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Energy Association of Pennsylvania

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December 13, 2006

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Commonwealth Keystone Building
Harrisburg, Pennsylvania 17105-3265

RE: COMMENTS of THE ENERGY ASSOCIATION of PENNSYLVANIA on the IMPLEMENTATION of the ALTERNATIVE ENERGY PORTFOLIO STANDARDS ACT OF 2004
Docket No. M-00060180

M-00060180

Dear Secretary McNulty:

The Energy Association of Pennsylvania, on behalf of its member electric distribution companies, files the enclosed Comments on the Implementation of the Alternative Energy Portfolio Standards Act of 2004. Enclosed please find an original and fifteen (15) copies of the Association's Comments. An electronic copy has been sent to Shane Rooney.

Cordially,

J. Michael Love, Esq.
President and CEO

Donna M. J. Clark, Esq.
Vice President and General Counsel

CC: Chairman Wendell F. Holland
Vice Chairman James H. Cawley
Commissioner Kim Pizzingrilli
Commissioner Terrance J. Fitzpatrick
Irwin A. Popowsky, Consumer Advocate
William R. Lloyd, Jr., Small Business Advocate
J. Edward Simms, Esq., Office of Trial Staff
Shane Rooney, Esq., PUC Law Bureau (electronic mail)

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INDEPENDENT REGULATORY REVIEW COMMISSION

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Comments of Energy Association of Pennsylvania

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. Introduction

By Order entered July 25, 2006, the Public Utility Commission ("PUC" or the "Commission") issued a proposed rulemaking to codify prior Commission interpretations of the Alternative Energy Portfolio Standards Act of 2004 (the "Act") and resolve other issues relevant to its implementation. The Proposed Rulemaking Order was published in the Pennsylvania Bulletin on October 14, 2006. Comments on the Proposed Rulemaking Order are due within 60 days from the date it was published in the Bulletin or by December 13, 2006.

The Energy Association of Pennsylvania ("EAPA" or "Association") represents the interests of the Commonwealth's PUC-regulated electric and natural gas energy distribution companies. EAPA has been an active participant in the stakeholder process that the Commission has established to address issues relevant to the implementation of the Act. EAPA has previously filed comments under other

captions at this docket relative to certain of the matters addressed in this Proposed Rulemaking Order.

II. Comments

For the sake of efficiency, EAPA's comments follow the headings and numbering established by the Commission in its Order.

A. Section 75.61. EDC and EGS obligations.

The EAPA, consistent with its earlier comments at this docket, supports the proposed language in Sections 75. 61(a) through 75.61(e) related to compliance obligations, exemption periods, the true-up period, and the definition of alternative energy credits. Section 75.61(f) establishes an obligation for Electric Distribution Companies ("EDCs") to provide monthly reports to the program administrator documenting deliveries of electricity to retail customers by each load serving entity serving customers within its service territory within 45 days from the end of each month. The Order requests comments on this proposal and, specifically, on any technical limitations EDCs might face in meeting this obligation, the desirability of using estimates in the reports, and the potential for a margin of error in compliance.

Some of the Association's members will be able to provide monthly retail sales reports within 45 days from the end of each month. Other members will have to use estimated sales to meet the 45-day requirement. Each of the companies have in place a process by which EGS sales are established from the meter read data for the purpose of reconciling energy sales. While the processes of those companies may differ, each can provide

the required data within 45 days of the end of each calendar month. The benefit of using these existing processes is that the data reported on retail sales will have been developed on a consistent basis with the data used to settle wholesale energy accounts. To the extent that billings may reflect estimates in the absence of actual reads, both the settlement of energy and the basis for determining the number of credits required for compliance will be consistent.

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

The Order proposes language that more specifically describes the fuel and technology standards that define the specific Tier I and Tier II resources. The Order also requests comments on certain of those standards. The EAPA comments as follows:

Section 75.62(a)(2): Consistent with its comments on Implementation Order II filed on September 28, 2005, the EAPA concurs with the proposed definition of solar thermal and its inclusion among Tier I resources.

Section 75.62(a)(4): Consistent with its comments filed on March 17, 2006 regarding standards and processes for the qualification of systems and for credit certification, the EAPA asks that the actual definition for "alternative energy resources" be used which permits both "existing and new resources" to be counted.

EAPA does not read the Act to restrict low-impact hydropower facilities to only those facilities "permitted on or after February 28, 2005" or to "capacity

additions or efficiency improvements to a preexisting facility implemented on or after February 28, 2005".

In the Act, low-impact hydropower is defined under the term "alternative energy sources" which "include[s] the following existing and new sources for the production of electricity." 73 P.S. §1648.2 (emphasis added). The EAPA maintains that restricting low-impact hydropower to facilities or incremental capability implemented on or after the effective date of the Act is inconsistent with the Act. Accordingly, the EAPA believes that proposed Section 75.62(a)(4)i should be deleted and subsequent sub-sections 75.62(a)(4)ii through 75.62(a)(4)vi should be renumbered as 75.62(a)(4)i through 75.62(a)(4)v.

Section 75.62(b)(1): The EAPA contends that clarity would be added if a cross reference to Section 75.62(a)(4), the definition of low-impact hydropower, is added after the words "low-impact hydropower". Accordingly the EAPA recommends that Section 75.62(b)(1) should be revised as follows:

> (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 as defined in Section 75.62(a)(4).

Section 75.62(b)(3): The proposed definition of "demand-side management" is not consistent with the statutory language. The proposed regulatory language states "[t]he conservation of electricity" whereas the Act states "the management of customer consumption of electricity or the demand for electricity...." 73 P.S. §1648.2. (Emphasis added). In the August 23, 2005

comments on standards for the participation of demand side management resources, the EAPA proposed that all measures that shift load be given full credit for kilowatt hours shifted as well as for any conservation effect.

The EAPA agrees and accepts that creating demand side response is an important objective in a market environment and has worked with the Commission's Demand Side Response Working Group to develop pilots and policy regarding demand response.

The EAPA maintains that the inclusion of demand side management among the Tier II resources in the Act is intended to recognize the value of demand response, not only from an environmental perspective, but also its value to the energy market. In this way, demand side management is similar to other eligible technologies that provide benefits in ways beyond simply avoiding traditional generation.

The EAPA notes that the availability of credits to demand response programs will make those programs more economically attractive. Accordingly, the EAPA contends that all demand side measures should qualify for Credits, including those that only shift load, but have no conservation component, and believes that Section 75.62(b)(3) should be revised as follows:

> (3) Demand-side management – The management of customer consumption of electricity or the demand of electricity through:

Distributed Generation: The Order requests comments on whether there should be restrictions on the fuels that distributed generation can use to qualify

for Tier II credits. Recognizing that such a limitation had been eliminated in the drafting of the Act as evidence of legislative intent, the proposed rulemaking does not incorporate any limitations on the type of fuel that can be used in a distributed generation facility. The EAPA has previously proposed (see comments on the PUC's tentative order regarding the participation of demand side management resources filed on August 23, 2005) that where self-generation is a component of a demand-side measure, the generator should meet the definition of a Tier I or Tier II resource. The EAPA argued that, without this clarification, actions might be undertaken that are contrary to the environmental objectives of the act. However, in light of the absence of a limitation within the Act, either with regard to distributed generation or with regard to demand side measures (which is the application where distributed generation would typically be employed) and the evidence that such a limitation was specifically eliminated, the EAPA believes that there should be no restriction on the fuel that can be used by a distributed generation system, because the Act contains no such restriction.

C. Section 75.63. Alternative energy system qualification.

Section 75.63(d): The proposed language states that credits associated with a "qualified alternative system" located outside of Pennsylvania shall be eligible for compliance purposes only in those portions of Pennsylvania within the boundaries of the same regional transmission organization ("RTO") control area as the alternative energy system. However, the more important issue is the narrowing of geographic eligibility which the Order states is "consistent

with the standard identified in the Act and the Penn Power Order." Order at page 11. As explained in the comments filed on March 17, 2006 regarding standards and processes for the qualification of systems and for credit certification, the EAPA suggests this interpretation is inconsistent with the plain language of the Act and the "Commerce Clause" of the U.S. Constitution. Comments at page 8. Furthermore, the EAPA notes that the Penn Power Order is only dispositive of the Penn Power situation. Opinion and Order entered April 28, 2006 at Docket P-00052188, page 145. Accordingly, the EAPA believes that Section 75.63(d) should be revised to read as follows:

> (d) The alternative energy credits associated with a qualified alternative energy system located outside of Pennsylvania shall be eligible for compliance purposes anywhere within Pennsylvania so long as the alternative energy system is located within the boundaries of any RTO control area that serves any portion of Pennsylvania.

Section 75.63(e): Consistent with its comments on Section 75.62(b)(3), the EAPA recommends that the proposed language in Section 75.63(e) be revised as follows to include specific reference to demand-side measures:

> (e) A facility shall be qualified for alternative energy system status if it generates electricity, manages customer consumption of electricity, or manages the demand of customers for electricity through a Tier I or Tier II alternative energy source identified at § 75.62.

Section 75.63(h): In its comments filed on March 17, 2006 regarding standards and processes for the qualification of systems and for credit certification, the EAPA raised concerns regarding the type of "violations" that could result in a suspension or revocation of alternative energy system status,

the process by which a change of status would occur, and the effect such a change of status would have on the compliance of a load serving entity that had, in good faith, contracted for credits with such an alternative energy system. Comments at page 5. EAPA further recommends that the Commission add language to this section providing that if the Commission revokes a facility's alternative energy system ("AES") status, EDCs and EGSs that have contracted to obtain credits from the facility may petition the Commission for a special force majeure determination. This additional language is necessary because many EDCs and EGSs may choose to enter into long-term contracts to satisfy their AEPS obligations. If a qualified facility loses its AES status during a future reporting period, the EDCs and/or EGSs that have contracted to obtain some or all of their alternative energy supply from the facility may not be able to obtain sufficient credits to meet their AEPS requirements.

Accordingly, the EAPA recommends that the proposed language be revised as follows:

> (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 final, non-appealable compliance order or penalty assessed by the Department. Alternative energy credits generated by that facility during the 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 shall not be certified. EDCs and EGSs that have contracted to purchase alternative energy credits from a facility whose alternative energy status has been

revoked as set forth above may petition the Commission for a force majeure determination pursuant to the provisions of §75.68.

D. Section 75.64. Alternative energy credit certification.

Consistent with its comments filed previously at this and related dockets, the EAPA generally concurs with the proposed language regarding the certification of alternative energy credits. However, consistent with its comments on Section 75.62(b)(3), the EAPA recommends that the proposed language in Sections 75.64(b) and 75.64(c) be revised as follows to include specific reference to demand-side measures:

> (b) An alternative energy credit may be certified by the Commission for each MWh of electricity conserved or shifted by demand-side measures by qualified alternative energy systems on or after November 30, 2004.
> (c) An alternative energy credit may not be certified for a MWh of electricity generation, electricity conservation, or electricity consumption shifted that has already been used to satisfy another state's renewable energy portfolio standard, alternative energy portfolio standard, or other comparable standard.

E. Section 75.65. Alternative energy credit program administrator.

In its comments, above, on Section 75.61, the EAPA suggested that its member companies will be able to provide monthly retail sales reports within 45 days from the end of each month. See, supra. p.2-3, stating that using existing processes to report monthly retail sales reports, whether the data is actual or estimated, will ensure that the companies meet the 45-day requirement. However, in Section 75.65(c)(1) the proposed rules would have the program administrator providing written notice to each EDC and EGS of their compliance status within 45 days of the end of the reporting period.

Because reporting periods end at the end of a month (May 31 of each year), the administrator would be required to report on the same day that EDCs are finalizing their reports. This does not seem practical. Also, proposed Section 75.65(c)(4) requires the program administrator to provide a report to the Commission within 45 days of the end of each reporting period that identifies the compliance status of all EDCs and EGSs. Again, as in the case of the written notice to EDCs, this seems impractical. Accordingly, the EAPA recommends that the proposed language in Sections 75.65(c)(1) and 75.65(c)(4) be revised to reflect a 60 day period instead of the 45 day period proposed.

F. Section 75.66. Alternative Compliance Payments.

Section 75.66(b)(3): The Order explains in its discussion of section 75.67 that the Commission has changed its thinking on the recoverability of the cost of alternative compliance payments from customers such that recovery would be permitted under the provisions of sections 75.67 and 75.68. It is not clear that the language proposed in section 75.66(b)(3) is consistent with this changed view. Accordingly, the EAPA recommends that the proposed language be revised as follows:

> (3) The costs of alternative compliance payments made pursuant to § 75.66 may be recoverable from ratepayers consistent with the provisions of § 75.67 and § 75.68.

Section 75.66(c): The proposed language requires EDCs and EGSs to advise the Commission in writing within 15 days of the issuance of the notice

described in section 75.66(a) of their acceptance of the alternative compliance payment determination or, alternatively, to file a petition contesting that determination. The proposed language also states that a failure of an EDC or EGS to respond within 15 days shall be deemed as acceptance of the determination. The EAPA respectfully requests that this process be better defined and that the response time be lengthened to 30 days. The EAPA is concerned that, without a formal issuance process, some of the 15 days will be lost while the notice travels through the postal system and additional time may be lost if it is not directed to the proper person within the EDC or EGS. Furthermore, the EAPA does not believe that paying uncontested amounts to sustainable energy funds 15 days earlier than the EAPA proposal is inconsistent with the Act or critical to the implementation of the requirements of the Act. Accordingly, the EAPA recommends that the proposed language in Section 75.66(a) be revised to reflect a more formal issuance of the notice and that the proposed language in Section 75.66(c) be revised to reflect a 30 day response period as follows:

> (a) Within 15 days of receipt of the report identified in § 75.65(c)(4), the Commission will, following action of the Commission in a formal setting, provide written notice to each EDC and EGS that was non-compliant with § 75.61 of their alternative compliance payment for that reporting period.
>
> (c) EDCs and EGSs shall advise the Commission in writing within 30 days of the receipt 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 30 days of the issuance of this notice shall be deemed an acceptance of the alternative compliance payment determination.

Section 75.66(d): For the sake of clarity, the EAPA recommends that the proposed language be revised as follows:

> (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 within 30 days of the conclusion of proceedings before the Commission regarding the modification of the level of payment.

G. Section 75.67. General force majeure.

In comments filed previously at this docket, both the EAPA, on behalf of its member companies, and certain of those companies, individually, recommended that the cost of Alternative Compliance Payments ("ACPs") incurred by default suppliers be recoverable from customers taking default service. The rationale for this recommendation was that to do otherwise would incent EDCs and EGSs to acquire alternative energy credits at any price, regardless of the costs to ratepayers. In this Order, the Commission acknowledges that this could indeed be the case and has established provisions regarding both a general force majeure and a special force majeure that permit the recovery of the cost of ACPs from ratepayers. The EAPA appreciates the Commission's consideration of this issue and adoption of this approach. The EAPA offers the following comments intended to clarify and improve the process by which a general force majeure condition is found to exist.

Section 75.67(d):

Reasonable availability of resources/verification of good faith efforts to comply.

The definition of force majeure included in Section 1648.2 of the Act states that, in determining a force majeure to exist, the Commission "shall determine if alternative energy resources are reasonably available in the marketplace in sufficient quantities for the electric distribution companies and electric generation suppliers to meet their obligations for that reporting period". 73 P.S. §1648.2. (Emphasis added.) The use of the modifier "reasonably" establishes that the issue is not simply whether there are or are not sufficient quantities of resources or credits available. There may be more than enough, but if they are only available on an unreasonable basis, then a force majeure may be determined to exist.

It is the understanding of the EAPA that the primary determinant of reasonableness is cost. This understanding is supported by the proposed language at Section 75.67(c) and Section 75.68(d) which establishes a price above which Tier I credits other than solar photovoltaic credits and Tier II credits, although available, are deemed to be unreasonably available. The EAPA questions, therefore, the need for a statement by EDCs or EGSs, in light of a determination by the Commission that a general force majeure exists, that they have made good faith efforts to comply and that making an alternative compliance payment is the least cost method of compliance. It would seem, in the face of a finding of general force majeure, that additional efforts to comply would be a waste of resources and that the finding of a

general force majeure would establish the Commission's belief that the making of alternative compliance payments has the least cost impact on customers.

Accordingly, the EAPA recommends that the following sentence be deleted from Section 75.67(d):

> 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.

On the other hand, if it can be assumed that the statement is to be provided at the conclusion of a true-up period then EDCs and EGSs may continue to attempt to procure credits during the reporting period despite the declaration of a force majeure (so long as more credits are not procured at a price exceeding $45). If such a circumstance is the desired result, the Commission's final rule must be clear that an alternative compliance payment made pursuant to Section 75.67(d) is due after the true-up period. This clarification will allow EDCs and EGSs adequate time even in the case of a force majeure to attempt to procure the requisite Tier I and Tier II credits.

General Force Majeure

As discussed above, the EAPA interprets the Commission's language in Section 75.67(c) and 75.68(d) as establishing a de facto price cap for both Tier I and Tier II credits. EAPA members agree with this approach. Based on these sections and the Commission's finding that a price of $45 for a Tier I or Tier II credit is reasonable, EAPA members request that the Commission

include specific language that prohibits an EDC or EGS from purchasing any Tier I or Tier II credit above $45. Such a statement would formalize the presumption that force majeure should be declared for the market, should the prices exceed the cap.

Finding of a general force majeure after credits have been acquired.

Consistent with the Order's objective of making general force majeure determinations prior to each reporting period, Section 75.67(a) of the proposed rule establishes that individual determinations will be completed for Tier I, Tier II, and solar photovoltaic requirements at least 30 days prior to the beginning of each reporting period. In endorsing the use of "up-front" determinations, it was the expectation of the EAPA that such determinations would be best made on a reporting–period basis. As importantly, it was also the hope that such determinations would be made in time to be reflected in the procurement of energy and credits for default service customers. Indeed, because (1) the reporting period matches the PJM planning period; (2) there are certain advantages to using energy supply terms that coincide with the PJM planning period; and (3) many procurements do use a June through May time frame, it may be possible to reflect the finding of a general force majeure in the procurement and, thereby, avoid locking the default service suppliers (and their customers) into compliance costs of greater than $45 per kwh. Where, however, because supply terms do not match the June through May timeframe, or where, energy procurements take more than 30 days and may be in process before a general force majeure finding is complete, the default

service provider may find itself with compliance costs greater than $45 per KWh.

The proposed rules seem to recognize this dilemma by including the following language in Section 75.67(d):

> "The option to make alternative compliance payment in lieu of compliance with Section 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."

This would be true, for example, in the case of an EDC emerging from its generation rate cap and requiring default supply beginning January 1. In such a case, the EDC may have already acquired some or all of the credits it will need for the term of supply. Moreover, a finding by May 2 that a general force majeure exists during the upcoming June 1 through May 31 timeframe might enable the EDC to avoid the purchase of unreasonably high cost credits to meet some portion of the credits it may need for a supply term that extends beyond June 1. To clarify that this circumstance may apply to some or all of a load server's credit needs, the EAPA recommends deleting the word "sufficient" from the proposed language. More importantly, however, the EAPA proposes adding language to make clear that a subsequent finding of a general force majeure does not, by its existence, render the cost of credits purchased prior to such finding unrecoverable.

Accordingly, the EAPA proposes the following revisions to the language referenced above:

> "The option to make alternative compliance payment in lieu of compliance with Section 75.61 may not be available to EDCs and EGSs

> that have already acquired alternative energy credits for compliance with the requirements of that reporting period. In such a circumstance, a finding that a general force majeure exists shall not form a basis for rejecting an EDC's or EGS's request to recover the costs of such credits from their customers."

Solar photovoltaic alternative compliance payments

Subsection (d) of §75.67 should also be revised to enable the Commission to place a dollar value on the market price for solar photovoltaic credits prior to a force majeure crisis. The regulation as currently drafted at section 75.67(d) states that solar photovoltaic alternative compliance payments will be

> "...equal to the market value of the solar photovoltaic credits in the applicable RTO service territory [during the reporting period for which the Commission has declared that force majeure exists], or the Commission may choose to reduce the required level of solar photovoltaic compliance for that reporting period."

The fundamental problem with this language, as it relates to solar photovoltaic alternative compliance payments, is that it links the price of these payments to the market price of solar credits ***during the force majeure period***. Yet, during such a period, there would be a shortage of solar photovoltaic credits and, as a result, the market price would be extremely high. The effect of the language as drafted is that a finding of solar photovoltaic force majeure would be meaningless.

Accordingly, EAPA recommends that the Commission link the force majeure solar photovoltaic alternative compliance payment to the average market price of solar photovoltaic credits in the applicable RTO for the reporting period ***prior*** to the finding of force majeure, assuming the prior

reporting period was not subject to force majeure. By doing so, the Commission avoids the unreasonable result of requiring EDCs and EGSs to make alternative compliance payments at what amounts to be a penalty price, and the Commission's solution still has a link to the reasonable market price of solar photovoltaic credits as opposed to a spike in the price caused by a shortage of credits.

Therefore, the EAPA proposes the following further revisions to §75.67(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 §75.61 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. For the solar photovoltaic requirement, EDCs and EGSs shall have the option of making an alternative compliance payment equal to the <u>average</u> market value of solar photovoltaic credits in the applicable RTO service territory <u>for the reporting period prior to the finding of force majeure</u>, or the Commission may choose to reduce the required level of solar photovoltaic compliance for that reporting period. 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 alternative energy credits for compliance with the requirements of that reporting period. In such a circumstance, a finding that a general force majeure exists shall not form a basis for rejecting an EDC's or EGS's request to recover the costs of such credits from their customers."

H. Section 75.68. Special force majeure.

Section 75.68(a):

The proposed rules establish a window of 45 days prior to the conclusion of a reporting period for which the Commission did not find a general force majeure to exist for EDCs or EGSs to petition the Commission

for a force majeure determination. However, the definition of force majeure included in Section 1648.2 of the Act does not place limits on when an EDC or EGS can petition for a force majeure determination. The EAPA believes that load servers and their customers are best protected from unreasonable acquisitions of resources and credits by permitting petitions requesting a force majeure determination in the absence of a finding of a general force majeure to be filed at any time and having them addressed within 60 days in accordance with the Act. Accordingly, the EAPA proposes the following revisions to the language in Section 75.68(a):

> (a) At anytime during a reporting period or the subsequent true-up period for which the Commission did not find force majeure to exist for the Tier I alternative energy source, Tier II alternative energy source, or solar photovoltaic requirements of §75.61, an EDC or EGS may petition the Commission for a force majeure determination.

Section 75.68(b):

Consistent with the change EAPA proposes to the language in Section 75.68(a), the EAPA proposes the following change to the language in Section 75.68(b):

> (b) The Commission will provide public notice of all requests for a force majeure determination.

Section 75.68(d):

Consistent with the change EAPA proposes to the language in Section 75.68(a), the EAPA proposes that the language in Section 75.68(d) be revised to parallel the language in Section 75.67(c):

(d) The Commission may find that force majeure exists for the non-solar photovoltaic requirement of §75.61 when the average price for a non-solar photovoltaic alternative energy credit purchased by a Pennsylvania EDC and EGS exceeds $45 in the 6 month period ending 30 days prior to the filing of the petition referenced in §75.67(a).

Section 75.68(e):

Consistent with the change EAPA proposes to the language in Section 75.68(a), the EAPA proposes to delete the words "for the true-up period" from the first sentence of proposed Section 75.68(e). In addition, consistent with the discussion under Section 75.67(d) related to the reasonable availability of resources and the need for a verification of good faith efforts to comply, the EAPA recommends deleting the need for a statement. Accordingly, the EAPA recommends that the language of Section 75.68(e) be revised as follows:

(e) If the Commission determines that force majeure exists, 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.

I. Section 75.69. Alternative energy cost-recovery.

Section 75.69(a):

Section 75.69(a) lists (in subsections (1) through (8)) eight specific types of costs which, if reasonable and prudently incurred, a default service provider can recover from default service customers. However, the language of the Act is much broader and permits the recovery of "any direct or indirect costs for the purchase by electric distribution [sic] of resources to comply with this section, including, but not limited to..." a list of five costs that are among

the eight listed in the proposed rule. Section 1648.3(b)(3). The EAPA believes that the proposed language is not consistent with the Act's declaration that "any" direct or indirect costs for the purchase of resources are recoverable and inappropriately limits default service providers ability to recover such costs. Accordingly, the EAPA recommends that the language of Section 75.69(a) be revised as follows:

> (a) A default service provider may recover from default service customers any reasonable and prudently incurred direct or indirect costs for compliance with 73 P.S. §§1648.1 – 8:

Section 75.69(e):

Proposed Section 75.69(e) states, in part, that "(T)he Commission will perform fuel costs audits". The EAPA believes that this should be revised to read "(T)he Commission will perform audits of costs to comply with the Act".

J. Section 75.70. Alternative energy market integrity.

The EAPA concurs with the proposed language at Section 75.70.

K. Section 75.71. Banking of alternative energy credits.

In the proposed Rulemaking Order (pp. 20-21), the Commission requested comment on whether the Act prohibits the banking of credits from existing alternative energy systems in quantities equal to their sales to Pennsylvania retail customers during the 12-month period prior to the effective date of the Act. EAPA believes that the Act does not place this restriction on

alternative energy systems, and that the proposed language at §75.71 is consistent with the requirements of Section 1648.3(e)(7) of the Act.

Section 1648.3(e)(7) provides in relevant part that:

> An ***electric distribution company or an electric generation supplier*** with sales that are exempted under subsection (d) [i.e., during the EDC's cost-recovery period], may bank credits for retail sales of electricity generated from Tier I and Tier II sources made prior to the end of the cost-recovery period and after the effective date of this act.
>
> Bankable credits shall be limited to credits associated with electricity sold from Tier I and Tier II sources during a reporting year which exceeds the volume of sales from such sources ***by an electric distribution company or electric generation supplier*** during the 12-month period immediately preceding the effective date of this act.

(Emphasis added).

The plain language of this section of the Act places no restriction on credits generated by alternative energy systems. Instead, it provides that EDCs and EGSs may not bank credits for their retail sales of electricity from Tier I and Tier II resources made during their cost recovery period and after the effective date of the Act unless the credits are associated with electricity sold from such sources over and above the volume of their sales for the one-year period before the effective date of the Act. In short, the Act's purpose here is to reward EDCs and EGSs that have increased their alternative energy source sales since the effective date of the Act. The Commission's proposed regulation is correct and EAPA supports it as drafted.

L. Section 75.72. Alternative energy credit registry.

The EAPA concurs with the proposed language at Section 75.72.

III. Conclusion

For the reasons stated above, the Energy Association of Pennsylvania respectfully requests the adoption of the changes to the Proposed Rulemaking as highlighted in these Comments.

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