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January 17, 2012

Brad Smith, Primary Secretary (by email to smithb1@pjm.com)  
Net Energy Metering Senior Task Force  
PJM Interconnection  
995 Jefferson Avenue  
Norristown, PA 19403

Re: Proposed Changes to Net Energy Metering  
Senior Task Force Charter

Dear Mr. Smith,

On behalf of the Interstate Renewable Energy Council (“IREC”), I appreciate the opportunity to participate in the Net Energy Metering Senior Task Force (“NEMSTF”) and plan to attend as many meetings as possible in person. I participated in the January 5, 2012 meeting of the NEMSTF via telephone and submit this letter in response to your call in that opening meeting for input from stakeholders and participants on the language of the senior task force’s charter.

IREC is a non-profit organization that has worked for nearly three decades to accelerate the sustainable utilization of renewable energy resources through the development of programs and policies that reduce barriers to renewable energy deployment. IREC has participated in workshops, proceedings and rulemakings before over thirty state public utility commissions during the past three years, addressing topics that directly impact the development of renewable energy resources, including net metering rules, interconnection standards and the permissibility of third-party ownership of renewable generation under state law. IREC has participated in state regulatory proceeding in many of the states within the PJM Interconnection footprint. Nationally and within the PJM region, IREC is heavily vested in working with states and stakeholder to develop net metering standards and implement creative program augmentations, such as virtual net metering, aggregated net metering, and community-based solar projects. IREC has published model rules for net metering and interconnection and has developed a community-based solar model.

At the outset, IREC believes that it is important to revise the NEMSTF charter to reflect the well-established delineation of jurisdiction between state and federal regulatory concerns. Though the pronouncements by the Federal Energy Regulatory Commission (“FERC”) in regards to retail net metering are few, they are relatively clear on the limits of federal jurisdiction. As discussed in the FERC’s *MidAmerican* Order, and more recently in the *SunEdison* Declaratory Order, retail net metering is purely a state jurisdictional billing practice and a sale is only implicated if there is a payment to the customer-generator by the interconnected utility for excess generation that has accrued at the end of the billing period.<sup>1</sup> Even if there is a “sale,” the FERC has been clear that it does not have jurisdiction over that sale if the generator is a qualifying facility (“QF”) and so long as the sale is pursuant to the Public Utilities Regulatory Policy Act of 1978 (“PURPA”). Because most net metering facilities are solar photovoltaic facilities, most small net metering facilities automatically qualify as QF and enjoy the waiver from self-certification filing requirement for systems under 1 MW.

IREC’s proposed revisions, attached to this letter in a redline document, are minimal, but are aimed at reflecting the existing law regarding state responsibility for net metering and net metering program contours. Indeed, it is important to establish these “rules of the road” at the threshold so that the ultimate recommendations made by this senior task force are not hamstrung by jurisdictional limitations. First, at the most basic level, the starting point for this senior task force should be that net metering in most instances does not involve a sale for wholesale, so it does not invoke the FERC’s broad authority to regulate such sales under the Federal Power Act. Moreover, net metering customers are not likely market participants and the charter should reflect this reality. Second, nearly every facility engaged in net metering in the country are interconnected to distribution facilities. Distribution level interconnections for net metering facilities are generally governed by state procedures. The recommendations of the senior task force on what can be done through the various committees should reflect the sensitivity that certain areas of regulation, such as the interconnection of net metering customer to distribution systems, are beyond the reach of the FERC and, thereby, of the PJM.

IREC looks forward to engaging in this process with stakeholders and participants and hopes to make positive contributions to the group through its unique and extensive expertise in the area of net metering policy.

Sincerely,



Jason B. Keyes

Interstate Renewable Energy Council

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<sup>1</sup> *MidAmerican Energy Co.*, 94 F.E.R.C. ¶ 61,340 (2001); *SunEdison, L.L.C.*, 129 F.E.R.C. ¶ 61,146 (2009).