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McNees Wallace & Nurick LLC
attorneys at law

CHARIS MINCAVAGE
DIRECT DIAL: (717) 237-5437
E-MAIL ADDRESS: CMINCAVAGE@MWN.COM

December 13, 2006

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

VIA HAND DELIVERY

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

Dear Secretary McNulty:

Enclosed for filing with the Commission are an original and fifteen (15) copies of the Comments of the Industrial Energy Consumers of Pennsylvania, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Philadelphia Area Industrial Energy Users Group, the PP&L Industrial Customer Alliance, and the West Penn Power Industrial Intervenors, concerning the above-referenced proceeding.

If you have any questions, please contact us. Please date stamp the extra copy of this transmittal letter and kindly return it to us for our filing purposes. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By *Charis Mincavage*
Charis Mincavage

Counsel to the Industrial Energy Consumers of Pennsylvania, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Philadelphia Area Industrial Energy Users Group, the PP&L Industrial Customer Alliance, and the West Penn Power Industrial Intervenors.

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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Enclosures

c: Mr. Shane Rooney, Law Bureau (via Hand Delivery)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF THE INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA,
THE MET-ED INDUSTRIAL USERS GROUP, THE PENELEC INDUSTRIAL
CUSTOMER ALLIANCE, THE PHILADELPHIA AREA INDUSTRIAL ENERGY
USERS GROUP, THE PP&L INDUSTRIAL CUSTOMER ALLIANCE, AND THE WEST
PENN POWER INDUSTRIAL INTERVENORS

David M. Kleppinger (Pa. I.D. No. 32091)
Derrick Price Williamson (Pa. I.D. No. 69274)
Charis Mincavage (Pa. I.D. No. 82039)
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
717.232.8000 (p)
717.237.5300 (f)

Counsel to the Industrial Energy Consumers
of Pennsylvania, the Met-Ed Industrial Users
Group, the Penelec Industrial Customer Alliance,
the Philadelphia Area Industrial Energy Users
Group, the PP&L Industrial Customer Alliance, and
the West Penn Power Industrial Intervenors

Dated: December 13, 2006

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I. INTRODUCTION

On November 30, 2004, Governor Edward Rendell signed the Alternative Energy Portfolio Standards Act of 2004 ("AEPS" or "Act 213"). Act 213 requires Electric Distribution Companies ("EDCs") and Electric Generation Suppliers ("EGSs") to include a specific percentage of electricity from alternative resources in the generation that they sell to Pennsylvania customers, the percentage of which is increased via a fifteen-year schedule. Since that time, the Pennsylvania Public Utility Commission ("PUC" or "Commission") has convened numerous Working Groups ("WG") and issued various orders regarding implementation. Most recently, the Commission entered a Proposed Rulemaking Order on July 25, 2006 (hereinafter, "July 25 Order"), to resolve certain issues associated with the Act's implementation. The July 25 Order, which was published in the Pennsylvania Bulletin on October 14, 2006, solicited comments from interested parties regarding these issues.

The Industrial Energy Consumers of Pennsylvania ("IECPA"), the Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), the Philadelphia Area Industrial Energy Users Group ("PAIEUG"), the PP&L Industrial Customer Alliance ("PPLICA"), and the West Penn Power Industrial Intervenors ("WPPII") (hereinafter, "IECPA, et al.") participated in the PUC's AEPS WG, provided formal and informal comments during the course of this proceeding on various issues related to implementation, and reviewed the PUC's July 25 Order.¹

¹ Appendix A, attached hereto, provides the membership for each of these groups.

IECPA, et al., submits these Comments to respond to specific issues raised in the PUC's July 25 Order. As discussed more fully herein, IECPA, et al.: (1) agrees with the Commission that the scope of "distributed generation" should be expanded to include sources other than alternative energy; (2) differs with the Commission's conclusion that Alternative Energy Credits ("AECs") generated outside of Pennsylvania are compliance eligible only in the portions of Pennsylvania within the same Regional Transmission Organization ("RTO") boundaries as that of the alternative energy system; (3) disagrees that the AEC program administrator should be required to rely on findings by the Department of Environmental Protection ("DEP") as part of the AEPS adjudicatory process; (4) supports the Commission's determination that the PUC should utilize force majeure and alternative compliance payments to establish de facto price caps for AECs; and, (5) agrees that EDCs should be permitted to enter into long-term contracts for purposes of procuring default supply.

II. COMMENTS

A. *The Scope of Distributed Generation Facilities Should Be Expanded to Include Any Type of Fuel Source.*

Section 75.32 of the proposed rulemaking addresses fuel and technology standards for alternative energy sources.² In this Section, the Commission seeks to clarify the scope of "distributed generation" as an alternative energy source and notes that the Act does not define a particular type of fuel or technology that must be used by the generator for qualification purposes. See July 25 Order, p. 11. Moreover, the Commission indicates that the General Assembly struck previous language in a draft of the Act that would have limited qualification to only those systems that use alternative energy as a fuel source. Id. Based upon the General Assembly's intent to expand distributed generation to include various fuel sources, such as combined heat and power systems that run on natural gas or diesel, the PUC finds that that the definition of distributed generation should not be limited to a particular fuel or technology. Id.

The Commission's interpretation of the Act is correct. By specifically excluding a previous draft provision that would have limited distributed generators to using an alternative energy source, the General Assembly obviously intended to broaden the scope of fuels available under this provision. The PUC's interpretation appropriately accounts for such intent and reasonably interprets the Act by broadening the scope of distributed generation. The Commission's proposed rulemaking provision on this matter is eminently proper.

² The Commission's July 25 Order codified these regulations from Section 75.31 to Section 75.42; however, while substantively the same, the Order published in the Pennsylvania Bulletin begins with Section 75.51 and ends at Section 75.62. These Comments refer to the section numbers set forth in the July 25 Order.

B. Alternative Energy Sources Within Any Regional Transmission Organization that Serves Any Portion of the Commonwealth Should Be Eligible to Meet the Compliance Requirements of the Act.

In Section 75.33, the Commission affirms its holding in Pennsylvania Power Company's ("Penn Power") Provider of Last Resort ("POLR") proceeding as it relates to the geographic eligibility of alternative energy sources. Specifically, the PUC finds that AECs associated with qualified systems outside of the Commonwealth are eligible for compliance only in those portions of Pennsylvania with the same RTO boundaries as the alternative energy system. See July 25 Order, p. 11.

Commissioners Fitzpatrick and Pizzingrilli correctly argue that the PUC's restrictive interpretation of this issue is inconsistent with the plain language of AEPS. See Dissenting Statement of Commissioner Pizzingrilli, p. 1; see also Dissenting Statement of Commissioner Fitzpatrick, p. 1. Under the majority's restrictive interpretation, an EDC within PJM Interconnection, LLC ("PJM") is able to purchase alternative energy only from sources within PJM or within Pennsylvania. At the same time, an EDC within the Midwest Independent Transmission System Operator, Inc. ("MISO") territory is only able to purchase from a source within MISO or from a source within Pennsylvania. As such, both EDCs are permitted to purchase alternative energy from other states wherein their respective RTOs operate, but neither EDC is able to purchase alternative energy from an entity in a separate RTO, even if the RTO serves a portion of the Commonwealth. This result is illogical and inconsistent with AEPS.

The plain language of the Act clearly indicates that any alternative energy system located within the PJM and MISO service territories in any state meets the necessary geographic eligibility criteria for compliance for any EDC physically located in any portion of Pennsylvania.

Section 1648.4 of the Act clearly provides:

Energy derived only from alternative energy sources inside the geographical boundaries of this Commonwealth or *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 of this act.

73 P.S. § 1648.4 (emphasis added). Conversely, the Commission's interpretation excludes the entire MISO service territory from eligibility for alternative energy purchases to the vast majority of EDCs within Pennsylvania. This construction unnecessarily restricts competition for alternative energy procurement, and it purposefully limits the market for alternative energy, which is contrary to the intent of AEPS. In turn, the Commission's myopic interpretation may well result in higher costs for generation, contrary to the intent of the Competition Act.

Section 75.33, as proposed, is inconsistent with the plain language of AEPS and fails to comply with the General Assembly's clear intent to promote competitive procurement of generation. For these reasons, the PUC should reconsider this proposed provision and adopt the less restrictive interpretation supported by Commissioners Fitzpatrick and Pizzingrilli, which would allow Pennsylvania EDCs to purchase alternative energy from any RTO operating within the Commonwealth.

C. *The Department of Environmental Protection Should Not Have a Decision-Making Role in the Formal Adjudicatory Process Under the Act.*

As proposed, Section 75.35 would require the AEC program administrator to certify questions of compliance with DEP regulations and rely on DEP's findings as part of the administrator's final determination. See July 25 Order, p. 13. As Commissioner Fitzpatrick correctly notes in his Dissenting Statement to this July 25 Order, this provision improperly grants

dual decision-making and party-litigant status to DEP. See Dissenting Statement of Commissioner Fitzpatrick, p. 2.

Notwithstanding the PUC's ultimate authority in reviewing and modifying the administrator's final determinations, Commissioner Fitzpatrick suggests a more practical approach of providing DEP the opportunity to issue non-binding guidance on environmental compliance and eligibility. This approach would avoid initial conflicts inherent with DEP's dual status and would prevent the Commission from having to exercise its ultimate oversight authority on these issues. The PUC should revise its proposal for this section and adopt Commissioner Fitzpatrick's proposed modification.

D. Application of Force Majeure and Alternative Compliance Payments to Establish a De Facto Price Cap for Alternative Energy Credits Appropriately Protects Ratepayers.

In previous Comments regarding AEPS implementation, IECPA, et al., noted that a potential pitfall exists for ratepayers if an EDC is not allowed to flow through the cost of a lesser compliance payment but is permitted to allocate costs of a more expensive alternative energy purchase to customers. See Implementation of the Alternative Energy Portfolio Standards Act of 2004; Docket No. M-00051865, IECPA, et al. Comments (Sept. 27, 2005). In recognition of this concern, the PUC proposes Section 75.37, the provisions of which would avoid potential price shock for customers by utilizing force majeure and alternative compliance payment provisions to establish a de facto rate cap for AECs. See July 25 Order, pp. 14-16.

Pursuant to the requirements of the Act, the Commission will initially review the state of the alternative energy market prior to each reporting period, and, if the Commission determines that insufficient quantities of credits exist, the Commission will find that a force majeure exists

for that reporting period.³ Under Section 75.37, the Commission will also find that a force majeure exists if the average market price for each non-solar photovoltaic credit exceeds \$45 for a significant period of time. See July 25 Order, p. 15. EDCs and EGSs that have not already acquired credits for the reporting period at issue will be permitted to pay an alternative compliance payment of \$45 for each credit needed to satisfy their obligations, and the EDCs may recover such payments from ratepayers as a cost of compliance with the Act. Id.

The Commission's approach of establishing a de facto rate cap for AECs through application of force majeure and alternative compliance payment provisions is an appropriate means to ensure that EDCs obtain the necessary AECs without detrimentally impacting customers by purchasing the required credits at outrageous prices to avoid remitting compliance payments. By implementing PUC oversight through the force majeure provision, while also maintaining compliance payments, the Commission appropriately provides an opportunity for EDCs to recover costs and sufficiently protects customers from paying for excessively priced AECs. The Commission's proposal is reasonable and acceptable.

E. Long-Term Contracts Are Appropriately Permitted under the Provisions of the Act.

As part of this rulemaking, the Commission properly finds that, because Section 2807(e)(3) of the Public Utility Code requires energy procured for default service to be acquired at "prevailing market prices," EDCs are not precluded from entering into long-term, bilateral

³ IECPA, et al., assumes that if an "all out" force majeure occurs, the EDCs will not be held responsible for obtaining the necessary AECs and will not be required to remit compliance payments. IECPA, et al., also assumes that compliance payments that can be flowed through to customers will only occur if a "partial" force majeure occurs due to the average price for non-solar photovoltaic credits exceeding \$45 for a significant period of time. If, however, the PUC is proposing that the Act be modified to require compliance payments by EDCs in the event of any type of force majeure, and the costs of all of these payments be flowed through to customers, IECPA, et al., would oppose such a proposal as contrary to the intent of the Act.

contracts as part of a reasonably balanced portfolio of alternative energy generation supply resources.⁴ See July 25 Order, p. 19. Pursuant to Section 75.39, the PUC provides a reasonable and appropriate interpretation of this provision, which ensures that EDCs will be able to procure default supply at prevailing market prices while still satisfying the alternative energy requirements of AEPS. See id.

Contrary to Commissioner Fitzpatrick's dissenting opinion, long-term contracts are neither anti-competitive nor inconsistent with the Competition Act. In order for an EDC to be able to analyze the marketplace and determine the most cost-efficient means by which to procure energy, the EDC must have all of the various market tools at its discretion. Currently, the market provides numerous means by which an entity can purchase electricity, including locked-in pricing, forward-looking contracts, and hedging options. Because neither the Competition Act nor AEPS prohibits an EDC from utilizing these tools, the PUC's interpretation of "prevailing market prices" appropriately ensures that these key risk management options are not eliminated or impaired.

While Commissioner Fitzpatrick is concerned that long-term contracts will establish a fixed price that does not move with current wholesale prices, the Legislature intended EDCs to maintain flexibility in contracting for electricity, which includes entering into long-term contracts. In requiring an EDC to obtain electricity at "prevailing market prices," the EDC need only prove that the price for this contract is the prevailing market price for similar long-term contracts at the time of execution. In other words, the electricity price in the contract does not

⁴ IECPA, et al., assumes that the PUC also agrees that the EDC can enter into long-term, bilateral contracts to obtain energy for any default service obligation, rather than just energy relating to alternative generation supply resources. Id. EDCs must be permitted to have a reasonably balanced portfolio for all of their generation supply, and the only way in which that can be achieved is through the use of contracts of varying durations. Id.

need to maintain a specific relationship to the wholesale prices at any given time during the contract term, but rather, the contract must maintain a reasonable relationship to the wholesale price at the time the contract was entered given the term of the contract.

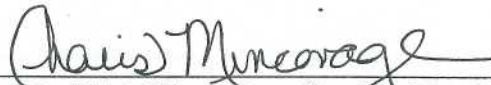
Accordingly, in order to ensure that EDCs are able to maintain a reasonably balanced portfolio of alternative energy resources, EDCs must be permitted to enter into long-term, bilateral contracts. Because the Commission's findings comport with the requirements of the Competition Act and AEPS on this matter, the proposed regulations are just, reasonable, and appropriate with respect to this issue.

III. CONCLUSION

WHEREFORE, the Industrial Energy Consumers of Pennsylvania, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Philadelphia Area Industrial Energy Users Group, the PP&L Industrial Customer Alliance, and the West Penn Power Industrial Intervenors respectfully request that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the foregoing Comments.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 
David M. Kleppinger (Pa. I.D. No. 32091)
Derrick Price Williamson (Pa. I.D. No. 69274)
Charis Mincavage (Pa. I.D. No. 82039)
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300

Counsel to the Industrial Energy Consumers of Pennsylvania, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Philadelphia Area Industrial Energy Users Group, the PP&L Industrial Customer Alliance, and the West Penn Power Industrial Intervenors

Dated: December 13, 2006

APPENDIX A

INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA

Air Liquide Industrial U.S. LP
Air Products and Chemicals, Inc.
AK Steel Corporation
Benton Foundry
BOC Gases
Carbone of America
Carpenter Technology Corporation
CertainTeed Corporation
Ervin Industries, Inc.
Glen-Gery Corporation
Hershey Foods Corporation
Knouse Foods Cooperative, Inc.
LWB Refractories
NOVA Chemicals, Inc.
NRG Energy Center
PPG Industries
Praxair, Inc.
Procter & Gamble Paper Products Company, The
Rohm and Haas Company
Standard Steel
United States Steel Corporation
World Kitchen, Inc.

MET-ED INDUSTRIAL USERS GROUP

Air Liquide Industrial U.S. LP
Carpenter Technology Corporation
East Penn Manufacturing Company
Farmers Pride, Inc.
Glen-Gery Corporation
Harley-Davidson Motor Company - York Division
Knouse Foods Cooperative, Inc.
Lehigh Cement Company
LWB Refractories
PPG Industries, Inc.
Royal Green LLC
STI Capital Company

PENELEC INDUSTRIAL CUSTOMER ALLIANCE

Appleton Papers Inc.
E.I. DuPont de Nemours and Company
Electralloy, a G.O. Carlson, Inc., Co.
Ellwood National Steel
Erie Forge & Steel, Inc.
Glen-Gery Corporation
The Plastek Group, Inc.
PPG Industries, Inc.
The Procter & Gamble Paper Products Co.
Sheetz, Inc.
Standard Steel
U.S. Silica Company
Wegmans Food Markets, Inc.

PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP

Air Liquide Industrial U.S. LP
The Boeing Company
Buckeye Pipe Line Company, L.P.
ConocoPhillips Trainer Refinery
Franklin Mills Associates Limited Partnership
GlaxoSmithKline
Jefferson Health System
Kimberly-Clark Corporation
Merck & Co., Inc.
Rohm and Haas Company
Saint Joseph's University
Temple University

PP&L INDUSTRIAL CUSTOMER ALLIANCE

Air Products and Chemicals, Inc.
Alcoa, Inc.
Binkley & Ober, Inc.
BOC Gases
Buckeye Pipe Line Company, L.P.
CertainTeed Corporation
Chamberlain Manufacturing Corp.
Cinram Manufacturing Inc.
Hercules Cement Company
Hershey Foods Corporation
High Industries, Inc.
Lafarge Whitehall Cement
Magee Rieter Automotive Systems
Mount Joy Wire Corporation
Praxair, Inc.
Stroehmann Bakeries
TIMET North America
Wegmans Food Markets, Inc.

WEST PENN POWER INDUSTRIAL INTERVENORS

Air Liquide Large Industries U.S. LP
Air Products & Chemicals, Inc.
Allegheny Ludlum Corporation
Carbone of America
Ervin Industries
Excela Health
Lehigh Specialty Melting Inc. / (WHEMCO, Inc.)
PPG Industries, Inc.
Sheetz, Inc.
Timken Latrobe Steel
World Kitchen