

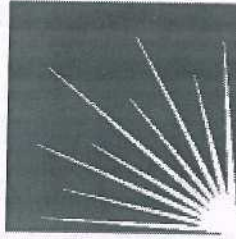
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Clean Air Council



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PA PUBLIC UTILITY COMMISSION
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Clean Air Council Comments to the Proposed Rulemaking

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 75]

[L-00060180]

Implementation of the Alternative Energy Portfolio Standards Act of 2004

Background

Clean Air Council was one of many groups that worked with the Pennsylvania Legislature, Pennsylvania Public Utility Commission, Pennsylvania Department of Environmental Protection and other stakeholders on the Alternative Energy Portfolio Standards Act of 2004. The goals of the legislature were threefold: 1) to promote environmental benefits-participants believed there was a strong need to move away from relying on polluting traditional sources of energy 2) to move toward energy security-parties proposed the act as a start toward fuel diversity and energy security 3) to nurture local energy sources like wind and other alternative sources for the energy future of Pennsylvania.

The Council believes that the interpretation of force majeure proposed by the commission will seriously undermine all three of the act's goals.

In 2007, Clean Air Council will be celebrating its 40th year preserving everyone's right to breathe clean air. The Council focuses on the development of clean energy policy in addition to its air pollution, transportation, waste reduction and recycling, and indoor air quality programs. The Council appreciates the opportunity to comment on the following provisions of Docket No.L-00060180 to clarify the intent and meet the goals of the Advanced Energy Portfolio Standards Act of 2004.

§ 75.51. EDC and EGS obligations

Currently, provisions in subsection § 75.51 (b)(1) – (15) describes the solar share as a percentage of the Act 213 Tier I requirement. This is counter to statements in previous Act 213 rulemakings. The solar photovoltaic requirement is defined as a percentage of

an electric distribution company's (EDC) or electric generation supplier's (EGS) overall retail sales. To clarify the original intent of the Act, the language in the section should be changed as follows:

(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 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, **WHICH SHALL INCLUDE** the minimum solar photovoltaic requirement [is] **OF** .0013% of [Tier I] **ALL RETAIL** 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, **WHICH SHALL INCLUDE** the minimum solar photovoltaic requirement [is] **OF** .0013% of [Tier I] **ALL RETAIL** 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, **WHICH SHALL INCLUDE** the minimum solar photovoltaic requirement [is] **OF** .0013% of [Tier I] **ALL RETAIL** 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, **WHICH SHALL INCLUDE** the minimum solar photovoltaic requirement [is] **OF** .0013% of [Tier I] **ALL RETAIL** 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, **WHICH SHALL INCLUDE** the minimum solar photovoltaic requirement [is] **OF** .0203% of [Tier I] **ALL RETAIL** 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, **WHICH SHALL INCLUDE** the minimum solar

photovoltaic requirement [is] **OF .0203%** of [Tier I] **ALL RETAIL** 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, **WHICH SHALL INCLUDE** the minimum solar photovoltaic requirement [is] **OF .0203%** of [Tier I] **ALL RETAIL** 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, **WHICH SHALL INCLUDE** the minimum solar photovoltaic requirement [is] **OF .0203%** of [Tier I] **ALL RETAIL** 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, **WHICH SHALL INCLUDE** the minimum solar photovoltaic requirement [is] **OF .0203%** of [Tier I] **ALL RETAIL** 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, **WHICH SHALL INCLUDE** the minimum solar photovoltaic requirement [is] **OF .25%** of [Tier I] **ALL RETAIL** 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, **WHICH SHALL INCLUDE** the minimum solar photovoltaic requirement [is] **OF .25%** of [Tier I] **ALL RETAIL** 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, **WHICH SHALL INCLUDE** the minimum solar photovoltaic requirement [is] **OF .25%** of [Tier I] **ALL RETAIL** 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, **WHICH SHALL INCLUDE** the minimum solar photovoltaic requirement [is] **OF .25%** of [Tier I] **ALL RETAIL** 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, **WHICH SHALL INCLUDE** the minimum solar photovoltaic requirement [is] **OF .25%** of [Tier I] **ALL RETAIL** 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, **WHICH SHALL INCLUDE** the minimum solar photovoltaic requirement [is] **OF .5%** of [Tier I] **ALL RETAIL** sales, and the Tier II requirement is 10% of all retail sales.

§ 75.54. Alternative Energy Credit Certification

Clean Air Council has been developing the voluntary market for wind energy since 1998. That market has driven the present development of wind energy and led to the concept of further development of the alternative energy industries through this advanced energy portfolio standard. The voluntary market continues to be strong and can continue to be a driver for further alternative energy development. If, however, the alternative energy credits for voluntary purchases are allowed to be used to satisfy the portfolio standard, that market will be destroyed. The Council proposes the following language in **§ 75.54, § 75.55 and § 75.60** that would allow for the continuation of that successful market force.

§ 75.54. Alternative Energy Credit Certification

(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 PURCHASES UNDER A VOLUNTARY GREEN ENERGY PROGRAM**, another state's renewable energy portfolio standard, alternative energy portfolio standard, or other comparable standard.

§ 75.55. Alternative energy credit program administrator

(d) (2) The program administrator may not certify alternative energy credit for a MWh of electricity generation or electricity conservation that has already been **TO SATISFY PURCHASES UNDER A VOLUNTARY GREEN ENERGY PROGRAM**, another state's renewable energy portfolio standard, alternative energy portfolio standard, or other comparable standard

§ 75.60. Alternative energy market integrity

(a) All sales of electricity by EDCs and EGSs to A retail electric customer marketed as deriving from alternative energy sources that exceed the requirements of § 75.51 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 § 75.51.

§ 75.57 General Force Majeure

Force majeure is intended to apply only in cases of extraordinary circumstances to provide parties relief from the consequences of those circumstances beyond their control. Force majeure must not be defined in a manner that encourages non-compliance with the goals and requirements for the Advanced Energy Portfolio Standard of 2004. The Public Utility Commission's proposed force majeure language too easily allows EDCs and EGSs to ignore the act's requirement to expand the supply of alternative energy and instead opt for the alternative compliance payment which is recoverable from rate payers. Clean Air Council feels that force majeure and the alternative compliance payment should not be used to determine a price cap for alternative energy credits. The intent of the act is to stimulate growth of alternative energy sources over the long term. If the alternative compliance payment is allowed to be used to control the market then the development of alternative energy sources will be stalled and not fully tapped.

The following language is recommended to amend the ruling:

§ 75.57. General force majeure.

(d) 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 § 75.51 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 § 75.51. For the solar photovoltaic requirement, EDCs and EGSs shall have the option of making an alternative compliance payment equal to **THE AVERAGE MARKET VALUE, INCLUDING THE SREC VALUE AND THE LEVELIZED VALUE OF CAPITAL REBATES RECEIVED BY THE SOLAR PROJECT OWNERS, FOR SOLAR PHOTOVOLTAIC ALTERNATIVE ENERGY CREDITS** 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. 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),~~ **DETAILING THE ACTIONS TAKEN BY THE EDC OR EGS TO MEET** ~~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 § 75.51, 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 § 75.51 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.~~

(e) ~~Alternative compliance payments made by EDCs pursuant to § 75.57(d) shall NOT BE RECOVERED. be deemed a cost of compliance with this chapter and may be recovered pursuant to § 75.39.~~

§ 75.58 Special Force Majeure

Specific language is proposed to guide EDCs and EGSs under what circumstances a need for a force majeure determination can be invoked. Again in order to meet the intent of the act to stimulate growth of alternative energy, alternative compliance payments should not be allowed to be recovered. Recommended language is as follows:

(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.~~ **IF THE EDC OR EGS CAN DEMONSTRATE IN THEIR PETITION THE FOLLOWING: (A) SIGNIFICANT EFFORT TO PROCURE REQUIRED RESOURCES, INCLUDING BUT NOT LIMITED TO CONSTRUCTING THE REQUIRED TIER I ALTERNATIVE ENERGY SOURCES, TIER II ALTERNATIVE ENERGY SOURCES, AND SOLAR PHOTOVOLTAIC ENERGY SOURCES FOR THE REPORTING PERIOD, (B) PRODUCING AN EFFECTIVE OPEN BIDDING PROCESS TO PROCURE NEEDED TIER I ALTERNATIVE ENERGY SOURCES, TIER II ALTERNATIVE ENERGY SOURCES, AND SOLAR PHOTOVOLTAIC, (C)**

COMPLETION OF PROPER DUE-DILIGENCE DURING BIDDER REVIEW PROCESS, (D) ISSUANCE OF REASONABLE DRAFTED RFP AT LEAST 1 (ONE) YEAR PRIOR TO THE REPORTING PERIOD, (E) UTILIZATION OF LONG-TERM CONTRACTS TO PROCURE REQUIRED TIER I ALTERNATIVE ENERGY SOURCES, TIER II ALTERNATIVE ENERGY SOURCES, AND SOLAR PHOTOVOLTAIC ENERGY SOURCES

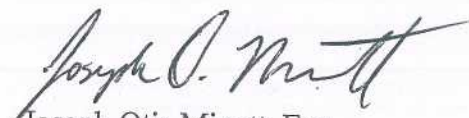
(e) If the Commission determines that force majeure exists for the true-up period, an EDC or EGS requesting a force majeure determination shall have the option of making alternative compliance payments in lieu of compliance with § 75.51 for the just concluded reporting period, consistent with the standard identified in § 75.57. Any payments shall be accompanied by a statement filed with the Commission and verified by oath of affirmation, consistent with § 1.36 (relating to verification), **DETAILING THE ACTIONS TAKEN BY THE EDC OR EGS TO MEET THE REQUIREMENTS** ~~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 § 75.51, and that an alternative compliance payment is the least cost method of compliance.

(f) The Commission may not determine force majeure exists if another EDC or EGS was able to comply with the obligations of § 75.51 that same reporting period.

(g) Alternative compliance payments made by EDCs pursuant to § 75.58(e) shall **NOT BE RECOVERED.** ~~be deemed a cost of compliance with this chapter and may be recovered pursuant to § 75.59.~~

Thank you again for the opportunity to comment on this proposed rulemaking. Should you have any questions please give me a call at 215-567-4004, Ext. 116 or email me at joe_minott@cleanair.org.

Sincerely,



Joseph Otis Minott, Esq.
Executive Director

