INDEPENDENT REGULATORY REVIEW COMMISSION
PUBLIC MEETING MINUTES
10:00 A.M.
Thursday, June 30, 2016
14th Floor Conference Room
333 Market Street

I. CALL OF THE MEETING

The June 30, 2016 public meeting of the Independent Regulatory Review Commission (Commission) was called to order by Chairman Bedwick at 10:05 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
Telephone:	Murray Ufberg, Esq. Dennis A. Watson, Esq.

II. APPROVAL OF THE MAY 19, 2016 PUBLIC MEETING MINUTES

Chairman Bedwick asked for a motion for approval of the May 19, 2016 public meeting minutes, as submitted. Commissioner Faber made the motion and Vice Chairman Mizner seconded, and the motion passed 5-0.

III. ANNOUNCEMENT OF REGULATION DEEMED TO BE APPROVED BY LAW SINCE THE COMMISSION'S LAST PUBLIC MEETING

1. No. 3130 Insurance Department #11-255: Tables Approved for use in Determining Minimum Nonforfeiture Standards and Minimum Standards for Valuation

IV. NEW BUSINESS

A. ACTION ITEMS

1. No. 3149 State Board of Education #6-333: Strategic Planning

James Smith, Regulatory Analyst, explained that there is no impact from the regulation because it clarifies existing requirements for strategic planning.

Karen Molchanow, Executive Director, and Maureen Lally-Green, Board Member, State Board of Education (Board), were present to answer any questions.

Ms. Molchanow reiterated that the regulation will not have a substantive impact. "It simply aligns changes that went through the regulatory process two years ago," she stated.

Vice Chairman Mizner made a motion for approval. Commissioner Faber seconded, and the motion passed 5-0.

2. No. 3064 State Board of Education #6-329: Financial Recovery

Scott Schalles, Regulatory Analyst, said the regulation identifies the criteria the Secretary of Education may consider when determining whether to place a school district in financial recovery status and provides guidance on whether a financial recovery district will be deemed in moderate or severe recovery status.

Ms. Lally-Green explained that Act 141 of 2012 directed the Board to review the criteria for financial recovery and make recommendations for criteria to the Secretary. She emphasized that the Board took a collaborative approach with key stakeholders to craft the recommendations. "We examined the 15 criteria and offered three more criteria. They really pattern what is already in the statute; we just added a little more color to them. The focus on the additional three was to look at what school districts could control and not necessarily what they could not control," she stated.

Commissioner Faber made a motion for approval. Vice Chairman Mizner seconded, and the motion passed 5-0.

3. No. 3057 Environmental Quality Board #7-486: Administration of the Land Recycling Program

Michelle Elliott, Regulatory Analyst, explained that the regulation updates the statewide health cleanup standards as required by the Land Recycling and Environmental Standards Act of 1995 and corrects errors and omissions and clarifies established program policies.

Ken Reisinger, Deputy Secretary, Waste, Air Radiation, and Remediation, George Hartenstein, Director, Bureau of Environmental Cleanup and Brownfields, and Keith Salador, Assistant Counsel, Bureau of Regulatory Counsel, Department of Environmental Protection (DEP), were present to answer any questions.

Commissioner Faber noted that the majority of changes in the standards are less stringent in the regulation. Mr. Hartenstein said DEP and the technical advisory committee reviewed the Environmental Protection Agency's (EPA) exposure factors for performing risk assessments. "The average body weight of humans is going up so that really drove the risk assessment equations we have in the regulations and that's why the numbers have raised. They are not huge increases but there are some increases," he stated.

Commissioner Ufberg inquired about concerns related to Methyl Tertiary Butyl Ether (MTBE) standards. Mr. Hartenstein explained that the EPA issued a draft health advisory level for MTBE and DEP is maintaining the EPA standard. "EPA has made no changes in science to

that compound and they are still evaluating it under their drinking water program to determine whether they want to promulgate an actual drinking water standard. We are just waiting for them to finalize their evaluation," he stated.

Commissioner Faber made a motion for approval. Vice Chairman Mizner seconded, and the motion passed 5-0.

4. No. 3101 Pennsylvania Public Utility Commission #57-309: Customer Information Disclosure Requirements for Natural Gas Suppliers Providing Natural Gas Supply to Residential and Small Business Customers

Corinne Brandt, Regulatory Analyst, described the final regulation as modeled after Public Utility Commission (PUC) customer disclosure rules for the electric industry. She said that the ad hoc group Natural Gas Supplier Parties had provided a comment opposed to this regulation.

Jennedy Johnson, Assistant Counsel, Law Bureau, and Daniel Mumford, Director, Office of Competitive Market Oversight, PUC, were present to answer any questions.

Ms. Johnson described the regulations as a "culmination of a three-year process," which saw the investigation of the state's retail natural gas market. The enhanced disclosure requirements formed during this time with significant input from stakeholders, she stated, "reflect the lessons learned from the 'Polar Vortex'" of 2014. "During this time," said Ms. Johnson, "the PUC came face-to-face with the confusion and frustration that customers may face in a variable price situation that they were not aware they were part of." Ms. Johnson stated that the PUC, in order to avoid such a situation in the natural gas market, seeks to protect customers through promoting the use of concise, transparent terminology in reference to "the scope and limits of variable-price products."

Commissioner Faber said that most of the conflict surrounding this regulation has to do with the timing and method of delivery for notifications of price change, asking why PUC decided on 30 days. Mr. Mumford clarified that the 30-day price notice applies only to a subset of customers, those who were on a contract, ignored notices of renewal, and were "rolled off" onto a variable-price product. PUC makes this distinction, he said, because these customers did not "affirmatively select" to be on the variable plan, and thus deserve additional protections. Mr. Mumford declared that PUC does not believe letting customers know what they will be paying to be a burden for the supplier. Further, he said that 30 days may allow a customer time to drop or negotiate with the supplier, or else go back to utility default service. Commissioner Faber asked if 30 days is enough for a customer to switch providers. Mr. Mumford replied that it may not always be the case, as regulations "do not set a standard switching time frame" for the gas industry. He said the PUC intends to see what can be done to speed up the process. Next, Commissioner Faber asked Mr. Mumford to respond to the concerns that suppliers may not be able to have an exact price 30 days early. Mr. Mumford indicated that PUC recognizes that some business models may require suppliers to estimate the prices for these notices; however, the customer still needs that information. Commissioner Faber asked how many residents are part of that subset of customers affected by this regulation. Mr. Mumford did not have precise

numbers, but said that focus groups seemed to indicate that a majority of customers ignore the mentioned renewal notices. Finally, Commissioner Faber asked if the regulation provided for the 30-day notifications to be transmitted by either United States Mail or electronically. Mr. Mumford answered that the latter option is available if the customer provides email or phone information to the supplier.

Chairman Bedwick wondered why every customer on a variable-price plan would not need to receive the 30-day notice. Mr. Mumford replied that PUC believes customers who affirmatively select to participate in a variable plan to hold a different position, having received a disclosure informing them of the conditions of variability. Chairman Bedwick asked if the renewal notices ignored by most residents included warnings and options, including a switch to variable rate. Mr. Mumford stated that PUC had strengthened the warning language in those letters at the Commission's recommendation. Commissioner Faber agreed with PUC's distinction. Chairman Bedwick, on price estimation, expressed concern that the customer may not get the lowest price because suppliers may add risk factors into their cost equations. Mr. Mumford said that PUC recognizes this reality. Chairman Bedwick further asked why PUC was pressing for this regulation without likewise emulating the expedited switching option available in the electricity market. Mr. Mumford said that while exploration into speeding up switching in the gas industry will continue, "no one is really envisioning a world" in which such a process moves as quickly as it does in the electric industry due to operational issues. In the current situation, he said, 30 days was seen as a "reasonable middle ground."

Todd Stewart, Partner, Hawke McKeon and Sniscak LLP, spoke on behalf of Natural Gas Supplier Parties. Mr. Stewart disagreed with the notion that the designated subset of customers did not affirmatively select the variable-price option. He cited several of his clients' initial contracts spelling out that the signer will be shifted to a variable-rate plan after one year, which PUC admittedly does not see as "timely notice," but can be construed as an agreement. On the difficulty of estimating prices, Mr. Stewart said that some prices do not become available to suppliers until the beginning of a given month, sometimes causing the 30-day notice to practically become closer to 60 days on the suppliers' end. He stated that his clients believe PUC could achieve its ends in a "less intrusive and difficult way" by posting the latest prices on a website, where the few motivated customers can go to check. Mr. Stewart said that even email and text pose significant costs for suppliers.

Commissioner Faber asked if the customer's rate a year later is listed on the initial contract mentioned by Mr. Stewart, who answered that it is not, but they do at least know that they will be on a variable-rate plan. On establishing prices, Commissioner Faber likened the calculations and risk assessments that go into establishing a fixed rate to be effectively the same process involved in setting prices month-to-month. Mr. Stewart disagreed with this assessment, stating that, while the futures price of gas ultimately determines the rate, suppliers will not typically buy all of the gas necessary initially, allowing them to hedge and manage supply throughout the year. On the other hand, said Stewart, variable-rate plans reduce suppliers' ability to act on this in the short term. Finally, Mr. Stewart stated that while risk factors are taken into consideration for fixed-rate plans, this is not currently the case for variable-rate plans, so the need to estimate for the 30-day notices will increase prices. Chairman Bedwick asked if it

was easier for suppliers to hedge on a one-year, fixed-rate contract because a significant portion of the gas can be purchased upfront at a certain price. Mr. Stewart replied that this is the case.

In rebuttal, Ms. Johnson declared PUC's belief that it has a legal responsibility to guarantee that customers of natural gas suppliers receive "clear, timely, and adequate" information. On the claim that customers know what they are getting into based on their first disclosures, Mr. Mumford replied that current regulations only require the two renewal notices to be sent near expiration, and that a supplier need not include such information in their initial contract. Even if they do, he continued, it would not be fair to the consumer to expect them to recall a certain clause they may have glanced over in a contract one year prior. Mr. Mumford also disagreed with the claim that the costs to providing cost information electronically are prohibitive.

Commissioner Faber made a motion for approval. Vice Chairman Mizner seconded, and the motion passed 4-1, with Chairman Bedwick dissenting.

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

Mr. Schalles stated this final-form rulemaking amends the PUC's existing Alternative Energy Portfolio Standards regulations.

On May 19, 2016, IRRC disapproved this rulemaking. It was determined that the PUC lacked the statutory authority to impose a limit on the amount of energy a customer-generator could sell back to their electric distribution company. It was also determined that the PUC did not establish a compelling need for imposing the limit found. Finally, it was determined that imposing such a limit would be a policy decision of such a substantial nature that it would require legislative review.

Mr. Schalles stated that the limit on energy sold back to a provider, previously found objectionable by the Commission, had been removed. Further, he said, the definition of "utility" was adjusted to remove a reference to this limit and the regulatory analysis form (RAF) was also amended to the same effect. Mr. Schalles noted that "members of the regulated community, the Department of Agriculture, and the Department of Environmental Protection" still oppose this regulation, in particular believing that the revised definition of "utility" will inhibit the development of alternative energy.

Chairman Bedwick asked Mr. Schalles to review a problem of submission regarding this revised regulation. Mr. Schalles explained that the revised regulation was not formatted correctly. Language was removed from the Annex instead of showing the language with strike-through type.

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

Mr. Brown first apologized for the submission error, then stated that PUC had removed any reference to "non-statutory limits to customer-generators (CGs) ability to net-meter excess

generation." Mr. Brown noted that net-metering is only one part of an entire regulatory scheme. The entire regulation, he said, aims to have 18 percent of all electric retail sales to be supplied by alternative energy, a requirement largely fulfilled by electric generation suppliers (EGSs) and electric distribution companies (EDCs) purchasing "alternative energy credits." Of particular note, said Mr. Brown, is that utilities, while permitted to maintain alternative energy production, cannot be considered CGs, which do not fall under the jurisdiction of the Federal Energy Regulatory Commission (FERC). Likewise, he continued, on-site generation and excess production does not classify CGs as EGSs or EDCs, both of which do fall under FERC regulation. Mr. Brown declared that the revisions made to this rule do not implicate every CG.

Chairman Bedwick asked if it would have been easier to have defined "non-utility" as anyone who is not an EDC or EGS. Mr. Brown replied that this is not necessarily true, that a company may branch off and establish different companies to manage production but not market it, as a licensed EGS would. Commissioner Faber stated that the "real issue here seems to be the definition of utility," only required because the definition for CG contains the word "non-utility." He asked if a non-utility is not a public utility only because it is not licensed. Mr. Brown stated that this is not necessarily accurate, as only EDCs are considered to be public utilities. Commissioner Faber then cited the RAF, which describes a utility as an "entity whose primary business is the generation, transmission, or distribution of electricity." Focusing primarily on the phrase "whose primary business," he criticized PUC for not carrying that through into the actual definition. This being left out, he continued, throws the situation into confusion.

Commissioner Faber asked if the intent lines up with that stated in the RAF, why additional language was needed in the regulation to discuss landlords. Mr. Brown contested that the definitions questioned by Commissioner Faber had not changed throughout the entire formulation of this regulation and had gone without comment asking for it to be changed. Commissioner Faber responded that the issue was actually indirectly addressed in last month's disapproval order. Mr. Brown disagreed, stating that Commissioner Faber's interpretation is "absurd," as it would make every net-metering customer out to be a utility, when these individuals are not directly providing energy to other persons or entities.

Vice Chairman Mizner agreed with Commissioner Faber that both interpretations seem reasonable, and that that is the crux of the problem. He said that the "lowest common denominator" of the customers dealing with this regulation may see things in Commissioner Faber's way and be confused. Mr. Brown did not believe the definition to be unclear, stating that the entities in the wholesale market understand PUC's phrasing.

Chairman Bedwick asked if the PUC would deem an EGS or EDC to be "another entity" in the context of the definition. Mr. Brown said yes, but not as a wholesale or retail supplier-transactions are done at retail value, he said, by statute, and this fact is thus incidental. Chairman Bedwick flatly declared that CGs are selling electricity "no matter how we want to word it." Further, Chairman Bedwick stated that the disapproval order went further than addressing the issue of sale limits and questioned whether the regulations followed the intent of the General Assembly, including a question on the definition of "utility." Finally, he addressed the matter of the submission error, stating that IRRC sees things that may be seen as "nitpicking" to be an

extremely important part of its mission of keeping the public informed. He did not see the error as disrespectful on the part of PUC.

Larry Moyer, owner of a small solar generation system, described himself as a poster-child for the "murky" regulations in this policy arena. He said that he had been told for years that he is a customer-generator, despite not being supplied with terms during the installation of his array. Mr. Moyer's reading of the definition of "utility," he said, cast his assumption into doubt, at least for the two years during which he generated an excess, which was compensated by PPL Electric at the price to compare. Chairman Bedwick asked what type of an investment Moyer made in his system. Mr. Moyer replied that he had made his investment of approximately $35,000 in 2009, when the price of solar panels was nearly double current prices. Chairman Bedwick asked if that was an investment he would have made if "your ability to do the things you're doing" was unclear. Mr. Moyer said that he would not have made the investment if he knew what he has learned in the last seven years.

Ron Celentano, President, Pennsylvania Solar Energy Industries Association (PSEIA), expressed opposition to the regulation, highlighting two particular facets as "detrimental to the growth as well as to the existing solar market." First, he said, is the potential for imposing a fee on CGs. He stated that the regulations leave the door open to future fees, and that this uncertainty may dissuade investors. Further, said Mr. Celentano, the statute precludes the PUC from instituting fees on CGs by stating that customer-generators will receive full retail value on their excess generation. Mr. Celentano's second matter of concern was the requirement for there to be an "existing measurable load at the point of interconnection" for virtual net-metering aggregation. He said that connecting at a site without a load is not common because it tends to be the last resort for potential CGs.

Dave Hommrich, Sunrise Energy, stated his observation that, in the two and a half years since the rule was initially submitted, there has been a marked decline in renewable energy production in Pennsylvania. He said unequivocally that uncertainty has lost the state "tens of millions of dollars" and jobs. Mr. Hommrich celebrated the law creating the Commission as a Bill of Rights for small businesses. He said further that there appears to be no serious problem that needs solving by the PUC regulations, and that the PUC has not provided evidence to the contrary. Though he recognized that the Commission can only disapprove a regulation, he encouraged the Commission to do whatever is in their power to stop this regulation.

Chairman Bedwick asked if Mr. Hommrich concurred with Mr. Moyer in that the cost figure has dropped despite the reduction in the price of solar panels. He concurred. Mr. Brown rebutted, stating that PUC had never viewed Mr. Moyer's system as a utility. When Vice Chairman Mizner asked if he could see how someone may come to that conclusion, Mr. Brown said that he could not, again declaring the implications to be absurd. Mr. Sherrick responded to Mr. Hommrich, claiming that the decrease in production activity is actually due to the expiration of a federal subsidy, further stating that applications to generate solar energy have increased recently.

On aggregation in net-metering, Commissioner Faber asked if the measurable load requirement applies to one or all participants. Mr. Brown replied that there is only one customer

owning all accounts. Chairman Bedwick followed up, wondering what the situation would be if it were more efficient for the CG to place their panels farther away from their property's load. Mr. Brown replied that this would be permitted if the array is physically wired to the barn. He stated further that net-metering and solar does not have to work for everybody. Mr. Moyer took issue with Mr. Brown's responses and stated "in the definition of meter aggregation within the statute it specifically says virtual metering aggregation shall be eligible for net metering."

Commissioner Watson made a motion stating that the regulation is not in the public interest. "I am concerned about the uncertainty of interpreting the language. I appreciate that the PUC thinks it's very clear and any other contrary interpretation would be in their words 'absurd.' It's a difficult prediction that any judge trying to interpret these regulations would necessarily agree that the interpretation as interpreted by the regulated community would necessarily be absurd," he stated. He recalled that the first time this Commission considered the regulation; it appeared to be a solution in search of a problem. "I'm concerned that where we are at today just makes the whole situation more confusing."

Commissioner Watson made a motion for disapproval. Vice Chairman Mizner seconded, and the motion passed 5-0.

V. OTHER BUSINESS

Approval of Vouchers

Vice Chairman Mizner made motions to approve vouchers and expenses for the period April 22, 2016 through May 19, 2016. Commissioner Faber seconded, and the motions passed 5-0.

VI. DATE AND PLACE OF SUBSEQUENT MEETING

Chairman Bedwick announced the next public meeting is scheduled for Thursday, July 21, 2016, at 10:00 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg.

VII. EXECUTIVE SESSION ANNOUNCEMENTS

Chairman Bedwick announced that no executive session would be held.

VIII. ADJOURNMENT

Chairman Bedwick announced the meeting adjourned at 11:50 a.m.