. Lego V currently fuels a natural gas generator with the landfill gas providing a portion of the electric power as well as recovered heat that is required by treatment operations at the landfill. Lego V has begun the permitting and power application process to upgrade the gas processing facility that will enable Lego to meet its present power and heat needs and allow for future expansion. The improvements include adding two 1.5 megawatt generators to be powered by the recovered landfill gas.

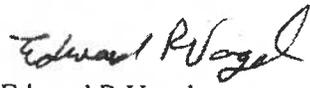
Lego V presently is a customer-generator using and intending to net meter in the service territory of Penn Power/First Energy, as provided in the current PUC regulations, the tariff of Penn Power and the Alternative Energy Portfolio Standards Act, or AEPS. It is understood that the legislature in passing the AEPS Act overwhelmingly in 2004, established net metering to foster the development of alternative energy systems. It was understood there would be a need to provide some support to assist the successful development of these alternative systems in a market dominated by long established fossil fuel generation that for years have transferred external costs to rate paying customers. It is unwarranted for these large energy distributors who presently are shedding generation capacity to be claiming they are championing the cause of rate payers. As markets adjust, this limited support for bio-gas production from landfills, farms and waste water facilities continue to create sustainable beneficial sources of alternative energy from waste by-products.

The PUC acting to preempt by de facto rule the intent and the law passed by the legislature seems misaligned. If net metering is to be challenged it should be done through changing the law by legislative representative vote, not by a non-accountable body to the people of the Commonwealth.

There is concern that the subject regulations regarding net metering being reviewed by IRRC are out of step with the law passed in 2004, and will have a severe impact on several Vogel projects for generating electricity and the companion Combined Heat and Power plants fueled by recovered landfill bio-gas. The net metering aids the present day economic viability, and supports an environmentally positive approach in recovering and utilization of methane that previously was vented or flared directly in to the atmosphere. This is optimizing the managing of solid waste which is the larger community's responsibility.

The greater good is served by the advancement of alternative energy sources and systems that ultimately over time are evolving into more cost effective solutions. The IRRC would do well by curtailing the PUC over reach and maintain the concept of net metering as established in the AEPS Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward R. Vogel". The signature is written in a cursive style with a large, prominent "V" at the end.

Edward R Vogel

President Lego V LP.

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2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001

2016 MAY 18 AM 8:45

Tori L. Giesler, Esq.
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610-929-3601

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May 17, 2016

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

**Re: *Implementation of the Alternative Energy Portfolio Standards Act of 2004;*
Docket No. L-2014-2404361; IRRC # 3061**

Dear Chairman Bedwick:

Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power") and West Penn Power Company ("West Penn") (collectively "the Companies") respectively submit this letter to provide input related to the above-referenced rulemaking proceeding ("Rulemaking") pending review of the Independent Regulatory Review Commission ("IRRC"). As proposed, the Rulemaking is aimed to update the Pennsylvania Public Utility Commission's ("Commission") regulations to comply with the 2007 and 2008 amendments to the AEPS Act, as well as clarify certain implementation issues which have arisen over the course of implementation.

The Commission's proposed revisions extend to the topics of portfolio standards, interconnection, and net metering rules. In general, the Companies support the proposed revisions as necessary clarifications that are likely to provide efficiency and clarity in the application of the AEPS Act and Chapter 75 of the Commission's regulations. In particular, the Companies strongly support the Commission's effort to clarify within its regulations that a customer-generator is a retail electric customer with native load, as this guidance is consistent with the AEPS Act. Given the level of confusion raised by developers of merchant generation as to what qualifies for net metering, the Companies believe that these revisions are critical to eliminating disputes and gaining efficiencies for customers, the Commission and electric distribution companies ("EDCs") in carrying out the mandates of the AEPS Act and the Commission's associated regulations at Chapter 75. It is the Companies' strong belief that merchant generation was not intended to enjoy the protections and benefits afforded by net metering under the AEPS Act due to the fact that the merchant generation community has the ability to access wholesale energy markets through other avenues. Other portions of the revisions, while not controversial, simply document what exists as an ongoing process today, which the Companies believe is beneficial in creating transparency and consistency for all affected parties.

The Honorable George D. Bedwick, Chairman
May 17, 2016
Page 2

Most significantly, the proposed changes to § 75.13 are intended to further clarify the qualifications a customer-generator must demonstrate in order to net meter, including ownership status, size restrictions, and Commission approval requirements. These proposed additions are consistent with the intent of the legislation, and yet have been a subject of much unnecessary conflict between utilities, developers and the Commission. Due to this pattern of debate in application of these provisions, the Companies fully support the revisions to § 75.13, as it is expected that in further outlining the legislature's intent, the additional clarity in the regulations will promote economic efficiency and minimize customer disputes regarding what constitutes a qualifying system. In particular, the Companies support the notion that in order to qualify as a customer-generator, there necessarily must be native load (i.e., load that would exist absent the customer-owned generation) at the service location which exceeds the customer's anticipated usage. To permit anything other would allow merchant generators to bypass the existing process through which they sell to the wholesale market, at the expense of retail electric customers and EDCs, while those merchant generators already have access to the marketplace through other means. The Companies share the Commission's interest in properly aligning the regulations with the intent of the AEPS Act such that the benefits of net metering are provided to true customer-generators and believe that the limitations proposed, while restrictive as to merchant generators, will lead to create a more sustainable net metering environment for the Commonwealth and all EDC ratepayers.

Thank you for your consideration of the Companies' input. Please contact me if you have any questions regarding this matter.

Very truly yours,



Tori L. Giesler

dln

cc: Scott Gebhardt, Bureau of Technical Utility Services
Kriss Brown, Law Bureau

May 18, 2016

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

RE: Regulation #57-304: Implementation of the Alternative Energy Portfolio Standards Act of 2004
(Pennsylvania Public Utility Commission)

Dear Members of the Commission:

Pennsylvania Farm Bureau (PFB) is pleased to offer comments on *Regulation #57-304: Implementation of the Alternative Energy Portfolio Standards Act of 2004*, promulgated by the Pennsylvania Public Utility Commission (PUC), revising the governing regulatory standards for implementation of the Alternative Energy Portfolio Standards Act of 2004 (AEPS Act), 73 P.S. § 1648.1, et seq.

PFB is a general farm organization, made up of more than 59,780 members. Since 1950, PFB has provided support, advocacy and informational and professional services for agriculture and farm families, including those operating Tier I energy generation systems on farms who may be affected by this rulemaking. Our organization includes 54 local organizations (County Farm Bureaus) that actively operate in 64 of Pennsylvania's 67 counties.

First of all, as we noted in our comments of Sept. 3, 2014 to the PUC on its proposed rulemaking, it seems clear that one of the primary purposes underlying the PUC's rulemaking process in this case is to ensure that farmers and other Tier I generators receiving the benefits of "net metering" are truly local customers engaged in consumption of electricity in the system for which the generator is supplying electricity. The three systems most often developed and operated on farms eligible for net metering generate electricity through utilization of anaerobic methane digestion, solar energy and wind energy.

While opportunity for supplemental income through electrical generation may be part of the reason why Tier I energy systems are developed and operated on farms, it is hardly the primary incentive behind their development and operation. Farmers must incur high input and operation costs to viably engage their farms in agricultural production, and development and maintenance of alternative energy systems requires farmers to commit a serious amount of capital outlays and debt. Rarely, if ever, are farmers using their farms as a façade for operation of the type or scale of intensive electrical generation system commonly operated by commercial electrical companies. Typically, the "income" from the electrical generation "enterprise" is merely part of the income and cost factors managed overall by the farmer in the viable management of the farm as a single business unit.

In its advance notice of final rulemaking, the PUC took steps reflecting its recognition and appreciation of the fact that there are many non-economic reasons why farmers have engaged in Tier I energy development by increasing the eligibility threshold for net metering from the originally proposed 110 percent of the customer-generator's annual electric consumption at the interconnection meter to 200 percent, and revising the definition of "customer-generator" to make clear that it is intended to represent a "non-utility owner or operator" of the distributed generation system. Yet while these changes represent a move in the proper direction by the PUC, PFB remains concerned that they still do not sufficiently take into account the twin imperatives faced by farm families: the need to increase production yields while at the same time accounting for and managing, as required by statute and regulation, the environmental impacts associated with such increases. Operation of Tier I energy generation systems can and does play a critical role in farmers' ability to attain agricultural production yields

necessary for the farm's continued economic viability in a way that is more compatible with sustaining the environment.

In our previously referenced Sept. 3, 2014 comments, we noted that the use of methane digesters on farms provides farmers with an expensive, but feasible, opportunity for farmers engaged in more intensive farming operations to manage adverse environmental effects and legally meet the increased water and air quality standards imposed on more intensive agricultural practices while also providing the opportunity to offset costs or generate revenue from the process, which is an important factor due to the high capital costs of the system. The U.S. Department of Agriculture, U.S. Environmental Protection Agency and the U.S. Department of Energy recognize the many benefits and opportunities offered by anaerobic digestion systems and strongly encourage animal agriculture operations (particularly those in the Chesapeake Bay Watershed) to increase implementation of these systems. We also noted that for many "larger scale" farms in the Commonwealth, a farmer's decision to initially develop a methane digestion system or to install capital infrastructure to increase operational capacity of their current system is done more for environmental purposes than for purposes of additional income or increased access to electrical energy.

In the same vein, relative to crop production, development of solar and wind energy systems provide farmers the opportunity to manage their farms in a more economically efficient and environmentally efficient manner. These systems can be located on marginally productive lands that are susceptible to high rates of soil erosion when used in field crop production, which allows resources and inputs for increasing crop production yields to be more effectively and efficiently directed to fields with more fertile soil types and more optimum slope and land conditions.

Finally, as noted in our previous comments, income from the generation of electricity is often the only revenue stream that will be factored into a project's "payback period" or "return on investment" by lenders and investors. For that reason, the ability of a project to recoup retail electricity prices (versus wholesale prices or avoided costs) through net metering is extremely important.

In light of the critical benefits that development and operation of Tier I systems on farms can feasibly provide to the ability of Pennsylvania farmers to achieve environmental quality and legally meet environmental obligations of Chesapeake Bay TMDL and other requirements of federal and state law, we strongly reiterate our recommendation that any regulations finally adopted by the Commission ensure the broadest eligibility of all Tier I systems on farms engaged commercially by farm families in agricultural production to the benefits of net metering, both now and in the future.

In spite of the PUC's changes to the language of the regulation, those changes will not substantially enhance the ability of farmers to be eligible for net metering in development of on-farm systems whose capacity for electrical generation exceeds 200 percent of the farmer's annual consumption. While the 200 percent limitation is an improvement relative to the PUC's original proposal, it remains an arbitrary figure that is problematic for several reasons. As described above, farmers develop and operate on-farm generation systems more for environmental management rather than economic gain. Given the high costs and debt that farmers must incur in developing these systems, the 200 percent limitation will still disincentivize farm families' use of Tier I generation to achieve the level of environmental control or economic efficiency that they will need to viably sustain their farms in agricultural production.

Again, PFB understands that the general purpose behind the PUC's proposed criterion of "200 percent of consumption" is to ensure utilities and other truly commercial generation enterprises are not able to masquerade as "customers" to obtain the benefits of net metering that they were not intended to receive. But use of this same criterion in the context of Tier I systems operated on legitimate farm operations is unreasonable and arbitrary, as described above.

Pennsylvania Farm Bureau

510 S. 31st Street, P.O. Box 8736 | Camp Hill, PA 17001-8736 | 717.761.2740 | www.pfb.com

PFB notes that the PUC, in the advance order, included language that would allow for exclusion from the 200 percent limit for systems for which the Pennsylvania Department of Environmental Protection (DEP) provides confirmation that it is used to comply with the DEP's Chesapeake Bay Watershed Implementation Plan (WIP), or is an integral element for compliance with the Nutrient Management Act. However, qualification for exclusion from the limitation would be determined by forces well beyond the control of the farmer-generator. Financially viable plans for development or expansion of systems by farmers could be thwarted by a determination by agency officials that the expansion is not immediately necessary for compliance with Nutrient Management Act or the state WIP.

At the same time, the PUC's language puts regulatory agencies, such as the DEP, in a position to determine when minimum legal standards and requirements are being exceeded by a regulated entity. This is a role that differs from that which such agencies should and normally do perform, which is to evaluate and affirm whether or not an entity is in compliance with legal and regulatory standards.

Therefore, in light of the overriding environmental quality incentives driving the on-farm installation of the types of alternative energy systems we have described, as well as the subjective nature inherent in any process of determining which on-farm systems are eligible for "exclusion" from certain requirements or limitations under the advance order, PFB recommends that the Commission disapprove the final regulation.

PFB again thanks the Commission for the opportunity to comment on this important issue.

Sincerely,



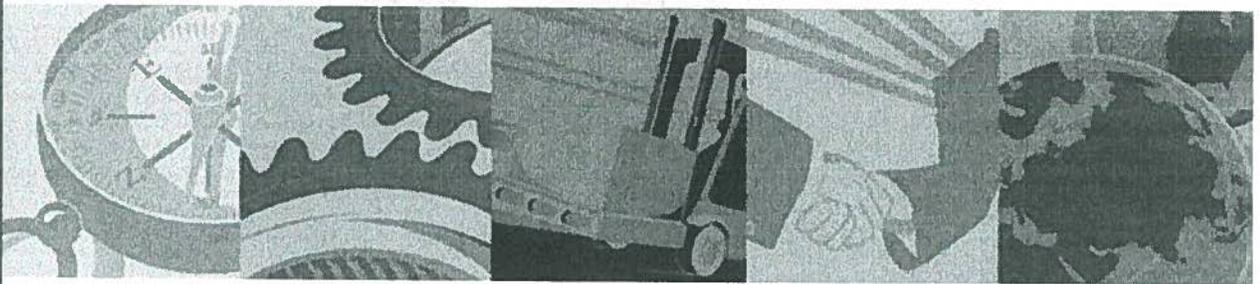
Grant R. Gulibon
Director, Regulatory Affairs

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IRRC Briefing – May 19, 2016

David N. Hommrich

President

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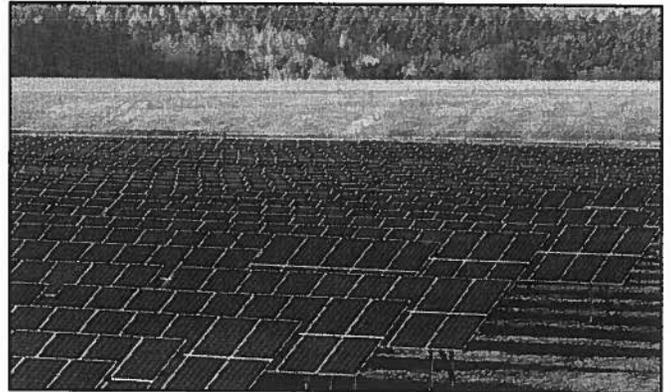
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Creation of the PA Renewable Energy Industry

- **Many renewable energy companies formed between 2005 and 2010 (including Sunrise Energy)**
- **Many were just getting on their feet in the midst of the “Great Recession” in 2008 (the global financial crisis)**
- **Sunrise Energy (and many others) made a bet on an economic recovery, and on the protection provided under Pennsylvania’s AEPS Act**
- **The Act was written to protect renewable energy owners from the historically predatory behavior of electric utilities**
- **Everyone assumed that the PUC would be there to protect the industry.**
- **No one could have predicted the changes that are now being proposed.**



Sunrise Energy joined over one hundred other companies to create today's Pennsylvania renewable energy market. This was only possible because of the AEPS Act

The Regulatory Bait & Switch

- Around 2011, the PUC began attempting to “morph” the AEPS Act.
- Not a result of a statutory change, but rather a change in the makeup of the PUC
- Initially, they took aim at third party owners of renewable energy systems
- This was the first attempt by the PUC at a cap on production (henceforth known as the 110% rule)
- Renewable energy developers were assured that this rule would only apply to third party owners, so there was little objection.
- Then, in February of 2014, the PUC announced the new rulemaking, which rolled back promises made only two years earlier. The first of many bait and switches.
- For the last 2 ½ years, a pall has been cast over the renewable energy industry in Pennsylvania that has frozen the market



Far from promoting regulatory certainty (as they claim), the PUC has created a climate where everyone fears when the next shoe may fall.

Small Businesses are Outgunned / Outmatched

- **Any small business caught up in the whirlwind from the PUC's rulemaking knows how rigged the system is**
- **Electric utilities, emboldened by the rhetoric of the PUC, have been imposing undocumented rules for a long time**
- **The current rulemaking is an attempt to retroactively promulgate a regulation to match what has actually been enforced in the field for years.**
- **In order for a small business to even file a complaint with the PUC, they must hire legal counsel. Most simply can't afford it.**
- **Meantime, the PUC and the electric utilities have essentially unlimited resources at their disposal**
- **The Regulatory Review Act is the only real protection that small businesses have against excessive regulation**



No small business can hope to do battle with the PUC or with their allies (the electric utilities)

The Damage of “Frivolous Rulemaking”

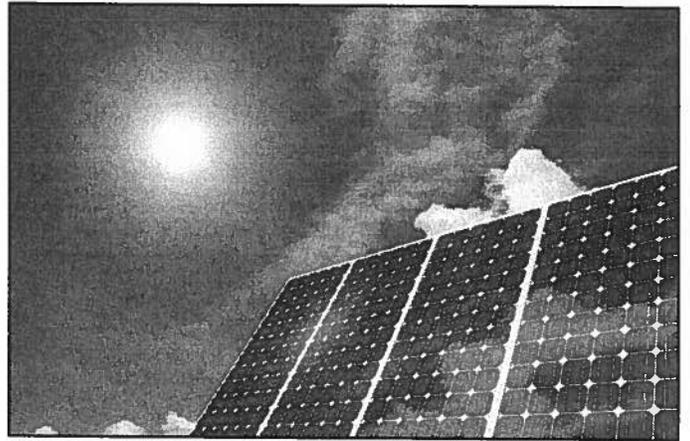
- The PUC has consistently failed to produce the compelling need for their regulation
- Claims of excessive net metering costs are unsubstantiated, and exaggerated
- In the legal system, this would be called a frivolous lawsuit (and there would be consequences)
- However, nothing prevents an agency from initiating a rulemaking that has a poor chance of passing. The worst outcome is disapproval, and the agency loses nothing
- Meantime, the “freeze” on the market happens immediately, and lasts the duration of the regulatory review process
- This kind of market manipulation should have consequences
- The current rulemaking has wasted countless hours, and millions in lost revenue in PA
- Investors will spend their money elsewhere unless something is done.



The PUC presented a flawed regulation that has sown uncertainty in the renewable energy market by its very existence. Even if it is ultimately disapproved, the damage they caused in lost jobs and lost revenue can't be undone.

The Future of Renewable Energy in Pennsylvania

- **Passage of this new regulation will represent a very large step in the dismantling of the AEPS Act, and the industry that it spawned....without being triggered by a change to the underlying statute.**
- **The Pennsylvania AEPS Act is one of the best renewable energy statutes in the country. That was the intent of the PA General Assembly when they wrote it.**
- **If we allow the PUC to erode the Act through unnecessary regulations, we disenfranchise people who voted for the leaders who wrote the Act.**
- **We don't elect the PUC. We appoint them. They are not allowed to legislate; they may only regulate.**
- **Despite the damage done to date, there is still a chance for the PA renewable energy market to flourish.**



The PUC must find a way to work with and support the renewable energy industry. The AEPS Act mandates it.