#3061

Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

IRRC #3061
PUC Docket #L-2014-2404361

June 20, 2016

IRRC Commissioners:

This letter is in response to the PUC's revised final form rule, which was submitted to the IRRC on June 13, 2016. As always, Sunrise Energy appreciates the opportunity to provide comments prior to the IRRC voting on the matter.

The PUC made two major changes to their final form rule.

1. They removed all references to a 200% cap on system production, which was deemed to be beyond their authority to impose by the IRRC
2. They removed supporting data in Section 10 of the Regulatory Analysis Form that was intended to illustrate the alleged net metering burden that is borne by ratepayers.

On the surface, this seems like progress. The data presented in Section 10 was found to be flawed, so the PUC removed it. Also, by removing the proposed cap, the PUC appears to have acknowledged that they do not have the statutory authority to impose a cap on system. But unfortunately, what they left in their final form rulemaking is far worse than the prior version.

The attached comments describe in detail the remaining issues with the final form rule. Far from fixing the issue of a regulatory cap on system size, the PUC is now proposing a 0% cap; which they accomplish via the new definition of the word "utility". If the currently proposed rule were to pass, anyone who generates **any** excess power would immediately earn the designation of "utility", and would be disqualified from net metering.

Despite changes that appeared to be helpful on the surface, the PUC continues to put forth a rule that would stifle renewable energy and that is not in the public interest. They also continue to be unable or unwilling to provide acceptable data in support of the need for the regulation. The lack of acceptable data in support of their regulation continues to be a fatal flaw. For these reasons, we request that the IRRC disapprove the PUC's proposed final form rule.

Regards,

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Revised Definition of "Utility"

In the prior final form rule submitted by the PUC, there was a new term created ("Utility"). Embedded in that new term was a 200% cap based on a customer-generator's historical load. Any customer-generator that exceeded that 200% cap would be designated as a utility, and would lose the ability to net meter. After the IRRC (and many commenters) pointed out that the creation of this cap exceeded the PUC's authority, they opted to remove the cap on system size and to re-submit their rule. Listed below is a side-by-side comparison of the prior definition and the current one.

Unfortunately, upon removal of the 200% cap, the PUC created an even worse scenario. The remaining definition (minus the reference to a 200% cap) creates the situation where **any** excess energy production (however small) earns the designation of "utility". This applies to small residential systems as well as large farm-scale and commercial-scale implementations. A 0% cap is obviously not what the IRRC had in mind. This change in the definition was possibly done in haste, and the unfortunate outcome may have been an oversight. But it highlights a fundamental problem.

The PUC continues to believe that their role is to prevent alternative energy systems from "over producing"; a term which implies that a production limit exists. They believe that over production is possible even in the case of systems that otherwise qualify under the AEPS Act. And that is where the problem lies. So long as a system is within the statutory size constraint imposed by the AEPS Act, there can be no such thing as "over production". There is only production, and any energy produced by an appropriately sized system is acceptable under the Act.

The PUC's pejorative term "merchant generator" (a term that doesn't exist in the statute or in the regulations) is now called into question. The term "utility" was minted as a means of blocking from net metering systems that the PUC deems are merchant generators. The PUC claims that anyone who "over produces" is a merchant generator. But with the removal of the cap, how can there ever be "over production"? The undefined term "merchant generator" now makes even less sense; likewise for the new term "utility". What is left is an extremely confusing definition that will no doubt spawn legal challenges for years to come if it is adopted.

Prior Definition	Currently Proposed Definition
Utility—A person or entity that provides electric generation, transmission or distribution services, at wholesale or retail, to other persons or entities. AN OWNER OR OPERATOR OF AN ALTERNATIVE ENERGY SYSTEM THAT IS DESIGNED TO PRODUCE NO MORE THAN 200% OF A CUSTOMER-GENERATOR'S ANNUAL ELECTRIC CONSUMPTION OR SATISFIES THE CONDITIONS UNDER §75.13 (A)(3)(IV) (RELATING TO GENERAL PROVISIONS) SHALL BE EXEMPT FROM THE DEFINITION OF A UTILITY IN THIS CHAPTER. THIS TERM EXCLUDES BUILDING OR FACILITY OWNERS OR OPERATORS THAT MANAGE THE INTERNAL DISTRIBUTION SYSTEM SERVING SUCH BUILDING OR FACILITY AND THAT SUPPLY ELECTRIC POWER AND OTHER RELATED POWER SERVICES TO OCCUPANTS OF THE BUILDING OR FACILITY.	Utility—A person or entity that provides electric generation, transmission or distribution services, at wholesale or retail, to other persons or entities. THIS TERM EXCLUDES BUILDING OR FACILITY OWNERS OR OPERATORS THAT MANAGE THE INTERNAL DISTRIBUTION SYSTEM SERVING SUCH BUILDING OR FACILITY AND THAT SUPPLY ELECTRIC POWER AND OTHER RELATED POWER SERVICES TO OCCUPANTS OF THE BUILDING OR FACILITY.

New system for review of systems larger than 500 kW

The PUC continues to believe that there is a need to conduct a special review for renewable energy systems that are larger than 500 kW. This should give the alternative energy industry cause for concern. The statutory constraints should apply equally for all system sizes. What problem does the PUC hope to solve with this special review process? What rules would need to be applied at 500 kW that aren't also necessary at 50 kW? The answers no doubt lie in their new definition of "utility".

The PUC clearly maintains their belief that some systems should be excluded from net metering, even if they meet the statutory requirement. If the new definition of "utility" is left to stand, one can only imagine what these reviews might look like. The PUC will be free to arbitrarily impose constraints on system size based on their belief that a customer-generator is actually a utility. This could be done retroactively too. The ensuing litigation will cause further disruption in the industry, and will continue to freeze projects in the planning stage.

It is not clear on what basis the PUC might qualify or disqualify a project in this new process. They seem to have agreed that a percentage cap is not allowed (although it was left in via the backdoor with their definition of "utility"). So what are the remaining conditions under which the PUC could block a facility from net metering (or rescind one that had previously qualified)? No one knows, and that is the problem. This is precisely the kind of regulatory uncertainty that the PUC claims that they want to avoid. How could a renewable developer submit an application with confidence (or make any plans at all) when this ill-conceived and ill-defined process looms on the horizon?

This new review process is simply one more means for the PUC to impose their long held belief that they are entitled to decide which systems can qualify for net metering. But the legislature laid down those rules, and the PUC must eventually learn that they may not supersede the clear intent of the legislature.