American biogas Council
Promoting the Anaerobic Digestion and Biogas Industry

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PA PUBLIC UTILITY COMMISSION SECRETARY'S BUREAU

September 3, 2014

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

RE: **Opposition to Proposed Net Metering Changes**
Docket L-2014-2404361

Dear Secretary Chiavetta:

The American Biogas Council (ABC) is a 501(c)(6) non-profit, industry-driven organization working to create jobs, environmental sustainability and energy independence by growing the American biogas industry. The association is focused on the generation of biogas from organic residuals from the commercial, institutional, agricultural, and industrial sectors, and the production of clean, renewable energy across North America.

Our members now operate biogas energy projects across the Commonwealth of Pennsylvania, and are working to install and operate additional facilities. We have great concern over the recent Proposed Rulemaking Order which contains revisions to the Commission's Regulations implementing the Alternative Energy Portfolio Standards Act of 2004 (AEPS Act), 73 P.S. § 1648.1, et seq, published on July 5, 2014 in the Pennsylvania Bulletin.

Our understanding is that the net metering rules were established to promote the use of renewable energy in the Commonwealth under the AEPS Act by facilitating the development of numerous local renewable power projects. The existing rule also sought to provide reasonable access to the grid and fair market value in a highly restrictive market which protects the interests of regulated utilities. In our opinion, the proposed modifications will undermine these objectives and slow the implementation of these environmentally responsible technologies.

Biogas projects have numerous benefits to the Commonwealth beyond power generation. However, net metering is an essential component to their development. Biogas generation utilizing anaerobic digestion generates numerous benefits for 'on-farm', 'off-farm' generators of organic residuals, as well as solid waste management facilities and waste water treatment plants (WWTP). Recently the US Federal Government outlined the benefits of biogas[1] and provided a roadmap for better implementation[2], several of which are summarized below:

- ✓ Provide high paying jobs (much needed in rural PA)
- ✓ Diversification of our Commonwealth's energy portfolio
- ✓ Generation of decentralized electricity, heat and/or "Green Gas"
- ✓ Reduces organic disposal in landfills and resultant fugitive emissions
- ✓ Strengthen Livestock Operations (dairy, hog, and poultry) in Rural Communities
    - Increase operational efficiency by management of manure
    - Support financially sound return on investment by converting manure into saleable products
    - Creation of dairy bedding and compost products for on-farm and off-farm use
    - Controls strong odors that are critical for mitigation as farm size increase and development encroach on farm "buffer zones"
- ✓ Improve Chesapeake Bay Watershed Nutrient & Water Quality Management
    - Modify the form of Nitrogen and Phosphorus so it can be removed more efficiently, thereby protecting the watershed (a process supported by Chesapeake Bay Commission)
    - >98% pathogen kill compared to untreated waste
- ✓ Proven Greenhouse Gas (GHG) destruction (methane consumption by combined heat and power)
- ✓ Economic driver for solid waste and agricultural sectors as well as surrounding communities
- ✓ Improves air quality through replacement of fossil fuels and reduction in direct emissions from standard waste management practices

There are several aspects of the proposed net metering changes that are particularly troublesome to the ABC. These concerns include, but are not limited to:

1. Utility exclusion – We are concerned that all renewable projects involving "parties in the business of providing electric services" (merchant generators) will be disqualified from the net metering program. First, this effectively places an unwarranted restriction on normal business practices whereby two or more organic waste generators might form a legal partnership or corporation to implement a biogas project and use the produced energy to offset loads from each partner or member. The mere formation of a separate legal entity should not redefine the facility as a "merchant generator" or as a "utility". Second, in many cases, individual organic waste generators such as farmers do not have

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[1] http://www.usda.gov/wps/portal/usda/usdamediafb?contentid=2014/08/0166.xml&printable=true&contentidonly=true

[2] http://www.usda.gov/oce/reports/energy/Biogas_Opportunities_Roadmap_8-1-14.pdf

sufficient access to the capital required for these energy projects, and their ability to benefit from the significant tax subsidies associated with renewable investment may be limited. Additionally, realizing the value of any environmental attributes (RECs or other credits) can also be difficult for entities that do not normally participate in these markets. Renewable facilities built, owned, and operated by experienced merchant generators, on the other hand, provide valuable services to the energy consumer. By selling renewable energy under an established net metering program or other power purchase agreement, merchant generators secure the necessary financing, reduce the retail customer's exposure to operating and resource risks, and monetize the environmental benefits more efficiently. Recognizing these services, it would be a serious mistake to disqualify a project simply for merchant generator participation.

2. 110% limitation proposed change §75.13(a)(3) – While the capital cost of renewable projects declined significantly in recent years, these technologies remain expensive. Given today's market prices for electricity and renewable attributes, a distributed generation project may not be financeable if its capacity is limited to the load of the retail customer. Additional and higher priced energy sales (provided under a net metering program) may be necessary to justify the renewable facility capital investment.
3. Emergency Resource Requirements – "Large" renewable projects (3 MW – 5 MW) can qualify for net metering. It may also qualify if PJM can call upon these resources during grid emergencies. By their very nature the intermittent renewable technologies, such as solar and wind, are not suitable for addressing baseload power or grid emergencies. While biogas projects can theoretically be dispatched for grid emergencies, in practice the opportunity is limited. In order to be financeable, biogas plants must normally show24/7 operation at their maximum capacities. To the extent these projects are producing in excess of their host requirements, energy is already being provided to the grid. Emergency grid supply is only possible to the extent the host can turn back its own loads, but combined with the 110 percent limitation, this is unlikely to be the case. So this requirement is, effectively, a limitation on renewable project capacity and not a realistic route to larger (3MW-5MW) projects.
4. Although not directly involved with solar, as a matter of principle and legal precedence the ABC opposes the changes in §75.13(k) that would give the Commission authority to allow utilities to charge a new special monthly fee to customers with solar. We believe this new fee would violate the AEPS guarantee that net metered customers receive the full retail rate for all generation of their solar installation up to their annual usage. A fee would erode that right to receive credit at the full retail rate. Moreover, the proposed change fails to provide any basis for determining this fee. If there is to be a fee, it should be based on a full cost of service study that evaluates both the costs and the benefits of each.
5. We believe the proposed new definition for "utility" §75.1 is overly broad and threatens the third-party ownership model for solar and other distributed generation which the Commission has approved in prior dockets. While the discussion section of the Proposed

Rulemaking Order (page 7) indicate the new definition of "utility" is designed to allow non-electric utilities such as water and wastewater utilities to qualify as a customer-generator, the "utility" definition could be interpreted to apply to solar and other alternative energy developers who build and own systems and sell the output to the host customer through a long-term power purchase agreement. We urge the Commission to amend the definition of "utility" so the ability to use a third-party ownership business model is preserved. The Proposed Rulemaking Order imposes certain restrictions and limitations on the newly defined "utilities" without also extending other benefits afforded to existing utilities such as securitization.

6. We oppose the proposed change in §75.12 to the definition of "virtual meter aggregation" that adds a requirement that all service locations must have separate existing measurable load. It should be sufficient that the customer-generator have measurable electric load, not that each meter of the customer-generator have measurable load. This proposed change would prevent appropriate siting for virtual net metered systems as it requires systems to be installed in close proximity to customer-generator's existing meters that have a measurable load. The proximity requirement fails to recognize the existing systems which aggregate meters for client billing throughout a service territory. This violates the AEPS legislation's intent to promote new clean distributed generation.

Each of these proposed modifications creates a new hurdle for project development and limits the potential for additional renewable resources for Pennsylvania.

Significant investment decisions, benefiting both the environment and the local economy, have been and are in the process of implementation, relying on the original understanding of the statute. Changing the rules is unfair to net metering participants and threatens the viability of their businesses. In addition, it undermines public trust in the Commonwealth and the Commission. Pennsylvania will have difficulty attracting investment, if its announced long term policies are subject to revision.

Both 'on-farm' and off-farm anaerobic digester systems need to sell kilowatt hours (kWhs) well in excess of site load requirements in order to payback the capital investment on these projects. Net metering is the most efficient market mechanism for the distribution of the clean, renewable energy they produce and fully recognizes the economic benefit of distributed generation to rate payers. Limitations on size (megawatts) and a proportion to power consumption will deter private investment. In short, if this proposed role is enacted these high quality projects will be shut down. The Commonwealth cannot afford to make these proposed changes.

However, if the PUC proceeds with the proposed rule changes, we request that each of the renewables be dealt with independently as the rule is implemented. Given the numerous benefits of biogas which make it unique from other renewables, it is essential that implementation is both fair and just..

On behalf of our member companies located or doing business in Pennsylvania, we respectfully request a response to their concerns.

Sincerely,

Keith Henn under the permission of

Norma McDonald
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Co Vice-Chair, American Biogas Council

c:

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