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INDEPENDENT REGULATORY
REVIEW COMMISSION



House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

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SECRETARY'S BUREAU

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August 21, 2014

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, Pennsylvania 17105-3265

RE: Implementation of the Alternative Energy Portfolio Standards Act of 2004
Docket No. L-2014-2404361

Dear Ms. Chiavetta:

In accordance with the Public Utility Commission's ("PUC's") Proposed Rulemaking Order filed under Docket No. L-2014-2404361, we are hereby attaching comments regarding the Commission's proposed amendments to regulations implementing the Alternative Energy Portfolio Standards Act ("AEPS") of 2004.

We read with great interest the Commission's letter to George Greig, Secretary of Agriculture, regarding the Department of Agriculture's request to extend the comment period for the above captioned rulemaking.

Clearly the proposed rulemaking has a profound impact upon agriculture operations in the Commonwealth, and we appreciate Secretary Greig's advocacy for those farmers and agricultural operations that have installed anaerobic digesters in support of the AEPS who may now be unfairly penalized under the Commission's proposed rule.

On behalf of the hardworking men and women of the our legislative districts who engage in agriculture and have in good faith installed alternative energy systems, including anaerobic digesters, we offer the following comments and strongly encourage the Commission to consider them.

Sincerely,

Representative Mindy Fee
37th Legislative District

Representative David Hickernell
98th Legislative District

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Representative Gordon Denlinger
99th Legislative District



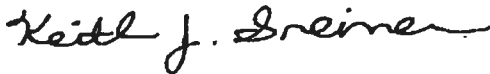
Representative Bryan Cutler
100th Legislative District



Representative Ryan Aument
41st Legislative District



Representative Steven Mentzer
97th Legislative District



Representative Keith Greiner
43rd Legislative District

cc: John Maher, Chairman
House Committee on Agriculture

Robert Godshall, Chairman
House Committee on Consumer Affairs

Ron Miller, Chairman
House Committee on Environmental Resources & Energy

Greg Greig, Secretary
Pennsylvania Department of Agriculture

E. Christopher Abruzzo, Secretary
Pennsylvania Department of Environmental Protection

June Perry, Legislative Director
Public Utility Commission

Attachment

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|--|---|---------------------------|
| Implementation of the Alternative | : | Docket No. L-2014-2404361 |
| Energy Portfolio Standards Act of 2004 | : | |
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**COMMENTS OF
REPRESENTATIVES FEE, HICKERNELL, DENLINGER, CUTLER, AUMENT, MENTZER, GREINER**

INTRODUCTION

The Pennsylvania General Assembly enacted the Alternative Energy Portfolio Standards Act (“AEPS”) in 2004.¹ The purpose of the AEPS statute was to, “provide for the sale of electric energy generated from renewable and environmentally beneficial sources.” as well as for the, “...acquisition of electric generated from renewable and environmentally beneficial sources by electric distribution and supply companies.”² More generally, the General Assembly believed as a matter of public policy that the Commonwealth should encourage the development of sources of energy that utilize renewable fuels, such as solar photovoltaic, solar thermal, wind power, as well as biomass energy and biologically derived methane gas from anaerobic digestion of organic materials.³

Since its inception in 2004, the General Assembly has taken great interest in the results of the AEPS statute. For example, the law was amended by the General Assembly twice to reflect

¹ See the act of Act of Nov. 30, 2004, P.L. 1672, No. 213.

² See the Constitutional Title of the act of Nov. 30, 2004, P.L. 1672, No. 213.

³ The AEPS statute delineates sources based on Tiers. Tier I resources include solar photovoltaic and solar thermal energy, wind power, low-impact hydropower, geothermal energy, biologically derived methane gas, fuel cells, biomass energy and coal mine methane. Tier II resources include waste coal, distributed generation systems, demand-side management, large scale hydropower, municipal solid waste, generation of electricity outside of Pennsylvania utilizing by-products of the pulping process and wood manufacturing process including bark, wood chips, sawdust and lignin in spent pulping liquors and integrated combined coal gasification technology.

ongoing efforts by the legislature to clarify issues with the statute as well as make other policy changes the legislature deemed appropriate.⁴ Further, the General Assembly has required, since the AEPS statute first was enacted, that the Commission provide an ongoing assessment of the AEPS program through the issuance of an annual report to the legislature.⁵

The purpose of the required annual report is to provide information to the members of the General Assembly so that, *should issues arise with the implementation of the AEPS statute*, that the House of Representatives and the Senate could actively engage in those decisions and manage the program to the betterment of the people of the Commonwealth. In furtherance of that goal, the report requires the Commission to give the following information to the General Assembly each year:

* * *

(1) The status of the compliance with the provisions of this act by electric distribution companies and electric generation suppliers.

(2) Current costs of alternative energy on a per kilowatt hour basis for all alternative energy technology types.

(3) Costs associated with the alternative energy credits program under this act, including the number of alternative compliance payments.

(4) The status of the alternative energy marketplace within this Commonwealth.

(5) Recommendations for program improvements.⁶

⁴ See Act 35 of 2007 and Act 129 of 2008.

⁵ See Act 213 of 2004 § 7(c).

⁶ *Ibid.*

PROPOSED RULEMAKING

The Commission now has before it proposed revisions to the Commission's regulations implementing the AEPS which the Commission declares are, "...necessary to update and revise [the current] regulations to comply with Act 129 of 2008, and Act 35 of 2007, and to clarify certain issues of law, administrative procedure and policy."⁷ While the Commission's proposed regulatory changes are being promulgated under the guise of codifying appropriate regulatory changes pursuant to statutory changes, there are some aspects of the Commission's proposed changes which are seeking to make *substantive and policy-related* changes to the AEPS which have not been authorized by the General Assembly.

For example, the Commission's proposed changes to the net-metering provisions (52 Pa. Code §75.13), specifically the newly proposed limitations relating to the size of alternative energy systems so that they cannot generate more than 110 percent of the customer-generator's annual electric consumption at the interconnection meter and all qualifying virtual meter aggregation locations is not only unjust and unreasonable, it directly contradicts the very purpose of the AEPS act, which seeks to *expand*, not limit the production of electrical power from alternative energy sources.

While the Commission opines that its reason for supporting a 110 percent size limit is to, "...limit the possibility of merchant generators posing as customer-generators,"⁸ the necessity to add this additional limitation is unwarranted because the General Assembly already set maximum nameplate capacity size limitations in the AEPS for customer-generators by customer

⁷ See Proposed Rulemaking Order. Docket No. L-2014-2404361, P. 1.

⁸ *Ibid.*, P. 12.

class, with 50 kilowatts for residential service and three megawatts at other service locations and up to five megawatts under certain circumstances.⁹

In establishing the new 110 percent limit, the Commission notes that in previous dockets, "...the majority of comments supported the limit as a reasonable and balanced approach to support the intent of the AEPS Act and limiting the potential for merchant generators to use net metering to circumvent the wholesale electric market and gain excessive retail rate subsidies at retail customer expense."¹⁰ However, without respect to previous commentators or expired Commission dockets, it is the plain text of the AEPS that controls, and additional Commission produced limits cannot substitute the existing broader limits established by the General Assembly.

Perhaps more disconcerting is that the Commission openly admits that while it previously, "...declined to extend the application of the 100 percent limitation of systems owned or operated by a customer-generator in the policy statement, we now believe that this same reasonable and balanced approach should apply to all new customer-generators as it more appropriately supports the intent of the AEPS Act."¹¹ This statement highlights the very problem with the Commission's proposed changes.

First, it is inappropriate for the Commission to change the requirements of the program (in this instance, creating additional barriers through limitations) over 10 years after the AEPS statute took effect. There are many customer-generators, particularly those producing electricity from biologically derived methane gas through the use of anaerobic digestion of organic materials that will be negatively impacted because of this proposed change. How could any

⁹ *Ibid.*, P 12.

¹⁰ *See Net Metering – Use of Third Party Operators*, Final Order at Docket No. M-2011-2249441.

¹¹ Proposed Rulemaking Order, *Op cit.*, P. 12. In its Proposed Order, cited here, the Commission uses a "100 percent" figure to describe the limitation, yet in preceding references, it uses a "110 percent" figure.

customer-generator have confidence in AEPS if the Commission, through a rulemaking, can unilaterally change the parameters of the program, which could result in a customer-generator's alternative energy system becoming uneconomic?

Further, if the Commission believed then - as it apparently does now - that such important changes must be made to ensure that merchant generators are not posing as customer-generators, why hasn't the Commission offered this as a recommendation to the General Assembly in one of its annual reports? The Commission's proposed new limitations are a *de facto* amendment to the AEPS statute and not, as the Commission would like to suggest, simply clarifying certain issues of law, administrative procedure and policy.

Additionally, the Commission's view that a merchant power generator would seek to use the net metering provisions of the AEPS to "...circumvent the wholesale electric market and gain excessive retail rate subsidies at retail customer expense" is entirely without merit. The Commission offers no evidence in support of this position and the limits already included in the AEPS would practically prevent this type of market manipulation. Simply put, we are all well aware of what an electric generating station (power plant) is, and we can most certainly differentiate those large stationary sources from customer-generators, such as anaerobic digesters that are located on a dairy farm. Finally, the Commission notes that it previously adopted a policy statement with the 110 percent limit because, "We believe that this approach appropriately captures the intent of the AEPS Act regarding net metering and is consistent with how net metering is treated in other states."¹² In reviewing the AEPS, as we noted earlier, the *intent* is to provide for the sale of electric energy generated from renewable and environmentally beneficial sources and for the acquisition of electric energy generated from renewable and environmentally beneficial sources. The Commission's newfound limitation is entirely *contrary* to that intent, as

¹² Proposed Rulemaking Order, *Op cit.*, P. 13.

it places additional, unnecessary and inappropriate barriers on customer-generators, thereby *reducing* and *discouraging* the production of electricity from renewable and environmentally beneficial sources. In summary, while the Commission claims it is capturing the intent of the AEPS, it is actually subordinating the intent of the law.

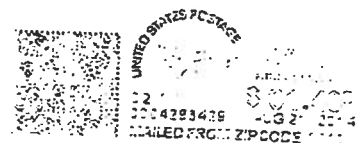
CONCLUSION

As elected members of the House of Representatives, we are greatly concerned about the Commission's unnecessary and inappropriate intervention into the existing AEPS program by proposing a new 110 percent limit on the size of a customer-generator's alternative energy system.

We represent the hard working men and women of Lancaster County, home to the world's most productive, non-irrigated farmland, and there are many agricultural operations which have invested in anaerobic digesters because of the AEPS. Anaerobic digesters are providing benefits that go far beyond the electricity they produce. These digesters provide a management method for manure that improves water quality, reduces methane emissions from manure lagoons and storage ponds, and minimizes odor. They are helping our Commonwealth meet many of the environmental challenges that we face.

When AEPS was enacted a decade ago, farmers in Lancaster County and across the state engaged in a good-faith effort to utilize renewable and environmentally beneficial alternative energy systems, which were capital intensive and required significant financial commitments. Now, the Commission is proposing to diminish that value and undermine the AEPS by proposing limitations which are (1) not supported in the AEPS statute; and (2) are contrary to the intent of the existing law.

If the Commission so strongly believes, for whatever reason, that there are sinister power producers hiding on farms posing as customer-generators, then it is incumbent upon the Commission to immediately notify the General Assembly so that the AEPS can be amended to protect the integrity of the program. We suspect that such situations are extraordinarily rare - if they occur at all. Rather than financially punishing farmers who are helping the Commonwealth meet its AEPS goals, as well as other environmental goals, we should offer our sincere appreciation for all that the agriculture industry does to make Pennsylvania a great state.



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Representative Mindy Fee
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HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
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