

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 26th day of January, 2007.

CASE NO. 06-0708-E-GI

General Investigation into the Net Metering, Smart Metering and Interconnection standards set forth in the Federal Energy Policy Act of 2005.

COMMISSION ORDER

On August 8, 2005 President George W. Bush signed into law the Energy Policy Act of 2005 (EPAAct 2005). EPAAct 2005 amends the Public Utility Regulatory Policies Act of 1978 (PURPA) by adopting new standards for electric utilities regarding net metering, fuel source diversity, fossil fuel generation efficiency, smart metering, cogeneration, small power production, and interconnection. EPAAct 2005 requires that certain actions be taken by each electric utility and each state regulatory authority regarding EPAAct 2005 amendments.

By an Order entered May 31, 2006 the Commission initiated a general investigation proceeding to consider the requirements of EPAAct 2005, Subtitle E Section 1251 (a) (11), Net Metering; Section 1252, Smart Metering, which entails time-based metering and demand response; and Section 1254, Interconnection. The Order stated that a proceeding to address the fuel source diversity and fossil fuel generation efficiency standards of Section 1251 (a) (12) and (13) will be initiated at a later date. The Order directed publication as well as directed notice to the Commission's jurisdictional electric utilities.

On October 3, 2006 Commission Staff (Staff), Monongahela Power Company and the Potomac Edison Company, each dba Allegheny Power; Appalachian Power Company and Wheeling Power Company; Black Diamond Power Company, Elk Power Company, Elkhorn Public Service Company, Kimball Light & Water Company, Union Power Company, United Light & Power Company, and War Light and Power Company; the CAD; the WVEUG; the West Virginia Citizen Action Group and the West Virginia Environmental Council; the Cities of New Martinsville and Philippi, Harrison Rural Electrification Association, Inc., Craig-Botetourt Electric Cooperative, and Shenandoah Valley Electric Cooperative; and Frank Young filed a "Statement of Consensus Among Parties."

On October 10, 2006 a hearing was convened in Charleston before the Commission. The parties were present and represented as follows: Staff by Leslie J. Anderson, Esquire; the CAD by Jennifer L. Hughes, Esquire; WVEUG by Susan J. Riggs, Esquire; Counsel for

West Virginia Citizen Action Group and West Virginia Environmental Council by William V. Depaulo, Esquire; Appalachian Power Company and Wheeling Power Company by William C. Porth, Esquire; Allegheny Power by Michael A. Albert, Esquire; the Public Systems by Robert R. Rodecker, Esquire; the Musser Companies by Thomas N. Hanna, Esquire; and Frank Young, *pro se*. The Commission accepted the written positions of the parties in the case, in addition to the Consensus. The Commission also heard testimony regarding the content of the Consensus. At the close of the hearing, the Commission stated the following:

The Commission has reviewed the Consensus Statement and other filings and after hearing the testimony and comments of Counsel, the Commission will approve the Consensus Statement and will implement the recommendations and will issue an order.

Tr. p. 56.

Staff filed a Motion to Correct Exhibit B of the Consensus Statement on October 16, 2006.

On December 12, 2006 the Commission issued an order adopting the Consensus as follows:

IT IS THEREFORE ORDERED that the Consensus agreement ..., as modified by Staff's Correction to Exhibit B of the Consensus ..., is hereby adopted in resolution of this proceeding in fulfillment of the Commission's duties pursuant to the Energy Policy Act of 2005. The Consensus is applicable to all electric utilities in this State.

On December 20, 2006 the CAD filed a Petition for Clarification or Modification noting that during the hearing, Staff witness Paul Stewart testified that the parties were recommending that certain net metering provisions should not be adopted as Commission rules, but should instead be included in each electric utility's tariff. Tr. at 25-26. Mr. Stewart testified that the benefit of placing some of the net metering provisions in the tariffs rather than in the Commission rules is that any changes that need to be made to those provisions in the future can be achieved through a tariff proceeding rather than a more complex and lengthy rulemaking proceeding. Tr. at 26. Such tariff filing was to take the form of the proposed Net Metering Service Tariff ("Tariff N.M.S.") as Exhibit C to the Consensus. The CAD asked that the Commission clarify or modify its Order of December 12, 2006 to include the requirement that each electric utility file the agreed-upon Net Metering Service Tariff. The CAD noted that without such clarification or modification there will be no means by which customers can apply for and receive net metering service unless and until the Commission institutes and completes time-consuming rulemaking procedures.

The CAD also suggested that in requiring each utility to file the agreed-upon Net Metering Tariff, the Commission should waive the requirement that each electric utility must publish a notice of the tariff filing since notice had previously been given to the public of this proceeding and of the hearing held October 10, 2006. The CAD suggested that in lieu of requiring each electric utility to publish notice of its tariff filing, the Commission should require its Executive Secretary to issue a press release announcing that all electric utilities in West Virginia will offer net metering pursuant to new Net Metering Tariffs.

In closing, the CAD stated that it was authorized to represent that the following parties had no objection to the granting of its Petition: Staff, Appalachian Power Company and Wheeling Power Company, dba American Electric Power, Monongahela Power Company and The Potomac Edison Company, dba Allegheny Power, West Virginia Energy Users Group, the Musser Companies, West Virginia Environmental Council and West Virginia Citizen Action Group, and Frank Young.

Staff filed a letter on December 22, 2006 in which Staff agreed with the CAD's petition. Regarding the issue of notice to the public regarding the tariff filings, Staff stated:

Staff agrees that notice of the net metering issue was provided in this proceeding. Furthermore, for efficiency purposes and since this case is related to the Commission's responsibilities under the federal Energy Policy Act of 2005, Staff believes that the utilities should not be required to publish notice or otherwise follow the notice requirements for tariff changes found in the Commission's *Rules for the Construction and Filing of Tariffs*. Staff agrees that the Commission could require the Executive Secretary's office or the appropriate Public Service Commission Staff to issue a press release announcing that all electric utilities in West Virginia will offer net metering pursuant to new Net Metering Tariffs. If the Commission is concerned that electric utility customers need more notice than the issuance of a press release, then Staff would recommend that the Commission direct the Executive Secretary's office to cause a legal advertisement to be published statewide announcing that all electric utilities in West Virginia will be adopting a Net Metering Tariff and will be providing net metering pursuant to the terms of that tariff should customers be interested. The legal advertisement could also inform customers that if they want more information on the net metering they may contact their local electric utility or the Public Service Commission for more information.

Staff also recommended that the Commission set a deadline for filing the Net Metering Tariffs as follows:

Additionally, to prevent any further confusion on when the electric utilities should file the net metering tariff provisions (the net metering tariff attached to the Consensus Statement as Exhibit C) (an issue which Staff

acknowledges was not clearly addressed in the Consensus Statement), Staff recommends that the Commission in its order clarifying the issue direct all electric utilities providing service in West Virginia to file the net metering tariff attached to the Consensus Statement as Exhibit C with the Commission to be made a part of the utility's tariff already on file on or before January 16, 2007, with an effective date of February 1, 2007.

DISCUSSION

The Commission's December 12, 2006 Order implemented the terms of the Consensus, including the requirement that each electric utility must file a Net Metering Service Tariff in the form of the tariff attached as Exhibit C to the Consensus. To clarify that requirement the Commission shall adopt the CAD and Staff recommendations, as modified below, such that:

(1) All electric utilities providing service in West Virginia, that have not already done so, will be directed to file the net metering tariff attached to the Consensus as Exhibit C, with the Commission to be made a part of the utility's tariff already on file, on or before February 15, 2007, with an effective date of March 1, 2007; and,

(2) The Commission shall waive the requirement that each electric utility must publish a notice of the tariff filing since notice had previously been given to the public of this proceeding and of the hearing held October 10, 2006. However, the Commission shall require that each electric utility shall inform its customers, through media advertising, billing insert, or other method, providing at least a general description of the net metering tariff and company contact information for those customers interested in participating or learning more about the program. The Commission shall issue a brief press release as well.

Regarding the decision to waive notice of the Net Metering Tariff filings, the Commission notes that *West Virginia Code* § 24-2-4a and the Commission's *Rules for the Construction and Filing of Tariffs (Tariff Rules)* § 150-C.S.R. 2-12, allow the Commission to waive publication and notice requirements for good cause.

The Net Metering Tariff is an optional provision of which customers may choose to take advantage. Additionally, such tariffs will likely inure to the benefit of those who participate in the program. For these reasons, the Commission believes that good cause exists to waive the normal notice and filing requirements.

FINDINGS OF FACT

1. On August 8, 2005 President George W. Bush signed into law the EPAct 2005.

2. On October 3, 2006 Staff, Monongahela Power Company and the Potomac Edison Company, each dba Allegheny Power; Appalachian Power Company and Wheeling Power Company; Black Diamond Power Company, Elk Power Company, Elkhorn Public Service Company, Kimball Light & Water Company, Union Power Company, United Light & Power Company, and War Light and Power Company; the CAD; the WVEUG; the West Virginia Citizen Action Group and the West Virginia Environmental Council; the Cities of New Martinsville and Philippi, Harrison Rural Electrification Association, Inc., Craig-Botetourt Electric Cooperative, and Shenandoah Valley Electric Cooperative; and Frank Young filed a "Statement of Consensus Among Parties."

3. On October 10, 2006 the Commission convened a hearing on this matter and heard testimony regarding the content of the Consensus. At the close of the hearing, the Commission stated the following:

The Commission has reviewed the Consensus Statement and other filings and after hearing the testimony and comments of Counsel, the Commission will approve the Consensus Statement and will implement the recommendations and will issue an order. [Tr. p. 56.]

4. On December 12, 2006 the Commission issued an Order adopting the Consensus as follows:

IT IS THEREFORE ORDERED that the Consensus agreement ..., as modified by Staff's Correction to Exhibit B of the Consensus ..., is hereby adopted in resolution of this proceeding in fulfillment of the Commission's duties pursuant to the Energy Policy Act of 2005. The Consensus is applicable to all electric utilities in this State.

5. On December 20, 2006 the CAD filed a Petition for Clarification or Modification regarding the filing of tariffs. The CAD asked that the Commission clarify or modify its Order of December 12, 2006 to include the requirement that each electric utility file the agreed-upon Net Metering Service Tariff. The CAD suggested that in requiring each utility to file the agreed-upon Net Metering Tariff, the Commission should waive the requirement that each electric utility must publish a notice of the tariff filing. No party objected to the CAD's Petition.

6. Staff agreed that public notice pursuant to the *Tariff Rules* was not necessary.

CONCLUSIONS OF LAW

1. The Commission's December 12, 2006 Order implemented the terms of the Consensus, including the requirement that each electric utility must file a Net Metering Service Tariff in the form of the tariff attached as Exhibit C to the Consensus.

2. The Commission shall require that all electric utilities providing service in West Virginia, that have not already done so, file the net metering tariff attached to the Consensus as Exhibit C, with the Commission to be made a part of the utility's tariff already on file, on or before February 15, 2007, with an effective date of March 1, 2007.

3. There exists good cause to waive the requirement that each electric utility must publish a notice of the tariff filing since notice had previously been given to the public of this proceeding and of the hearing held October 10, 2006. However, to increase public awareness of the tariffs, the Commission shall require that each electric utility inform its customers, through media advertising, billing insert, or other method, providing at least a general description of the net metering tariff and company contact information for those customers interested in participating or learning more about the program.

4. Good cause exists to waive notice of the Net Metering Tariff filings.

ORDER

IT IS THEREFORE ORDERED that all electric utilities providing service in West Virginia, that have not already done so, are hereby directed to file the net metering tariff attached to the Consensus as Exhibit C, to be made a part of the utility's existing tariff. Such filing shall be made on or before February 15, 2007, with an effective date of March 1, 2007.

IT IS FURTHER ORDERED that the public notice requirement of the *West Virginia Code* and the Commission's *Tariff Rules* is hereby waived.

IT IS FURTHER ORDERED that each electric utility shall inform its customers, through media advertising, billing insert, or other method, providing a general description of the net metering tariff and company contact information for those customers interested in participating or learning more about the program. Each electric utility shall submit an affidavit evidencing such notice was provided. Such affidavit shall be filed on or before April 10, 2007.

IT IS FURTHER ORDERED that upon entry of this order this case shall be removed from the Commission's docket of open cases.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this Order upon all parties of record by United States First Class Mail and upon Commission Staff by hand delivery.

A True Copy, Testes:


Sandra Squire
Executive Secretary

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