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December 12, 2006

Hon. James J. McNulty
Secretary
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Bldg.
Harrisburg, Pa. 17105

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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RE: *Implementation of the Alternative Energy Portfolio Standards Act of 2004*
PUC Docket No. ~~M-00060180~~
h-00060180

Dear Mr. McNulty:

Constellation NewEnergy, Inc. ("Constellation NewEnergy") appreciates the opportunity to provide the Pennsylvania Public Utility Commission ("Commission") with its comments on issues related to the implementation of the alternative energy portfolio standard of 2004.

Enclosed please find the original and fifteen copies of Constellation NewEnergy, Inc. comments. Please do not hesitate to contact me with any questions concerning these forms. My telephone number is (410) 230-4788, and my email address is scott.miller3@constellation.com.

Sincerely yours,

W. Scott Miller (GMU)

W. Scott Miller
Vice President Regulatory Affairs

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Enclosures

STATE OF PENNSYLVANIA
BEFORE THE PUBLIC UTILITY COMMISSION

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

COMMENTS OF CONSTELLATION NEWENERGY, INC.

Constellation NewEnergy, Inc. ("Constellation NewEnergy") appreciates the opportunity to comment on the proposed regulations concerning the implementation of Pennsylvania's Alternative Energy Portfolio Standards ("AEPS"). Constellation NewEnergy is a licensed electric generation supplier ("EGS") in the state of Pennsylvania. Accordingly, the implementation of the AEPS is of critical importance to Constellation NewEnergy as we provide products and services to retail customers. The action of the Public Utility Commission ("Commission") in this regard should provide the market to help develop the kind of alternative energy investments to meet the Commonwealth's societal objectives.

I. INTRODUCTION AND BACKGROUND

Constellation NewEnergy is a competitive energy supplier that serves commercial, industrial, and governmental customers, including more than two-thirds of the Fortune 100, representing more than 15,000 megawatts of peak electric load in sixteen states and two Canadian provinces. Originally founded as New Energy Ventures in 1995, NewEnergy's vast and lengthy experience in the competitive energy markets, our outstanding record of customer service, our customized products and solutions and the strong values behind our business make us North America's leading competitive energy supplier. NewEnergy sells electricity to commercial, industrial and governmental customers throughout the United States and Canada. In addition to meeting the various state requirements for selling "generic," non-renewable power, NewEnergy must also purchase supply or qualifying renewal energy certificates ("RECs") to

meet our customers' renewable energy requirements. We sell multiple products and services to provide a customized solution for our customers; and renewable products are among those products.

As the Commission is likely aware, AEPS (or renewable portfolio standards) are mandatory in 10 states (California, Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, Pennsylvania, Rhode Island, and Texas) that have retail electric competition. The specifics of the requirements generally differ from state to state regarding minimum overall renewable percentage targets, the percentage of renewable resources by technology type, and the AEPS compliance schedule. Typically, states have set annual percentage requirements that typically increase over a period of time and have provided for flexibility in meeting those requirements.

As a load serving entity ("LSE") in such states, Constellation NewEnergy must comply with the specific AEPS requirements for each individual state. Constellation NewEnergy meets this requirement by contracting for renewable power and RECs from qualifying facilities and counterparties (through wholesale market transactions). The length of our contract terms for renewable power or RECs vary from spot purchases to short-term and long-term deals depending on our customers' needs and the commercial opportunities that we find available in the market. Having the flexibility to enter into contracts of varying lengths for renewable power or RECs is vitally important to meeting our customers' needs, keeping our costs down and managing our risk. It is Constellation NewEnergy's hope that the Commission will allow LSEs to use similar flexible compliance policies in this state that we strongly feel will lead to increased liquidity in the retail and wholesale renewable as witnessed in other states.

II. SPECIFIC COMMENTS

Constellation NewEnergy submits comments regarding three (3) sections of the Proposed Rules with the goal of assisting the Commission in achieving its objective of establishing a viable, competitive renewable energy market in Pennsylvania.¹ Constellation NewEnergy shares with the Commission the goal of increasing the percentage of renewable energy used by Pennsylvania consumers.

A. §75.31. EDC AND EGS OBLIGATIONS

Paragraph (f)² of the proposed rulemaking order states:

“EDCs shall provide monthly reports to the program administrator documenting total deliveries of electricity to all retail 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.”

CNE requests clarification as to some of the potential purposes of these reports. For instance, will the reports from the EDC to the program administrator serve as the official MWhr usage for determining EGS compliance with the rule? In addition, will each EGS be required to provide the Commission with MWhr usage by their customers? Further, will the reports developed by the EDC, and supplied to the program administrator, be made available to the individual EGSs for verification?

CNE feels it is appropriate for these reports to be made available to CNE, in order for CNE to verify the MWhrs usage reported by the EDC and if necessary dispute any figures being

¹ Our failure to offer any specific comments on other sections of the Proposed Rules should not be construed as indicating support for said sections of the Proposed Rules.

² Page 4, Subchapter D: Alternative Energy Portfolio Requirement

supplied to the program administrator. CNE respectfully requests that the Commission clarify the Proposed Rules to ensure that these reports are made available to EGSs.

B. ALTERNATIVE ENERGY CREDIT PROGRAM ADMINISTRATOR

Constellation NewEnergy submits two (2) comments regarding this Section of the Rules.

First, Subsection 1³ states that:

“At the end of each reporting period, the program administrator shall verify EDC and EGS compliance with §75.31, and provide written notice to each EDC and EGS of their compliance status within 45 days of the end of the reporting period.”

As discussed above in section A of these Comments, Constellation NewEnergy requests clarification regarding the specific documents that will be used to determine compliance with the rules.

Second, Subsection 4⁴ states that:

“The report provided after the end of the true-up period shall **propose** alternative compliance payment amounts for each EDC and EGS that is non-compliant with §75.31 for that reporting period.”

(Emphasis added.) According to the Proposed Rules, any non-compliance is charged at a rate of 200% of the market value for solar photovoltaic alternative energy credits sold during the reporting period or \$45 per MWhr for all other requirements (“Standard Rate”).⁵ As such, Constellation NewEnergy does not understand the Rules to allow for the use of an alternative rate or formula (other than the Standard Rate) to be imposed as a result of the non-compliance. Instead, it might be useful to provide some context surrounding what constitutes “alternative compliance payment amounts” and some greater specificity on that process and/or procedure regarding making such a proposal, including but not limited to how the market value will

³ Page 11, Subchapter D: Alternative Energy Portfolio Requirement

⁴ Page 12, Subchapter D: Alternative Energy Portfolio Requirement

⁵ Page 13, Subchapter D: §75.36(b)(1), (b)(2).

determined for the calculation of such payments, and the process by which an EGS can contest or protest the alternative compliance payment. Accordingly, Constellation NewEnergy requests that the Commission provide some clarity regarding the “alternative compliance payment” Mechanism.

C. ALTERNATIVE ENERGY CREDIT REGISTRY

CNE concurs with the Commission’s decision to use PJM-EIS’s GATS in the implementation of Pennsylvania’s AEPS requirements. The functional design of GATS was developed through a lengthy collaborative stakeholder process that included representation from PJM market participants as well as representatives from state public utility commissions, state environmental agencies, state energy offices and consumer advocates. It is Constellation NewEnergy’s experience that this system is providing all necessary functions to facilitate the creation and transfer of energy credits to support renewable portfolio standards in surrounding states.

With respect to Commission’s desire for EDCs and EGSs to record the price for each alternative energy credit in the alternative energy credit registry, it is our understanding that GATS does have the ability to track prices. GATS is designed, however, such that pricing information is only available to the seller and the buyer of the RECs when such prices are supplied. Currently, other states in PJM do not require EGSs to enter prices for RECs. Constellation NewEnergy notes, moreover, that confidentiality agreements with PJM may not support release of such information. Thus, the use of GATS for Pennsylvania would first require system and business rule changes in order to provide such data to the program administrator and to the Commission. However, beyond the need to adjust systems and rules, several important concerns should be considered and addressed prior to making a decision to require the release of such pricing information.

For instance, if the Commission goes forward with requiring the reporting of REC prices, in no event should such information be made public or otherwise available to parties other than the Commission. Release of pricing information will significantly compromise EGSs' ability to negotiate and transact in RECs markets, as their competitors will gain access to such EGSs' competitively sensitive information. The more a competitor understands regarding an EGSs' willingness to transact at a certain price, for instance, the more leverage such competitors may have in negotiations with such EGSs for transactions that may be used to meet such EGSs' AEPS obligations. For this reason, the Commission should clarify that pricing information, if required to be reported, will not be made public or otherwise released to parties other than the Commission itself.

In addition, it is our experience that obligations that are required of market participants in one state that is part of a larger market can have unintended consequences from a public policy standpoint. For example, if prices for only credits in Pennsylvania are required, it could result in prices that are not as competitive as the rest of the Eastern PJM area where prices on credits are not required. This might partially be attributed to the pricing coming from a subsection of the market rather than the broader market or transactions being taken to other parts of the regional credit market (Eastern PJM) because buyers and sellers prefer dealing in areas where prices are not immediately known. The Commission may wish to consider this possible dynamic when finalizing its rules. For these reasons, if the Commission determines, after weighing the costs, that there is a need for the Commission to determine and know prices ("price discovery"), it should do so only through after the fact reporting, through which EGSs may report to the Commission their prices at least six months after the end of the compliance year.

III. CONCLUSION

As Constellation NewEnergy is anxious to offer innovative products that benefit customers and the needs of society in the broader context as the Pennsylvania market develops, we appreciate the Commission's work to finalize rules to promote alternative energy standards. It is our hope that these comments will be useful as the Commission works to adopt final rules to implement the Alternative Energy Portfolio Standard.

Respectfully submitted,

W. Scott Miller III
GMU

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