

Regulatory Analysis Form		This space for use by IRRC
(1) Agency Pennsylvania Public Utility Commission		RECEIVED OCT - 3 PM 12: 37 INDEPENDENT REGULATORY PENNSYLVANIA COMMISSION IRRC Number: 2569
(2) I.D. Number (Governor*s Office Use) L-00060180/57-252		
(3) Short Title Final Rulemaking Order Implementation of the Alternative Energy Portfolio Standards Act of 2004		
(4) PA Code Cite 52 Pa. Code Chapter 75	(5) Agency Contacts & Telephone Numbers Primary Contact: Kriss E. Brown (legal), 717-787-4518 Secondary Contact: Lawrence F. Barth (legal), 717-772-8579	
(6) Type of Rulemaking (check one) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted	(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. <p>The Commission adopted regulations implementing the Alternative Energy Portfolio Standards Act of 2004 as amended by Act 35 of 2007. These regulations also include standards and processes for alternative energy resource qualification and alternative energy credit certification as well as codifying the compliance schedule for electric distribution companies (EDCs) and electric generation suppliers (EGSs), the banking provisions of the Act, and the Commission's authority to designate a credit registry. The regulations set forth the standards and processes for force majeure determinations, and their relationship to alternative compliance payments and provide for a force majeure mechanism as part of the true-up period.</p>		
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. <p>Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.2, 1648.3, 1648.7, 66 Pa.C.S. §§501, 504-506, 1301 and 1501, the Commonwealth Documents Law, 45 P.S. §§1201, et seq., and the regulations promulgated thereunder at 1 Pa. Code §§7.1, 7.2, and 7.5.</p>		

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes, Sections 2, 3 and 7 of the Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.2, 1648.3, 1648.7. No deadline stated.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The adoption of these regulations will facilitate the research, development and deployment of small alternative energy resources, which was the clear intent of the Alternative Energy Portfolio Standards Act, as amended.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no specific public health, safety, environmental, or general welfare risks associated with nonregulation. These regulations encourage and facilitate the development deployment of renewable electric generation resources in a manner that enables Pennsylvania to attract developers of alternative energy systems to the Commonwealth.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Consumers, utilities, and developers of alternative energy systems will benefit as these amendments to the existing regulations will provide a reasonable return on energy produced by customer owned alternative energy systems. Providing this reasonable return will facilitate the research, development and deployment of these small alternative energy resources, that will in turn help consumers fund alternative sources of energy and utilities meet the requirements of the Alternative Energy Portfolio Standards Act, as amended.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No one should be adversely affected by these regulations. These regulations implement the directives of the Legislature as set forth in the Alternative Energy Portfolio Standards Act, as amended by Act 35 of 2007.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Customer-generators, electric generation suppliers, electric distribution companies, and developers of alternative energy systems as defined by the Alternative Energy Portfolio Standards Act.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Commission engaged in a stakeholder process in order to solicit input from interested parties prior to drafting the regulations. The regulations reflect the detailed comments the Commission received from utilities, consumer advocacy groups, alternative energy developers and generators, and other government entities. A Commission order entered July 25, 2006 in this docket invited comments on the proposed regulations. Following the passage of Act 35 of 2007 amending the Act, the Commission issued a Secretarial Letter seeking additional comments. It was published in the Pennsylvania Bulletin on October 20, 2007, and distributed to all parties who previously commented on the proposed regulations. This Secretarial Letter provided interested parties with an opportunity to provide input before the regulations were finalized. Twenty parties filed comments, which were addressed in the PUC order finalizing the regulations.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

No specific cost study was conducted as costs associated with these regulations were dictated by the Alternative Energy Portfolio Standards Act, as amended by Act 35 of 2007.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

None.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

None.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$ N/A	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community	minimal	minimal	minimal	minimal	minimal	minimal
Local Government	N/A					
State Government	minimal	minimal	minimal	minimal	minimal	minimal
Total Costs						
REVENUE LOSSES:	N/A					
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

Not applicable.

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(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A				

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Not applicable.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Not applicable.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Not applicable.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No federal standards apply.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Some 26 states have laws which are similar to the Alternative Energy Portfolio Standards Act. Insofar as the Act and these regulations will encourage the development and use of renewable energy resources, they should not put Pennsylvania at a competitive disadvantage with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

Yes. The Alternative Energy Portfolio Standards Act has required the Commission and the Department of Environmental Protection to work together in implementation of certain parts of the Act. Therefore, the Department has commented on the proposed regulations and its input has been utilized in finalizing the regulations.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The regulations will require minimal increases in record keeping for EDCs and EGSs. No forms are available.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Not applicable.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulations will become final following publication in the Pennsylvania Bulletin and approval by the IRRC.

(31) Provide the schedule for continual review of the regulation.

After taking effect, the final regulations will be reviewed and revised as necessary and, particularly, once the Commission and other interested parties have experience implementing the amended regulations.

**FACE SHEET
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WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

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REVIEW COMMISSION

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Copy below is hereby approved as to form and legality. Attorney General.

BY _____
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

Pennsylvania Public Utility Commission
(AGENCY)

DOCUMENT/FISCAL NOTE NO. L-00060180/57-252

DATE OF ADOPTION September 25, 2008

BY James J. McNulty
James J. McNulty

TITLE Secy
(SECRETARY)

Copy below is hereby approved as to form and legality. Executive or independent Agencies.

BY Bohdan R. Pankiw
Bohdan R. Pankiw
Chief Counsel

9-25-2008
DATE OF APPROVAL

Check if applicable. No Attorney General approval or objection within 30 days after submission.

L-00060180/57-252
Rulemaking Re: Implementation of the Alternative Energy
Portfolio Standards Act of 2004
52 Pa. Code, Chapter 75

The Pennsylvania Public Utility Commission on September 25, 2008, adopted a final rulemaking order which codifies prior Commission interpretations of the Alternative Energy Portfolio Standards Act and resolves issues relevant to its implementation. The contact person is Kriss Brown, Law Bureau, 717-787-4518.

EXECUTIVE SUMMARY

L-00060180/57-252

Implementation of the Alternative Energy Portfolio Standards Act 52 Pa. Code Sections §§ 75.61-75.70

On July 20, 2006, the PUC entered an order soliciting comments on establishing regulations implementing the general requirements of the Alternative Energy Portfolio Standards Act of 2004 which promotes the development and use of renewable energy resources in the Commonwealth. The regulations would apply primarily to all electric distribution companies (EDCs) and active electric generation suppliers (EGSs). Order entered July 25, 2006 at Docket No. L-00060180. The proposed order was published in the *Pennsylvania Bulletin* on October 14, 2006. Twenty-five comments were filed and IRRC also filed comments.

Following the amendment of the Act by Act 35 of 2007, on September 13, 2007, the Commission issued a Secretarial Letter reopening the comment period. Ten comments were filed on or before October 11, 2007. The PUC issued its final rulemaking order on September 29, 2008.

The regulations at 52 Pa. Code §§ 75.61-75.70 codify the compliance schedule for EDCs and EGSs which will be measured in quantities of alternative energy credits, each of which shall represent one MWh of qualified alternative electric generation or conservation, whether self-generated, purchased along with the electric commodity or separately through a tradable instrument. Compliance will be measured against total sales of electricity to retail customers for the reporting period.

The regulation also sets standards and processes for force majeure determinations, and their relationship to alternative compliance payments. The Act requires the Commission to provide for a force majeure mechanism as part of the true-up period. This special force majeure section would only need to be used during those reporting periods

where the Commission had declined to make a general force majeure determination for one or more of the compliance obligations.

Under the Act, EDCs and EGSs may fully recover the reasonable and prudently incurred costs of complying with the Act from ratepayers. This includes the costs for purchases of alternative energy or alternative energy credits, payments to credit program administrators, and costs levied by regional transmission organizations to ensure that alternative resources are reliable. The regulation provides for costs and revenues for alternative energy compliance to be reconciled on an annual basis as well as for the annual audit of these costs by the Commission.

The contact person for technical issues related to this rulemaking is Calvin Birge, Supervisor, Conservation, Economics and Energy Planning, 717-787-2139 and the contact person for legal issues related to this rulemaking is Kriss Brown, Assistant Counsel, Law Bureau, 717-787-4518.

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held September 25, 2008

Commissioners Present:

James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman, Statement attached
Robert F. Powelson
Kim Pizzingrilli
Wayne E. Gardner

Implementation of the Alternative Energy
Portfolio Standards Act of 2004

Docket No. L-00060180

FINAL RULEMAKING ORDER

The Commission is required to carry out the provisions of the Alternative Energy Portfolio Standards Act of 2004 (the "AEPS Act"), 73 P.S. § 1648.1, *et seq.* Pursuant to this obligation, the Commission issued proposed regulations at this docket on July 20, 2006. The initial public comment period for this rulemaking proceeding concluded on January 13, 2007. On July 19, 2007, Governor Rendell signed into law Act 35 of 2007, which amended multiple provisions of the AEPS Act. The Commission reopened the public comment period to allow interested parties to file comments regarding these amendments. This second comment period ended on October 11, 2007. The Commission has completed its review of these comments and now issues final form regulations. This final rulemaking codifies prior Commission interpretations of the AEPS Act and resolves other issues relevant to its implementation. These final form rules will be effective upon publication in the *Pennsylvania Bulletin*.

BACKGROUND

The AEPS Act, which became effective February 28, 2005, establishes an alternative energy portfolio standard for Pennsylvania. The Pennsylvania General Assembly charged the Commission with implementing and enforcing this mandate, with the assistance of the Pennsylvania Department of Environmental Protection (“DEP”). 73 P.S. §§ 1648.7(a) and (b). The Commission determined that the Act is in *pari materia* with the Public Utility Code, and that it would develop the necessary regulations to be codified at Title 52 of the Pennsylvania Code. 1 Pa.C.S. § 1932.

The Commission initiated an implementation proceeding for the AEPS Act on January 7, 2005, at Docket No. M-00051865. Subsequently, the Commission established an Alternative Energy Portfolio Standards Working Group (“AEPS WG”) to provide a forum for input by consumers and their advocates, electric distribution companies (“EDC”), electric generation suppliers (“EGS”), state agencies, and other interested parties. The AEPS WG held its first meeting on March 2, 2005. The Commission tasked the AEPS WG with the development of the rules necessary for the participation of customer-generators in this market, as required by the Act. 73 P.S. § 1648.5.

The Commission has completed the following tasks necessary to the implementation of the AEPS Act.

- The Commission has issued final, uniform net metering regulations for customer-generators. *Final Rulemaking Re Net Metering for Customer-generators pursuant to Section 5 of the Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.5, L-00050174* (Final Rulemaking Order entered June 23, 2006). These regulations were approved by the Independent Regulatory Review Commission (“IRRC”) and became legally effective on December 16, 2006. The Commission approved revisions to

all EDC customer tariffs that implemented this regulation in February and March of 2007.

- The Commission issued final, uniform interconnection regulations for customer-generators. *Final Rulemaking Re Interconnection Standards for Customer-generators pursuant to Section 5 of the Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.5, L-00050175* (Final Rulemaking Order entered August 22, 2006, as modified on Reconsideration September 19, 2006). These regulations were approved by the IRRC and became legally effective on December 16, 2006.
- Identification of the fifteen year reporting period schedule. *Implementation of the Alternative Energy Portfolio Standards Act*, Docket No. M-00051865 (Order entered March 23, 2005) (“First Implementation Order”).
- Identification of the compliance exemption period for each EDC service territory. *Implementation of the Alternative Energy Portfolio Standards Act*, Docket No. M-00051865 (entered March 23, 2005); as modified in *Implementation of the Alternative Energy Portfolio Standards Act*, Docket No. M-00051865 (Order entered July 18, 2005) (“Second Implementation Order”).
- Establishment of general standards and processes for tracking and verifying demand side management and energy efficiency measures. *Implementation of the Alternative Energy Portfolio Standards Act: Standards for the Participation of Demand Side Management Resources*, Docket No. M-00051865 (Final Order entered September 29, 2005).
- Designation of the alternative energy credit registry. *Implementation of the Alternative Energy Portfolio Standards Act: Designation of the Alternative Energy Credit Registry*, Docket No. M-00051865 (Final Order entered January 31, 2006) (“Credit Registry Order”). The Commission designated PJM Environmental Information Systems, Inc.’s (“PJM-EIS”) Generation Attribute Tracking System (“GATS”) as the credit registry. The Commission has executed a subscriber agreement with PJM-EIS to use GATS.
- Completion, with the DEP, of an interim alternative energy system qualification process. (Secretarial Letters of December 20, 2005, and January 30, 2006). An application form developed as part of this process is

available through the Commission's website. More than 500 alternative energy systems have been qualified and registered with GATS.

- Selected Clean Power Markets as the independent alternative energy credit program administrator on November 30, 2006. A services contract has been executed and CPM has assumed the duties of the program administrator identified in these rules.
- The Commission has resolved litigation on the ownership of alternative energy attributes for contracts entered into pursuant to the federal Public Utility Regulatory Policies Act of 1978 ("PURPA"), which required electric utilities to enter into long-term contracts with independently owned electric generation facilities, some of which relied on alternative energy sources to generate electricity. The Commission held that, where the contract language was silent, the alternative energy attributes was conveyed with the energy to the purchasing EDC. *Petition for Declaratory Order Regarding Ownership of Alternative Energy Credits and any Environmental Attributes Associated with Non-Utility Generation Facilities Under Contract to Pennsylvania Electric Company and Metropolitan Edison Company*, Docket No. P-00052149 (Order entered February 12, 2007). The Commission denied reconsideration of this Order, on the merits, at the Public Meeting of May 30, 2007.¹
- The Commission adopted a policy statement on the non-public utility status of some alternative energy systems in late 2005. *Implementation of the Alternative Energy Portfolio Standards Act*, Docket No. M-00051865 (Final Order entered December 5, 2006). This policy statement became effective as of January 6, 2007 and codified at 52 Pa. Code § 69.1401.
- The Commission addressed the recovery of alternative energy costs in the context of the default service rulemaking. *Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa.C.S. § 2807(e)(2)*, Docket No. L-00040169 (Final Rulemaking Order entered May 10, 2007). These regulations became effective on September 15, 2007.
- The Commission revised the net metering regulations to be consistent with the Act 35 of 2007 amendments to AEPS through a final omitted rulemaking. *Implementation of Act 35 of 2007; Net Metering and Interconnection*, Docket No. L-00050174 (Final Omitted Rulemaking Order entered July 2, 2008).

¹ This matter is currently on appeal at the Commonwealth Court of Pennsylvania.

Certain other matters related to the AEPS Act's implementation remain open before the Commission:

- Standards for the receipt, custody and disbursement of alternative compliance payments are in the process of being developed by the Pennsylvania Sustainable Energy Board ("PASEB"), which is the entity that the AEPS Act delegated primary responsibility to for managing these monies.

The Commission commenced this rulemaking by issuing a proposed rulemaking order at its Public Meeting of July 20, 2006. The proposed rule was published in the Pennsylvania Bulletin on October 14, 2006. Comments to the proposed rule were submitted on or before December 13, 2006, by the following parties: ARIPPA, Citizens for Pennsylvania's Future (PennFuture), Citizen Power, Clean Air Council (CAC), Community Energy, Constellation NewEnergy (Constellation), Dominion Retail, Inc. (Dominion), the Energy Association of Pennsylvania (EAP), the Electric Power Generation Association (EPGA), FirstEnergy,² FPL Energy (FPL), LLC, Fat Spaniel Technologies, the Industrial Energy Consumers of Pennsylvania (IEC), the Mid-Atlantic Solar Industries Association (MASIA), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Pennsylvania Department of Environmental Protection (DEP or Department), the Pennsylvania Waste Industries Association (PWIA), PPM Energy, Inc. (PPM), PV Now, PECO Energy Company (PECO), Reliant Energy, Inc. (Reliant), the Reinvestment Fund, and the U.S. Steel Corporation. The Independent Regulatory Review Commission ("IRRC") submitted its comments on January 12, 2007.

² Including the Metropolitan Edison Company, the Pennsylvania Electric Company, and the Pennsylvania Power Company.

On July 19, 2007, Governor Rendell signed Act 35 of 2007 into law. Act 35 of 2007 (Act 35) amended multiple provisions of the AEPS Act. As a result, this Commission issued a Secretarial Letter on September 13, 2007, reopening the public comment period at this docket to provide interested parties an opportunity to advise the Commission on how the Act 35 amendments should be reflected in the final form rule. Comments in response to this secretarial letter were submitted on or before October 11, 2007 by the following parties: ARIPPA, Citizens for Pennsylvania's Future (PennFuture), the Energy Association of Pennsylvania, the Mid-Atlantic Solar Industries Association, the Office of Consumer Advocate, the Office of Small Business Advocate, the Pennsylvania Department of Environmental Protection, PECO Energy Company, U.S. Steel Corporation, and the York County Solid Waste and Refuse Authority (York). All comments are available at the Commission's public internet domain.

SUMMARY OF CHANGES

The final rule has been changed in response to comments submitted by the IRRC and interested parties, and also in response to the amendments to the AEPS Act due to Act 35. Key substantive changes include:

- Clarification of solar photovoltaic ("solar pv") obligation (e.g., all sales vs. Tier I sales)
- Revision of the fifteen year schedule for solar pv requirements
- Revision of the geographic scope standard for resource eligibility
- Revision of the alternative compliance payment standard for solar pv
- Revision of the process and standard of review for force majeure determinations
- Revision of the alternative energy market integrity provision
- Revision of the alternative energy credit certification verification process
- Deletion of certain provisions relating to alternative energy system qualification

The Commission has made other changes based on its experience in implementing the AEPS Act over the last year and in response to comments from the IRRC and other parties that are intended to clarify or otherwise improve the final rule.

DISCUSSION

The Commission has reviewed the comments filed at each stage of this proceeding. The following sections identify changes from the proposed version of the rule and the Commission's rationale.

A. § 75.61. EDC and EGS obligations.

This section codifies the compliance schedule for EDCs and EGSs. This section acknowledges that compliance will be measured in quantities of alternative energy credits, each of which shall represent one MWh of qualified alternative electric generation or conservation, whether self-generated, purchased along with the electric commodity or separately through a tradable instrument. Compliance will be measured as a percentage of total sales of electricity to retail customers for the reporting period.

PennFuture, CAC, MASIA, DEP, PV Now, and Reinvestment Fund all commented that the solar photovoltaic share requirement should be a percent of total retail sales. Section 75.61(b) has been revised in two ways in regard to the solar photovoltaic requirement. The Commission agreed with the public comments that asserted that the solar photovoltaic requirement is a percentage of all sales, and not just Tier I sales. This issue was ultimately resolved by the passage of Act 35, which removed any ambiguity that the solar photovoltaic requirement was a percentage of all retail sales. Act 35 also changed the AEPS Act to increase the solar photovoltaic requirement every year, as opposed to every four years.

Section 75.61(b) has also been supplemented to clarify the annual alternative energy credit (“AEC”) obligation. When an EDC or EGS’s AEC obligation is calculated for a particular reporting period, it will likely be expressed as a fraction. The AEPS Act does not provide for the creation of fractional AECs. The rule has therefore been revised to reflect that an EDC or EGS’s AEC obligation for a reporting period will be rounded to the nearest whole number.

OSBA comments that Section 75.61(d) appears to be inconsistent with the Act’s Section 3(b)(1), 73 P.S. § 1648.3(b)(1), requirement that Tier I compliance be by both EDCs and EGSs based upon retail sales in the certificated service territory. OSBA specifically notes that this regulation allows EGSs to measure compliance on a statewide basis while EDCs measure compliance only within the EDC’s service territory. The Commission disagrees that such disparate treatment is inconsistent with the Act. First, the section referred to by OSBA specifically states that “at least 8% of the electric energy sold by an [EDC] or [EGS] to retail electric customers in that certificated territory....” This section of the Act does not refer to only an EDC’s “service territory” as OSBA seems to assert. This section of the Act in fact refers to the total Commonwealth territories of both EDCs and EGSs. In fact, these regulations do measure compliance of EDCs and EGSs on a statewide basis, based on the territories both are certificated to serve. Second, neither the Tier II nor solar photovoltaic requirements sections reference an EDC or EGS territory. As all EDCs and EGSs have Tier II and solar photovoltaic requirements, OSBA’s assertion could result in different sales figures for Tier I than for Tier II and solar photovoltaic. Lastly, there would only be minimal differences between the accounting proposed by OSBA and the method outlined in the regulations. These differences, if any, would simply be due to rounding differences.

Finally, Constellation, EAP, FirstEnergy, OCA, and PECO all expressed concern about meeting the monthly retail sales report obligations outlined in Section 75.61(f) of these proposed regulations. We have deleted Section 75.61(f) in its entirety. The IRRC

and other commenters had questioned its need and the cost of complying with the provision. Based on our experience with verifying compliance for the first reporting period, we have developed methods for the timely collection of sales information that do not require a regulatory provision. We will work closely with stakeholders on this issue. Accordingly, this section is unnecessary and is being deleted.

B. § 75.62. Fuel and technology standards for alternative energy sources.

This section was originally included to define the fuel and technology standards for alternative energy sources identified in the AEPS Act at 73 P.S. § 1648.2. The IRRC questioned the Commission's authority to include this provision in its regulation. It suggested that these issues are more properly within the jurisdiction of the Department. It therefore recommended removing this provision, and addressing the matter through a Memorandum of Understanding. Other parties offered comments expressing disagreement with or asking for clarification of the proposed standards.

The Commission respectfully disagrees with the IRRC's analysis. The Commission has been expressly charged with carrying out the provisions of the AEPS Act. 73 P.S. § 1648.7(a). There is no statutory language that divests the Commission of authority over the qualification of alternative energy systems. The Department is assigned some responsibility in this area, but we do not agree that they have been given the exclusive authority to determine whether a particular source qualifies for alternative energy system status.

In the interest of bringing this proceeding to a timely conclusion and producing a rule that will obtain the IRRC's approval, the Commission will remove this section.³ The proposed rule would have provided a measure of regulatory certainty about the eligibility

³ The subsequent sections of the final rule have been renumbered consistent with the deletion of proposed 75.62.

of resources for alternative energy system status. The Department has not issued any final rule or policy statement identifying uniform criteria for alternative energy system qualification. So far, the absence of a regulatory provision on this issue does not appear to have been an impediment to the effective implementation of the AEPS Act. The Department and the Commission have jointly qualified over 500 alternative energy systems since the effective date of the AEPS Act. We will continue to review applications on a case by case basis.

C. § 75.62. Alternative energy system qualification.

This section identifies processes and standards for alternative energy system qualification to produce Tier I nonsolar photovoltaic, Tier II and solar photovoltaic alternative energy credits.

In its initial comment on this section of the proposed rule, the IRRC asked that the Commission specify in more detail the timeline and process for review of alternative energy system applications. The time for application review is specified in Section 75.64(b)(5) of the final rule. The program administrator will notify the applicant of the qualification decision within 30 days of the receipt of a complete application. Accordingly, the Commission, the Department and the third party administrator must coordinate their reviews within 30 days. We believe that this is a reasonable time, and our experience over the last two years is that most qualification decisions will take substantially less than 30 days.

At the IRRC's request, Section 75.62(b) has been supplemented to require that the Department be copied on alternative energy system applications. Also at the request of the IRRC, the wording of Sections 75.62(c), (e) and (f) has been revised to more clearly reflect that these provisions are a requirement for qualification. Subsections 75.62(e) and

(f) have been revised, and (g) and (h) deleted, consistent with the IRRC's and the Department's comments.

Citizen Power, Dominion, EAP, EPGA, FirstEnergy, and IEC all commented that the proposed regulations were too restrictive regarding the use of credits from alternative energy systems located in another RTO. Act 35 clarified this issue. Subsections 75.62(c) and (d) have been revised consistent with Act 35's amendments to Section 1648.4 of the AEPS Act. The General Assembly, with these amendments, resolved certain issues that had arisen due to the ambiguity of the previous language of this provision. The revised wording of subsection (d) is copied almost in its entirety from Act 35, excepting a few non-substantive changes.

The revised Section 1648.4 of the AEPS Act reflects the General Assembly's preference for PJM located resources. Alternative energy systems located in the PJM control area, whether in the Commonwealth or not, may be used by all Pennsylvania EDCs for compliance purposes, even those that are not PJM members (e.g., the Pennsylvania Power Company and Pike County Light & Power Company). Section 1648.4 reflects the limited availability of MISO located resources. Alternative energy systems located outside of the Commonwealth, but within MISO, may only be used in the areas of Pennsylvania that overlap MISO's service territory. This effectively limits out of state MISO resources to use by either the Pennsylvania Power Company or any EGSs operating in its service territory. A resource located in Pennsylvania can continue to be used by all EDCs and EGSs for compliance purposes.

Sections 75.62(g) and (h) relate to verification of compliance with environmental regulations. EAP, OSBA, PWIA, and PECO all comment that the proposed subsection (h) should be prospective in nature and should establish force majeure for any EDC or EGS that contracted with the alternative energy system that loses certification due to an environmental regulation violation. The Commission declines to establish such an

automatic declaration of force majeure. As will be discussed below, any EDC and EGS may request that the Commission declare force majeure. Upon such a request the Commission must consider all relevant factors as outlined in the Act, not just this one factor, in determining whether force majeure should be so declared.

IRRC questions whether the Commission has authority to require an alternative energy system to provide information to DEP or enforce subsection (g). IRRC also questions the Commission's authority to determine major violations of environmental regulations that cause significant harm outlined in subsection (h). IRRC further notes that this proposed subsection does not delineate when the Commission will act in relation to DEP's actions and suggests that the Commission and DEP cooperate in establishing their roles through a memorandum of understanding.

As with the section relating to fuel and technology standards above, the Commission respectfully disagrees with the IRRC's analysis. The Commission has been expressly charged with carrying out the provisions of the AEPS Act. 73 P.S. § 1648.7(a). There is no statutory language that divests the Commission of authority over the qualification of alternative energy systems. The Department is assigned some responsibility in this area, but we do not agree that they have been given the exclusive authority to determine whether a particular source qualifies for alternative energy system status.

Again, in the interest of bringing this proceeding to a timely conclusion and producing a rule that will obtain the IRRC's approval, the Commission will remove subsections (g) and (h). The proposed rule would have provided a measure of regulatory certainty about the continuing eligibility of resources for alternative energy system status. The Department has not issued any final rule or policy statement identifying uniform criteria for determining the applicable environmental standards that alternative energy systems must meet. So far, the absence of a regulatory provision on this issue does not

appear to have been an impediment to the effective implementation of the AEPS Act. The Department and the Commission have jointly qualified over 500 alternative energy systems since the effective date of the AEPS Act. We will continue to review applications on a case by case basis.

D. § 75.63. Alternative energy credit certification.

This section identifies the processes and standards for alternative energy credit certification for use to meet the requirements of the Act. We have made the following changes to this section. (1) We added the phrase “demand-side management” to section 75.63(b), at the suggestion of the IRRC. (2) We eliminated the requirement for consumption or delivery of electricity into this Commonwealth or an RTO that serves this Commonwealth. (3) We added language clarifying ownership rights to alternative energy credits, consistent with the Act 35 amendments. And, (4) we revised the alternative energy system meter requirements to balance the need for verifiable alternative energy production against the need to reduce barriers to the development and participation of small alternative energy systems.

The IRRC asked us to explain why credits for conservation activities may be certified beginning on November 30, 2004. This is required by the plain language of Section 1648.3(e)(10) of the AEPS Act. This section addressed energy efficiency and demand-side management activities, and when discussing credit creation stated: “All verified reductions shall accrue credits starting with the passage of this act.” The AEPS Act was “passed” on November 30, 2004.

Credits for generation were allowed to be banked “...after the effective date of this act.” 73 P.S. § 1648.3(e)(7). The effective date of the AEPS Act was 90 days later, February 28, 2005. For whatever reason, the General Assembly provided that credits for energy efficiency and demand side management would begin to accrue at the date of the

AEPS Act's "passage," rather than its "effective date." These regulations reflect this disparate treatment by the General Assembly.

EAP suggested that a reference to demand-side management be added to subsection (b). As indicated above, the Commission agrees and has added this phrase.

Citizen Power noted that the Act speaks of where energy comes from, not where it is used. The Commission agrees. In Section 75.63(d) the language relating to where the alternative energy systems electric generation is consumed or delivered has been deleted. Upon further review of the statute, the Commission has determined that there is no requirement that the energy associated with an AEC be consumed within or delivered to the distribution system of an EDC in this Commonwealth or the control area of an RTO that manages a portion of this Commonwealth's transmission system. The Commission finds it significant that Section 1648.3(e)(4)(ii) specifically states that "one alternative energy credit shall represent one megawatt hour of qualified alternative electric generation, whether self-generated, purchased along with the electric commodity or separately through a tradable instrument...." (Emphasis added.) This definition does not delineate where the electric commodity is to be used. Requiring that the electric commodity be consumed or delivered into this Commonwealth or a specific RTO would in effect tie the AEC directly to the electric commodity, preventing the ability to trade the AEC separate from the commodity. Furthermore, it is not possible to track where the electricity is ultimately used or delivered.

In addition, Section 1648.4 of the AEPS Act specifically states that energy derived from alternative energy sources located within this Commonwealth and the service territory of an RTO that manages the transmission system within this Commonwealth shall only be eligible to meet the compliance requirements. The AEPS Act did not state that energy consumed within or delivered to this Commonwealth and the service territory of an RTO that manages the transmission system within this Commonwealth shall only be eligible to meet the compliance requirements. Therefore, we have deleted any

reference to a requirement that the actual electricity from an alternative energy system be consumed in or delivered to an EDC in this Commonwealth or an RTO that manages a portion of this Commonwealth's transmission system.

PennFuture, CAC, Community Energy, Native Energy, DEP and the Reinvestment Fund suggest that language be added to subsection (c) noting that an AEC may not be certified if it has already been used to satisfy a voluntary alternative energy purchase. The Commission agrees to the extent that they cannot be certified if they are not sold to an EDC or EGS. New language has been added to Section 75.63(d) regarding EDCs or EGSs use of AECs already purchased by individuals, businesses or government bodies. This language is consistent with Act 35's amendment to Section 1648.4 of the AEPS Act.

Section 75.63(f) has been revised in response to a comment by the IRRC as well as the Commission staff's experience in implementing the Act. We recognize that the IRRC has a standing objection to the use of words like "standards," where the standards are not detailed in the body of the regulation or otherwise referenced. Accordingly, the reference to "standards" developed by the Commission will be dropped from this subsection. In practice, the Commission will largely be relying on PJM market settlement data to verify cumulative electric production of alternative energy systems.

Fat Spaniel Technologies suggests that specific metering requirements must be established in the regulations for all types and sizes of qualifying alternative energy systems. PV Now supports the use of metered data or other approved technology for all solar applications regardless of size. PV Now also suggests that there should be two separate processes for small and large solar systems. The Commission declines to follow Fat Spaniel Technologies suggestion. As the verification data may come from an RTO, the credits registry or the program administrator, the metering requirements of these different sources will control. This metered data is recorded in PJM Environmental

Information Services, Inc.'s Generator Attribute Tracking System ("GATS"), which the Commission has designated to serve as the credits registry.

The Commission agrees with PV Now, to the extent that there should be separate processes for small and large solar applications. Experience in implementing the AEPS Act has revealed that requiring separate metering of small behind-the-meter solar photovoltaic alternative energy systems may pose a financial impediment to the development and deployment of these systems. As there are other reasonably reliable methods for verifying solar photovoltaic system output, such as inspections, self-certification, etc., the Commission will not require metered verification of solar photovoltaic systems with a nameplate capacity of 15 kilowatts or less. Accordingly, subsection (f) was revised to delineate what systems must be metered and where the metered data can be obtained. In addition, a new subsection (g) was inserted to address verification of solar photovoltaic systems with a nameplate capacity of 15 kilowatts or less.

York suggests that language should be added noting that ownership of AECs are vested with the alternative energy system owner. We agree only to the extent that this clarification of ownership rights does not conflict with this Commission's decision in *Petition for Declaratory Order Regarding Ownership of Alternative Energy Credits Associated with Non-Utility Generating Facilities Under Contract to Pennsylvania Electric Company and Metropolitan Edison Company* at Docket No. P-00052149, per section 3.1 of Act 35. As such, previous subsection (g) has been redesignated as subsection (h) and revised consistent with Act 35's amendment to the definition of "alternative energy credit" in Section 1648.2 of the AEPS Act. This subsection now states that the alternative energy credit is the property of the alternative energy system owner until it is voluntarily transferred. Moreover, we are also aware that ARIPPA has sought judicial review of our decision in that docket. *ARIPPA v. Public Utility*

Commission, Case No. 1198 C.D. 2007. That appeal is currently pending before the Commonwealth Court.

E. § 75.64. Alternative energy credit program administrator.

This section identifies the powers and duties of the program administrator pursuant to 73 P.S. § 1648.3(e)(2). We had previously designated Clean Power Markets as the program administrator.

EPGA, IEC, PWIA, PECO and US Steel all comment that while DEP has a role in identifying systems not in compliance with environmental regulations, the Commission has the ultimate responsibility and authority to make to determine whether the system should be qualified under the Act. DEP commented that the program administrator should only refer system applications to DEP for environmental regulation compliance determination if the administrator believes that the applicant does not meet the standards. DEP also noted its role of determining environmental regulation compliance through the Environmental Hearing Board.

This section has been revised consistent with the IRRC's general objection on the proposed rule's treatment of the qualification process, and the Department's role in it. The Commission maintains that its proposed rule was a reasonable, lawful approach for resource qualification that provided a measure of regulatory certainty. As the IRRC notes, the proposed rule was criticized by some for providing for too much involvement by the Department, and alternatively by the IRRC as providing for too little or incorrect levels of involvement. In order that the successful, timely completion of this rulemaking not be delayed by this issue, we will delete subsections 75.64(b)(4), (5) and (6) that the IRRC and others have expressed a concern about.⁴ The Commission, the Department, and the Commission's third party administrator will continue to manage the resource

⁴ The subsequent subsections have been renumbered as 75.64(b)(4) and (5).

qualification process. As stated previously, several hundred alternative energy systems have already been qualified without the benefit of a rule on this issue.

EAP and PECO comment that the reporting periods contained in Section 75.64(c) should be revised. The Commission declines to make the revisions requested because the driving force for the periods is the Act's requirement that there must be a final determination of compliance by the end of the true-up period. Language was added to subsections (c)(1) and (2) regarding their application to an initial assessment and a final assessment.

As with Section 75.63(d) the language in Section 75.64(d)(1), relating to where an alternative energy systems electric generation is consumed or delivered, has been deleted for the same reasons stated above.

As in the previous section, PennFuture, CAC, Community Energy, FPL, Native Energy, OCA, DEP and the Reinvestment Fund suggest that language be added to this section noting that an AEC may not be certified if it has already been used to satisfy a voluntary alternative energy purchase. The Commission agrees to the extent that AECs cannot be certified if they are not sold to an EDC or EGS. New language has been added to Section 75.64(d)(1) regarding EDCs or EGSs use of AECs already purchased by individuals, businesses or government bodies. This language is consistent with the Act 35's amendment to Section 1648.4 of the AEPS Act. This language also addresses the IRRC's comment on subsection 75.65(d) regarding a response to commenters' concerns about double counting of AECs purchased in the voluntary market.

F. § 75.65. Alternative compliance payments.

This section identifies standards for determining alternative compliance payments, consistent with the provisions of the Act, as amended. 73 P.S. §§ 1648.3(f) and (g).

PennFuture, EAP, FPL, MASIA, DEP, PV Now and the Reinvestment Fund all comment that the solar photovoltaic alternative compliance payment (ACP) should include the levelized value of the up-front rebates given in other states for installing solar photovoltaic systems. EAP and PECO comment that any such levelized value must be spread out over the useful life of the solar energy system. PV Now proposed a sample calculation for determining the levelized value that spread the up-front rebates over the 20 year life span of a solar energy system.

The formula for calculating the solar photovoltaic alternative compliance payment in § 75.65(b)(1) was modified to include the levelized up-front rebates provided to sellers of solar renewable energy credits in PJM, as required by the Act 35 amendments. While most of those providing supplemental comments in response to the September 13, 2007 Secretarial letter acknowledged that the solar photovoltaic ACP must include a levelized value of up-front rebates, several noted that the rebates should be spread out over the useful life of the average solar energy system. This Commission agrees. Up-front rebates provide an incentive that increases the number of installations that, in turn, affects the price of solar alternative energy credits over the useful life of that system. Current industry standards show that solar photovoltaic panels lose on average 0.05 percent of production each year such that the cumulative loss is 10 percent of production after 20 years. While the solar photovoltaic panels may continue to produce electricity for an additional five to ten years, the loss of productivity makes them significantly less useful, especially in systems designed primarily to offset a significant portion of annual usage. This Commission is also cognizant of the fact that not all states within the PJM service territory provide up-front rebates. Therefore, we believe it prudent to only apply the levelized value to the percentage of total solar AECs sold during the reporting period, equal to the percentage of solar AECs used that were generated within the jurisdictions that provide rebates.

The OSBA and PECO suggested that the third party administrator be compensated under a fee system as authorized by Section 1648.3(e)(9) of the AEPS Act. It expressed concern that EGSs would not share in the costs of the program administrator if the Commission recovers administration costs through its utility assessment mechanism under 66 Pa.C.S. § 510(a). The IRRC asked why the Commission did not elect to use a fee based system. This section provides:

The commission may impose an administrative fee on an alternative energy credit transaction. The amount of this fee may not exceed the actual direct cost of processing the transaction by the alternative energy credits administrator. The commission is authorized to utilize up to 5% of the alternative compliance fees generated under subsection (f) for administrative expenses directly associated with this act.

73 P.S. § 1648.3(e)(9)

This section identifies two ways for the Commission to collect fees, at its discretion, to recover the costs of administrative expenses. The first involves an administrative fee on an “alternative energy credit transaction.” The second involves the Commission retaining 5% of the alternative compliance payments (“ACPs”) made by EDCs and EGSs. Initially, we note that language in this section allows the Commission to utilize these mechanisms, but does not mandate it. The Commission “may” or is “authorized” to assess fees, but is not required to do so. Given the manner in which the Commission has decided to implement the AEPS Act, and the way this section is written, the fee option is not an appropriate model to use at this time.

The Commission finds it significant that the first two sentences of this section envision a credit program model in which the Commission or its administrator is providing a trading platform or credit transaction services to EDCs or EGSs. In such a model, the Commission could attempt to assess a fee for the “direct cost” of these credit transactions. The Commission has not adopted this approach to administer the program.

Rather, alternative energy credit creation and transactions are managed through the PJM Environmental Information Services, Inc. Generation Attribute Tracking System (“GATS”), which the Commission has designated to serve as the alternative energy credit registry required by Section 1648.3(e)(8) of the AEPS Act, and Section 75.70 of the final rule. The use of GATS is free to non-transacting governmental agencies such as the Commission and its designated agents.

Qualified alternative energy systems, EDCs and EGSs are required to have GATS accounts, consistent with a prior Commission order and Section 75.70 of the final rule. GATS will create one certificate for each MWH of generation from a qualified alternative energy system, based upon PJM market settlement data. This certificate will be considered the equivalent of an alternative energy credit by the Commission and its administrator. Certificates will be transferred from the accounts of alternative energy systems to the accounts of EDCs and EGSs when credit transactions occur. Because the Commission and its administrator are not a party and do not process these transactions, the Commission does not have the legal authority to assess a fee on them. The Commission does not see itself taking on this role in the foreseeable future, so the final rule does not incorporate this power.

The final rule does reflect the fact that the Commission may retain up to 5% of the ACPs collected from EDCs and EGSs to recover its administrative costs, consistent with Section 1648.3(e)(9). However, the Commission does not plan on using this provision to recover its program administrator costs at this time. The primary reason is that there is no way to predict what the level of ACPs will be, if any, for a given reporting period. If there were no ACPs, or relatively few, the Commission would be unable to pay the program administrator. Accordingly, the Commission cannot reasonably rely on the use of ACPs to recover its administrative costs. We would also prefer, for policy reasons, that all ACPs be used to fund new alternative energy development.

At the request of the IRRC, we have added a cross-reference to the Commission docket for the Pennsylvania Sustainable Energy Board (“PASEB”) at Section 75.65(e). This docket, M-00031715, is directly referenced in Section 1648.3(g)(1) of the AEPS Act. The AEPS Act requires that the ACPs be made available “under procedures and guidelines approved” by this board. The Commission issues orders relating to the duties of the PASEB at this docket. For example, On March 1, 2007, the Commission approved best practices for the sustainable energy funds that will be the recipient of the ACPs.⁵ These guidelines address issues that will have bearing on how ACPs will be used, and included topics relating to applications for funding and the process for reconsidering the denials of funding requests. Any additional policies or orders that are adopted by the Commission on this topic will be issued at this docket, as required by Section 1648.3(g)(1) of the AEPS Act.

The IRRC also asked whether the ACP funds will be used to comply with 73 P.S. § 1648.3(g). This question was prompted by comments suggesting that the ACPs be used to subsidize projects relating to the Tier for which the ACP was assessed. The Commission declines to establish such a restriction. The reasons for assessing ACPs are retrospective in nature. They only indicate that, for whatever reason, a particular EDC or EGS did not meet one or more of the Act’s mandates during the prior reporting period. Whereas, projects funded by ACPs should be prospective in nature and subsidize projects that will assist in alleviating more substantial future shortcomings. For example, assume that ACPs were assessed in a reporting period on an EDC for failure to meet its Tier I requirement. Also assume that the reason the EDC failed to meet this requirement was due to a one year delay in the completion of a wind farm that the EDC contracted with to provide Tier I credits. Finally, assume that there is a projected shortfall of solar photovoltaic AECs within three years. The restriction that some commenters would like imposed would force the utilization of sustainable energy funds to fund Tier I related projects at the expense of solar photovoltaic projects. Such funding would alleviate a

⁵ Order entered on March 6, 2007.

Tier I shortfall that is already anticipated to be resolved through a previously funded program at the expense of an under-funded solar photovoltaic project. This Commission believes it would be more prudent to allow the sustainable energy funds to use the ACP funds to subsidize projects that would alleviate projected shortfalls that are under-funded, regardless of the Tier.

G. § 75.66. General force majeure and § 75.67. Special force majeure.

This section establishes the processes and standards for force majeure determinations, and their relationship to alternative compliance payments. The Commission is combining Sections 75.66 (general force majeure) and 75.67 (special force majeure) into one section titled force majeure.⁶

This is being done in response to IRRC's observation that the proposed regulations imposed limitations on the Commission that are not contained in the Act. As written, the proposed regulations only permitted the Commission to declare force majeure during two brief periods before and after the conclusion of a reporting period. In addition, while the intent of the special force majeure section was to provide an opportunity for force majeure during the true-up period, no separate type of force majeure is required, as the factors to be considered are identical.

PennFuture, FPL, Community Energy and the Reinvestment Fund comment that the Commission should not declare force majeure on its own initiative. But, as the IRRC points out, per the Act's definition of force majeure, 73 P.S. § 1648.2, the Commission, an EDC or EGS may begin the process for declaring force majeure for any reporting and true-up period. The only limitation contained in the Act is that the Commission must make its determination within 60 days. *Id.* It is apparent from this short time limitation

⁶ The subsequent sections of the final rule have been renumbered consistent with the deletion of proposed 75.67.

that the General Assembly recognized that the AEC market is a relatively fast moving and evolving market, such that any delayed action could frustrate or complicate future compliance efforts. As such, the commission has limited the period for declaring force majeure for any particular compliance period from 60 days prior to the beginning of the compliance period to 60 days after the end of the true-up period. This window will allow EDCs and EGSs ample opportunity to request a declaration for force majeure, but, also limits the period such that it requires proactive action by EDCs and EGSs. In addition, by preventing a determination earlier than 60 days prior to the beginning of a compliance period and no later than 60 days after the true-up period, any determination will be based on the current state of the market.

EAP and PECO comment that the ability of the Commission to modify compliance requirements should not be limited to solar photovoltaic requirements. The Commission agrees and is adding language to section 75.66(e)(1) that provides the Commission with the option of reducing the required level of Tier I nonsolar photovoltaic and Tier II credits for a particular compliance period. The proposed regulations had given the Commission this option for solar photovoltaic requirements only. As the Act did not limit this option to solar photovoltaic requirements, the Commission declines to impose such a limit.

Citizen Power commented that EDCs and EGSs should be required to bank credits during a period when force majeure is declared equivalent to the compliance requirements, for future use. The Commission notes that it has added section 75.66(e)(5), which allows the Commission to increase future compliance requirements whenever it modifies a requirement. This section is being added to make the regulations consistent with the Act 35 amendments. This new section permits the Commission to increase future compliance requirements by an equivalent type (Tier I nonsolar photovoltaic, Tier II or solar photovoltaic) and equivalent amount, if it determines, in a subsequent year, that there are sufficient AECs available.

The IRRC noted that commenters had concerns about the effect force majeure declarations will have on long-term contracts and recoverability of costs associated with AECs purchased prior to any declaration. The Commission does not believe that a declaration of force majeure will have a negative impact on long-term contracts or cost recovery. First, the Commission notes that per section 75.66(e)(4), an EDC or EGS with sufficient AECs must use those AECs, for which they will be able to recover costs. Second, per section 75.66(e)(3), an EDC or EGS must verify that it was unable to acquire sufficient AECs to meet its obligations. Third, an EDC and EGS may bank AECs created in one year for use in the two subsequent years. 73 P.S. § 1648.3(e)(6). Finally, an EDC or EGS may be able to sell any excess AECs for use by other EDCs or EGSs for future Pennsylvania compliance or another state's compliance. Thus, depending on the circumstances, the EDC or EGS may be required to use, bank or sell any AECs during a force majeure declaration. In any case, a force majeure determination should not affect the ability of EDCs or EGSs to enter into long-term contracts or recover the costs associated with previously purchased AECs.

The Commission also added language to sections 75.66(e)(3) and 75.66(g) referencing the definition of force majeure contained in section 75.1.⁷ This definition of force majeure contains factors the Commission must consider in determining whether force majeure should be declared. These factors are consistent with those contained in the Act 35 amendments.

The Commission declines to set forth additional, more specific factors at this time. Those commenters advocating for a more specific list of factors for declaring force majeure are in essence asking this Commission to assume facts and circumstances that may or may not materialize. For example, PV Now comments that “[g]iven the realities of developing a new industry and market in the state, and especially given the prudent

⁷ This references the definition of force majeure in 52 Pa. Code § 75.1 as modified by the Final Omitted Rulemaking Order at Docket No. L-00050174, adopted on May 22, 2008 and entered on July 2, 2008.

long-term contracting mechanism we have proposed, failure of the spot or short-term market to supply a party with the allocated number of SRECs should not be considered an event outside the default provider's reasonable control." This comment essentially asks this Commission to assume that long-term contracts will always be available at reasonable prices. It also assumes that long-term contracts will always be available and provide for all of an EDC's or EGS's AEPS requirements. With that said, per the Act 35 amendments, this Commission must consider an EDC's and EGS's efforts in seeking to purchase AECs through long-term contracts prior to granting force majeure.

Other commenters, such as PennFuture, Community Energy, MASIA, FPL, DEP, PPM, PV Now, and the Reinvestment Fund advocate for the application of very narrow and specific circumstances to be met before force majeure is declared. Specifically, PennFuture, proposed a list of more than 25 items that must be met prior to determining whether force majeure is to be declared. All of these comments assume that the AEC market will develop in a certain way. The Commission declines to make these assumptions at this time without additional facts. With that said, the concerns raised by these commenters can be addressed during any on the record proceeding regarding a declaration of force majeure.

PennFuture, Citizen Power, CAC, Community Energy, FPL, and the Reinvestment Fund comment in opposition to the Commission using the \$45 ACP payment figure for nonsolar photovoltaic Tier I and Tier II AECs as a trigger for force majeure. This Commission disagrees with their assessment of such a regulation. PennFuture comments that "[f]ree enterprise markets operate according to the laws of supply and demand." PennFuture goes on to comment that to cap the AEC price at \$45 would "thwart" the market signal for more supply. PennFuture seems to be referring to Adam Smith's invisible hand theory of the free market.⁸ What PennFuture fails to acknowledge is that

⁸ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (Methuen and Co., Ltd., ed. Edwin Cannan, 1904) (1776).

the hand moving this market is not invisible. The hand moving this market is that of the very visible General Assembly. Without this visible hand, the market would not likely have materialized. The General Assembly, for very prudent policy reasons, created an artificial demand for these alternative energy sources. The General Assembly also recognized that due to this artificial demand, there was an opportunity for those on the supply side to take advantage of that artificial demand. Thus, the General Assembly determined that it would be equally prudent to establish a reasonable limit to the market price for AECs by setting the ACP at \$45.

Furthermore, as PennFuture points out, the definition of force majeure specifically requires this Commission to determine if “alternative energy resources are *reasonably available* in the marketplace in sufficient quantities” 73 P.S. § 1648.2 (emphasis added). Contrary to PennFuture’s assertion, this Commission believes that price is a factor in determining reasonableness, especially when the costs associated with the purchase of AECs are passed on to the consumers of this Commonwealth. While the General Assembly determined that it was prudent to establish this market, it did not state that it was prudent to create it at all costs. Therefore, as this Commission must always balance the needs of the consumers and the utilities to ensure safe and reliable service at **reasonable rates** and protect the public interest, the Commission declines to modify section 75.66(d).

H. § 75.67. Alternative energy cost-recovery.

As we noted in our order commencing this proceeding, EDCs⁹ may fully recover the reasonable and prudently incurred costs of complying with Act 213 from ratepayers. This includes the costs for purchases of alternative energy or alternative energy credits,

⁹ In this section, we substitute the term “default service provider” for EDC. The proposed default service regulations use this term for any party, EDC or otherwise, that provides default service after the conclusion of the transition period.

payments to credit program administrators, and costs levied by regional transmission organizations to ensure that alternative resources are reliable. 73 P.S. § 1648.3(a)(3). These costs are to be recovered “pursuant to an automatic energy adjustment clause under 66 Pa.C.S. § 1307” and are considered “a cost of generation supply under 66 Pa.C.S. § 2807.” 73 P.S. § 1648.3(a)(3). Section 2807(3) of the Public Utility Code includes the legal standard governing the acquisition of and recovery for costs for electricity provided to an EDC’s retail electric customers at the conclusion of the transition period. 66 Pa.C.S. § 2807(e)(3). We found that the alternative energy delivered to retail customers after the conclusion of the stranded cost recovery period is a component of the default service provided by EDCs. This section sets forth the standards for such recovery.

Both OCA and IRRC urge us to ensure that there be consistency between the cost recovery mechanisms used for alternative and traditional sources of energy purchased to meet the default service load. They state that this will avoid complication and ensure that the cost procurement processes are not conducted along separate tracks. They ask that we make these cost recovery mechanisms comparable.

We agree with both comments and have inserted a reference to 52 Pa. Code § 54.187; our regulation governing default service rate design and the recovery of reasonable costs. However, we must note that these regulations must currently be used by EDCs which are still under generation rate caps. Insofar as this affects the recovery of costs for energy, whether traditional or alternative, our rules must reflect the current reality and can be revisited in the future when rate caps have expired. PECO urges us to more closely follow the language of the Act with respect to the nature of costs to be recovered. PECO Comments, p. 23. We believe that the regulation as proposed is adequate in that regard, but, in the event of a conflict, the language of the law itself shall control what costs may be recovered.

I. § 75.68. Alternative energy market integrity.

This section is intended to preserve the viability of the voluntary market for alternative or renewable energy in Pennsylvania. This section proposes certain requirements for the marketing of alternative energy sources by EDCs and EGSs. These restrictions are similar to the requirements for green energy marketing found at 52 Pa. Code § 54.6(c).

A number of commenters, MASIA, EAP and PECO, among others, have pointed out that AECs that are purchased by customers should not automatically be included in the EDC's or EGS's AEPS compliance unless those AECs have been sold to the EDC or EGS. We agree that this change brought about through Act 35 should be recognized in our regulation. Therefore, we have amended the regulation to provide that sales of electricity by EDCs and EGSs to retail electric customers marketed as deriving from alternative energy sources shall be tracked and counted separately from AECs used to support compliance with the requirements of § 75.61 (relating to EDC and EGS obligations).

J. § 75.69. Banking of alternative energy credits.

This section codifies prior interpretations of the AEC banking provisions of the Act from the First and Second Implementation Orders. Penn Future suggests that we allow all market participants to bank AECs as do EDCs and EGSs.¹⁰ Penn Future comments, pp. 21-22. Penn Future also stated that providing for this through a regulation would improve cost effectiveness and efficiency for consumers.

We understand Penn Future's concern, but do not believe it is necessary to amend the proposed regulation as requested. The AECs were created as a means of measuring

¹⁰ Community Energy makes a similar suggestion. Community Energy Comments, p. 3.

EDC and EGS compliance with the AEPS Act. No other entity is required to comply with the Act. Therefore, the AECs are only of value to the EDCs and EGSs for compliance with the Act. The Act and these regulations permit EDCs and EGSs to bank AECs created in one reporting year for use in either or both of the two subsequent reporting periods. 73 P.S. § 1648.3(e)(6). In essence, this provision of the Act creates a three year useful life span for an AEC, the compliance year in which it was produced and the two subsequent reporting years. For example, per the Act, an EDC or EGS can purchase an AEC created in the prior or current reporting year and use it in either the current or subsequent reporting year, provided that the EDC or EGS met its compliance requirements in the year the AEC was generated and it was not previously used for compliance with the AEPS Act or in another state. Thus, once an EDC or EGS can no longer use the AECs they would have no value to the EDC or EGS, as they would not be able to recover the cost of purchasing the AEC. In short, the value of an AEC is based on its ultimate sale to an EDC or EGS for compliance with the Act. There is no need for any one else to bank an AEC since it can be sold at any time by its owner prior to it being retired.

Penn Future has also asked that we extend the life of AECs associated with the generation of power through solar energy. *Id.* It states that it makes this suggestion because it anticipates that EDCs and EGSs will have difficulty meeting their requirements relating to solar power as the solar share ramps up. Again, we are sympathetic to PennFuture's concern; however, the AEPS Act leaves us no room to make such an allowance. The Act is clear that AECs created in one reporting year may be banked for use in the reporting year it was created and in the two succeeding reporting years. 73 P.S. §§ 1648.3(e)(6). The Act makes no differentiation among the various means by which alternative power is generated. Therefore, neither can the Commission.

IRRC and some other parties, including OSBA, have sought clarification of how generation from periods immediately prior to passage of the AEPS Act should be

accounted for with regard to banking during the cost recovery period. We shall decline to do that here. By and large, the question became moot for EDCs and EGSs with the passage of time. Also, after the comments were filed, this Commission addressed this issue in some detail in the matter of the *Petition of PECO Energy Company for Approval Of (1) A Process to Procure Alternative Energy Credits during the AEPS Banking Period and (2) A Section 1307 Surcharge and Tariff to Recover AEPS Costs*, Docket No. P-00072260. See the Tentative Opinion and Order entered December 6, 2006 at 11. Furthermore, the need for any regulations addressing this particular issue will dissolve in the near future as the cost-recovery period for the last EDCs and EGSs will expire on December 31, 2010. Given the limited scope of this issue, we feel it is best addressed on a case-by-case basis.

On a related matter, the Commission has eliminated subsections (b)(1) and (b)(2). Subsection (b)(1) was incorporated into subsection (b). Subsection (b)(2) was eliminated in its entirety. Subsection (b)(2) was originally proposed to deal with a situation where an EDC or EGS exited its cost-recovery period prior to having any AEPS requirements. As the Act's initial compliance requirements have already begun, all EDCs and EGSs exiting cost-recovery will have immediate compliance requirements. Therefore, it is not necessary to reference the pre-compliance requirement period, and we have eliminated subsection (b)(2) as we believe its retention would cause unnecessary confusion.

Finally, PECO asks us to be more specific with respect to the life of the AEC. PECO Comments, pp. 27-29. We believe that the regulation is sufficiently detailed and complies with the Act. A credit is valid and is not retired unless used in the compliance period in which it is generated or in the two succeeding compliance periods. This is adequately stated within the regulations.

K. § 75.70. Alternative energy credit registry.

This section codifies the Commission's authority to designate a credit registry. 73 P.S. § 1648.3(e)(8). We have designated PJM-EIS's GATS as the credit registry required by the Act. Some commenters, such as the EAP and Constellation, are in agreement with this.

The Commission does not plan to permanently designate GATS as the credits registry, as the Commonwealth's needs may change over time, and better credit registry options may become available. The IRRC requested clarification of the subsection (b), which requires compliance with the registry's . . . rules, policies, and procedures." As stated earlier in this order, the Commission has designated PJM-EIS's GATS system to serve as the credits registry. EDCs and EGSs have been directed to obtain GATS accounts so that the Commission can track credit transaction and verify compliance with the AEPS Act. Subscribers must agree to abide by the GATS "Terms of Use" and "Operating Rules."¹¹ Accordingly, the Commission has declined to use this rule to specifically name the GATS as the registry, or directly reference its rules. We have attempted to clarify this regulation at the suggestion of the IRRC by adding a reference to subscriber agreements or terms of use.

EDCs and EGSs are required to make all information within the registry available to the Commission and the program administrator so that they can carry out their responsibilities under the Act, including verification of compliance and the tracking of credit prices. As the needs of the Commission in regards to implementing the Act may change over time, as will available technologies, we will not permanently designate any particular party or technology as the credit registry in this rulemaking.

¹¹ Available at <http://www.pjm-eis.com/documents/documents.html>.

CONCLUSION

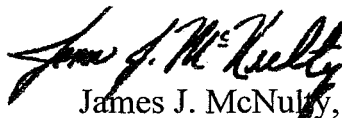
Accordingly, under 66 Pa. C.S. § 501, 2807(e), Sections 1648.7(a) and 1648.3(e)(2) of the Alternative Energy Portfolio Standards Act of 2004, 73 P.S. §§ 1648.7(a), 1648.3(e)(2); the Commonwealth Documents Law, 45 P.S. §§ 1201 *et seq.*, and the regulations promulgated hereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5, the Commission proposes adoption of the final regulations pertaining to the obligations of EDCs and EGSs to comply with the alternative energy portfolio standard obligation, as noted and set forth in Annex A; **THEREFORE,**

IT IS ORDERED:

1. The Commission hereby adopts the final regulations in Annex A.
2. That the Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.
3. That the Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.
4. That the Secretary shall submit this order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by the Independent Regulatory Review Commission.
5. That the Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
6. That regulations embodied in Annex A shall become effective upon publication in the *Pennsylvania Bulletin*.

7. That the contact person for technical issues related to this rulemaking is Calvin Birge, Supervisor, Conservation, Economics and Energy Planning, 717-787-2139. That the contact person for legal issues related to this rulemaking is Kriss Brown, Assistant Counsel, Law Bureau, 717-787-4518. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri Delbiondo, Regulatory Coordinator, Law Bureau, 717-772-4597.

BY THE COMMISSION,


James J. McNulty,
Secretary

(SEAL)

ORDER ADOPTED: September 25, 2008

ORDER ENTERED: **SEP 29 2008**

ANNEX A
TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 75: ALTERNATIVE ENERGY PORTFOLIO STANDARDS

* * * * *

Subchapter D: ALTERNATIVE ENERGY PORTFOLIO REQUIREMENT

§ 75.61. EDC and EGS obligations.

(a) EDCs and EGSs shall comply with the act through the acquisition of certified alternative energy credits, each of which shall represent one MWh of qualified alternative electric generation or conservation, whether self-generated, purchased along with the electric commodity or separately through a tradable instrument.

(b) For each reporting period, EDCs and EGSs shall acquire alternative energy credits in quantities equal to a percentage of their total retail sales of electricity to all retail electric customers for that reporting period, as measured in MWh. THE CREDIT OBLIGATION FOR A REPORTING PERIOD SHALL BE ROUNDED TO THE NEAREST WHOLE NUMBER. The required quantities of alternative energy credits for each reporting period is identified in the following schedule:

(1) For June 1, 2006, through May 31, 2007: The Tier I requirement is 1.5% of all retail sales, the solar photovoltaic requirement is OF WHICH AT LEAST 0.0013% of Tier I ALL RETAIL sales ARE TO COME FROM SOLAR PHOTOVOLTAIC SOURCES AND THE REMAINING FROM NONSOLAR PHOTOVOLTAIC TIER I SOURCES, and the Tier II requirement is 4.2% of all retail sales.

(2) For June 1, 2007, through May 31, 2008: The Tier I requirement is 1.5% of all retail sales, the solar photovoltaic requirement is .0013% of Tier I OF WHICH AT LEAST 0.0030% OF ALL RETAIL sales ARE TO COME FROM SOLAR PHOTOVOLTAIC SOURCES AND THE REMAINING FROM NONSOLAR PHOTOVOLTAIC TIER I SOURCES, and the Tier II requirement is 4.2% of all retail sales.

(3) For June 1, 2008, through May 31, 2009: The Tier I requirement is 2% of all retail sales, the solar photovoltaic requirement is .0013% of Tier I OF WHICH AT LEAST 0.0063% OF ALL RETAIL sales ARE TO COME FROM SOLAR PHOTOVOLTAIC SOURCES AND THE REMAINING FROM NONSOLAR PHOTOVOLTAIC TIER I SOURCES, and the Tier II requirement is 4.2% of all retail sales.

(4) For June 1, 2009, through May 31, 2010: The Tier I requirement is 2.5% of all retail sales, the solar photovoltaic requirement is .0013% of Tier I OF WHICH AT LEAST 0.0120% OF ALL RETAIL sales ARE TO COME FROM SOLAR PHOTOVOLTAIC SOURCES AND THE REMAINING FROM NONSOLAR PHOTOVOLTAIC TIER I SOURCES, and the Tier II requirement is 4.2% of all retail sales.

(5) For June 1, 2010, through May 31, 2011: The Tier I requirement is 3% of all retail sales, the solar photovoltaic requirement is .0203% of Tier I OF WHICH AT LEAST 0.0203% OF ALL RETAIL sales ARE TO COME FROM SOLAR PHOTOVOLTAIC SOURCES AND THE REMAINING FROM NONSOLAR PHOTOVOLTAIC TIER I SOURCES, and the Tier II requirement is 6.2% of all retail sales.

(6) For June 1, 2011, through May 31, 2012: The Tier I requirement is 3.5% of all retail sales, the solar photovoltaic requirement is .0203% of Tier I OF WHICH AT LEAST 0.0325% OF ALL RETAIL sales ARE TO COME FROM SOLAR PHOTOVOLTAIC SOURCES AND

THE REMAINING FROM NONSOLAR PHOTOVOLTAIC TIER I SOURCES, and the Tier II requirement is 6.2% of all retail sales.

(7) For June 1, 2012, through May 31, 2013: The Tier I requirement is 4% of all retail sales, the solar photovoltaic requirement is .0203% of Tier I OF WHICH AT LEAST 0.0510% OF ALL RETAIL sales ARE TO COME FROM SOLAR PHOTOVOLTAIC SOURCES AND THE REST FROM NONSOLAR PHOTOVOLTAIC TIER I SOURCES, and the Tier II requirement is 6.2% of all retail sales.

(8) For June 1, 2013, through May 31, 2014: The Tier I requirement is 4.5% of all retail sales, the solar photovoltaic requirement is .0203% of Tier I OF WHICH AT LEAST 0.0840% OF ALL RETAIL sales ARE TO COME FROM SOLAR PHOTOVOLTAIC SOURCES AND THE REMAINING FROM NONSOLAR PHOTOVOLTAIC TIER I SOURCES, and the Tier II requirement is 6.2% of all retail sales.

(9) For June 1, 2014, through May 31, 2015: The Tier I requirement is 5% of all retail sales, the solar photovoltaic requirement is .0203% of Tier I OF WHICH AT LEAST 0.1440% OF ALL RETAIL sales ARE TO COME FROM SOLAR PHOTOVOLTAIC SOURCES AND THE REST FROM NONSOLAR PHOTOVOLTAIC TIER I SOURCES, and the Tier II requirement is 6.2% of all retail sales.

(10) For June 1, 2015, through May 31, 2016: The Tier I requirement is 5.5% of all retail sales, the solar photovoltaic requirement is OF WHICH AT LEAST 0.25% of Tier I ALL RETAIL sales ARE TO COME FROM SOLAR PHOTOVOLTAIC SOURCES AND THE REMAINING FROM NONSOLAR PHOTOVOLTAIC TIER I SOURCES, and the Tier II requirement is 8.2% of all retail sales.

(11) For June 1, 2016, through May 31, 2017: The Tier I requirement is 6% of all retail sales, the solar photovoltaic requirement is .25% of Tier I OF WHICH AT LEAST 0.2933% OF ALL RETAIL sales

ARE TO COME FROM SOLAR PHOTOVOLTAIC SOURCES AND THE REMAINING FROM NONSOLAR PHOTOVOLTAIC TIER I SOURCES, and the Tier II requirement is 8.2% of all retail sales.

(12) For June 1, 2017, through May 31, 2018: The Tier I requirement is 6.5% of all retail sales, the solar photovoltaic requirement is .25% of Tier I OF WHICH AT LEAST 0.3400% OF ALL RETAIL sales ARE TO COME FROM SOLAR PHOTOVOLTAIC SOURCES AND THE REMAINING FROM NONSOLAR PHOTOVOLTAIC TIER I SOURCES, and the Tier II requirement is 8.2% of all retail sales.

(13) For June 1, 2018, through May 31, 2019: The Tier I requirement is 7% of all retail sales, the solar photovoltaic requirement is .25% of Tier I OF WHICH AT LEAST 0.3900% OF ALL RETAIL sales ARE TO COME FROM SOLAR PHOTOVOLTAIC SOURCES AND THE REMAINING FROM NONSOLAR PHOTOVOLTAIC TIER I SOURCES, and the Tier II requirement is 8.2% of all retail sales.

(14) For June 1, 2019, through May 31, 2020: The Tier I requirement is 7.5% of all retail sales, the solar photovoltaic requirement is .25% of Tier I OF WHICH AT LEAST 0.4433% OF ALL RETAIL sales ARE TO COME FROM SOLAR PHOTOVOLTAIC SOURCES AND THE REMAINING FROM NONSOLAR PHOTOVOLTAIC TIER I SOURCES, and the Tier II requirement is 8.2% of all retail sales.

(15) For June 1, 2020, through May 31, 2021, and each successive twelve month period thereafter: The Tier I requirement is 8% of all retail sales, the solar photovoltaic requirement is .25% of Tier I ALL RETAIL sales ARE TO COME FROM SOLAR PHOTOVOLTAIC SOURCES AND THE REMAINING FROM NONSOLAR PHOTOVOLTAIC TIER I SOURCES, and the Tier II requirement is 10% of all retail sales.

(c) EDCs are exempt from these requirements for the duration of their cost-recovery period. An EDC shall be required to comply with the requirements in effect during the reporting period, as identified in subsection (b), in which its exemption expires.

(d) EGSs are exempt from these requirements in the service territories of EDCs in their cost-recovery period. EGS compliance shall be measured against their total MWh sales to all retail electric customers in all EDC service territories that have exited their cost-recovery periods.

(e) A 90 day true-up period shall commence at the end of each reporting period. EDCs and EGSs not in compliance with the requirements of this chapter at the end of a reporting period, as determined by the program administrator under ~~§ 75.65(e)(2)~~ § 75.64(C)(2) (relating to alternative energy credit program administrator), may acquire additional alternative energy credits during the true-up period to satisfy the requirements of this chapter.

~~(f) EDCs shall provide monthly reports to the program administrator documenting total deliveries of electricity to all retail electric customers within their service territory. Separate totals shall be reported for each load serving entity active in the EDC's service territory. Reports shall be submitted to the program administrator within 45 days from the end of each month.~~

§ 75.62. Fuel and technology standards for alternative energy sources.

~~(a) Alternative energy system status may be granted to existing or new facilities, except where provided otherwise, including those interconnected and net metered by customer generators, that generate electricity through the following Tier I alternative energy fuel sources and technologies:~~

~~(1) Solar photovoltaic. Electricity generated from solar photovoltaic technologies that utilize solar energy~~

~~(2) Solar thermal. Electricity generated from solar thermal technologies that utilize solar energy.~~

~~(3) — Wind. Electricity generated through use of windmills, wind turbines, or other technologies that utilize wind energy.~~

~~(4) — Low-impact hydropower. Electricity generated from any technology that produces electric power by harnessing the hydroelectric potential of moving water impoundments, provided that the facility:~~

~~(i) Was permitted on or after February 28, 2005, or represents capacity additions or efficiency improvements to a preexisting facility implemented on or after February 28, 2005.~~

~~(ii) Does not adversely change existing impacts to aquatic systems.~~

~~(iii) Meets the certification standards established by the Low Impact Hydropower Institute and American Rivers, Inc., or their successors.~~

~~—— (iv) Provides an adequate water flow for protection of aquatic life and for safe and effective fish passage.~~

~~—— (v) Protects against erosion.~~

~~—— (vi) Protects cultural and historic resources.~~

~~(5) — Geothermal energy. Electricity produced by extracting hot water or steam from geothermal reserves in the earth's crust and supplied to steam turbines that drive generators to produce electricity.~~

~~(6) — Biomass energy. Electricity generated utilizing the following:~~

~~(i) Organic material from a plant that is grown for the purpose of being used to produce electricity or is protected by the Federal Conservation Reserve Program (CRP) and provided further that production on CRP lands does not prevent achievement of the water quality protection, soil erosion prevention or wildlife enhancement purposes for which the land was primarily set aside. This may include switchgrass and other warm seasonal grasses, hybrid willow and hybrid poplar.~~

~~(ii) Solid, nonhazardous, cellulosic waste material segregated from other waste materials, such as waste pallets, crates, landscape or right-of-way tree trimmings or agricultural sources, including orchard tree crops, vineyards, grain, legumes, sugar and other crop by products or residues. This includes bark, sawdust and clean, untreated wood chips from lumber mills, manufacturers or other producers that otherwise meet the definition of solid, nonhazardous, cellulosic waste material segregated from other waste materials.~~

~~(7) — *Biologically derived methane gas.* Electricity produced from methane from the anaerobic digestion of organic materials from yard waste, such as grass clippings and leaves, food waste, animal waste and sewage sludge. This source also includes landfill methane gas.~~

~~(8) — *Coal mine methane.* Electricity produced from methane gas emitting from abandoned or working coal mines, specifically fugitive methane released from its natural geologic sequestration as a result of coal-mining activity and vented to the atmosphere, or destroyed without useful energy recovery. This source does not include commercially developed coal bed methane.~~

~~(9) — *Fuel cells.* Electricity produced from an electrochemical device that converts chemical energy in a hydrogen-rich fuel directly into electricity, heat and water without combustion.~~

~~(b) — Alternative energy system status may be granted to existing or new facilities, except where provided otherwise, that generate or conserve electricity through the following Tier II alternative energy fuel sources and technologies:~~

~~(1) — *Large scale hydropower.* Electricity produced by harnessing the hydroelectric potential of moving water impoundments, including pumped storage that does not meet the requirements of low impact hydropower.~~

~~(2) — *Waste coal.* Electricity generated from the combustion of waste coal in facilities when the waste coal was disposed of or abandoned prior to July 31, 1982, or disposed of thereafter in a permitted coal refuse disposal site regardless of when disposed of. Facilities combusting waste coal shall use, at a minimum, a combined fluidized bed boiler and be outfitted with a limestone injection system and a fabric filter particulate removal system. Alternative energy credits shall be calculated based upon the proportion of waste coal utilized to produce electricity at the facility. Applicants may petition for waste coal from nonpermitted sites to be qualified for alternative energy resource status. The Commission may grant such petitions at its discretion.~~

~~(3) — *Demand-side management.* The conservation of electricity through:~~

~~—— (i) Energy efficiency technologies, management practices or other strategies in residential, commercial, industrial, institutional or government customers that reduce electricity consumption by those customers.~~

~~—— (ii) Load management or demand response technologies, management practices or other strategies in residential, commercial, industrial, institutional and government customers that shift electric load from periods of higher demand to periods of lower demand.~~

~~—— (iii) Industrial by-product technologies consisting of the use of a by-product from an industrial process, including the reuse of energy from exhaust gases or other manufacturing by-products, used in the direct production of electricity at the facility of a customer.~~

~~(4) — *Distributed generation system.* Small-scale power generation of electricity and useful thermal energy.~~

~~(5) — *Integrated combined coal gasification technology (ICCG).* Electricity generated from combined cycle format with a gas turbine driven~~

~~by the combusted syngas, while exhaust gases are heat exchanged with water/steam to generate superheated steam to drive a steam turbine: Alternative energy credits shall only be certified for electricity produced by ICCG technology. The use of ICCG to create feedstocks for manufacturing or liquid fuels not used to generate electricity may not be eligible for the certification of alternative energy credits.~~

~~(6) — *Municipal solid waste.* Electricity generated from waste to energy facilities permitted by the Department on or before February 28, 2005, which the Department has determined to be in compliance with current environmental standards, including applicable requirements of the Clean Air Act (69 Stat. 322, 42 U.S.C.A. §§ 7401—7618) and associated permit restrictions and applicable requirements of the act of Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003).~~

~~(7) — *Wood pulping and manufacturing.* Electricity generated by utilizing by products of the pulping process and wood manufacturing process, including bark, wood chips, sawdust and lignin in spent pulping liquors.~~

§ 75.63 § 75.62. Alternative energy system qualification.

(a) An application for alternative energy system status shall be submitted on a form developed and made available by the Commission. A copy of the application form will be made available on the Commission's public internet domain. An application shall be verified by oath or affirmation as required in § 1.36 (relating to verification).

(b) A completed application and supporting attachments shall be filed with the alternative energy credit program administrator, THE DEPARTMENT OF ENVIRONMENTAL PROTECTION and any other parties that may be designated by the Commission.

(c) A facility, IN ORDER TO shall be qualified for alternative energy system status, SHALL DEMONSTRATE THAT if it is physically located in either:

- (1) This Commonwealth.
- (2) The control area of an RTO that manages a portion of the electric transmission system in this Commonwealth.

~~(d) The alternative energy credits associated with a qualified alternative system located outside of this Commonwealth shall be eligible for compliance purposes only in the portions of this Commonwealth within the boundaries of the same RTO control area as that alternative energy system.~~ ALTERNATIVE ENERGY CREDITS DERIVED FROM ALTERNATIVE ENERGY SOURCES LOCATED OUTSIDE THE GEOGRAPHICAL BOUNDARIES OF THIS COMMONWEALTH BUT WITHIN THE CONTROL AREA OF AN RTO THAT MANAGES THE TRANSMISSION SYSTEM IN ANY PART OF THIS COMMONWEALTH SHALL ONLY BE ELIGIBLE TO MEET THE COMPLIANCE REQUIREMENTS OF EDCS OR EGSS LOCATED WITHIN THE SERVICE TERRITORY OF THE SAME RTO. FOR PURPOSES OF COMPLIANCE WITH THIS ACT, ALTERNATIVE ENERGY SOURCES LOCATED IN THE CONTROL AREA OF THE PJM INTERCONNECTION, L.L.C. RTO OR ITS SUCCESSOR SHALL BE ELIGIBLE TO FULFILL COMPLIANCE OBLIGATIONS OF ALL PENNSYLVANIA EDCS AND EGSS.

(e) A facility, IN ORDER TO shall be qualified for alternative energy system status, SHALL DEMONSTRATE THAT if it generates electricity from or conserves electricity through a Tier I or Tier II alternative energy source identified at § 75.62 (relating to fuel and technology standards for alternative energy sources).

(f) A facility MAY NOT shall be qualified UNLESS if the Department has verified compliance with applicable environmental regulations, AND THE

STANDARDS SET FORTH IN SECTION 2 OF THE ACT, and if it has obtained necessary state and federal environmental permits for operations.

(g) Alternative energy system applicants shall provide the Department with all information necessary to verify compliance with applicable environmental regulations and § 75.62.

(h) The Commission may suspend or revoke the alternative energy system status of a facility, after notice and opportunity to be heard, for major violations of environmental regulations, or failure to satisfy the requirements of an alternative energy source at § 75.62. Major environmental violations shall be defined as those that cause significant harm to the environment or public health and result in a compliance order or penalty assessed by the Department. Alternative energy credits may not be certified for that facility for a period beginning with the suspension or revocation of alternative energy system status, as evidenced by formal Commission action, through the time that alternative energy system status is restored.

§ 75.64 § 75.63. Alternative energy credit certification.

(a) An alternative energy credit may be certified by the Commission for each MWh of electricity generated by qualified alternative energy systems on or after February 28, 2005.

(b) An alternative energy credit may be certified by the Commission for each MWh of electricity conserved by qualified alternative energy systems OR DEMAND SIDE MANAGEMENT on or after November 30, 2004.

(c) An alternative energy credit may not be certified for a MWh of electricity generation or electricity conservation that has already been used to satisfy another state's renewable energy portfolio standard, alternative energy portfolio standard, or other comparable standard.

(d) An alternative energy credit shall be certified for that portion of a qualified alternative energy system's electric generation that is consumed within

~~or delivered to the distribution system of an EDC in this Commonwealth or the control area of an RTO that manages a portion of this Commonwealth's transmission system.~~ AN ALTERNATIVE ENERGY CREDIT ALREADY PURCHASED BY INDIVIDUALS, BUSINESSES OR GOVERNMENT BODIES THAT DO NOT HAVE A COMPLIANCE OBLIGATION UNDER THE ACT MAY NOT BE CERTIFIED FOR A MWH OF ELECTRICITY GENERATION OR ELECTRICITY CONSERVATION UNLESS THE INDIVIDUAL, BUSINESS OR GOVERNMENT BODY SELLS THOSE CREDITS TO THE EDC OR EGS.

(e) When an alternative energy system relies on more than one fuel source or technology, alternative energy credits shall be certified for that portion of the electric generation that is derived from an alternative energy fuel source or technology as identified in § 75.62.

(f) FOR ALL ALTERNATIVE ENERGY SYSTEMS EXCEPT SOLAR PHOTOVOLTAIC SYSTEMS WITH A NAMEPLATE CAPACITY OF 15 KILOWATTS OR LESS, ~~Alternative~~ ALTERNATIVE energy credit certification shall be verified by metered data under standards approved by the Commission. OBTAINED FROM OR BY ONE OF THE FOLLOWING:

- (1) AN RTO.
- (2) THE CREDITS REGISTRY DESIGNATED UNDER § 75.71 (RELATING TO ALTERNATIVE ENERGY CREDIT REGISTRY).
- (3) THE ADMINISTRATOR DESIGNATED UNDER § 75.64 (RELATING TO ALTERNATIVE ENERGY CREDIT PROGRAM ADMINISTRATOR).

(G) FOR SOLAR PHOTOVOLTAIC ALTERNATIVE ENERGY SYSTEMS WITH A NAMEPLATE CAPACITY OF 15 KILOWATTS OR LESS, ALTERNATIVE ENERGY CREDIT CERTIFICATION SHALL BE VERIFIED

BY THE ADMINISTRATOR DESIGNATED UNDER § 75.64 (RELATING TO ALTERNATIVE ENERGY CREDIT PROGRAM ADMINISTRATOR).

(g)(H) An alternative energy credit represents the attributes of 1 MWh of electric generation that may be used to satisfy the requirements of § 75.61 (relating to EDC and EGS obligations). THE ALTERNATIVE ENERGY CREDIT SHALL REMAIN THE PROPERTY OF THE ALTERNATIVE ENERGY SYSTEM UNTIL VOLUNTARILY TRANSFERRED. A certified alternative energy credit does not automatically include environmental, emissions or other attributes associated with 1 MWh of electric generation. Parties may bundle the attributes unrelated to compliance with § 75.61 with an alternative energy credit, or, alternatively, sell, assign, or trade them separately.

§ 75.65§ 75.64. Alternative energy credit program administrator.

(a) The Commission may select an independent entity to act as a program administrator and perform administrative functions necessary to the implementation of this chapter. If an independent entity is not selected to act as a program administrator, the Commission will perform the functions identified in this section.

(b) The program administrator will have the following powers and duties in regard to alternative energy system qualification:

(1) Distribute, receive, and review applications for alternative energy system qualification.

(2) Reject applications that are incomplete or do not adhere to the application instructions.

(3) Determine whether an application satisfies the geographic eligibility standard at § 75.63(e)§ 75.62(C) (relating to alternative energy system qualification) and reject applications that fail this standard.

(4) Refer verification of the application's compliance with applicable environmental regulations to the Department.

~~(5)~~ Refer verification of the application's compliance with § 75.62 (relating to fuel and technology standards) to the Department.

~~(6)~~ Reject applications that the Department advises to be noncompliant with environmental regulations or § 75.62.

~~(7)~~(4) Qualify applicants for alternative energy system status who have filed a complete application, adhered to application instructions, satisfied the geographic eligibility standard, complied with environmental regulations, and utilized an alternative energy fuel source or technology consistent with § 75.62.

~~(8)~~(5) The program administrator will provide written notice to applicants of its qualification decision within 30 days of receipt of a complete application form.

(c) The program administrator shall have the following powers and duties regarding the verification of compliance with this chapter:

(1) At the end of each reporting period, the program administrator shall verify EDC and EGS compliance with § 75.61 (relating to EDC and EGS obligations), and provide written notice to each EDC and EGS of AN INITIAL ASSESSMENT OF their compliance status within 45 days of the end of the reporting period.

(2) At the end of each true-up period, the administrator shall verify compliance with § 75.61 for EDCs and EGSs who were in violation of § 75.61 at the end of the reporting period. The administrator will provide written notice to each EDC and EGS of A FINAL ASSESSMENT OF their compliance status within 15 days of the end of the true-up period.

(3) EDCs and EGSs shall provide all information to the program administrator necessary to verify compliance with § 75.61.

(4) The program administrator shall provide a report to the Commission within 45 days of the end of each reporting period and true-up period that identifies the compliance status of all EDCs and EGSs. The

report provided after the end of the true-up period shall propose alternative compliance payment amounts for each EDC and EGS that is noncompliant with § 75.61 for that reporting period. As part of this report the administrator shall identify the average market value of alternative energy credits derived from solar photovoltaic energy sold in the reporting period for each RTO that manages a portion of this Commonwealth's transmission system.

(d) The program administrator shall have the following powers and duties relating to alternative energy credit certification:

(1) The program administrator shall certify alternative energy credits for the portion of a qualified alternative energy system's electric generation that is consumed within or delivered to the distribution system of an EDC in this Commonwealth or the control area of an RTO that manages a portion of this Commonwealth's transmission system. THE PROGRAM ADMINISTRATOR MAY NOT CERTIFY AN ALTERNATIVE ENERGY CREDIT ALREADY PURCHASED BY INDIVIDUALS, BUSINESSES OR GOVERNMENT BODIES THAT DO NOT HAVE A COMPLIANCE OBLIGATION UNDER THE ACT UNLESS THE INDIVIDUAL, BUSINESS OR GOVERNMENT BODY SELLS THOSE CREDITS TO THE EDC OR EGS.

(2) The program administrator may not certify AN alternative energy credit for a MWh of electricity generation or electricity conservation that has already been used to satisfy another state's renewable energy portfolio standard, alternative energy portfolio standard, or other comparable standard.

(e) A decision of the program administrator may be appealed consistent with the provisions of § 5.44 (relating to petitions for appeal from actions of staff).

(f) The Commission may delegate other responsibilities to the program administrator as may be necessary for the implementation of the act.

§ 75.66§ 75.65. Alternative compliance payments.

(a) Within 15 days of receipt of the report identified in § 75.65(e)(4) § 75.64(C)(4) (relating to alternative energy credit program administrator), the Commission will provide written notice to each EDC and EGS that was non-compliant with § 75.61 (relating to EDC and EGS obligations) of their alternative compliance payment for that reporting period.

(b) Each EDC and EGS shall be assessed an alternative compliance payment according to the following formula:

(1) For non-compliance with the solar photovoltaic requirements identified at § 75.61, an EDC and EGS shall make an alternative compliance payment equal to the FOLLOWING: ~~number of additional alternative credits necessary for compliance times 200% the average market value for solar photovoltaic alternative energy credits sold during the reporting period in the RTO control area where the noncompliance occurred.~~

(I) THE AVERAGE MARKET VALUE FOR SOLAR PHOTOVOLTAIC ALTERNATIVE ENERGY CREDITS SOLD DURING THE REPORTING PERIOD IN THE RTO CONTROL AREA WHERE THE NONCOMPLIANCE OCCURRED.

(II) ADD TO (I) THE LEVELIZED UP-FRONT REBATES RECEIVED BY SELLERS OF SOLAR RENEWABLE ENERGY CREDITS, (CALCULATED AS FOLLOWS: TOTAL AMOUNT OF REBATES PAID WITHIN THE PREVIOUS 20 YEARS, DIVIDED BY THE TOTAL KILOWATT CAPACITY FOR WHICH REBATES WERE GIVEN IN THE PREVIOUS 20 YEARS, DIVIDED BY 20 (THE USEFUL LIFE OF A SOLAR PHOTOVOLTAIC SYSTEM), MULTIPLIED BY THE

PERCENTAGE OF AECS USED DURING THE REPORTING PERIOD ORIGINATING FROM JURISDICTIONS WHERE REBATES WERE GIVEN).

(III) MULTIPLY (II) BY 200 %.

(2) For noncompliance with all other requirements identified at § 75.61, an EDC and EGS shall make an alternative compliance payment equal to \$45 times the number of additional alternative energy credits necessary for compliance in that reporting period.

(3) The costs of alternative compliance payments made under this section may not be recoverable from ratepayers.

(c) EDCs and EGSs shall advise the Commission in writing within 15 days of the issuance of this notice of their acceptance of the alternative compliance payment determination or, if they wish to contest the determination, file a petition to modify the level of the alternative compliance payment. The petition shall include documentation supporting the proposed modification. The Commission will refer the petition to the Office of Administrative Law Judge for further proceedings as may be necessary. Failure of an EDC or EGS to respond to the Commission within 15 days of the issuance of this notice shall be deemed an acceptance of the alternative compliance payment determination.

(d) EDCs and EGSs shall send their alternative compliance payments to a special fund designated by the Commission within 30 days of acceptance of their payment determination, or the conclusion of proceedings before the Commission regarding the modification of the level of payment.

(e) Alternative compliance payments shall be made available to the sustainable energy funds established through the Commission's orders entered pursuant to 66 Pa.C.S. § 2806(f) (relating to Commission review of restructuring filings), under procedures and standards proposed by the Pennsylvania Sustainable Energy Board and approved by the Commission AT DOCKET M-00031715.

(f) Alternative compliance payments made available to the sustainable energy funds shall be utilized solely for projects that increase the amount of electric energy generated from alternative energy resources for purposes of compliance with § 75.61.

(g) The Commission may utilize up to 5% of alternative compliance payments made by EDCs and EGSs for administrative expenses directly associated with the implementation of this chapter, including the costs of the program administrator.

§ 75.67 § 75.66. ~~General force~~FORCE majeure.

(a) ~~At least 30 days prior to~~ NO EARLIER THAN 60 DAYS PRIOR TO the beginning of a reporting period AND NO MORE THAN 60 DAYS AFTER THE CONCLUSION OF THE TRUE-UP PERIOD, the Commission, UPON ITS OWN INITIATIVE OR UPON THE REQUEST OF AN EDC OR EGS, will MAY issue an order declaring whether THAT force majeure exists for SOME OR ALL EDCS AND EGSS FOR that reporting period. The order will include separate force majeure determinations for the Tier I alternative energy source, Tier II alternative energy source, and solar photovoltaic requirements of § 75.61 (relating to EDC and EGS obligations).

(B) THE COMMISSION WILL PROVIDE PUBLIC NOTICE OF ALL REQUESTS FOR FORCE MAJEURE DETERMINATION.

~~(b)~~(C) The Commission may find that force majeure exists if there are insufficient alternative energy credits to satisfy the aggregate Tier I alternative energy source, Tier II alternative energy source, and OR solar photovoltaic obligation for all EDCs and EGSs under § 75.61 for that reporting period.

~~(e)~~(D) The Commission may find that force majeure exists for the nonsolar photovoltaic requirement of § 75.61 if the average price for a nonsolar photovoltaic alternative energy credit purchased by a Pennsylvania EDC and EGS

exceeds \$45 in the 6 month period ending 30 days prior to PRECEDING the issuance of the order referenced in subsection (a).

(d)(E) If the Commission determines that force majeure exists for a reporting period for, EDCs and EGSs shall have the option of making alternative compliance payments in lieu of compliance with § 75.61 for that reporting period.

(1) This payment shall equal \$ 45 for each alternative energy credit needed to satisfy the Tier I NONSOLAR PHOTOVOLTAIC and Tier II requirements of § 75.61 OR THE COMMISSION MAY CHOOSE TO REDUCE THE REQUIRED LEVEL OF TIER I NONSOLAR PHOTOVOLTAIC AND TIER II COMPLIANCE FOR THE REPORTING PERIOD.

(2) For the solar photovoltaic requirement, EDCs and EGSs shall have the option of making an alternative compliance payment equal to the market value of solar photovoltaic credits in the applicable RTO service territory, or the Commission may choose to reduce the required level of solar photovoltaic compliance for that reporting period.

(3) A payment shall be accompanied by a statement WITH SUPPORTING FACTS, filed with the Commission and verified by oath or affirmation, consistent with § 1.36 (relating to verification), that the EDC or EGS has made a good faith effort to comply with the requirements of this chapter AS OUTLINED IN SECTION (I) OF THE FORCE MAJEURE DEFINITION IN § 75.1, that they are unable to acquire a sufficient quantity of alternative energy credits to meet their obligations under § 75.61 AS OUTLINED IN SECTION (II) OF THE FORCE MAJEURE DEFINITION IN § 75.1, and that an alternative compliance payment is the least cost method of compliance.

(4) The option to make an alternative compliance payment in lieu of compliance with § 75.61 may not be available to EDCs and EGSs that have

already acquired sufficient alternative energy credits for compliance with the requirements of that reporting period.

(5) IF THE COMMISSION MODIFIES ANY COMPLIANCE REQUIREMENTS, THE COMMISSION MAY INCREASE THE COMPLIANCE REQUIREMENTS OF AN EQUIVALENT TYPE AND AMOUNT IN SUBSEQUENT YEARS WHEN THE COMMISSION DETERMINES THAT SUFFICIENT ALTERNATIVE ENERGY CREDITS OF AN EQUIVALENT TYPE EXIST IN THE MARKETPLACE.

~~(e)~~(F) Alternative compliance payments made by EDCs under subsection (d)(E) shall be deemed a cost of compliance with this chapter and may be recovered under § 75.69§ 75.67 (relating to alternative energy cost-recovery).

~~(f)~~(G) EDCs and EGSs shall provide the Commission all information necessary for it to render a force majeure determination, AS OUTLINED IN THE FORCE MAJEURE DEFINITION IN § 75.1.

§ 75.68. Special force majeure.

~~(a) Within 45 days of the conclusion of a reporting period for which the Commission did not find force majeure to exist for the Tier I alternative energy source, Tier II alternative energy source, and solar photovoltaic requirements of § 75.61 (relating to EDC and EGS obligations), an EDC or EGS not in compliance with § 75.61 may petition the Commission for a force majeure determination.~~

~~(b) The Commission will provide public notice of all requests for a force majeure determination during the true-up period.~~

~~(c) The Commission may find that force majeure exists when there are insufficient alternative energy credits to satisfy the Tier I alternative energy source, Tier II alternative energy source, and solar photovoltaic obligations for all EDCs and EGSs requesting force majeure determinations under this section.~~

~~(d) The Commission may find that force majeure exists for the nonsolar photovoltaic requirement of § 75.61 when the average price for a nonsolar photovoltaic alternative energy credit purchased by a Pennsylvania EDC and EGS exceeds \$45 for the just concluded reporting period in § 75.676(a)(relating to general force majeure):~~

~~(e) If the Commission determines that force majeure exists for the true-up period, an EDC or EGS requesting a force majeure determination shall have the option of making alternative compliance payments in lieu of compliance with § 75.61 for the just concluded reporting period, consistent with the standard identified in § 75.676. Payments shall be accompanied by a statement filed with the Commission and verified by oath of affirmation, consistent with § 1.36 (relating to verification), that the following apply:~~

~~(i) The EDC or EGS has made a good faith effort to comply with the requirements of this chapter.~~

~~(ii) The EDC or EGS are unable to acquire a sufficient quantity of alternative energy credits to meet their obligations under § 75.61.~~

~~(iii) An alternative compliance payment is the least cost method of compliance.~~

~~(f) Alternative compliance payments made by EDCs under subsection (e) shall be deemed a cost of compliance with this chapter and may be recovered pursuant to § 75.698 (relating to alternative energy cost recovery):~~

~~(g) EDCs and EGSs shall provide the Commission all information necessary for it to render a special force majeure determination:~~

§ 75.69§ 75.67. Alternative energy cost-recovery.

~~(a) A default service provider may recover from default service customers the following reasonable and prudently incurred costs for compliance with the act:~~

(1) The costs of electricity generated by an alternative energy system, purchased by a default service provider, and delivered to default service customers for purposes of compliance with § 75.61 (relating to EDC and EGS obligations).

(2) The costs of alternative energy credits purchased and used within the same reporting period for purposes of compliance with § 75.61.

(3) The costs of alternative energy credits purchased in one reporting period and banked for use in later reporting periods, consistent with ~~§ 75.71~~ § 75.69 (relating to banking of alternative energy credits).

(4) The costs of alternative energy credits purchased in the true-up period to satisfy compliance obligations for the most recently concluded reporting period, consistent with § 75.61(e)

(5) Payments to the alternative energy credits program administrator for its costs of administering an alternative energy credits program, consistent with ~~§ 75.65~~ § 75.64 (relating to alternative energy credit program administrator).

(6) Payments to a third party for its costs in operating an alternative energy credits registry, consistent with ~~§ 75.72~~ § 75.70 (relating to the alternative energy credit registry).

(7) The costs levied by a regional transmission organization to ensure that alternative energy sources are reliable.

(8) The costs of alternative compliance payments made under ~~§§ 75.67 and 75.68~~ § 75.66 (relating to ~~general force majeure; and special force majeure~~).

(b) A default service provider shall demonstrate compliance with the requirements of § 75.61 and the default service provisions of Chapter 54 (relating to electricity generation customer choice) by identifying a competitive procurement process for acquiring alternative energy credits in default service implementation plans filed with the Commission.

(c) A competitive procurement process for alternative energy and alternative energy credits shall comply with the standards for competitive procurement processes identified in the default service provisions in Chapter 54.

(d) The costs of compliance with the alternative energy portfolio standards act shall be recovered through an automatic adjustment clause within the meaning of 66 Pa.C.S. § 1307 (relating to sliding scale of rates; adjustments) AND CONSISTENT WITH 52 PA. CODE § 54.187 (RELATING TO DEFAULT SERVICE RATE DESIGN AND THE RECOVERY OF REASONABLE COSTS) according to the following standards:

(1) Costs incurred by a default service provider during the cost-recovery period shall be deferred as a regulatory asset and fully recovered with a return on the unamortized balance during the first full 12-month reporting period after the expiration of the cost-recovery period in the EDC service territory where it is acting as the default service provider.

(2) Costs incurred by a default service provider after the expiration of a cost-recovery period shall be recovered during the reporting period in which they are incurred, except as provided for in paragraph (7).

(3) The default service implementation plan shall include a schedule of rates for the recovery of these costs as required under 66 Pa.C.S. § 1307(a).

(4) A default service provider shall file a report with the Commission within 30 days of the conclusion of each reporting period that includes the information identified in 66 Pa.C.S. § 1307(e)(1).

(5) The Commission will hold public hearings on the substance of these reports, and other matters pertaining to this subject, as required by 66 Pa.C.S. § 1307(e)(2).

(6) The Commission will order the default service provider to provide refunds to or recover additional costs from default service customers consistent with 66 Pa.C.S. § 1307(e)(3).

(7) The costs of alternative energy credits purchased by the default service provider during the true-up period under section 3(e)(5) of the act (73 P.S. § 1648.3(e)(5)) shall be recovered during the reporting period in which these costs are incurred.

(e) The Commission will perform fuel costs audits, on at least an annual basis, of each default service provider that recovers costs using the automatic adjustment clause provided for under this section.

§ 75.70§ 75.68. Alternative energy market integrity.

(a) Sales of electricity by EDCs and EGSs to retail electric customers marketed as deriving from alternative energy sources SHALL BE TRACKED AND COUNTED SEPARATELY FROM ALTERNATIVE ENERGY CREDITS USED TO SUPPORT COMPLIANCE WITH THE REQUIREMENTS OF ~~that~~ ~~exceed the requirements of § 75.61 (relating to EDC and EGS obligations) at the time of the sale shall be supported by alternative energy credits separate from and in addition to alternative energy credits counted for compliance with the requirements of § 75.61.~~

(b) When EDCs and EGSs market their generation as deriving from alternative energy sources, they shall include information to substantiate their claims. Disclosure of alternative energy sources shall be traceable to specific alternative energy sources by an auditable contract trail or equivalent, such as a tradable commodity system, that provides verification that the alternative energy source claimed has been sold only once to a retail customer.

§ 75.71§ 75.69. Banking of alternative energy credits.

(a) An EDC and EGS may bank alternative energy credits certified in one reporting period for use in either or both of the two immediately following reporting periods.

(b) An EDC and EGS may bank alternative energy credits certified during a cost-recovery period for use in either: THE REPORTING PERIOD IN WHICH THE COST-RECOVERY PERIOD EXPIRES, AND THE REPORTING PERIOD THAT IMMEDIATELY FOLLOWS.

(1) The reporting period in which the cost-recovery period expires, and the reporting period that immediately follows.

(2) The first two full, 12-month reporting periods for which compliance with § 75.61 (relating to EDC and EGS obligations) is required after the expiration of the cost-recovery period.

(c) Alternative energy credits acquired by EDCs and EGSs not used within the time limits identified in subsections (a) and (b) shall be retired within the alternative energy credits registry and not available for the compliance requirements of this chapter.

(d) EDCs and EGSs shall satisfy the requirements of this chapter for the present reporting period before banking alternative energy credits produced in that same reporting period for use in either or both of the two subsequent reporting periods.

(e) The Commission will determine the volume of sales, measured in MWh, by EDCs and EGSs to retail customers in the 12-month period that immediately preceded the effective date of the Act derived from specific alternative energy systems. EDCs and EGSs may bank credits during the cost-recovery period for the generation output of qualified alternative energy systems that exceed their volume of alternative energy sales to retail customers during this 12-month period.

§ 75.72§ 75.70. Alternative energy credit registry.

(a) The Commission will designate an alternative energy credit registry to track the creation and transfer of certified alternative energy credits among qualified alternative energy systems, EDCs, and EGSs. EDCs and EGSs shall

record the price paid for each alternative energy credit in the alternative energy credit registry.

(b) The Commission may direct EDCs and EGSs to enter into agreements with an alternative energy credit registry to verify compliance with this chapter and for compliance with section 3(e)(8) of the act (73 P.S. § 1648.3(e)(8)). EDCs and EGSs shall comply with the rules, policies, and procedures of the designated alternative energy credit registry IDENTIFIED IN THE REGISTRY'S TERMS OF USE, SUBSCRIBER AGREEMENT OR OTHER COMPARABLE DOCUMENT.

(c) EDCs and EGSs shall provide the Commission and the program administrator with access to information in this registry necessary to verify compliance with this chapter and for compliance with section 3(e)(8) of the act.

(d) The prices paid for individual credits will be treated as confidential information by the Commission. Aggregate pricing data on alternative energy credits will be made available to the public by the Commission or the program administrator on a regular basis.

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

**FINAL RULEMAKING ORDER
IMPLEMENTATION OF THE
ALTERNATIVE ENERGY PORTFOLIO
STANDARDS ACT OF 2004**

**PUBLIC MEETING –
SEPTEMBER 25, 2008
SEP-2008-L-0091*
DOCKET NO: L-00060180**

STATEMENT OF VICE CHAIRMAN TYRONE J. CHRISTY

I first would like to commend the Law Bureau for its excellent work product in this proceeding. The final regulations presented to us for consideration reflect sound judgment and legal analysis, and sensitivity to the cost of these requirements that will be borne by Pennsylvania's customers.

Although I am voting today to approve these final regulations, I do so somewhat reluctantly due to a concern that rests more with the AEPS¹ Act itself, as opposed to our implementing regulations. Specifically, my concern lies with the broad geographic area encompassed by the 13-state PJM control area, and the ability of an alternative energy project located hundreds of miles from Pennsylvania to qualify under our AEPS and receive revenues from Pennsylvania. I believe that it is incumbent upon us to ensure, as best we are able, that that the benefits provided by alternative energy projects inure to the benefit of the Pennsylvania customers that are bearing the substantial costs that have been created by the AEPS. Since it is unlikely that Pennsylvania customers will realize any significant economic or environmental benefits from an alternative energy project located outside of the Commonwealth, I believe that this Commission should support a legislative amendment to the AEPS Act to add a reciprocity requirement for out-of-state projects.

If a reciprocity requirement were added to the AEPS Act, the AECs produced by an alternative energy facility located in, for example, Illinois, would qualify in Pennsylvania only if credits produced by a similar facility in Pennsylvania, using the same fuel source, would qualify in Illinois. Such a reciprocity requirement would help ensure that Pennsylvania receives the benefits for which it is paying, and would encourage other states within PJM to enact their own renewable/alternative energy portfolio standard, and to open their borders to Pennsylvania. This would encourage the development of alternative energy in PJM states other than Pennsylvania.

I note with interest a letter dated 2/28/06 to the Commission from three of the prime sponsors of the AEPS Act in the General Assembly. The purpose of this letter was to clarify the legislative intent underlying the Act. A portion of this letter stated as follows:

The General Assembly passed Act 213 to diversify the electric generation technologies and fuels that serve electricity customers located in Pennsylvania; to

¹ The Alternative Energy Portfolio Standards Act of 2004, 73 P.S. §§ 1648.1 *et seq.*

increase economic development within Pennsylvania by attracting investment to Pennsylvania to build alternative energy projects; to speed the commercialization within Pennsylvania of the technologies listed in Tier 1 and Tier 2 of the AEPS; and to reduce the pollution of Pennsylvania air, water and land resources caused by electric generation.

Letter of February 28, 2006 (emphasis supplied).

There is an element of fairness in a reciprocity requirement that I believe is important and that should be incorporated into the AEPS Act. Pennsylvania should not be in the position of being required to export its dollars to other states and getting nothing in return. As things stand, Pennsylvania's electric customers are required to subsidize the development of alternative energy projects in states that either do not have an alternative energy portfolio, or that have a portfolio but have restricted eligibility in such a way that projects in Pennsylvania can not participate. I would ask my fellow commissioners to support such a legislative amendment to the AEPS Act, which I believe would further promote its legislative intent as described above in the letter of 2/28/06 from three of its prime sponsors.

9-25-08
DATE

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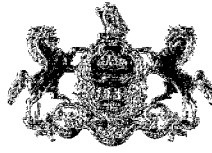
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PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG, PENNSYLVANIA

JAMES H. CAWLEY
CHAIRMAN

October 3, 2008

The Honorable Arthur Coccodrilli
Chairman
Independent Regulatory Review Commission
14th Floor, Harristown II
333 Market Street
Harrisburg, PA 17101

Re: L-00060180/57-252
Final Rulemaking
Implementation of the Alternative Energy
Portfolio Standards Act of 2004
52 Pa. Code, Chapter 75

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2008 OCT -3 PM 12:36
INDEPENDENT REGULATORY
REVIEW COMMISSION

Dear Chairman Coccodrilli:

Enclosed please find one (1) copy of the regulatory documents concerning the above-captioned rulemaking. Under Section 745.5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15) the Commission, on September 27, 2006, submitted a copy of the Notice of Proposed Rulemaking to your Committee, the House Committee on Consumer Affairs and the Independent Regulatory Review Commission (IRRC). This notice was published at 36 *Pa.B.* 6289 on October 14, 2006. The Commission has provided the Committees and IRRC with copies of all comments received.

In preparing this final form rulemaking, the Commission has considered all comments received from the Committees, IRRC and the public.

Very truly yours,

James H. Cawley
Chairman

Enclosures

cc: The Honorable Robert M. Tomlinson
The Honorable Lisa Boscola
The Honorable Robert Godshall
The Honorable Joseph Preston, Jr.
Legislative Affairs Director Perry
Chief Counsel Pankiw
Regulatory Coordinator DelBiondo
Assistant Counsel K. Brown
Judy Bailets, Governor's Policy Office

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE REGULATORY REVIEW ACT

ID Number: L-00060180/57-252

Subject: Implementation of the Alternative Energy Portfolio
Standards Act of 2004


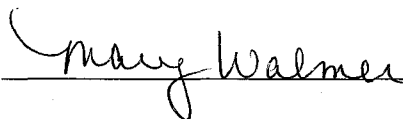
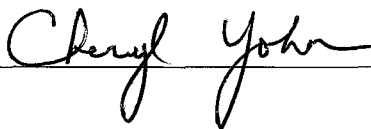
Pennsylvania Public Utility Commission

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INDEPENDENT REGULATORY
REVIEW COMMISSION

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted.
- Final Regulation
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor

FILING OF REPORT

<u>Date</u>	<u>Signature</u>	<u>Designation</u>
10/3/08		<u>HOUSE COMMITTEE</u> (Preston) Consumer Affairs
10/3/08		<u>SENATE COMMITTEE</u> (Tomlinson) Consumer Protection and Professional Licensure
10/3/08		Independent Regulatory Review Commission Attorney General
		Legislative Reference Bureau