

RECEIVED
IRRC

3061

June 21, 2016

JUN 21 2016 AM 9:06

Independent Regulatory Review Commission
333 Market Street
Harrisburg, PA 17101
Attention: Chairman George D. Bedwick

Sent by email to irrc@irrc.state.pa.us

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

Dear Chairman Bedwick:

As a participant in the Commonwealth's AEPS and net metering program through our landfill gas-to-energy project, we are now even more concerned with the final revised ruling passed by the PAPUC on June 9, 2016 and continue to ask the IRRC to disapprove this final revised rulemaking.

With the removal of only the "200% limitation", the language that remains is now even more restrictive to the future development of renewable energy projects in the Commonwealth. Where the previous language may have grandfathered some existing projects and allowed future development under the 200% limitation, the revised language will now exclude any project deemed a "utility" whether existing or proposed.

The new definition of what is considered a "utility" which says "A person or entity that provides electric generation, transmission or distribution services, at wholesale or retail, to other persons or entities" is so broad that it appears to negate any chance of any party involved in any form of electricity production or distribution to anyone. It is setting a precedent by declaring any alternative energy producer that basically provides power to anyone else as a "utility". The Public Utility Code specifically excludes Electric Generation Suppliers (non-PAPUC regulated suppliers) from the definition of a public utility.

A utility is traditionally considered a provider of services for the good of the general public and therefore subject to substantial regulations and reporting requirements. A small, on-site, non-regulated alternative energy system is simply not a utility by any definition. This new utility definition in conjunction with the revised customer-generator definition (which goes beyond the statutory language) does not support the AEPS Act's intent to promote renewable generation.

By way of example, this new definition appears to not allow existing and future alternative energy providers (such as a Solar City or Vivint Solar) to provide power to residential customers by now declaring them a utility. This means 30% to 50% (assuming PA market penetration mimics the national market share for these two solar suppliers) of solar projects on houses would no longer be eligible for net metering – severely impeding existing project economics and the development of new alternative energy systems. The same remains true for larger systems that rely on partnerships with other parties.

In its revisions, the PAPUC several time uses the word "presume" the legislature meant something and this presumption becomes the basis for their interpretation of the term utility and customer-generator. We would suggest the legislature provide written clarifications to its own bill and that presumptions are not used to re-write content that end up being detrimental to the true intent of the bill itself.

Our understanding is that the net metering rules were established to promote the use of renewable energy in the Commonwealth under the AEPS Act which "was designed to foster economic development, encourage reliance on more diverse and environmentally friendly sources of energy". In our opinion, however, the proposed revised changes to the Act will undermine these objectives and slow the acceptance of these environmentally responsible technologies.

Significant investments were and are are being made, benefiting both the environment and the local communities, relying on this understanding. Changing the rules after the fact is unfair to current and new net metering participants and threatens the viability of their businesses. In addition, it undermines public trust in the Commonwealth and its existing laws. Pennsylvania will have difficulty attracting future investment, if its announced long term policies are subject to regular revision.

Executive Order 13423 of January 24, 2007, Strengthening Federal Environmental, Energy, and Transportation Management, signed into law by the President, states in Section 2, subset (b) ensure that (i) at least half of the statutorily required renewable energy consumed by the agency in a fiscal year comes from new renewable sources, and (ii) to the extent feasible, the agency implements renewable energy generation projects on agency property for agency use. Our landfill gas project enables the Federal Bureau of Prisons in the North East Region to meet this mandate.

Thanks for your consideration of our comments.

Respectfully Submitted,



L. J. Oddo

Complex Warden
FCC Allenwood