INDEPENDENT REGULATORY REVIEW COMMISSION
PUBLIC MEETING MINUTES
10:00 A.M.
Thursday, May 19, 2016
14th Floor Conference Room
333 Market Street

I. CALL OF THE MEETING

The May 19, 2016 public meeting of the Independent Regulatory Review Commission (Commission) was called to order by Chairman Bedwick at 10:06 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg, PA.

Commissioners Present:	George D. Bedwick, Chairman John F. Mizner, Esq., Vice Chairman W. Russell Faber Murray Ufberg, Esq.
Absent:	Dennis A. Watson, Esq.

II. APPROVAL OF THE APRIL 21, 2016 PUBLIC MEETING MINUTES

Chairman Bedwick asked for a motion for approval of the April 21, 2016 public meeting minutes, as submitted. Commissioner Faber made the motion and Commissioner Ufberg seconded, and the motion passed 4-0.

III. NEW BUSINESS

A. ACTION ITEMS

1. No. 3137 Department of Human Services #14-539: Intellectual Disability Terminology Update

Corinne Brandt, Regulatory Analyst, explained that the regulation updates 24 chapters of the Public Welfare Code by changing the term "mentally retarded" and similar terms to the term "intellectual disability." It also changes the term "normalization" to "integration" and "mentally disabled" to "individual with a mental disability." She noted that the regulation makes the Department of Human Services' terminology consistent with federal and state laws.

Nancy Thaler, Deputy Secretary of the Office of Developmental Programs, and Julie Mochon, Policy Specialist, Department of Human Services, were present to answer any questions.

Ms. Thaler provided a historical context of the term and spoke in support of the regulation. "While wording change is often seen as a superfluous and minor thing, in this case it

is pretty significant. It represents a long evolution in the field of services to people with disabilities," she stated.

Commissioner Faber noted that he was an Americans with Disabilities Act (ADA) coordinator in the Senate for many years. "I welcome this change," he stated.

Maureen Cronin, Executive Director, ARC of Pennsylvania, called on the Commission to approve the regulations. "Words really matter. To me personally I winced every time I saw the term used for my son years ago," she stated. "It's not just some politically correct phrase, this actually demonstrates the Department's commitment to people with intellectual disabilities and their families."

Dr. Scott Spreat, speaking on behalf of Pennsylvania Advocacy and Resources for Autism and Intellectual Disability, discussed the medical community's view of intellectual disabilities and urged approval of the regulation. "Intellectual disability has emerged as the preferred term to replace mental retardation for several reasons. First, it better reflects the construct of disability proposed by the World Health Organization. Second, it aligns more properly with current professional practices that focus on functional behaviors in contextual factors. Third, it's more consistent with international terminology," he stated. "In addition, self-advocates and families find the term less offensive although honestly, history shows this term may be a pejorative in future years as well."

Commissioner Ufberg made a motion for approval. Commissioner Faber seconded, and the motion passed 5-0, with Commissioner Watson voting by proxy.

2. <u>No. 3117 Pennsylvania Liquor Control Board #54-85: Limited Wineries</u>

Ms. Brandt explained that the rulemaking amends the Pennsylvania Liquor Control Board's (PLCB) regulations related to the production, sale, and sampling of alcoholic ciders, wines, and wine coolers to make them more consistent with the Liquor Code and extends the hours a limited winery may be open for sales. "In our comments we requested that the Board define the term "wine cooler" and retain the existing language regarding limited wineries sales hours," she stated. "The Board did not make changes based on these two comments."

Rodrigo Diaz, Chief Counsel, and Norina Blynn, Assistant Counsel, PLCB, were present to answer any questions.

Mr. Diaz explained that the regulation is intended to codify existing practice. "It does not extend the hours a winery operates. In the statute the Board had the authority to extend the hours and it did so in 2014," he stated. "It isn't the regulation that extended the hours, it was the Board that extended the hours."

In regard to wine coolers, Mr. Diaz said the original draft had not used the term wine cooler in the regulation. "That's because in the 40 years that it's been in the statute it's never been defined by the legislature or by anybody else. It doesn't have a definition," he stated. "We felt very uncomfortable adding a definition because the purpose of the regulation was to

recognize the status quo. We aren't sure how we would define them without making a significant change to the industry."

Commissioner Ufberg questioned what the alcoholic content of a wine cooler can be or if there is any indication of what products can be utilized in creating a wine cooler. "I don't understand why the PLCB and the legislature aren't at least addressing this to assure there is greater safety in the product management," he stated. Mr. Diaz said the term was put in Act 14 of 1987 and indicated that the PLCB determines what a wine cooler is based on its content. "Does that product meet our definition of wine, which is defined in the Liquor Code, and the alcoholic content is no more than 24 percent in the Code," he stated. "For us to define it as anything other than a wine-based product will implicitly give it other rights and privileges that have not been contemplated. We just don't know."

Chairman Bedwick questioned if the definition for wine cooler could be "a wine-based product that is not part or all distilled spirit or malt or brewed beverage." Mr. Diaz said, "You could create that definition, that is essentially what the default is," but argued, "That's another way of saying you are ignoring the word. A wine cooler is wine; it would be a definition that wouldn't have any significance."

Chairman Bedwick raised concerns about the extension of the hours contained in the regulation. "It is fine to say you are codifying current practice. Current practice isn't in front of us today, a regulation is. The question is whether current practice and/or the regulation comply with the statute," he stated. "I look at a statute that gives specific hours that limited wineries can make sales. I see that a limited winery may also request approval from the Board to extend sale hours. The request shall be made in writing to the PLCB's Office of Chief Counsel, shall detail the exact locations where sales hours are proposed to be extended, the proposed hours, the dates of extended operations and the reason for the request. How does that equate to statutory authority to do a blanket extension of hours across the board every day of the year? Where is the request? Where are the specific dates? Where are the reasons?" Mr. Diaz explained that individual wineries were requesting individual dates to extend hours but they were not submitting them in the appropriate timeframe. He said the industry requested that the PLCB address the issue holistically and they accommodated the industry through the appropriate process in 2014. Mr. Diaz emphasized that the Attorney General's Office allowed the extension of hours. "The Board made a decision already," he stated. "Whether it's reflected in the regulation or not is not going to change the decision." Chairman Bedwick stated, "It doesn't make the decision legal whether they've made it or haven't made it" and reiterated that the statute specifically outlines the way in which a limited winery may extend hours.

Vice Chairman Mizner echoed Chairman Bedwick's concern about a lack of statutory authority regarding the extension of hours and made a motion for disapproval. Commissioner Ufberg seconded, and the motion passed 4-1, with Commissioner Watson dissenting by proxy.

3. No. 3061 Pennsylvania Public Utility Commission #57-304: Implementation of the Alternative Energy Portfolio Standards Act of 2004

Scott Schalles, Regulatory Analyst, explained that the regulation amends existing regulations to comply with Act 35 of 2007 and Act 129 of 2008, and clarifies issues of law, administrative procedure and policy and reduces uncertainty regarding the generation of resources qualifying for alternative energy status, interconnection, and net metering. He said commentators have expressed concern about the regulatory review criteria of statutory authority, the need for the regulation, and whether it reflects legislative intent. Mr. Schalles noted that Sen. Robert Tomlinson (R-Bucks) wrote in support of the regulation, and Rep. Pete Daley (D-Washington) and Rep. Greg Vitali (D-Delaware) wrote in opposition.

Kriss Brown, Assistant Counsel, Joe Sherrick, Policy Supervisor, Bureau of Technical Utility Services, and Scott Gebhardt, Policy Specialist, Bureau of Technical Utility Services, Pennsylvania Public Utility Commission (PUC), were present to answer any questions.

Mr. Brown explained that the PUC has revised its regulations pertaining to net metering, interconnection, and alternative energy portfolio compliance in order to comply with the Act 35 of 2007 and Act 129 of 2008 amendments to the Public Utility Code and the Alternative Energy Portfolio Standards (AEPS) Act as well as to ensure that default service costs are the least cost to customers over time and rates remain reasonable. "The PUC's authority comes from both the Public Utility Code and the AEPS Act itself," he stated. "Within this regulatory power, the PUC had previously promulgated the existing regulations covering net metering including how Electric Distribution Companies (EDCs) are interconnected distribution systems, implement net metering and compensate for excess generation. Both the Public Utility Code and AEPS Act refer to each other and relate to each in that they relate to the purchase of electric generation for sale to retail customers. The AEPS Act specifically refers to Chapter 13 of the Public Utility Code in permitting EDCs to recover all direct and indirect costs for complying with AEPS Act from their ratepayers in a full and current basis. These statutes specifically refer to each and must be construed together as one statute given the PUC's broad rulemaking authority to implement these regulations. The current rulemaking is rational, reasonable and in conformity with the AEPS Act and the Public Utility Code."

Mr. Brown noted that comments have asserted that the current rate impacts on default service customers are too low to justify the regulation changes. "This assertion fails to acknowledge that it is not just the overall impacts but the fact that default service customers are paying a premium of almost twice the rate for energy from net meter customers than for energy on the market for default service which is contrary to the 'least cost over time' requirement contained in the Public Utility Code," he stated.

Vice Chairman Mizner questioned if there is statutory authority for the PUC to promulgate the regulation specifically in regard to the 200 percent cap on net metering in the regulation. "A statute should have the basic policy decision made by the legislature and it seems to me that if you have to select some sort of number it suggests that there is not statutory authority," he stated. Mr. Brown pointed to the definition of "non-utility" and emphasized that in 2008 the legislature amended the default service regulation statute. "It required all energy

purchased from alternative energy sources as well as all energy purchased for default service must be least cost over time and to pay a full retail rate for any generation will not provide least cost over time," he stated. "The 200 percent cap the commission found was reasonable to limit how much the excess is to provide least cost over time." Chairman Bedwick requested that Mr. Brown provide the Commission the statutory provision that specifically gives the PUC the authority. Mr. Brown said the authority is found in 66 Pa. C.S. Section 2807E 3.4 and 3.5.

Commissioner Ufberg echoed the sentiments of the other Commissioners and reiterated that there is not statutory authority to promulgate some of the provisions of the regulation. Mr. Brown stated that the definition of "customer generator" found in statute would then be meaningless. "The Legislature would have simply said any alternative system generator at or below 3 Megawatts can sell its power to default service at full retail rate. There is no reason for the words 'non-utility' or 'customer' or 'netting'," he stated. "This stuff was not given meaning by the statute. The PUC, through its rulemaking, is trying to give meaning to those words and phrases."

Vice Chairman Mizner reiterated his concern about the lack of statutory authority. "I think the idea is a very fine one . . . but I think it needs to come from the legislature," he stated. "The policy issue is a very important one. I'm just afraid the statute doesn't provide them the authority to do it."

Referring back to the lowest cost over time, Chairman Bedwick stated, "Assuming I were to agree you could impose that requirement, the statute says you must purchase all excess . . . my concern is that you are equating lower cost over time with lower cost now. You are saying they are paying an excess cost because they have to pay retail costs, that's now." He questioned if the PUC did any analysis on rates over time that would result from a greater mix of alternative energy sources. Mr. Brown noted that the PUC has not conducted a study and agreed that additional generation can have an impact of lowering the wholesale price but stated "the default service rate is the retail rate."

Larry Moyer explained that he is a net metering customer of PPL Electric and owns a small resident Photovoltaics (PV) system that supplies electricity to his house. "I'm here today to say that I'm worried for myself and for thousands of other residential customers across the state. Six years ago, long before it became part of this rulemaking order, a provision which is being voted on today was already in effect," he stated. "Today it's identified as the 'independent load' requirement. This requirement was imposed on me in 2010, well before it was promulgated and it will effectively keep thousands of other homeowners from having solar generation. It will effectively deny them a choice that's guaranteed in the AEPS Act."

David Hommrich, President of Sunrise Energy, also spoke against the regulation. He argued that the PUC has failed to produce a compelling need for the regulation and that claims of excessive net metering costs are unsubstantiated and exaggerated. "Nothing prevents an agency from initiating a rulemaking that has a poor chance of passing. The worst outcome is disapproval and the agency loses nothing. In the meantime the freeze on the market happens immediately and lasts the duration of the regulatory review process. This kind of market manipulation should have consequences," he stated. "The current rulemaking has wasted

countless hours and millions in lost revenue in Pennsylvania. Investors will spend their money elsewhere unless something is done."

Robert Altenburg, Director of PennFuture Energy Center, argued for the regulation's disapproval. He said the PUC lacks the authority to promulgate the additional restrictions on net metering and the analysis of the need for this regulation is defective. "Under the AEPS Act, the best customer generators can do is to offset their next month's bill at the retail rate, which averaged about 9.73 cents per kilowatt hour (kWh) for commercial customers. Truly excess generation is paid for at the end of the year at the even lower price-to-compare which reflects only the costs of generation and transmission. In such cases, EDCs not only receive what amounts to an interest-free loan, they often end up spending much less than the market price for the power at the time it was generated and used," he stated. "The PUC hasn't documented the need for this regulation, and this creates a huge obstacle for effective public participation. Unless a problem is clearly explained, how are we expected to provide constructive criticism or propose alternatives?"

Ron Celentano, President of the Pennsylvania Solar Energy Industries Association, called for disapproval of the regulation. "We certainly don't need more barriers to further flatten solar development in Pennsylvania. Yet, that is exactly what the PUC's final rules create - new restrictions with fabricated system size limitations, newly added potential fees, and new restrictions for not allowing interconnections to take place where there are no existing electric loads," he stated. "The negative impact of not allowing on-site generation to interconnect at a location where this is no existing electric load is huge. Suddenly, we see our neighboring states embrace community solar policy, which broadens the market potential for renters, low-income customers, and others that do not have any solar access to take advantage of reducing their electric bills remotely from a large solar array in a nearby vicinity. Yet, at the same time, the PUC's final rules slam the door to community solar ever happening in Pennsylvania. Just another restriction to slow down whatever little growth the solar industry was hoping to achieve."

Mark Hammond, attorney representing the Pennsylvania Waste Industries Association, urged the Commission to disapprove the regulation and argued the regulation is unnecessary. He referred to a *Pittsburgh Post-Gazette* article regarding net metering. "Throughout this process I have been wondering how big is this problem. According to the *Post-Gazette*, in 2014 the total generation through net metering services is 288 Megawatt hours (mWh). That sounded like a big number until they pointed out that the statewide generation of all electricity is 220 million mWh. I believe that is 0.00013 percent of total generation coming from net metering," he stated. "That's ten years after net metering was created by the legislature and seven years after it was amended by the legislature to allow larger generators to net meter. There doesn't seem to be a problem."

Following public comment, Mr. Brown disputed Mr. Hammond's claim that only 288 mWh have been generated by net metering. Mr. Sherrick said the figure by the *Pittsburgh Post-Gazette* is "grossly understated" and said the number came from the Energy Information Agency which acknowledges the figure is a partial data set. "It is not inclusive of the generation that's

been metered in Pennsylvania," he stated. "Had they asked us for that information we would have researched that."

Commissioner Faber asked how many mWh are generated through net metering. Mr. Sherrick said they did not have that information. Commissioner Faber said that if you didn't know that number than what prompted someone to say that they needed a cap? Mr. Brown said the reason for the cap is because "we are seeing merchant generators move into retail rate net metering."

Commissioner Faber said he had strong concerns with the statutory authority and argued that he did not believe the PUC has the authority to enact a cap on net metering. He made a motion for disapproval. Vice Chairman Mizner seconded, and the motion passed 5-0, with Commissioner Watson voting by proxy.

IV. EXECUTIVE SESSION

Chairman Bedwick announced that the meeting would break for an Executive Session to discuss the FY 2015-16 Budget

Break at 12:03 p.m. and returned at 12:13 p.m.

V. OTHER BUSINESS

Approval of the FY 2015-16 Budget

Commissioner Faber made the motion to approve the FY 2015-16 Budget. Commissioner Ufberg seconded, and the motion passed 4-0.

Approval of Vouchers

Commissioner Faber made motions to approve vouchers and expenses for the period April 1, 2016 through April 21, 2016. Commissioner Ufberg seconded, and the motions passed 4-0.

VI. DATE AND PLACE OF SUBSEQUENT MEETING

Chairman Bedwick announced the next public meeting is scheduled for Thursday, June 9, 2016, at 10:00 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg.

VII. ADJOURNMENT

Chairman Bedwick announced the meeting adjourned at 12:15 p.m.