COMMONWEALTH OF PENNSYLVANIA

2569

OFFICE OF CONSUMER ADVOCATE
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWIN A. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

COPY

December 13, 2006

RECEIVED
DEC 13 2006
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

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

Dear Secretary McNulty:

Enclosed please find the original and fifteen (15) copies of the Comments of the Office of Consumer Advocate, in the above-referenced proceeding.

Sincerely,

David T. Evrard

David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. # 33870

Enclosure
cc: Shane Rooney, Law Bureau
Douglas L. Biden, Electric Power Generation Association

00091908.DOC

RECEIVED
2006 DEC 20 AM 11:27
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 THE OFFICE OF CONSUMER ADVOCATE

David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. # 33870
E-Mail: DEvrard@paoca.org
Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
E-Mail: TMcCloskey@paoca.org

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048

Dated: December 13, 2006

TABLE OF CONTENTS

I. INTRODUCTION

The Office of Consumer Advocate (OCA) files these comments in response to the Commission's July 25, 2006 Proposed Rulemaking Order, which was published for comment in the October 14, 2006 issue of the *Pennsylvania Bulletin*.

This rulemaking is part of the Commission's overall process for implementing the requirements of Act 213 of 2004, the Alternative Energy Portfolio Standards Act, codified at 73 P.S. §1648.1 *et seq.* (AEPS Act or Act) As the Commission's Rulemaking Order describes, the Commission has already done much to implement the Act through various orders and other rulemaking proceedings. Among the previous orders it has issued, four are directly related to the matters covered by this rulemaking. They are: 1) the Order entered March 23, 2005 under the caption, *Implementation of the Alternative Energy Portfolio Standards Act* which is commonly referred to as the "First Implementation Order"; 2) the Order entered July 18, 2005, under the same caption, which is commonly referred to as the "Second Implementation Order"; 3) the Tentative Order entered January 31, 2006, captioned *Implementation of the Alternative Energy Portfolio Standards Act: Standards and Processes for Alternative Energy System Qualification and Alternative Energy Credit Certification*; and 4) the Order also entered January 31, 2006, captioned *Implementation of the Alternative Energy Portfolio Standards Act: Designation of the Alternative Energy Credit Registry*. All were issued under Docket No. M-00051865 and were subject to public comment.[1]

The First Implementation Order, among other things, identified the schedule for the fifteen annual reporting periods under the Act and set forth the respective alternative energy compliance percentages applicable to each reporting period. The Commission now seeks to

---

[1] The January 31, 2006 Order re: *Designation of the Alternative Energy Credit Registry* was a Final Order. An earlier Tentative Order, seeking public comment, was entered on October 28, 2005.

codify this information in the proposed regulations at Section 75.61.[2] The First Implementation Order also addressed the banking of alternative energy credits for future use, a matter which the Commission revisited and revised in the Second Implementation Order and is now addressed in proposed Section 75.71 of the regulations.

The Second Implementation Order addressed in preliminary fashion three topics now taken up in the proposed regulations: alternative energy cost recovery (covered by proposed Section 75.69); force majeure (covered by proposed Sections 75.67 and 75.68); and voluntary alternative energy purchases (now referred to as "alternative energy market integrity" in proposed Section 75.60).

The Tentative Order of January 31, 2006, addressed a number of other matters now covered in the proposed regulations. It discussed in part the powers and duties of the program administrator (covered by proposed Section 75.65). It addressed the requirements for alternative energy system qualification, including what is referred to as the "geographic requirement" (covered by proposed Section 75.63). It also addressed the issue of alternative energy credit certification (covered by proposed Section 75.64).

The Order of January 31, 2006 concerning the *Designation of the Alternative Energy Credit Registry* identified the entity selected by the Commission to serve as the credit registry. The designation is provided for in general terms in Section 75.72 of the proposed regulations. The Order also addressed the issue of whether alternative energy credits included other attributes (*e.g.*, environmental attributes) associated with the electricity produced from alternative energy sources. This is addressed in Section 75.64 of the regulations. The same

---

[2] In identifying the various sections of the proposed regulations, the OCA has adopted the numbering sequence identified in the Notice of Correction published in the Pennsylvania Bulletin on October 21, 2006. That Notice identified the numbering sequence for these regulations as §§ 75.61- 75.72.

Order also discussed the public availability of alternative energy credit pricing information, a matter now addressed in proposed Section 75.72.

Finally, in proposed Section 75.62, the Commission sets forth the fuel and technology standards applicable to alternative energy sources. In doing so, it utilizes definitions of the various alternative energy sources provided in the Act itself, and relies upon Draft Technical Guidance produced by the Department of Environmental Protection.[3]

The OCA commends the Commission for the significant effort that has resulted in this proposed rulemaking. The OCA previously commented on a number of issues that were resolved by the Commission in prior Orders and are now codified in the proposed regulations. The OCA will not repeat its prior comments on those matters addressed here. On certain other issues, however, the proposed regulations take a new approach. The key unresolved area in which the OCA differs from the Commission concerns the approach taken to establishing a *de facto* price cap for alternative energy credits. As will be explained below, the OCA supports the concept of a price cap for these credits. The OCA submits, however, that the cap can be achieved in a manner that is both less costly to electric consumers and more consistent with the terms of the Act.

Following are the OCA's comments on specific sections of the proposed regulations.

---

[3] The DEP's Draft Technical Guidance can be found at: http://www.dep.state.pa.us/dep/deputate/pollprev/PDF/Section%202%20Technical%20Guidance%20Final.pdf

II. COMMENTS ON SPECIFIC SECTIONS

A. Section 75.61 -- EDC and EGS Obligations

Section 75.61 establishes the EDC and EGS obligations under the Act. Of note, Section 75.61 establishes year-by-year alternative energy requirements for EDCs and EGSs pursuant to the mandates of the Act. Percentage requirements for Tier I, Tier II and the solar photovoltaic share are established for the years 2006 through 2021, when the Act will be fully implemented. This section establishes that compliance is to be measured on the basis of a "reporting period" which is the 12-month period between June 1 and May 31. At the end of each reporting period, there will be a 90-day true-up period during which EDCs and EGSs that have not met their compliance requirements can purchase the alternative energy credits needed to reach compliance. Section 75.61(e). Consistent with the Act, EDCs, and the EGSs operating in their territories, are exempt from compliance with the Act during the period in which generation rate caps remain in effect.

In order to measure compliance, this section requires EDCs to submit monthly reports to the program administrator documenting total delivery of electricity to retail customers. Section 75.61(f). In its Rulemaking Order, the Commission notes that currently EDC retail sales data for a given month is often several months old by the time it is submitted to the Commission. To overcome this problem, the Commission requires that the monthly reports be submitted to the program administrator within 45 days of the end of the month. Even with that requirement, the Commission is concerned that compliance may not be able to be definitively determined until late into the true-up period, compressing the time available for purchasing the alternative energy credits needed to reach compliance. Order at 8-9. One suggestion the Commission makes for avoiding this result is to permit EDCs to submit estimated data for the latter months of the

reporting period. This would "allow the program administrator to produce a timely compliance report at the beginning of the true-up period." Order at 9.

The OCA shares the Commission's concern for the timely filing of retail sales data with the program administrator. If data on actual sales is submitted too far into the true-up period, EDCs and EGSs who are then determined not to have met their obligation may have too little time to secure the alternative energy credits needed for compliance. In addition, it is possible that if the supply of credits is tight, a compressed time frame to reach compliance could further push up the price of those credits. To avoid such a result, the OCA would support the Commission's suggestion for using estimated data for the latter months of the reporting period. This would ensure a timely compliance determination by the program administrator. The OCA notes that the Commission currently relies on estimated data when performing reconciliations of Gas Cost Rate charges and Competitive Transition Charges under Section 1307. Differences between actual and estimated data are then adjusted for in the following year's reconciliation. The OCA submits that the same process could be used for determining compliance with alternative energy requirements. In the longer term, the OCA anticipates that improvements in meter technology and data retrieval will reduce, if not eliminate, the need to rely on estimated data for this purpose.

B. Section 75.66 -- (Alternative Compliance Payments), Section 75.67 -- (General Force Majeure) and Section 75.68 -- (Special Force Majeure).

1. Blending The Alternative Compliance Payment Provisions And The Force Majeure Provisions May Not Be Appropriate.

In its Proposed Rulemaking Order, the Commission effectively seeks to establish a price cap for alternative energy credits through the use of two provisions of the Act, the

alternative compliance payment provisions and the force majeure provisions. The Commission explained its intent as follows:

> [T]he Commission will use the force majeure and alternative compliance payment provisions of the Act in concert to establish a de facto price cap for alternative energy credits. Under these proposed regulations, the Commission will review the state of the alternative energy market prior to each reporting period. Separate force majeure determinations will be made for the Tier I obligation, solar photovoltaic obligation, and Tier II obligation. If it appears there are insufficient quantities of credits to meet one or more of these obligations, the Commission will find that force majeure exists for that obligation for that reporting period. The Commission will also find that force majeure exists if the average market price for non-solar photovoltaic credits exceeds $45 for a significant period of time.

Order at 15. The Commission implemented this intent through the proposed regulations at Sections 75.66 (Alternative Compliance Payments), 75.67 (General Force Majeure) and 75.68 (Special Force Majeure).

Under the Commission's proposal, if a force majeure is declared, EDCs and EGSs who have not already acquired or contracted for the purchase of credits for that reporting period will be permitted to pay an alternative compliance payment of $45 for each credit they need to satisfy their obligations and may recover such payments from ratepayers as a cost of compliance, subject to Commission review.

Regarding the solar photovoltaic obligation, the Commission intends to limit itself to reviewing the availability of solar photovoltaic resources and if not available in sufficient quantities, alternative compliance payments at the applicable market price are to be made. These costs are to be recovered from ratepayers. The Commission allows for the option that it will reduce the required level of solar photovoltaic resources needed for compliance. Order at 16.

As the Commission recognizes, there are two potential issues of concern—first, that alternative energy credits are not available at all in sufficient quantities for some or all of the needed resources or second, that alternative energy credits may be available, but at an uneconomic price. The OCA supports the Commission's proposal to establish a *de facto* price cap when alterative energy credits are available, but the price is uneconomic. The OCA submits that the Commission correctly recognizes that when non-solar credits exceed the $45 alternative compliance payment called for in the AEPS Act, it would not be proper to pass the higher costs of these credits on to customers. As the Commission stated:

> Initially, the Commissions' view, as stated in the Second Implementation Order, was that costs of alternative compliance payments should not be recoverable by EDCs. The Commission and other parties were concerned that allowing alternative compliance payments to be recoverable would discourage the development of new, alternative energy resources. EDCs would find it more efficient to simply make a payment rather than procure credits from alternative energy sources. However, the Commission has concluded that the practical effect of disallowing recovery in all circumstances would be EDCs and EGSs acquiring alternative energy credits at any price, regardless of the costs to ratepayers. We do not believe that the public interest is served by EDCs and EGSs purchasing excessively priced alternative energy credits, the costs of which will be passed on to Pennsylvania's retail customers. The Commission is concerned about the magnitude of the electricity rate increases that retail customers will experience once the generation rate caps expire, and does not wish the Act's implementation to materially contribute to any potential price shock.

Order at 14-15. The OCA agrees with the Commission that it is not in the public interest to implement the AEPS Act in a way that would force EDCs and EGSs to purchase excessively priced alternative energy credits and then pass those excess costs on to ratepayers.

While the OCA is in agreement with the Commission's intent to establish a *de facto* price cap for non-solar credits, the OCA is concerned that blending the alternative compliance payment provisions and the force majeure provisions of the Act to address uneconomic credits, as proposed by the Commission, may be inconsistent with the terms of the Act. The force majeure provisions contemplate that EDCs and EGSs will be excused from the obligation upon declaration of the force majeure.[4] The Commission's proposal does not excuse the obligation but calls for the obligation to be met in another way.

A simpler solution, and one more in accord with the Act, would be to address the price cap issue through the recovery of alternative compliance payments. Rather than start from the proposition that the $45 alternative compliance payment related to non-solar credits is not recoverable from ratepayers, as the Commission does in Section 75.66(b)(3), the Commission should allow recovery of the $45 alternative compliance payment **if**—and only if—it can be shown that the non-solar credits were not, or are not, available for $45 or less per credit. In this way, the force majeure provision need not be invoked to establish the price cap. On the other hand, if the Commission determines that credits were available at a price less than or equal to $45 per credit and the provider did not comply with the requirements of the Act, the provider should not be permitted to recover the alternative compliance payment from customers.[5]

---

[4] The force majeure provisions are detailed in Sections 1648.2 and 1648.3(2) of the AEPS Act. In relevant part to this discussion, Section 1648.2 provides that upon determination that credits are not reasonably available in sufficient quantities, "the commission shall modify the underlying obligation of the electric distribution company or electric generation supplier. . .." 73 P.S. § 1648.2. Section 1648.3(2) then provides that EDCs and EGSs shall satisfy the requirements of the Act, but that an EDC or EGS "shall be excused from its obligations under this section to the extent the commission determines that force majeure exists." 73 P.S. § 1648.3(2).

[5] The OCA would note that the Commission could allow recovery of the cost of credits that exceed $45 per credit if it found there was a reasonable justification for a purchase above the $45 per credit alternative compliance payment level.

The Commission also proposes that if a force majeure is declared for any type of credit based on the credits not being available in sufficient quantities, the EDCs and EGSs would still have to make an alternative compliance payment. For solar credits, the compliance payment is to be the market value of the solar credits in the applicable RTO. For non-solar credits, the alternative compliance payment is the $45 per credit set forth in the Act. It appears as if the Commission's intent is to ensure that funding for resource development is provided through alternative compliance payments to the Sustainable Energy Funds so that credits can eventually be made available.[6] While the OCA recognizes the intent of this approach on policy grounds, this approach does not appear to be consistent with the Act. The AEPS Act contemplates that the obligation will be excused if credits are not available in sufficient quantities. See, 73 P.S. §1648.2 and 1648.3(2). Requiring payment for resources that are not available seems contrary to the Commission's stated concern about attempting to avoid the possibility of the Act's implementation materially contributing to potential price shock. Additionally, without the availability of resources, EDCs and EGSs have no means to attempt to mitigate this cost impact or to properly plan for resource procurement.[7]

The OCA recommends that the Commission revisit Sections 75.66, 75.67, and 75.68. Rather than blend the force majeure provisions and the alternative compliance payment provisions to establish a *de facto* price cap, the Commission should establish a *de facto* price cap for non-solar credits by allowing recovery of the $45 per credit alternative compliance payment

---

[6] The OCA would observe that there are alternative means of stimulating development of new alternative energy resources apart from the imposition of alternative compliance payments. Specifically, the OCA submits that the Commission should encourage EDCs to begin now to seek supplies to meet their post-recovery period alternative energy compliance obligations on a long-term basis. By contracting now for future supplies, EDCs will enable alternative energy developers to secure the critical financing necessary to build their projects.

[7] The OCA would also note that attempting to establish an alternative compliance payment for solar credits based on a market price when no resources are available is improper. A thin, or non-existent market cannot serve to set an appropriate price to be passed through to customers.

only when non-solar credits are available, but are priced in excess of $45 per credit. For solar credits, the Commission should use the force majeure provision to excuse or reduce the obligation when solar credits are unavailable without requiring any additional payment. Otherwise, the force majeure provisions should be left to address the situation of Tier I or Tier II credits that are unavailable, and should result in a reduction or excusing of the obligation rather than an additional payment.

2. Costs to Administer the Act Should be Covered Through Fees and Not Through the Traditional Utility Assessment Procedure.

Section 75.66 also specifies that up to 5% of the alternative compliance payments may be used to cover administrative expenses, including the costs of the program administrator. The Act further provides that the Commission may impose an administrative fee on alternative energy credit transactions. In response to this provision of the Act, the Commission invites parties to comment on whether it would be more appropriate for administrative costs to be recovered through traditional utility assessment procedures or through fees on EDCs and EGSs for alternative energy credit transactions.

On this point, the OCA recommends the use of fees as opposed to assessments. EGSs are generally exempt from the Commission's traditional assessment mechanism. Reliance on that mechanism would place all of the costs of administration on EDCs. Basic fairness dictates that EGSs share in the cost of the program. Therefore, the Commission should opt for funding the administration of the program through the use of fees.

C. Section 75.69 -- Alternative Energy Cost Recovery

This section lists the various costs of complying with the Act that can be recovered by EDCs from their default service customers. In an effort to harmonize with the

Commission's eventual default service regulations, this section provides that default service providers must use a competitive procurement process to acquire their alternative energy credits. It also establishes the procedures to be followed for recovering the costs of compliance through an automatic adjustment clause pursuant to Section 1307 of the Public Utility Code. 66 Pa.C.S. § 1307.

In its Rulemaking Order, the Commission expressly recognizes the overlap between the provisions of its eventual default service regulations and the instant regulations on alternative energy requirements. It states that "this rulemaking and the final default service regulations will include necessary cross-references." Order at 18. Indeed, in comments submitted in March of this year, the OCA urged the Commission to use an integrated approach in developing the two sets of regulations.[8] The OCA stressed the importance of consistency between the two sets of regulations both in terms of energy procurement and cost recovery.

With respect to energy procurement, the OCA has long advocated that Default Service Providers (DSPs) should use a portfolio approach when acquiring energy to serve default customers. Included within the portfolio should be the alternative energy needed to comply with the Act. In its March 8, 2006 comments, the OCA said:

> ...the proper role of the DSP for most utilities is that of portfolio manager, that is, as the procurer of a variety of electric generation products – differing in fuel type and length of term – necessary to meet its default service load obligations. Included in this portfolio would be the alternative energy resources needed to comply with the mandates of Act 213.

OCA March 8, 2006 Comments at 6.

---

[8] See *Supplemental Comments of the Office of Consumer Advocate in Response to the Commission Secretarial Letter of February 8, 2006*, submitted March 8, 2006, at combined Docket Nos. M-00051865 and L-00040169.

In the instant Rulemaking Order, the Commission accepts the use of longer term contracts when it states:

> Because section 2807(e)(3) requires energy procured for default service to be acquired at "prevailing market prices," the Commission interprets 73 P.S. §1648.3(a)(3) to mean that EDCs should use competitive processes to meet the requirements of [§75.61]. However, this interpretation does not preclude the use of long-term, bilateral contracts between an EDC and an alternative energy generator as part of a reasonably balanced portfolio of alternative energy generation supply resources.....an EDC might choose to enter into contracts of varying durations to acquire electricity from traditional energy sources, and at the same time enter into several long term contracts to satisfy its obligations under [§75.61]. However, the EDC must still use some type of competitive process to acquire alternative energy in order to demonstrate that retail customers are being provided alternative energy at the most reasonable rates.

Order at 19.

The OCA supports the Commission determination regarding the use of long-term contracts and wishes to underscore the importance of integrating the requirements for procurement of alternative energy products with those for traditional energy sources as part of an overall default service procurement strategy. On this point, the OCA, in its March 8, 2006 comments, stated:

> The OCA supports the procurement of the mandated amount and type of alternative energy resources as part and parcel of the Default Service Provider's overall default service procurement process. This integration will require the Default Service Provider to create and implement a long term procurement plan in order to evaluate the costs and benefits of various procurement options, including alternative energy resources and traditional generation supply sources. The result of that planning process should be a diverse array of generation (and potentially demand-side) products designed to meet the default service load obligations in a manner that provides reasonable and stable default service rates for customers over the term of the procurement plan.

OCA March 8, 2006 Comments at 7.

The OCA has also stressed consistency with respect to cost recovery for alternative and traditional energy sources. The OCA's concern here is two-fold. If the cost recovery mechanisms for alternative and traditional sources of energy are dissimilar, it will: 1) complicate consumers' ability to make ready comparisons between the default service rate and prices offered by competitive suppliers; and 2) potentially require that the procurement processes for alternative and traditional energy sources be conducted separately, resulting in higher costs than if the purchases are made through a single coordinated process.

The OCA addressed this point in comments submitted to the Commission in April of 2005 when it said:

> The OCA has concluded that if an automatic, reconcilable clause is used for the recovery of the alternative energy resources required by Act 213, then an automatic, reconcilable clause should be used for the recovery of all costs of default generation supply. To properly reflect the price of the portfolio, and capture the benefits of the entire portfolio, the same cost recovery mechanism must be used for all of the default generation supply that is procured.

OCA April 2005 Comments at 20-21.[9]

The OCA simply wishes to reiterate here the importance of consistency between the cost recovery mechanisms used for alternative and traditional sources of energy. Indeed, the OCA submits that the ultimate goal should be to have a single cost recovery mechanism for all energy purchased to meet the default service load.

D. Section 75.70 -- Alternative Energy Market Integrity

In its Rulemaking Order, the Commission begins its discussion of this provision by stating: "This section is intended to preserve the viability of the voluntary market for alternative or renewable energy in Pennsylvania." Order at 19. Specifically, the Commission is

---

[9] See *Comments of the Office of Consumer Advocate*, submitted April 27, 2005, at combined Docket Nos. L-00040169 and M-00041792.

attempting to address concerns that the adoption of an alternative energy portfolio standard will effectively put an end to voluntary purchases of renewable energy by retail electric customers. Its goal is to "ensure a level playing field between mandatory and voluntary alternative energy offerings." Order at 19. In pursuit of that goal, one of the requirements the Commission imposes is that sales of alternative energy that exceed the requirements of the Act must be supported by alternative energy credits that are separate from and in addition to the credits that count toward compliance with the Act. Section 75.70(a).

The OCA is concerned that rather than preserve the viability of the voluntary market, the approach taken by the Commission could be detrimental to that market. By requiring that sales of alternative energy in excess of the Act's requirements be supported by alternative energy credits, the Commission may be unnecessarily hindering the voluntary market.

Initially, the OCA questions the Commission's imposition of a requirement for alternative energy credits for sales of alternative energy in excess of the amount required under the Act. Alternative energy credits are a creation of the Act and exist to measure compliance with the requirements of the Act. Indeed, the Commission's fundamental grant of authority under the Act states, "The commission shall establish an alternative energy credits program *as needed to implement this act*." 73 P.S. §1648.3(e)(1) (emphasis added). If an EGS or EDC wants to sell a 100% wind product when the amount of Tier I energy required under the Act is only 3%, the OCA is unclear whether the Commission has the authority to, or should, require that the other 97% be supported by alternative energy credits.[10]

Additionally, the OCA submits that imposing the requirement for alternative energy credits to support sales in excess of the Act's requirements would be particularly inadvisable because of the geographic limitation that has been imposed on the use of out-of-state

[10] Such a requirement would be appropriate if the credits were going to be banked, but not otherwise.

credits by proposed Section 75.63(d) of these regulations. Currently, EDCs and EGSs that voluntarily offer alternative or renewable energy products are under no obligation to ensure that the energy sold comes from a particular RTO. Rather, they are required, through an auditable trail, to demonstrate that their transactions have the attributes advertised. This requirement can be met whether the energy comes from a source in PJM, MISO, NYISO or ISO-NE.

Indeed, the requirement for an auditable trail is incorporated in subsection (b) of Section 75.60, and should be retained. However, the additional requirement of having alternative energy credits to support sales in excess of the Act's requirements will limit the ability of EDCs and EGSs to procure the energy needed to offer their voluntary alternative energy products. Rather than fostering the voluntary market for these products, the Commission's approach threatens to burden it.

For these reasons, the OCA encourages the Commission to reconsider its approach to this section. In order to enhance the voluntary market for alternative energy products, the OCA recommends dropping the requirement in Section 75.60(a) and retaining Section 75.60(b).

E. Section 75.61 -- Banking of Alternative Energy Credits

In addressing this section in its rulemaking order, the Commission expresses concern over interpreting the banking provision of the Act, 73 P.S. §1648.3(e)(7), in a way that allows only credits associated with incremental purchases (those in excess of the purchases made during the twelve months preceding the effective date of the Act) to be banked. The Commission is concerned that such an interpretation will negatively impact Pennsylvania-located alternative energy sources and will cause EDCs and EGSs to meet their initial requirements from resources located outside Pennsylvania. Consequently, the Commission invites comments on

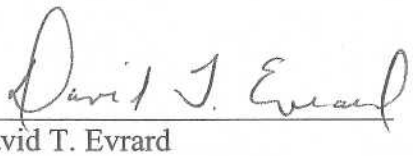
how this provision "may be interpreted in a way consistent with the intent of the General Assembly." Order at 21.

While the OCA appreciates the Commission's concern for Pennsylvania-based alternative energy resources, the OCA submits that the interpretation limiting banking to those credits associated only with incremental purchases is the proper one, and the only interpretation supported by the plain language of the Act. The OCA finds the language of Section 75.61(e) to be appropriate and entirely consistent with the intent of the General Assembly expressed in 73 P.S. §1648.3(e)(7). The OCA recommends that there be no changes to Section 75.61(e).

III. CONCLUSION

The OCA appreciates the opportunity to comment on the proposed regulations. The matters covered by these regulations and the policy decisions that underlie them are critical elements in successfully implementing the Alternative Energy Portfolio Standards Act. The OCA will continue to work with the Commission and interested stakeholders on these important issues.

Respectfully submitted,



David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. # 33870
E-Mail: DEvrard@paoca.org
Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
E-Mail: TMcCloskey@paoca.org

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Dated: December 13, 2006
00091646.DOC

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the Comments of the Office of Consumer Advocate, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 13th day of December 2006.

SERVICE BY INTEROFFICE MAIL

Dennis Yablonsky
Department of Community and Economic Development
Commonwealth Keystone Building
Pennsylvania Public Utility Commission
400 North Street, 4th Floor
Harrisburg, PA 17105-3265

Carrie Beale
Calvin Birge
Conservation, Economics and Energy Planning
Commonwealth Keystone Building
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17105-3265

Shane Rooney
Law Bureau
Commonwealth Keystone Building
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17105-3265

Johnnie E. Simms, Esquire
Office of Trial Staff
Commonwealth Keystone Building
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17105-3265

H. Kirk House
Office of Special Assistants
Commonwealth Keystone Building
Pennsylvania Public Utility Commission
400 North Street, 3rd Floor
Harrisburg, PA 17105-3265

SERVICE BY FIRST CLASS MAIL

Eric Thumma
Daniel Desmond
Department of Environmental Protection
Rachel Carson Building
Harrisburg, PA 17105

Eric Winslow, President
Citizens Electric Company of Lewisburg
P.O. Box 551
1771 Industrial Boulevard
Lewisburg, PA 17837

Brian Crowe, Esquire
Joseph Dominguez, Esquire
PECO Energy Company
2301 Market Street S26-2
Philadelphia, PA 19103

David W. Trego, President
UGI Utilities Inc. - Electric Division
100 Kachel Boulevard, Suite 400
Green Hills Corporate Center
Reading, PA 19607

Maureen L. Hogel, Esquire
Senior Vice President and Chief Counsel
Duquesne Light Company
411 Seventh Avenue 16-2
Pittsburgh, PA 15219

Jan L. Fox
Strategic Energy LLC
Two Gateway Center, 9th Floor
Pittsburgh, PA 15222

Matt Sommers
Shipley Energy Company, Inc.
550 East King Street
P.O. Box 946
York, PA 17405

William R. Lloyd
Small Business Advocate
Office of Small Business Advocate
Commerce Building - Suite 1102
300 North Second Street
Harrisburg, PA 17101

Leila Vespoli
Senior Vice President and General Counsel
DBA FirstEnergy Company
76 South Main Street
Akron, OH 44308

Kathy Patton, Esquire
John L. Munsch, Esquire
DBA Allegheny Power
800 Cabin Hill Drive
Greensburg, PA 15601

John D. McMahon, President
c/o Orange & Rockland Utilities
Pike County Light & Power Company
One Blue Hill Plaza, 4th Floor
Pearl River, NY 10965

Brian Nagle, Esquire
Paul E. Russell, Esquire
Douglas Krall, Esquire
PPL Electric Utilities Corporation
Two North Ninth Street
Allentown ,PA 18101-1179

Glen R. Waisner, Vice President
Gary A. Jeffries, Esquire
Dominion Retail, Inc.
1201 Pitt Street
Pittsburgh, PA 15221

Nadia Adawi
Director of Operations
Energy Cooperative Association of Pa
1218 Chestnut St. Suite 1003
Philadelphia, PA 19107

Anthony Cusati
ACN Energy Inc.
32991 Hamilton Court
Farmington Hills, MI 48334

Brent Beerley
Vice President
Community Energy Inc.
150 Strafford Avenue Suite 110
Wayne, PA 19087

Total Gas and Electricity (PA) LLC
510 Thornall Street
Suite 270
Edison, NJ 08837-2207

David R. Peloquin, Counsel
Richard M. Early, Senior Counsel
Select Energy
107 Selden Street
Berlin, CT 06037

Brendan P. Bovaird, Esquire
UGI Energy Services Inc.
460 North Gulph Road
King of Prussia, PA 19406

Robert J. McCafferty, Jr.
It's Electric & Gas LLC
630 Fairview Road, Suite 205
Swarthmore, PA 19081

Saul Horowitz, President
Econergy PA Inc.
286 N Main Street Suite 2Fl
Spring Valley, MY 10977-.728

Pamela Polacek, Equire
David Kleppinger, Esquire
McNees Wallace & Nurick, LLC
100 Pine Street, P.O. Box 1166
Harrisburg, PA 17108-1166

PA Utilipro Solutions, Inc.
259 N. Radnor-Chester Road
Radnor, PA 19087-1075

David Huff
FirstEnergy Solutions Corporation
395 Ghent Road
Room 315
Akron, OH 44333-2678

Frank J. Richards
The Richards' Energy Group
3901 Nolt Road Building #1
Landisville, PA 17538

Loren Altshuler
Energy Marketing
Amerada Hess Corporation
1 Hess Plaza, 12th Floor
Woodbridge, NJ 07095

Jon Loercher
Electricity Manager
Worley & Obetz, Inc.
85 White Oak Road
P.O. Box 429
Manheim, PA 17545

Nathan Wilcox
Pennenvironment Energy & Clean Air
1334 Walnut Street
Sixth Floor
Philadelphia, PA 19107

Janine Durand Senior Counsel
PJM Interconnection, LLC
955 Jefferson Ave
Valley Forge Corporation Center
Norristown, PA 19403-2497

John Hanger
Citizens for Pennsylvania Future
610 North Third Street
Harrisburg, PA 127101-1113