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October 11, 2007

VIA FED EX

COPY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd floor
Harrisburg, PA 17120

**Re: Implementation of the Alternative
Energy Portfolio Standards Act of 2004
Docket No. L-00060180**

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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INDEPENDENT REGULATORY
COMMISSION
PENNSYLVANIA

2007 OCT 18 PM 2:00

Dear Mr. McNulty:

Enclosed are an original and fifteen copies of the Comments of PECO Energy Company. Kindly file the original of record with your office and acknowledge same by date-stamping and returning the additional copy of this letter in the self-addressed stamped envelope provided.

Thank you for your assistance in this effort.

Sincerely,



Adrian D. Newall
Assistant General Counsel

ADN/jml
Enclosures

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October 12, 2007

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd floor
Harrisburg, PA 17120

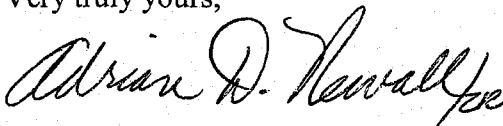
Re: **Implementation of the Alternative
Energy Portfolio Standards Act of 2004
Docket No. L-00060180**

Dear Secretary McNulty:

Due to administrative error, this FedEx package was not picked up for delivery. Please accept our filing in the above referenced matter one day out of time.

Please do not hesitate to contact me should you have any questions.

Very truly yours,



Adrian D. Newall
Assistant General Counsel

ADN/zr

Enc.

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2007 OCT 11 PM 12:16
PA PUC
SECRETARY'S BUREAU



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of the Alternative : **Docket No. L-00060180**
Energy Portfolio Standards Act of 2004 :

COMMENTS OF PECO ENERGY COMPANY

Introduction

On July 25, 2006, the Pennsylvania Public Utility Commission ("Commission") issued its Proposed Rulemaking Order setting forth proposed regulations pursuant to the Alternative Energy Portfolio Standards Act of 2004 ("AEPS")¹. On December 13, 2006, PECO Energy Company ("PECO") and other interested stakeholders, submitted comments suggesting revisions to the Commission's Proposed Rules ("December 13 Comments").

On July 19, 2007, Governor Rendell signed Act 35 of 2007 into law, which amends certain provisions of AEPS. On September 13, 2007, the Commission issued a Secretarial Letter reopening the public comment period to allow interested parties the opportunity to advise the Commission how these amendments should be reflected in the AEPS final rules. The Commission requested that the comments be limited to Act 35 amendments.

PECO commends the Commission for reviewing its Proposed Rules in light of the recent amendments to AEPS and appreciates the opportunity to provide its thoughts in this regard. Due to the fact that Act 35 only amended a few provisions of AEPS, PECO's comments are limited to the general sections regarding (1) EDC and EGS obligations, (2)

¹ *Implementation of the Alternative Energy Portfolio Standards Act of 2004, Proposed Rulemaking Order, Docket No. L-00060180 (Order entered July 25, 2006) ("Proposed Rulemaking Order").*

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alternative compliance payments, (3) force majeure, and (4) the integrity of the voluntary market. PECO continues to support its December 13 Comments filed in this docket and believes that its proposed changes are even more pertinent in light of Act 35.

Discussion

I. Proposed Section 75.61 (EDC and EGS obligations)

Recommendation: The Commission must amend subsections (b)-(c) to reflect the new percentage quantities of solar photovoltaic alternative energy credits that EDCs and EGSs must acquire to track the new language of Act 35.

Act 35

Act 35 amended AEPS by increasing the percentages of solar alternative energy credits that must be acquired by EDCs and EGSs. Section 75.61 reflects the language in the original AEPS legislation.

PECO's comment

PECO continues to support its December 13 Comments and the changes advocated therein with regard to Section 75.61. However, Section 75.61(b)-(c) must be amended to include the new Act 35 solar percentages. PECO therefore proposes the following changes to subsections (b)-(c) of Section 75.61:

(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 total percentage of electric energy sold by an EDC or EGS to retail electric customers in Pennsylvania that must be sold from solar photovoltaic technologies as well the required quantities of alternative energy credits **from other Tier I and Tier II resources** 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 .0013% of Tier I sales, 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 .0030 % of Tier I sales, 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 .0063% of Tier I sales, 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 .0120 % of Tier I sales, 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 sales, 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 .0325% of Tier I sales, 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 .0510% of Tier I sales, 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 .0840% of Tier I sales, 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 .1440% of Tier I sales, 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 .25% of Tier I sales, 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 .2933% of Tier I sales, 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 .34% of Tier I sales, 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 .39% of Tier I sales, 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 .4433% of Tier I sales, 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 .5% of Tier I sales, and the Tier II requirement is 10% of all retail sales.

II. Proposed Section 75.66 (Alternative compliance payments)

Recommendation: The Commission should add language to Proposed Section 75.66 regarding the level of solar alternative compliance payments to reflect the changes made in Act 35.

Act 35

In Act 35, the General Assembly added language to the definition of Alternative Compliance Payment that should be reflected in the Commission's final AEPS regulations. Act 35 requires the Commission, when setting an alternative compliance payment for the solar photovoltaic share, to include, "where applicable, the levelized up-front rebates received by sellers of solar renewable energy credits in other jurisdictions in the PJM Interconnection, LLC Transmission Organization (PJM) or its successor."

PECO's Comment

PECO continues to support the changes set forth in its December 13 Comments. PECO recommended that the Commission amend Proposed Section 75.66 to add a fee to alternative energy credit transactions to recover program administrator costs. PECO believes that this change must be adopted by the Commission in its final AEPS regulations for the reasons included in its original comments.

PECO also recommends that Proposed Section 75.66 be changed to reflect the new language added by Act 35. The Commission is now required to consider the levelized, up-front rebates received by solar energy systems in other PJM jurisdictions when calculating an alternative compliance payment for EDCs and EGSs that fail to meet their solar obligation. The Commission should use the average useful life of the solar energy system and not a lesser number of years. The Commission must add this

definition of "levelized" in its final AEPS regulations in order to ensure that the alternative compliance payment for the solar portion can be properly measured. The AEPS program administrator, when requiring alternative compliance payments, must have guidelines in order to determine the appropriate level of payment. By stating that the levelized up-front rebates received by sellers in other PJM jurisdictions must be measured using the average useful life of a solar energy system, the Commission will be providing the requisite guidance. Accordingly, PECO proposes the following addition:

(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 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 non-compliance occurred, including, where applicable the levelized up-front rebates received by solar photovoltaic alternative energy systems in the same RTO control area. The levelized up-front rebate is equal to the rebate spread in equal amounts over the useful life of average solar energy system.

III. Proposed Section 75.67 (General force majeure)

Recommendation: The Commission should adopt the recommendations made by PECO in its December 13, 2006 comments in order to codify the changes made to the Force Majeure provision in Act 35.

Act 35

Act 35 amended the force majeure provision of AEPS. Under the new section, the Commission is required when determining whether or not force majeure exists in the alternative energy marketplace, to consider whether or not EDCs and EGSs have made a good faith effort to comply with their AEPS obligations. The provision sets forth some of the ways an EDC or EGS can establish that such efforts were made. Act 35 also requires the Commission when making a force majeure determination, to assess the availability of alternative energy credits in the PJM Generation Attributes Tracking

System (GATS), in Pennsylvania and other jurisdictions in PJM. The new provision also states that if the Commission modifies an EDCs or EGSs obligation, it is limited to that compliance period only and provides that the Commission may require an EDC or EGS to make-up any reduction in future compliance periods.

PECO's Comment

PECO continues to support the recommendations made in its December 13 Comments and believes that Act 35 now requires many of the changes. PECO's comments will focus on the changes that pertain to the new language added in Act 35.

First, as set forth in subsection (a) the proposed rule, if the Commission finds that force majeure exists for a reporting period, EDCs and EGSs have the option of making alternative compliance payments in lieu of compliance with § 75.61. A payment must be accompanied by an oath or affirmation that an EDC or EGS made a good faith effort to comply with the requirements of AEPS but was unable to procure a sufficient number of credits. Act 35 now clearly requires the Commission to consider whether EDCs and EGSs have made good faith efforts to comply with their obligations and provides specific examples of what such efforts could look like, including, but not limited to, the banking of alternative energy credits during an EDCs transition period and seeking alternative energy credits through competitive solicitations. The items included in Act 35 must be taken as a measure of an EDCs or EGSs efforts and not an exhaustive check list of all tasks that must be undertaken before the Commission can find that good faith efforts were made.

PECO believes that the Commission's proposed rule adheres to the new amendments by requiring the oath or affirmation to accompany an alternative compliance

payment during a force majeure reporting period. However, as PECO discussed in its December 13 Comments, the proposed rule envisions the Commission making a force majeure determination 30 days prior to the beginning of a reporting period but does not make clear when an alternative compliance payment that accompanies the oath of good faith, must be paid. PECO suggested in its December 13 Comments that in order for an EDC or EGS to make such an affirmation, it must be granted the opportunity to procure credits during the actual reporting period, and potentially the true-up period, following a force majeure determination. It is even more imperative in light of the amendments promulgated in Act 35 that the Commission's final rules be clear that an alternative compliance payment made pursuant to Section 75.67 is due after the true-up period. This clarification will allow EDCs and EGSs the time permitted by AEPS to comply with their obligations while also allowing EDCs and EGSs to meet the good faith requirement legislated in Act 35.

Second, in subsection (b) of the proposed rule, the Commission states that it will consider conditions existing in the alternative energy markets in other states and in the voluntary markets when making a force majeure determination. The amendments made by Act 35 now requires the Commission when determining whether or not force majeure exists to assess the availability of alternative energy credits in PJM GATs, in Pennsylvania and other jurisdictions in PJM. Act 35 also made clear that alternative energy sources located in PJM shall be eligible to fulfill the compliance obligations of all EDCs and EGSs. Although proposed Section 75.67(b) is consistent with the new sections added by Act 35, PECO continues to support its December 13 Comments which recommended that in determining whether or not force majeure exists, the Commission

must consider the demand from other states within PJM that have renewable portfolio standards². The Commission must also be cognizant of the additional demand generated by the voluntary market. As PECO explained in its December 13 Comments, circumstances giving rise to an insufficient availability of alternative energy credits within Pennsylvania during a reporting period could begin outside of Pennsylvania and stem from other programs besides AEPS. A provision that requires the Commission to consider both supply *and demand* from other states in PJM is consistent with AEPS as well as the Act 35 amendments that make clear that sources within PJM can be used to meet compliance.

Third, in subsection (d), if the Commission finds that force majeure exists in the market for solar credits, the proposed rule grants the Commission the flexibility to either require an alternative compliance payment, or reduce the level of solar photovoltaic compliance for that reporting period. PECO in its December 13 Comments, recommended that the Commission allow itself that same flexibility if it finds that force majeure exists for the remaining Tier I or Tier II obligations. PECO stated that there is no distinction between the Act's solar obligation and the other Tier obligations that would dictate that the Commission would only have this option for solar compliance. Act 35 added language to the force majeure section that discusses the Commission's reduction of an EDCs and EGSs obligations under AEPS. Act 35 *does not* limit the Commission's ability to reduce an AEPS obligation to the solar photovoltaic share. PECO continues to support its recommendation that the proposed rule be revised to give the Commission the parallel option as to all compliance obligations and believes that the

² PECO in its December 13 Comments recommended changes to Section 75.67 that tracked AEPS Section 1648.4 regarding the eligibility of alternative energy sources. The changes suggested to subsection (b) included herein, track the language of Act 35 with regard to eligible resources.

amendments made by Act 35 make clear that the General Assembly envisioned the Commission having this ability as well. PECO also recommends that should the Commission choose to require an EDC or EGS to acquire additional alternative energy credits in subsequent years equivalent to the reduced amount, it must inform the affected EDC or EGS at the time the reduction is granted. This is the only way to ensure that an EDC and/or EGS have the time to prepare for its increased AEPS obligation.

Consistent with the foregoing, PECO proposes the following amendments to proposed Section 75.67. As PECO has stated previously, it continues to support the changes recommended in its December 13 Comments and does not repeat below all of the changes proposed therein.

(b) 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 solar photovoltaic obligation for all EDCs and EGSs pursuant to § 75.61 for that reporting period. In making this finding, the Commission will consider the alternative energy demand existing within the service territory of Pennsylvania as well as in other jurisdictions in PJM Interconnection, L.L.C. The Commission may also find that force majeure exists if the price in the market for a Tier I (non-solar) or Tier II credit exceeds \$45. An EDC or EGS is not required to purchase a Tier I (non-solar) or Tier II credit in excess of the \$45 price cap.

...

(d) If the Commission determines that force majeure exists for a reporting period, EDCs and EGSs shall have the option of making alternative compliance payments in lieu of compliance with § 75.61 for that reporting period. This payment shall equal \$45 for each alternative energy credit needed to satisfy the Tier I and Tier II requirements of § 75.61, or the Commission may choose to reduce the required level of Tier I (non-solar) and Tier II compliance for that reporting period. The Commission may also chose to require an EDC or EGS to acquire additional alternative energy credits in subsequent reporting periods equivalent to the obligation reduced due to a force majeure declaration. The Commission must inform the affected EDC or EGS at the time force majeure is declared of their new compliance obligation. For the solar photovoltaic requirement, EDCs and EGSs shall have the option of making an alternative compliance payment equal to the average market

value of solar photovoltaic credits in the applicable RTO service territory for the reporting period prior to the finding of force majeure, so long as there was no finding of force majeure for that prior reporting period, or the Commission may choose to reduce the required level of solar photovoltaic compliance for that reporting period. If at the conclusion of the true-up period, an EDC or EGS is unable to procure a sufficient amount of credits to meet its compliance obligations under § 75.61, or determines that the alternative compliance payment is the least cost method of compliance, the EDC or EGS shall make an alternative compliance payment to meet its compliance obligations for that reporting period. A payment 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 EDC or EGS has made a good faith effort to comply with the requirements of this chapter, that they are unable to acquire a sufficient quantity of alternative energy credits to meet their obligations under § 75.61, and that an alternative compliance payment is the least cost method of compliance. 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.

IV. Proposed Section 75.68 (Special force majeure)

Recommendation: The Commission should revise Proposed Section 75.68 to be consistent with PECO's comments on Proposed Section 75.67.

Act 35

As explained above, Act 35 states that the Commission may reduce an EDCs and EGSs AEPS obligations but that such reduction is good for that compliance period only. Act 35 also states that the Commission may require an EDC or EGS to acquire additional alternative energy credits in subsequent years equivalent to the obligation reduced due to a force majeure declaration. Also discussed above, Act 35 now requires that EDCs and EGSs make a good faith effort to comply with their AEPS obligations.

PECO's Comment

Consistent with PECO's comments above, if the Commission finds that force majeure exists under this section, it should be permitted to reduce an EDCs or EGS

obligation. Moreover, should it decide to require the EDC or EGS to acquire additional alternative energy credits in subsequent reporting periods, it must inform the EDC or EGS of their new compliance requirement at the time force majeure is declared. This is the only way for an EDC or EGS to adequately prepare and begin to take the steps necessary to acquire additional alternative energy credits in a presumably tight market. In addition, Section 75.68 also requires that EDCs and EGSs make a good faith effort to comply with their AEPS obligations. PECO believes that Proposed Section 75.68 captures this good faith requirement.

PECO proposes the following subsection be added to Section 75.68:

(e) If the Commission determines that force majeure exists for the true-up period, the Commission may chose to reduce the required level of Tier I, solar and Tier II compliance for that reporting period. The Commission may also chose to require an EDC or EGS to acquire additional alternative energy credits in subsequent reporting periods equivalent to the obligation reduced due to a force majeure declaration. The Commission must inform the affected EDC or EGS at the time force majeure is declared of their new compliance obligation. 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 § 75.67. Any payments shall be accompanied by a statement 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, that they were unable to acquire sufficient quantity of alternative energy credits to meet their obligations under § 75.61, and that an alternative compliance payment is the least cost method of compliance.

V. Proposed Section 75.70 (Alternative energy market integrity)

Recommendation: The Commission must amend Proposed Section 75.70 to make voluntary purchases of alternative energy credits separate from AEPS compliance obligations, as codified in Act 35.

Act 35

Act 35 clearly prohibits alternative energy credits purchased in the voluntary market from being used to comply with AEPS unless the purchaser resells their credits to an EDC or EGS with an AEPS obligation.

PECO's Comment

Subsection (a) of proposed Section 75.70 provides that all EDC and EGS sales to retail customers that exceed the EDC's or EGS's AEPS requirements should be represented by credits "separate from and in addition to" those credits used to satisfy their AEPS requirements. As PECO stated in its December 13 Comments, PECO believes that the proposed regulation as drafted would likely dampen the voluntary market and discourage EDCs and EGS from separately marketing alternative energy to their retail customers. Act 35 sends the clear message that voluntary credits are owned by the customer and should be kept separate from credits acquired for AEPS compliance. PECO commends the Commission for keeping voluntary credits separate from credits used for AEPS compliance. However, PECO believes that the changes proposed in its December 13 Comments captures the new requirements of Act 35 while preventing the chilling effect the Proposed Section 75.70 would have on voluntary purchases.

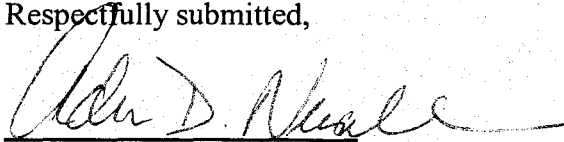
Accordingly, PECO proposed the following changes to subsection (a):

(a) All 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 § 75.61. ~~exceed the requirements of § 75.31 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 § 75.31.~~

Conclusion

PECO appreciates the opportunity to comment on the changes to the Commission's proposed regulations that it believes are necessitated by Act 35. PECO shares the Commission's goal of establishing AEPS regulations that are consistent with the governing legislation and conducive to the establishment of a successful alternative energy market. Based on the reasons set forth herein, PECO respectfully requests that the Commission adopt the recommendations proposed by PECO in these comments as well as in PECO's December 13 Comments.

Respectfully submitted,



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Dated: October 11, 2007