BEFORE THE
House Consumer Affairs Committee

Hearing on AEPS Act of 2004 -- Net-Metering and HB 1349

September 2, 2015

Testimony of

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Good morning, Chairman Godshall, Chairman Daley and members of the House Consumer Affairs Committee. I am Donna Clark, Vice President and General Counsel of the Energy Association of Pennsylvania ("EAP" or "Association"), a trade organization comprised of the major regulated electric and gas public utilities operating in the Commonwealth. Today, I am here to speak specifically concerning matters that impact the Association's electric utility members, otherwise known as electric distribution companies ("EDCs").[1] Thank-you for providing this opportunity to address industry support for and concerns with net-metering as it currently stands in Pennsylvania and to offer our perspective on HB 1349.

I. Evolution of Net-Metering Provisions Under the AEPS Act

Enacted in 2004, the Alternative Energy Portfolio Standards Act ("AEPS Act"), 73 P.S. § 1648.1 *et seq.* promotes the development of alternative energy in Pennsylvania in two fundamental ways. First, the AEPS Act mandates a greater reliance on identified (Tier I and Tier II) alternative energy sources through a 15-year schedule pursuant to which EDCs and electric generation suppliers ("EGSs") must purchase increasing amounts of electric energy generated by alternative energy sources for resale to Pennsylvania's retail electric consumers. 73 P.S. §§ 1648.3 (b) and (c). Second, the AEPS Act encourages customer-generators to obtain electric power through eligible onsite alternative energy systems which can be net-metered and interconnected to the distribution system of the EDC that serves the customer-generator. 73 P.S. § 1648.5.

[1] Citizens' Electric Company; Duquesne Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; Pennsylvania Power Company; Pike County Light & Power Company; PPL Electric Utilities; UGI Utilities, Inc.-Electric Division; Wellsboro Electric Company; and West Penn Power Company.

The AEPS Act has been amended on two occasions: First, by Act 35 of 2007, which amended certain provisions for net-metering and interconnection including, *inter alia,* the definitions for customer-generator and net-metering as well as provisions concerning the reconciliation mechanism for surplus energy supplied through net-metering and the price to be paid by the EDC to the customer-generator for such surplus energy. 73 P.S. §§ 1648.2 and 1648.5; Second, by Act 129 of 2008, which expanded the scope of eligible Tier I alternative energy sources (to include biomass energy and specific categories of low-impact hydropower) and amended the Tier I compliance obligation to increase the percentage share of Tier I resources mandated to be purchased and resold by EDCs and EGSs. 66 Pa. C.S. § 2814.

The Pennsylvania Public Utility Commission ("PUC" or "Commission") is tasked with implementing and enforcing the AEPS Act in cooperation with the Pennsylvania Department of Environmental Protection ("DEP"). The Commission promulgated a series of regulations concerning net-metering and interconnection for customer-generators and alternative energy portfolio standards obligations to implement the AEPS Act and its subsequent amendments.[2] The Commission also issued a policy statement in 2012 supporting net-metering by third party owned and operated alternative energy systems. *See, Policy Statement: Net Metering – Use of Third Party Operators,* Final Order at Docket M-2011-2249441 entered March 29, 2012. More recently in 2014, the Commission initiated a rulemaking to update and revise current regulations

[2] *Final Rulemaking Re Net Metering for Customer-generators pursuant to Section 5 of the Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.5*, L-00050174 (Final Rulemaking Order entered June 23, 2006); *Final Rulemaking Re Interconnection Standards for Customer-generators pursuant to Section 5 of the Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.5*, L-00050175 (Final Rulemaking Order entered August 22, 2006, as modified on Reconsideration September 19, 2006); *Implementation of Act 35 of 2007; Net Metering and Interconnection*, Docket No. L-00050174 (Final Omitted Rulemaking Order entered July 2, 2008); and *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, L-00060180 (Final Rulemaking Order entered September 29, 2008).

and to clarify certain issues of law, administrative policy, and procedure based on its experience to date in implementing and enforcing the AEPS Act. *See,* ANOFR, Docket L-2014-2404361 entered April 23, 2015.

Additionally, the PUC issues a number of reports in its role under the AEPS Act, including an annual report prepared in cooperation with DEP[3] and a periodic report prepared by the PUC Bureau of Technical Utility Services ("TUS") which summarizes and provides access to annually submitted EDC data concerning, *inter alia,* the number of customer-generators interconnected to an EDC distribution system.[4] Information in the TUS report reveals that the number of customers net-metered and interconnected to an EDC distribution system as of May 31, 2011 (4,442) had almost doubled as of May 31, 2014 (8,721). Further, over 94% of those customer-generators had installed a Tier I Solar PV alternative energy system.[5]

II. Suggested Changes/Revisions to Net-Metering Implementation in Pennsylvania

Our testimony today supports changes to the net-metering and interconnection provisions of the AEPS Act based on industry concerns that the current law results in excessive payments and subsidies for the electrical power produced from net-metered customer-generators. These issues are not unique to Pennsylvania and are under consideration in a number of states across the country. EAP is further concerned that current attempts to expand the use of net-metering, by allowing merchant generators to fit within the definition of customer-generator or by

[3] Most recent report, The 2013 AEPS Annual Report, issued in October of 2014 for the 2013 reporting year (June 1, 2012 – May 31, 2013), available on PUC website.
[4] *See,* Net-Metering & Interconnection Report for 2011-2013 and Net-Metering & Interconnection Report for 2012-2014, both available on the PUC website.
[5] As of May 31, 2011, 4210 of the 4,442 net-metered customer-generators had a Solar PV system and, likewise, as of May 31, 2014, 8407 of the 8,721 net-metered customer-generators interconnected had a Solar PV system.

removing any limitation on the size of the alternative energy system, are at odds with the policies underpinning both the Public Utility Code and the AEPS Act.

EAP contends that reimbursing customer-generators for generation at the full retail rate is excessive and in need of re-examination. The full retail electricity rate currently paid to customer-generators in Pennsylvania represents all costs involved in generating, transporting and delivering power to the retail customer. EAP believes that payment for excess generation should be at the wholesale electricity rate. The wholesale electricity rate includes the cost of the fuel used to generate electricity and the cost of buying the power in the competitive wholesale market. Wholesale electricity rates do not include the cost of transporting and delivering the electricity through the electric grid to reach the customer.

Paying the customer-generator the full retail rate for excess generation does not cover the EDC cost of maintaining the grid and other infrastructure required to transport and deliver power to retail customers and does not cover the cost of the distribution grid used by the customer-generators. Today, those costs are paid by other customers who do not net-meter. The inequity of the cost-shifting is further exacerbated by the fact that customers who install alternative energy systems, such as solar PV, tend to be more affluent; the costs avoided are subsidized by the remaining customers who do not have or cannot afford an alternative energy system.

EAP recognizes that net-metering is one of the tools identified in the AEPS Act to achieve the policy goal of increasing the amount of electric energy from renewable and environmentally beneficial sources. EAP believes, however, that increasing the amount of energy generated by these sources must be weighed against the subsidies provided to the customer-generator who net-meters and the costs expended by the EDC to accommodate the alternative energy system, including costs to maintain and operate an electric distribution system

which will supply electric power to the customer-generator when the alternative system is unavailable.

Alternative energy systems are already subsidized at both the state and federal level. Solar PV systems in particular are eligible for various grants and the federal solar investment tax credit. The AEPS Act itself promotes solar PV systems as a preferable form of alternative energy by mandating a carve-out for solar PV which, in turn, impacts the value of the solar REC. *See*, 73 P.S. § 1648.3 (b)(2). These subsidies are in addition to the annual payment at full retail value that the net-metered customer-generator receives for excess generation. 73 P.S. §1648.5. These subsidies are recovered by the EDCs from those remaining customers in the rate class who do not net-meter along with the costs for transmission and distribution avoided by customer-generators.

The level of federal subsidies available for alternative energy systems is tracked by the federal government. The U.S. Energy Information Administration ("EIA") reported in March of 2015 that renewables, with the exception of biofuel, received 72% of the electric subsidies and support in FY2013 even though renewables only accounted for 13% of the total electric generation for that year. Wind received the largest share of direct federal subsidies, accounting for 37% while solar received 27% of direct federal subsidies. Further analysis by EIA demonstrated that wind energy contributed only 1.9% of electric generation in FY2013 while solar energy made up 0.4% of the generations mix.

EAP contends that there is no need to continue the regressive nature of subsidies inherent under the AEPS Act, i.e. excessive value for generation at the retail rate and cost-shifting where ample financial support for alternative energy systems exists by way of federal subsidies and other state grants. While net-metering can be used to offset power that would otherwise be

supplied to the customer by its EDC and can provide broader benefits if the alternative system interconnected generates power from renewable and environmentally beneficial sources, it should not be used to generate revenue for the customer-generator[6] at the expense of other rate-payers who do not net-meter or at the expense of operating and maintaining an efficient, safe, and reliable electric distribution grid.

Pennsylvania's EDCs recognize the need to balance these two crucial public policy concerns (encouraging renewables and supplying adequate, efficient, safe and reasonable electric service to customers) and, in addition to testifying today, look to engage with all stakeholders to determine how best to plan for a future where an increasing number of customer-generators may wish to sell energy back to the grid. Issues concerning excessive payment for energy generated by alternative sources, cost-shifting and cross-subsidization are not unique to Pennsylvania and it is instructive that a number of other states are currently addressing these same concerns.[7] Notably legislatures and public utility commissions in Arizona, California and Hawaii are tackling concerns that the continued growth of net-metering alternative energy systems,

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[6] EAP maintains that eliminating the cost-shifting between EDC ratepayers through a fair and appropriate allocation of grid and distribution costs as well as a change in the annual payment from one which reflects the full retail value to one which pays at the wholesale rate will not prejudice the customer generator or slow the growth of alternative energy systems. Between the state and federal government and current utility incentives, there are eighty (80) different programs ranging from regulatory policies to grants and tax credits to rebates that subsidize alternative energy and energy-efficiency programs in Pennsylvania today.
http://programs.dsireusa.org/system/program?state=PA

[7] Trabish, Herman. "Hawaiian Electric's plan to end solar net metering, explained." Utility DIVE. January 26, 2015. http://www.utilitydive.com/news/hawaiian-electrics-plan-to-end-solar-net-metering-explained/356432/

Trabish, Herman. "What's solar worth? Inside Arizona utilities' push to reform net metering rates." Utility DIVE. June 1, 2015. http://www.utilitydive.com/news/whats-solar-worth-inside-arizona-utilities-push-to-reform-net-metering-r/399706/

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particularly solar, have created grid access, operation and maintenance costs which are not fairly allocated among ratepayers. Further, and similar to the concerns expressed here by EAP, both utilities and consumer representatives in those states are also expressing concern that continued payment for excess generation at retail value results in an unfair subsidy of those customers who net-meter by those customers who do not or cannot afford to own and operate alternative energy systems.

While penetration rates for alternative energy, particularly solar PV are higher in those states than Pennsylvania, now is the time to consider and resolve these issues of unfair cost allocation and cross-subsidization so as to better prepare for the continued growth of alternative energy systems in Pennsylvania. EAP asks the General Assembly to amend the AEPS Act to provide that excess generation from net-metered customers shall be compensated at the wholesale rate rather than at the current "full retail value." EAP further supports changes that would provide the Commission with the authority and direction to approve cost recovery mechanisms or fees for technologies/facilities that assure that the distribution grid can accommodate alternative energy systems now and in the future and that cover the cost of operating and maintaining a distribution system which stands ready to serve the customer-generator at times when the alternative system is not providing sufficient electric power.

III. HB 1349

Turning to the amendment proposed by HB 1349 which would, if enacted, both remove the Commission's authority to set reasonable limits on "the nameplate capacity and production of electrical power from biologically derived methane gas" and repeal or eliminate any such

limitation under the AEPS Act or regulations promulgated under the Act. EAP reiterates its caveats concerning net-metering by customer–generators as detailed above.

HB 1349 does not address concerns relating to the fair recovery and allocation of EDC costs necessary to maintain, operate, and update the electric distribution grid to accommodate interconnection and net-metering. And, by prohibiting any limitations on the size and production of electrical power from biologically derived methane gas, passage of HB 1349 would result in an increase of the subsidies already paid by those customers who do not net-meter. The unintended consequence would be an unlimited increase in the production of electricity by such alternative systems with payment for excess at the statutorily mandated "full retail value" -- the costs of which would be shifted to other customers.

EAP does not believe that a carve-out or exception for systems which generate electrical power from biologically derived methane gas is the best solution. EAP is supportive, however, of the goal that HB 1349 seeks to reach; namely how to encourage the use of anaerobic digesters as one way to meet environmental goals, particularly those relating to improvement of water quality in the Chesapeake Bay. EAP believes that the Commission is well-suited to determine reasonable limitations on the size of alternative energy systems so as to encourage this form of alternative energy system while balancing the concerns of EAP expressed above. Reasonable limits imposed by the Commission via the regulatory process would both meet the intent of the General Assembly to promote renewable energy and would prevent merchant generators from becoming customer-generators under the AEPS Act.

Additionally, EAP believes that other markets for the sale of electricity generated from biologically derived methane gas exist and are available to the particular class of customer-generators identified in HB 1349. An additional solution might be for those generators, who can

build systems that exceed a size appropriate for interconnection with the distribution grid, to sell their excess electrical power into a market more specifically designed to accommodate and compensate for this type of production. EAP maintains that wholesale transactions within PJM or PURPA-style contracts, where the alternative energy system is a qualifying facility under federal law, would provide a fair solution and would avoid additional subsidy or cost-shifting.

EAP and its member EDCs look forward to engaging in additional discussions with this committee and other stakeholders on this legislation and other issues surrounding current net-metering policies following the hearing today. Thank you for the opportunity to appear before you today, and we would be happy to answer questions.