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The Independent Regulatory Review Commission
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INDEPENDENT REGULATORY
REVIEW COMMISSION

October 30, 2006

Dear Chairman Alvin C. Bush,

PV NOW, the Solar Energy Industries Association (SEIA) and the Mid-Atlantic Solar Energy Industries Association (MSEIA) request the opportunity to address your Commission at your next public meeting scheduled for November 2, 2006. PV NOW is a national solar industry advocacy group comprised of manufacturers and integrators in the solar PV industry, including Sharp Solar, Shell Solar, PowerLight Corporation, Schott Solar, Energy Innovation, SunPower Corporation, Evergreen Solar and Sun Edison.

I am writing on behalf of PV NOW and our partners SEIA/MSEIA to respectfully ask the Independent Regulatory Review Commission to reject the Proposed Final Net Metering Rules (Docket # L-0050174 M-00051865) and send them back to the Pennsylvania Public Utility Commission for two very specific changes that will ensure a better business climate for the development of solar photovoltaics in Pennsylvania. We are pleased with much of the progress that has been made by the Department of Environmental Protection, the Public Utility Commission and others in advancing solar energy in Pennsylvania. We have been participating in the working groups and filing comments on the various rules related to the passage of Act 213, the Alternative Energy Portfolio Standards Act.

We do not believe the legislative intent has been adequately met because this new net metering regulation would be significantly worse for small clean generators than what exists in other states. In fact, net metering was specifically added to Act #213 in order to make net metering more friendly to businesses and consumers. The present proposal is inconsistent with twenty five other state policies and the District of Columbia which credit full retail value on an annual basis in order to provide the best possible incentive for customers to install photovoltaic systems. There is a provision in Act #213 that states that the rules should be:

> *"consistent with rules defined in other states within the service region of the regional transmission organization that manages the transmission system in any part of this Commonwealth,"*

While we agree with the Public Utility Commission's assertion that consistent does not have to be identical, we did not feel the Commission justified why they did not follow other successful state models where renewable energy is thriving, such as in New Jersey.

Under the Regulatory Review Act 1989, Section 2 (a), legislative intent is clearly to be considered when approving regulations through IRRC. Further §2(b)(1) requires the commission shall consider the economic or fiscal impacts of the regulation, which include the following: (i) direct and indirect costs to the Commonwealth, to its political subdivision and to the private sector, and (ii) adverse effects on prices of goods and services, productivity or competition. PV NOW believes that both of these sections of your rules may be in violation due to discriminatory treatment of generators and the financial impact of assigning wholesale credit for excess generation instead of retail credit.

Discriminatory treatment of generators is discussed in Section 75.13 (C) and states that "For customer generators involved in virtual meter aggregation programs, a credit shall be applied first to the meter through which the generating facility supplies electricity to the distribution system, then through the remaining meters for the customer-generator's account equally at each meter's designated rate." We understand that to mean that meters could be compensated at retail credit for virtual meter aggregators. If you approve this two tier credit system, you will be compensating virtual aggregators at the retail rate and single, residential account holders at the wholesale rate within the same rules. We believe single account holders should not be subject to the fluctuations of LMP or the lower value wholesale power rate.

Solar arrays typically produce more power in the summer months and less in the winter. Biodigesters typically produce more power in the winter months. Depending on the system size, these system owners will produce excess generation at the end of a few months in the year, but would not produce excess generation on an annual basis.

On the use of wholesale credit verses retail credit, this example is from an operating system installed in PECO service territory: a 10.6 KW PV system, which could be described as a large residential system would receive about $64 less a year if the average LMP value is used. Over the average life of the solar photovoltaic system of twenty five years, that lost value would be about $1600 at today's rates. This differential would be $0.0489/kWh (LMP) vs. $0.0740/kWh (retail) therefore; a customer-generator only gets on average about 66% of the retail value of the excess generation.

An additional impact on using average LMP instead of retail is on the solar salespeople and marketers. They can easily calculate the retail value to potential customers but when they have to explain that retail value is credited only up to the point before excess is generated and then the average locational marginal price is used, this will certainly confuse consumers. At a time when solar costs are still high, every advantage or disadvantage counts.

Further, the administrative cost and burden on the utility companies' who will either have to write small, monthly checks or calculate monthly credits is rather large, especially as more accounts net meter. The major increase in complexity associated with determining average locational marginal prices (LMP) or the avoided cost of wholesale power for each account, on a monthly basis, would likely mean that each customer's bill would have to be manually processed – and that such reconciliation would have to occur 12 times per year, instead of just once. Clearly, it is not worth the administrative cost especially if in many residential cases, the reconciliation checks in question may be for as little as one dollar. These costs are ultimately borne by consumers making it clear that IRRC's criteria that the regulation should not have "adverse effects on prices of goods and services" will be met. The price of changing and negotiating residential contracts that are not standard contracts will also adversely impact the solar business. Contracts used in other states with retail credit will not be appropriate for use in Pennsylvania which adds administrative costs for solar businesses.

The assignment of wholesale value over retail for excess generation demonstrates lost revenue for those self generators combined with the fact the customer generators will no longer be allowed to carry forward excess generation to future months to offset their retail bill. Home builders striving for a "zero energy home" will experience a lost marketing opportunity as well.

PV NOW is not seeking to throw out the entire net metering regulation but if rejection with the intent to fix it can be accomplished, PV NOW is making that request by writing this letter and asking for an opportunity to speak at the upcoming IRRC public meeting. We propose reinstating the original language which fairly treats all customer generators by crediting full retail value for all generation. We further request you return to the common method of annualizing payments instead of monthly billing. In making these changes, the Commission stated that they were responding to IRRC's concerns – however, it is not clear whether IRRC simply wanted the definition of avoided cost clarified or meant to completely change the intention of the earlier Proposed Rules.

Thank you for your consideration in this matter and we request 5 minutes on your upcoming agenda. We trust that our concerns will be circulated to the other Commissioners and staff at IRRC.

Sincerely,

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Executive Director, PV Now

Christopher O'Brien

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Sharp Electronics Corporation, Solar Energy Solutions