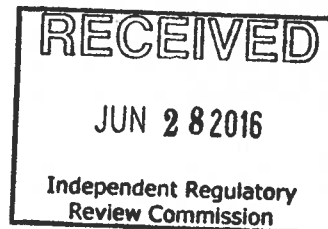


3061



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION



June 28, 2016

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 Regulation No. 57-304
Independent Regulatory Review Commission (IRRC) No. 3061

Dear Members of the Independent Regulatory Review Commission:

The Pennsylvania Department of Environmental Protection (DEP) appreciates the opportunity to comment on the Pennsylvania Public Utility Commission's Implementation of the Alternative Energy Portfolio Standards Act of 2004 Regulation No. 57-304 (IRRC No. 3061). Please find DEP's comments enclosed.

If you have any questions, please feel free to contact Jessica Shirley, Acting Policy Director, by e-mail at jessshirley@pa.gov or by telephone at 717.783.8727.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick McDonnell".

Patrick McDonnell
Acting Secretary

Enclosure

3061

RECEIVED

JUN 28 2016

Independent Regulatory
Review Commission

**BEFORE THE
INDEPENDENT REGULATORY REVIEW COMMISSION**

Regulation #57-304: Implementation of the Alternative Energy Portfolio Standards Act of 2004

**COMMENTS OF THE
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

The Pennsylvania Department of Environmental Protection (DEP) appreciates the opportunity to comment on the Pennsylvania Public Utility Commission's (PUC's) Implementation of the Alternative Energy Portfolio Standards (AEPS) Act of 2004 Final Rulemaking currently before the Independent Regulatory Review Commission (IRRC). The Department is appreciative of the May 19, 2016 action IRRC took in disapproving the regulation as previously submitted and the revisions made by PUC to address the concerns of IRRC, DEP and other parties in this proceeding.

While the removal of the net-metered system limit of 200 percent of load is consistent with the AEPS Act, the changes made to the regulation have created additional clarity issues with the regulation. In addition, DEP wishes to remind IRRC of issues DEP previously raised to the Commission.

75.1 – Definition of Utility

In removing the 200 percent limitation, the PUC has also amended the definition of "utility" in their final rulemaking. The previous definition included an exemption for systems that produced no more than 200 percent of their load. The revised definition removes this exemption sentence in its entirety.

The new definition creates a clarity issue within the regulation. Both the plain language of the AEPS Act and the intent of the legislature was to allow customer-generators to take advantage of net metered rates to increase the amount of renewable generation in the Commonwealth. The new definition of "utility" has created the appearance that all customer-generators are utilities due to the fact that they produce electricity.

While DEP believes that the regulation considered in its entirety as written supports the intent of the statute, PUC's definition has created an uncertainty amongst many parties due to its lack of clarity. DEP would encourage IRRC to provide PUC the opportunity to correct this oversight.

75.13(k) – Ability of PUC to Authorize Fees or Charges by Order

The AEPS final rulemaking includes language prohibiting electric distribution companies (EDCs) from charging fees or other types of charges for net metering by adding an exception for fees or charges "specifically authorized by this chapter or by order of the Commission." The preamble of the proposed regulation explains that this language was added in order to resolve an inconsistency in the regulations. Specifically, in 75.14(e), the PUC permits EDCs to charge fees for incremental expenses related to the processing of an account in order to provide virtual meter aggregation.

While DEP agrees that it is appropriate for customer-generators to pay for the costs related to virtual meter aggregation as outlined in the AEPS final rulemaking, inclusion of the phrase "or by order of the Commission" is unnecessary and unsupported by statutory authority. The inconsistency identified by the PUC is fully resolved by the inclusion of the phrase "specifically authorized by this chapter" which clearly would include the fees in 75.14(e). A blanket authorization to impose fees as the PUC may see fit goes further than needed to address the inconsistency, and opens the door for the future imposition of fees not intended under the AEPS. As with the virtual meter aggregation fees, any future additional fees should be properly vetted within the context of the Regulatory Review Act, and consistent with the intent of the AEPS.

75.14(e) – Virtual Meter Aggregation

Under the AEPS final regulation, customer-generators can aggregate generation and load at different locations subject to certain conditions. One of these conditions is that "all service locations to be aggregated must . . . have measurable load independent of any alternative energy system." DEP feels this creates a burden toward virtual meter aggregation that unnecessarily discourages potential customer-generators from installing systems.

It would not be unreasonable for example for a property owner with multiple acres to install solar panels on a remote corner of their property. If it makes more economic sense to interconnect this generation to a nearby distribution line instead of connecting the system back to the customer-generator's meter, that option should remain available to both the customer-generator and the electric distribution company. The result of requiring load independent of the distributed generation system will add additional costs or disqualify systems unnecessarily. The PUC proposed limitations requiring that service location accounts be held by the same entity provides an adequate safeguard against the merchant generator concerns that the language related to independent load at the distributed generation site seems intended to address.

Ultimately, the intent of the net-metering and virtual metering provisions of the AEPS is to encourage the installation of distributed alternative energy generation and we urge the PUC not to impose requirements that make that goal more difficult.