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August 18, 2016

Amy Elliot, Esq.
Senior Deputy Attorney General
Office of the Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

Re: Pa. Public Utility Commission Regulations Implementing the Alternative Energy Portfolio Standards Act of 2004 (Pa. PUC Docket No. L-2014-2404361; IRRC No. 3061)

Dear Ms. Elliot:

This office represents The Pennsylvania State University (Penn State, PSU or the University) with respect to the implementation by the Pennsylvania Public Utility Commission (the PUC) of the Pennsylvania Alternative Energy Portfolio Standards Act of 2004 (the AEPS Act or Act).¹ It is our understanding that the PUC recently submitted its revised regulations implementing the Act to your office for review pursuant to Section 205 of the Commonwealth Documents Law.² On behalf of Penn State, we respectfully urge that your office rule illegal certain portions of the PUC's regulations that contravene both the letter and the intent of the AEPS Act.

The purpose of the AEPS Act is "to provide for the sale of electric energy generated from renewable and environmentally beneficial sources, for the acquisition of electric energy generated from renewable and environmentally beneficial sources by electric distribution and supply companies."³ Its "*fundamental intent* . . . is the *expansion and increased use* of alternative

¹ 73 P.S. §§ 1648.1-1648.8 and 66 Pa. C.S. § 2814.

² 45 P.S. § 1205

³ Alternative Energy Portfolio Standards Act, 2004 Pa. Legis. Serv. Act 2004-213 (S.B. 1030) (Purdon's).

energy systems and energy efficiency practices”⁴ by providing customer-generators with “annual compensation for excess generation in a manner that *encourages research, development and deployment* of alternative energy systems.”⁵ The PUC’s proposed regulations, however, will sharply *reduce* customer-generators’ access to such compensation and thus will *discourage* research, development and deployment of alternative energy systems in the manner intended by the General Assembly.

The Act commands that “[e]xcess generation from net-metered customer-generators *shall receive full retail value for all energy produced* on an annual basis.”⁶ A “customer-generator” is the owner or operator of a distributed generation system with a nameplate capacity of not greater than 50 kilowatts if installed at a residential service location or not larger than 3,000 kilowatts (or 5,000 kilowatts in certain circumstances) if installed at other customer locations.⁷ The customer-generator is “net-metered,” and thus entitled to receive full retail value for all energy produced, when “*any portion* of the electricity generated by the alternative energy generating system is used to offset *part or all* of a customer-generator’s requirements for electricity.”⁸ The PUC’s proposed regulations contravene these provisions by inventing and imposing the PUC’s own additional restrictions on the eligibility of alternative energy generating systems for net metering *for the express purpose* of limiting the ability of customer-generators to receive full retail value for energy produced.⁹

First, Section 75.13(a)(1) of the proposed regulations requires that a customer-generator “[h]ave electric load, independent of the alternative energy system, behind the meter and point of interconnection of the alternative energy system,” and Sections 75.12 and 75.14(e) extends the “independent load” requirement to each service location included in virtual meter aggregation. These requirements disqualify customer-generators from net metering where, due to noncontiguous sites, the “independent load” and the alternative energy generation system are in different locations.

⁴ *Final Rulemaking Re Net Metering for Customer-generators pursuant to Section 5 of the Alternative Energy Portfolio Standards Act*, 73 P.S. § 1648.5, Docket No. L-00050174, Final Rulemaking Order at 21 (entered June 23, 2006) (emphasis added).

⁵ *Implementation of Act 35 of 2007; Net Metering and Interconnection*, Docket No. L-00050174, Final Omitted Rulemaking Order at 18 (entered July 2, 2008) (emphasis added).

⁶ 73 P.S. § 1648.5 (emphasis added).

⁷ 73 P.S. § 1648.2 (“Customer-generator”).

⁸ 73 P.S. § 1648.2 (“Net metering”) (emphasis added).

⁹ *Amended Final Rulemaking Order Re Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Docket No. L-2014-2404361 (entered June 9, 2016).

Second, the definition of “Utility”, and thus the definition of customer-generators who are *ineligible* for net-metering under the PUC’s revised regulations will now include *any* “person or entity that provides electric generation, transmission or distribution services, at wholesale or retail, to other persons or entities,” except where the customer-generator owns or operates the internal distribution system and supplies the power used to meet its own demand. This definition is so broad that it appears to encompass, and thus disqualify from net-metering, any person involved in providing any form of electricity generation to anyone else. Certainly, larger systems that rely on partnerships with third-parties will no longer be eligible for net metering.

Third, the proposed regulations’ procedure for obtaining PUC approval of customer-generator status¹⁰ unduly burdens prospective customer-generators and thus thwarts the goals of the Act.

The Independent Regulatory Review Commission (the IRRC) has correctly disapproved the PUC’s proposed regulations as contravening the AEPS Act not once but twice. (The IRRC’s disapproval orders are attached hereto as **Exhibit A** and **Exhibit B**, respectively.) As set forth more fully in Penn State’s most recent comments filed with the IRRC (a copy of which is enclosed as **Exhibit C**), these requirements contravene the Legislature’s command that customer-generators “*shall*” be compensated by net-metering when any part of their electrical requirements is offset by their alternative energy systems. Moreover, these limitations will discourage the deployment and use of alternative energy systems by customer-generators that, like Penn State, have multiple, varied, noncontiguous tracts of property. Thus, the PUC’s proposed regulations frustrate the fundamental intent of the Act as well as violate its express terms.

Penn State is the Commonwealth’s primary public institution for “research in agriculture, engineering, biological and physical sciences, earth and mineral sciences, health and human services, and other disciplines.”¹¹ As the Commonwealth’s designated land-grant university, Penn State owns and operates sites throughout the state to discharge this public purpose. The University is actively researching alternative energy generation systems. In order to progress beyond simple proof-of-concept testing, Penn State’s researchers must be able to build systems of sufficient scope to test both load scalability and geographic scalability. This is precisely the kind of innovation the AEPS Act, as amended, was intended to encourage; unfortunately, it is also precisely the kind of innovation that the independent load/behind-the-meter requirements and restrictive definition of “Utility” imposed by the PUC’s revised regulations will *discourage*, in direct violation of the Act.

¹⁰ *Amended Rulemaking Order*, Annex A (amending 52 Pa. Code § 75.17).

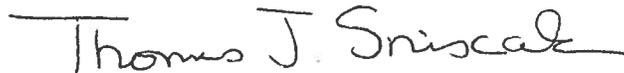
¹¹ Governor's Executive Budget Proposal for FY2007-08, at E14.24 (available at <http://www.budget.pa.gov/PublicationsAndReports/CommonwealthBudget/Pages/PastBudgets2015-16To2006-07.aspx#.VzSYmaTD-vF>).

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Senior Deputy Attorney General
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Therefore, Penn State respectfully requests that the provisions of the PUC's proposed regulations discussed above be ruled *illegal* pursuant to Section 205 of the Commonwealth Documents Law.

Please do not hesitate to contact the undersigned should you require any further information regarding this matter.

Respectfully submitted,

A handwritten signature in black ink that reads "Thomas J. Sniscak". The signature is written in a cursive style with a horizontal line under the first name.

Thomas J. Sniscak

TJS/das
Enclosures (Exhibits A, B & C)

cc: George D. Bedwick, Chairman, Independent Regulatory Review Commission (w/o enc.)
Rosemary Chiavetta, Secretary, Pennsylvania Public Utility Commission (w/o enc.)