

HOT TOPICS IN ENERGY & UTILITIES

Presented by:



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Lauren Burge concentrates her practice in the areas of energy, utilities and telecommunications matters. She represents clients in a variety of state regulatory proceedings primarily before the Pennsylvania Public Utility Commission (PA PUC), including base rate cases, consumer complaint cases, energy efficiency and demand-side management proceedings, universal service proceedings, and rulemakings, as well as other regulatory compliance and policy advocacy matters. In addition to the PA PUC, Lauren has practiced before the Federal Energy Regulatory Commission (FERC) and in appellate courts on matters related to public utilities. Lauren previously served as an assistant consumer advocate in the Pennsylvania Office of Consumer Advocate, representing the interests of utility consumers before the PA PUC and FERC in cases involving electric, natural gas, water and wastewater utilities.

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Agenda

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 - Infrastructure
 - Stormwater Charges
 - Legal Challenges
 - Mitigation Measures for Property Owners
- Solar in PA
 - Background
 - PA Net Metering Regulations
 - Legal Challenges
 - Future Challenges and Opportunities

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Stormwater

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Stormwater Basics

- Stormwater is any form of precipitation that runs off of surfaces and does not infiltrate into the ground.
 - Undeveloped areas: Absorbs into the ground or slowly runs off to waterways
 - Developed areas: Runoff flows to storm drains or directly into waterways



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Stormwater Basics

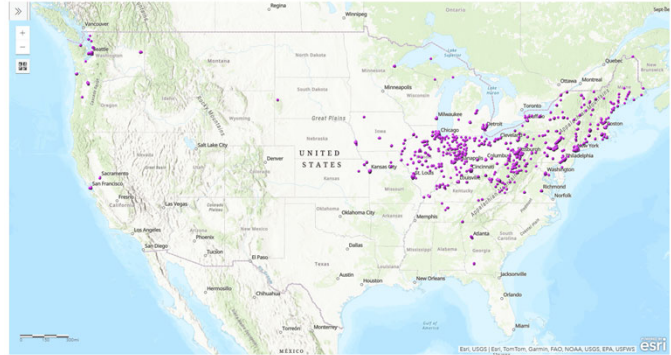
- Pervious Area
 - Lawns
 - Forests
 - Parks
 - Any unimproved areas that allow for water infiltration into the ground
- Impervious Area
 - Buildings/Roofs
 - Streets
 - Parking lots
 - Driveways
 - Other improvements that limit infiltration

Stormwater Basics

- Issues with Stormwater Runoff
 - Runoff picks up pollutants that harm water quality
 - Flooding and related property damage/public safety issues
 - Erosion
- Stormwater management is increasingly important to address these concerns.

Stormwater Infrastructure

- Combined Sewer System
 - One set of pipes transports both wastewater and stormwater
 - Combined flow is transported to treatment facility
 - Combined Sewer Overflows allow excess to be discharged directly to rivers/streams
 - Located in older cities, primarily in the northeast and Great Lakes regions



Stormwater Infrastructure

- Municipal Separate Storm Sewer Systems (MS4)
 - Separate collection system that conveys stormwater to outfalls
 - Owned and operated by a public entity, not part of a POTW.
 - Permitting and stormwater management requirements apply to these systems in “urbanized areas”
 - MS4 NPDES permit requires six Minimum Control Measures with implementation of Best Management Practices to address water quality impacts and reduce runoff.

National Map of Regulated MS4s



Source: US EPA

Stormwater Charges



Source: Western Kentucky University Stormwater Utility Survey 2025

- Stormwater management costs have increased significantly due to aging infrastructure, expanding development, changing weather conditions, increasing costs and greater regulatory mandates.
- A growing number of municipalities and authorities have created stormwater utilities and/or implemented stormwater charges.
 - Over 2100 stormwater utilities across the United States, in 43 states and the District of Columbia.
 - Approximately 70 in Pennsylvania, with many in SW PA.

Stormwater Charges

- Stormwater charges vary but are often based on Equivalent Residential Units (ERU).
 - One ERU is typically equal to the average or median impervious area (in square feet) on a single-family residential parcel.
 - Properties are typically charged a monthly or quarterly fee per ERU.
 - Aerial imagery and mapping are often used to identify impervious areas on individual parcels.
- Availability of credits or ERU reduction

Legal Challenges

- *Borough of West Chester v. Pa. State System of Higher Education and West Chester University*
 - West Chester University challenged the Borough’s stormwater fee, arguing that it is a tax, not a fee.
 - In ruling on a motion for summary judgment, the Commonwealth Court agreed with the University that the charge constituted a tax from which the University is immune. 291 A.2d 455 (Pa. Commw. Ct. 2023).
 - This was appealed to the PA Supreme Court. Argued Sept. 11, 2024, currently pending. (9 MAP 2023).
 - This case has drawn significant interest, and the outcome may have wide-ranging implications for the ability of municipalities to fund stormwater management activities.

Mitigation Measures for Property Owners



Reductions to impervious area



Best Management Practices (BMPs)



Corrections to Impervious Area designations

Solar in Pennsylvania

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Background

- Alternative Energy Portfolio Standards Act of 2004 (“AEPS Act”), 73 P.S. § 1648.1 *et seq.*
 - Established net metering in Pennsylvania.
 - Net metering allows those with alternative energy generating systems (such as solar) to offset some or all of their electricity usage and sell any excess into the grid.
- “NET METERING.” The means of measuring the difference between the electricity supplied by an electric utility and the electricity generated by a customer-generator when any portion of the electricity generated by the alternative energy generating system is used to offset part or all of the customer-generator’s requirements for electricity. Virtual meter aggregation on properties owned or leased and operated by a customer-generator and located within two miles of the boundaries of the customer-generator’s property and within a single electric distribution company’s service territory shall be eligible for net metering.
- “CUSTOMER-GENERATOR.” A nonutility owner or operator of a net metered distributed generation system with a nameplate capacity of not greater than 50 kilowatts if installed at a residential service or not larger than 3,000 kilowatts at other customer service locations, ...

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PA Net Metering Regulations



- The PA Public Utility Commission developed regulations for net metering and interconnection.
- The regulations included requirement that the customer-generator must:
 - “Have electric load, independent of the alternative energy system, behind the meter and point of interconnection of the alternative energy system.”
 - “To be independent of the alternative energy system, the electric load must have a purpose other than to support the operation, maintenance or administration of the alternative energy system.”
 - 52 Pa. Code § 75.13

Homrich v. Commonwealth

- Solar developer challenged aspects of the PUC regulations, including the independent load requirements.
- The PA Supreme Court invalidated PUC regulations that effectively blocked solar/alternative energy projects of 3 MW or less that proposed to use net metering, particularly where there was no “independent load” associated with the project.
 - *Homrich v. Commonwealth*, 231 A.3d 1027 (Pa. Cmwlth. 2020), *affirmed*, 245 A.3d 637 (Pa. 2021) (Per Curiam).
 - This made certain sections of the PUC’s regulations unenforceable as the PUC exceeded its authority under the AEPS Act.
 - “Homrich loophole”

Growth in Solar Development

- PA PUC recently announced that Pennsylvania doubled its solar generation over a 17-month period.
 - 1 GW in late 2023
 - 2 GW as of July 2025
- 47% from utility-scale solar
 - Reflects widespread adoption by residential and commercial customers.
- Another 500 MW of grid-scale solar is currently under development.

Future Challenges and Opportunities

Challenges

- OBBB Act phases out federal tax credits
 - Production Tax Credit and Investment Tax Credit: Projects can still qualify if construction begins by July 4, 2026, and in service by Dec. 31, 2027
 - Residential Clean Energy Credit: 30% credit is terminated for expenses incurred after Dec. 31, 2025
- Potential legislation addressing Homrigh loop hole

Opportunities

- Potential legislation on Community Solar
 - Would allow a group of customers to subscribe to purchase a portion of energy generated by a shared solar array, often located off-site, to receive credits on their electricity bills for the power their share produces.
 - Current prohibited under the AEPS Act so legislation is necessary.
 - Various bills have been proposed in recent years, but none have passed in Pennsylvania.
- Growing demand for electricity

Thank you & Questions

Let's stay connected

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