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P.O. Box 16001  
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2016 MAY 18 AM 8:45

Tori L. Giesler, Esq.  
(610) 921-6658  
(610) 939-8655 (Fax)

610-929-3601

**EMBARGOED MATERIAL**

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.

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

**EMBARGOED MATERIAL**

MAY 18 AM 9:04

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 the that 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](http://www.pfb.com)

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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

P. 01

FOR:

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DATE	START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#	DP
MAY-18	11:07 AM	97833458	1'24"	6	FAX TX	OK	742	

TOTAL : 1M 24S PAGES: 6

## Facsimile Cover Sheet



**Phone:** (717) 783-5417  
**Fax #:** (717) 783-2664  
**E-Mail:** [irrc@irrc.state.pa.us](mailto:irrc@irrc.state.pa.us)  
**Website:** [www.irrc.state.pa.us](http://www.irrc.state.pa.us)

**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14<sup>TH</sup> FLOOR, HARRISBURG, PA 17101

**To:** Alyson Zerbe  
**Agency:** Pennsylvania Public Utility Commission  
**Phone:** 772-4597  
**Fax:** 783-3458  
**Date:** 5/18/16  
**# of Pages:** 1

RE: PA Public Utility Commission's Regulation #57-304 (IRRC #3061)

# URGENT!

Section 5.1(j) of the Regulatory Review Act (71 P.S. § 745.5a(j)) requires us to forward to you any documents we receive during the 48-hour blackout preceding our public meeting upon receipt. **Please distribute this material to the appropriate regulatory staff as soon as possible.**

TRANSACTION REPORT

P. 01

MAY-18-2016 WED 11:07 AM

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MAY-18	11:05 AM	97722991	1' 02"	6	FAX TX	OK	741	

TOTAL : 1M 2S PAGES: 6

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Phone: (717) 783-5417  
 Fax #: (717) 783-2664  
 E-mail: [irrc@irrc.state.pa.us](mailto:irrc@irrc.state.pa.us)  
 Website: [www.irrc.state.pa.us](http://www.irrc.state.pa.us)

INDEPENDENT REGULATORY REVIEW COMMISSION  
 333 MARKET STREET, 14<sup>TH</sup> FLOOR, HARRISBURG, PA 17101

To: Honorable Robert M. Tomlinson, Chairman  
 Agency: Senate Consumer Protection & Professional  
 Licensure Committee  
 Phone 787-5072  
 Fax: 772-2991  
 Date: 5/18/16  
 # of Pages: 6

RE: PA Public Utility Commission's Regulation #57-304 (IRRC #3061)

**URGENT!**

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MAY-18	11:04 AM	97831257	1' 06"	6	FAX TX	OK	740	

TOTAL : 1M 6S PAGES: 6



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**Fax #:** (717) 783-2664  
**E-mail:** [irrc@irrc.state.pa.us](mailto:irrc@irrc.state.pa.us)  
**Website:** [www.irrc.state.pa.us](http://www.irrc.state.pa.us)

INDEPENDENT REGULATORY REVIEW COMMISSION  
333 MARKET STREET, 14<sup>TH</sup> FLOOR, HARRISBURG, PA 17101

**To:** Honorable Lisa M. Boscola, Minority Chairman  
**Agency:** Senate Consumer Protection & Professional  
Licensure Committee  
**Phone:** 787-4236  
**Fax:** 783-1257  
**Date:** 5/18/16  
**# of Pages:** 6

**RE: PA Public Utility Commission's Regulation #57-304 (IRRC #3061)**

# URGENT!

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 E-mail: [irrc@irrc.state.pa.us](mailto:irrc@irrc.state.pa.us)  
 Website: [www.irrc.state.pa.us](http://www.irrc.state.pa.us)

INDEPENDENT REGULATORY REVIEW COMMISSION  
 333 MARKET STREET, 14<sup>TH</sup> FLOOR, HARRISBURG, PA 17101

To: Honorable Robert Godshall, Chairman  
 Agency: House Consumer Affairs Committee  
 Phone: 783-6428  
 Fax: 787-7424  
 Date: 5/18/16  
 # of Pages: 6

RE: PA Public Utility Commission's Regulation #57-304 (IRRC #3061)

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MAY-18	10:59 AM	97837558	2' 48"	6	FAX TX	OK	738	

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**Fax #:** (717) 783-2664  
**E-mail:** [irrc@irrc.state.pa.us](mailto:irrc@irrc.state.pa.us)  
**Website:** [www.irrc.state.pa.us](http://www.irrc.state.pa.us)

**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14<sup>TH</sup> FLOOR, HARRISBURG, PA 17101

**To:** Honorable Peter Daley, Minority Chairman  
**Agency:** House Consumer Affairs Committee  
**Phone:** 783-9333  
**Fax:** 783-7558  
**Date:** 5/18/16  
**# of Pages:** 6

RE: PA Public Utility Commission's Regulation #57-304 (IRRC #3061)

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