2569

Kathy Cooper

From: Smith, James M.
Sent: Friday, December 08, 2006 3:04 PM
To: IRRC
Cc: Wilmarth, Fiona E.; Stephens, Michael J.
Subject: FW: EPGA - Comments, AEPS PAPUC DK# L-00060180

Please file in public comment on #2569.

-----Original Message-----
From: Ann Kulp [mailto:ann@epga.org]
Sent: Friday, December 08, 2006 2:26 PM
To: Smith, James M.
Cc: Biden, Douglas L.
Subject: EPGA - Comments, AEPS PAPUC DK# L-00060180

Jim -
Hope all is well.
For your information, please find attached the Electric Power Generation Association's AEPS comments pursuant to PAPUC Docket No. L-00060180. Our comments were filed with the Commission earlier this week.

Best regards,
Ann Kulp
Electric Power Generation Association
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For the latest in Pennsylvania Energy News, please visit http://www.paenergynews.com/

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of the Alternative Energy Portfolio Standards Act of 2004

Docket No. L- 00060180

Comments of the Electric Power Generation Association

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. Introduction

The Electric Power Generation Association (EPGA) appreciates the opportunity to submit these comments to the Pennsylvania Public Utility Commission (Commission) regarding implementation of the Alternative Energy Portfolio Standards (AEPS) Act of 2004, 73 P.S. §§ 1648.1 - 1648.8 (Act 213). EPGA is a regional trade association of electric generating companies with headquarters in Harrisburg, Pennsylvania. Our member companies include:

AES Beaver Valley
Allegheny Energy Supply
Cogentrix Energy, Inc.
Edison Mission Group
Exelon Generation
FirstEnergy Corp
Mirant Corporation
PPL Generation Group
Reliant Energy and
UGI Development Company

These companies own and operate more than 122,000 megawatts (MW) of electric generating capacity in the United States. Approximately half of this capacity is located in Pennsylvania and surrounding states. Our comments

represent the views of EPGA as an association of generating companies, not necessarily the views of any particular member company with respect to any specific issue.

EPGA's position on most issues related to AEPS is driven largely by its overriding interest in insuring that the development of alternative energy systems (AESs) is consistent with the efficient functioning of the wholesale and retail electricity market. The General Assembly, the Commission, EPGA members, and many other stakeholders have gone to great lengths to foster development of competitive wholesale and retail markets, and EPGA feels that the Commission should avoid, as much as possible, implementing Act 213 in ways that insulate suppliers from routine market forces or that provide perverse operating incentives.

In deciding the many issues before it, the Commission should also be guided by the goal of minimizing the potential cost of implementing Act 213. The Commission recognized in its Tentative Order of January 31, 2006 (Docket No. M-00051865), that because costs associated with Act 213 are to be recovered from Pennsylvania ratepayers, one could argue that the AEPS legislation should be interpreted in a way that insures the most competitive price for alternative energy. EPGA believes that most public policymakers, including the sponsors of Act 213, will agree that we should not implement Act 213 in ways that unnecessarily threaten to raise prices, and that we should strive to minimize the cost of compliance with AEPS as much as practicable.

It is with these guiding principles in mind that EPGA offers the following comments. Due to temporary and unavoidable personnel constraints, EPGA is limiting its comments here to three consensus issues concerning the qualification

of low impact hydroelectric resources (§ 75.32), the geographic scope of the area for AES qualification (§ 75.33), and the delegation of Commission authority to the Department of Environmental Protection (DEP) (§75.35). EPGA expects, however, that its individual member companies will address other issues extensively as necessary.

II. Comments

§ 75.32 Fuel and technology standards for alternative energy sources

The Commission's interpretation of Act 213 restricts the qualification of "low impact" hydroelectric resources for Tier I to only "incremental" development, and specifically, those resources developed on or after February 28, 2005 (the effective date of Act 213). EPGA disagrees with this interpretation of Act 213 and believes that any hydroelectric resource that meets the relevant certification standards should qualify as a Tier I resource.

If only "incremental" hydro qualifies, EPGA believes there will be very little hydroelectric resources eligible to compete within Tier I, especially if AESs from the New York Independent System Operator (NYISO) and the Midwest Independent System Operator, Inc. (MISO) are excluded from eligibility in most if not all of the Pennsylvania EDC service territories. In all the hearings and meetings that EPGA and its members had with the sponsors of Act 213 we never were given any impression that hydroelectric resources were intended to be practically excluded from Tier I. Yet, that is the result that the "incremental" only interpretation would likely achieve. Moreover, the language in Act 213 does not

limit eligibility to only new resources. The definition of "alternative energy sources" in Act 213 specifically includes existing resources: "the term shall include the following EXISTING AND NEW sources for the production of electricity…".

Hydropower is subject to the most comprehensive environmental licensing procedures of all the renewable energy sources. Environmental and social impacts are fully weighed and considered in this process. The development of new and incremental hydroelectric generation is a costly and extremely lengthy process, often taking a decade from concept to operation. The burden of this licensing process, coupled with the fact that most of the hydroelectric potential is already being utilized, means that very little incremental hydro power is likely to be developed in the near term, if at all.

To the extent that some incremental hydro capacity is developed, limiting resource eligibility only to the incremental portion could lead to perverse operating incentives for the generator. Given a limited quantity of water, the generator will have an incentive to run the "incremental" turbine capacity more than the existing capacity. Yet that existing capacity has no more or less environmental impact than the "incremental" capacity. EPGA sees no good public policy reason why Pennsylvania would want to incent less efficient utilization of this existing renewable, emission free generation. Accordingly, we recommend that any hydroelectric capacity that meets the requirements of being "low impact" should qualify as a Tier I resource.

Allowing the qualification of existing "low impact" hydro resources will help to meet the emission reduction and fuel diversity goals of Act 213 at lower cost, and will complement the predominantly intermittent, low capacity factor Tier

I resources such as wind and solar, thereby advancing our vital interest in maintaining system reliability. Excluding these existing resources puts them at a competitive disadvantage and risks that they will become uneconomic.

§ 75.33 Alternative energy system qualification – geographic requirement

> The Proposed Rulemaking Order states at § 75.33d as follows:
>
> The alternative energy credits associated with a qualified alternative system located outside of Pennsylvania shall be eligible for compliance purposes only in the portions of Pennsylvania within the boundaries of the same RTO control area as that alternative energy system.

EPGA strongly disagrees with this interpretation of Act 213 because it conflicts with the unambiguous language of Act 213. The Act provides that energy from alternative sources "within the service territory of any regional transmission organization that manages the transmission system in any part of this Commonwealth shall be eligible to meet the compliance requirements under this act." EPGA believes this clearly means that AESs located anywhere within the service territories of the PJM Interconnection, LLC (PJM) or MISO are eligible to meet the Commonwealth's AEPS requirements in any EDC service territory.

Excluding sources from eligibility that are outside a load serving entity's (LSE's) RTO is contrary to the plain language of Act 213, does not advance the purposes of the Act, is inconsistent with how competitive electric markets operate, and undermines the development of seamless regional electric markets. In addition, as the Commission noted in its Tentative Order of January 31, 2006, in view of the interconnected nature of the regional transmission grid, geographic

limitations on resource eligibility could impermissibly restrict interstate commerce and amount to unconstitutional discrimination against out-of-state competitors.

Early versions of the AEPS legislation contained language restricting the geographic scope of the market to the original footprint of PJM. This is essentially what the current restrictive language in the Proposed Rulemaking accomplishes for the entire Commonwealth with the exception of the Penn Power service territory. That language was rejected by the General Assembly in favor of the present amended language that does not unnecessarily restrict access to the MISO market.

The Commission must also be mindful that if it restricts access to AES generators in other states and regions those states may, in turn, restrict access to sources in Pennsylvania, limiting export potential from the Commonwealth. For this reason, we recommend that the Commission also consider allowing AESs that otherwise qualify in the NYISO. EPGA realizes that the language of Act 213 requires resources to be within an RTO. However, we do not believe that permitting resources within an ISO is necessarily inconsistent with the objectives of Act 213. The NYISO allows trades of its alternative energy credits (AECs or RECs) with sources in PJM. EPGA sees no compelling reason why Pennsylvania should adopt a more balkanized approach to the development of the market for its AECs.

If one of the goals of Act 213 (and other state AEPS statutes) is to maximize the development of alternative resources and realize associated energy diversity and environmental benefits, then clearly, at a minimum, the development of broad and highly-functioning regional markets is critical to meeting this goal.

Allowing LSEs to access AESs in the broadest possible market is also one of the attractive features of relying on a centralized AEC system like the PJM Generator Attributes Tracking System (GATS) to track compliance, because it will allow for tracking of AECs over a broader area, including neighboring regions, and not necessitate development of AES resources where it may not be economically or otherwise feasible or desirable (e.g., because of relatively poor wind conditions, local opposition or siting restrictions).

EPGA submits that a broader interpretation of the geographic eligibility criteria will promote a larger, more vibrant regional market for AES resources and the most competitive price for alternative energy, and help to realize the Commission's goal of minimizing future electricity price increases when retail price caps are lifted in most EDC service territories in 2009/2010. A basic tenet of electric restructuring is that broadly traded, liquid markets produce more efficient resource allocation and pricing. The electricity markets in Pennsylvania have not operated in isolation from those of its neighbors, and neither should a Pennsylvania AEC market. Allowing the AEC market to function across state and regional boundaries, without unnecessary geographic restrictions, widens the potential geographic market, eases compliance for LSEs, avoids transmission constraints, minimizes the potential for force majeure, and helps ensure that higher quality and lower cost AES resources are utilized.

§ 75.335 Alternative energy credit program administrator

The Proposed Rulemaking states that the program administrator will:

(4) Refer verification of the application's compliance with applicable environmental regulations to the Department.
(5) Refer verification of the application's compliance with § 75.32 to the Department.
(6) Reject applications that the Department advises to be non-compliant with environmental regulations or § 75.32.

EPGA believes that Act 213 vests the Commission with the ultimate authority to determine which resources qualify under the Act. EPGA and the Commission recognize that the DEP has certain responsibilities in implementing Act 213, namely to ensure that all qualified AESs meet all applicable environmental standards. However, the Commission or its agent, the program administrator, must make all final determinations regarding resource qualification.

Under the Proposed Rulemaking the Commission is sharing its responsibility under the Act with DEP, requiring the Commission or the AEPS program administrator to certify questions of fact or law to the DEP. This approach appears to have the program administrator reviewing the application from a generator applying for AES status and determining whether the resource was geographically eligible. The administrator would then certify to the DEP the question of whether the resource was consistent with the definition of AES. Once DEP reviews the application, it would report its findings to the program administrator.

Under this proposed approach, the administrator would be bound by the DEP's determinations. By certifying a question to DEP, the Commission is delegating some of its statutory authority to another state agency. EPGA respectfully disagrees with this delegation of legislative authority and believes that

the more appropriate role for DEP would be to act as an expert witness, providing technical guidance to the Commission and the program administrator - an option that the Commission considered in its Tentative Order. As an expert witness, DEP's findings would not be binding and could ultimately be rejected by the program administrator if it found other information to be more persuasive. EPGA believes that this is a more suitable role for the DEP under Act 213, rather than a decision-making role, particularly in view of the fact that DEP has become involved in the Penn Power proceeding as a party litigant to pursue its interpretations of Act 213, which differ markedly in certain respects from both wholesale and retail market participants.

EPGA believes that the Commission should maintain the primary role in qualifying resources under Act 213. The DEP should not be granted the broad authority to make final determinations regarding the qualification of a source. Although the DEP may have the technical and environmental expertise required to determine whether or not an AES meets the definitions in Section 2 of Act 213, the General Assembly has not delegated to the DEP the authority to "carry out the responsibilities delineated within this act." Rather, the Commission has been delegated that authority. DEP's role in this regard is limited to one where it is to "ensure" that AESs satisfy all applicable environmental standards and to "verify" that an AES meets the definitions set forth in Section 2 of the Act. As the Commission has been delegated the primary role in enforcing the requirements of the Act, DEP should have no more than an adjunct role in assisting the Commission on these issues. This interpretation of Act 213 is consistent with the plain language as well as the intent of the legislature.

If the Commission moves forward with the delegation of its statutory authority to DEP in this critical area of resource eligibility, as detailed in the Proposed Rulemaking, EPGA strongly recommends that, at a minimum, the DEP's Draft Technical Guidance on Resource Eligibility, or a separate resource eligibility order, should be formally issued by the Commission for public comment and should be subject to the regulatory review process as part of the Act 213 implementing regulations. Both AES resource developers and LSEs need greater assurance that Act 213 will be implemented and enforced more consistently and predictably than reliance on draft guidance (that can be changed at any time) currently affords them.

III. Conclusion

EPGA commends the Commission for considering these complex and difficult Act 213 implementation issues and, together with its member companies, pledges to work together with the Commission and other parties toward their successful resolution. And again, we thank the Commission for the opportunity to comment.

Respectfully submitted,

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