Reliant Energy

2569

COPY

Mark A. Baird
Director
Midwest Regulatory Affairs
P.O. Box 148
Houston, TX 77001-0148
Tel. No. (281) 451-7526
Fax No. (713) 537-2935
mbaird@reliant.com

December 15, 2006

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

Re: RULEMAKING RELATING TO ALTERNATIVE ENERGY PORTFOLIO STANDARDS (DOCKET NO. L-00060180)

Dear Secretary McNulty:

Enclosed are Reliant's comments in the above-referenced proceeding. These are being filed two days late because of a misunderstanding regarding the due date. The Pennsylvania Public Utility Commission's AEPS Rulemaking Order was published in the October 14, 2006 *Pennsylvania Bulletin*. A correction to that Rulemaking Order was subsequently published in the October 21, 2006 *Pennsylvania Bulletin*. Reliant calculated the 60 day comment period using the October 21 publication date, and therefore understood the comments to be due on December 20, 2006. Reliant only became aware of the correct filing deadline of December 13 one day prior to the deadline. We appreciate the Commission's understanding and consideration of these comments.

Very truly yours,

Mark Baird

Mark Baird
For Reliant Energy

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RULEMAKING RELATING TO ALTERNATIVE ENERGY PORTFOLIO STANDARDS	§ § § §	**DOCKET NO. L-00060180**

COMMENTS OF RELIANT ENERGY, INC. ON PROPOSED NEW TITLE 52, CHAPTER 75, SUBCHAPTER D, RELATING TO THE ALTERNATIVE ENERGY PORTFOLIO REQUIREMENT

TABLE OF CONTENTS

Description	Page
Comments on Proposed New Title 52, Chapter 75, Subchapter D, Relating to the Alternative Energy Portfolio Requirement	2-7

Contact:

Mark Baird
(281) 451-5726
Fax: (713) 537-29355
mbaird@reliant.com

December 15, 2006

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RULEMAKING RELATING TO ALTERNATIVE ENERGY PORTFOLIO STANDARDS	§ § § §	**DOCKET NO. L-00060180**

COMMENTS OF RELIANT ENERGY, INC. ON PROPOSED NEW TITLE 52, CHAPTER 75, SUBCHAPTER D, RELATING TO THE ALTERNATIVE ENERGY PORTFOLIO REQUIREMENT

Reliant Energy, Inc. ("Reliant") appreciates the opportunity to submit comments on the Pennsylvania Public Utility Commission's (the "Commission") proposed new Title 52, Chapter 75, Subchapter D, relating to the Alternative Energy Portfolio Requirement. In the following sections Reliant submits comments to the regulation proposed in public meeting held July 20, 2006 and published in the Pennsylvania Bulletin on October 14, 2006.

§75.52 Fuel and Technology Standards for Alternative Energy Sources

The Commission notes in its discussion that the definition for "alternative energy sources" at §73 P.S. 1648.2 does not specifically define what constitutes each particular source. Further, the Alternative Energy Portfolio Standards Act (the "Act") indicates that, "The term shall include..." the listed methods of electricity production; however, there is no indication that the list is comprehensive or complete. Reliant suggests that the definition of "biomass energy", proposed in §75.52 (6)(i), be expanded to include both biodiesel and ethanol produced by fermentation of an organic material. These two sources of fuel are commonly considered as alternative/renewable. Interpretation of the §75.52 (6)(i) may currently allow these two sources of energy, as they are organic plant materials. However some processing steps are needed to produce both proposed fuels, and the examples in the existing "biomass energy" definition are more of a raw form of plant material.

In addition, given that the definition in the Act is somewhat open-ended about what fuels or technologies may be considered as an "alternative energy source", Reliant believes it would be prudent for the Commission to add language to this section describing a petition method for other potential alternative energy sources to be added to the present Tier I and Tier II classifications. Such a method of petition is currently a provision of other states (e.g. New Jersey) with a renewable or alternative energy requirement. Also, as new technologies are developed and demonstrate their ability to conform to the spirit under which the Act was created, a stated means to broaden the category of "alternative energy source" would encourage developers about their potential to participate in the alternative or renewable energy market of Pennsylvania.

For the definition of "distributed generation" Reliant supports the Commission finding that it includes net-metered and interconnected "customer generators" as they are defined in §73 P.S. 1648.2. Reliant would add that this also includes the limitation on the size of the generators for residential and other customer classifications. We recognize that the requirement to produce electricity from an "alternative energy source" was removed. The nature of the Act is such that it encourages alternative generation, not just "renewable" generation per se, and "distributed generation" may be considered "alternative." However, the addition of the need to produce "useful thermal energy" limits the category of "customer-generators" that may be considered as "distributed generation" in a fashion where the intent is puzzling, and the resulting qualification process burdened by a subjective limitation.

§75.60 Alternative Energy Market Integrity

No product marketed as being derived from alternative energy sources should utilize alternative compliance payments (as discussed in §75.56) of any kind to either demonstrate compliance with the AEPS requirements applicable to all retail products for that period under §75.51 (b), or to obtain a level of alternative character as if voluntary alternative energy was purchased. All required and voluntary acquisitions in support of an alternative energy derivation should be supported by verifiable AEC purchases for these types of products.

§75.61 Banking of Alternative Energy Credits

An EDC or EGS is exempt from compliance with §75.51 (b) during its cost-recovery period. However, during the cost recovery period, and EDC or EGS may bank credits during this cost recovery period as allowed by §73 P.S. 1648.3(e)(7), but also according to the limitation in the section:

> *Bankable credits shall be limited to credits associated with electricity sold from Tier I or Tier II sources during the reporting year that exceeds the volume of sales from such sources by an EDC or EGS during the 12-month period immediately preceding the effective date of this act.*

The Commission provided as an example, an EDC selling 10,000 MWh of alternative energy from an alternative energy system ("AES") during the one year period prior to the effective date. That EDC may then only bank generation of the AECs for sales accruing above the 10,000 MWh level per each reporting period. Reliant agrees with the Commission conclusion here that the language of the rule applies to the relationship between a specific EDC or EGS, and a specific AES. Enforcement of this provision in the aggregate is untenable. The Commission's opinion in its discussion is that this provision will have negative implications regarding the market for AECs in Pennsylvania. Reliant does not share the Commission's opinion, but does believe that the example provided correctly represents the intent of the General Assembly.

The purpose of this limitation is to prevent an EDC or EGS with an incumbent AES, or an AES under a long-term power purchase agreement, from banking the entire AES output while the EDC or EGS is not subject to compliance with the rule during their cost-recovery period, only then to utilize these banked AECs during their reporting period. Should such unlimited banking be allowed, the EDC or EGS from the example would have a 20,000 AEC advantage during their first two applicable AEPS reporting periods that was gained while they were exempt from the rule during the cost-recovery period. This would place them at an unfair advantage over those EDCs or EGSs where the cost-recovery period expires sooner.

Reliant would like to expand the above example to illustrate this and other points regarding this provision. The example would be an EDC or EGS that has four years between the effective date and the end of its cost-recovery period, with compliance beginning January 1, 2009. In the four reporting periods after the effective date, the company's contracted AECs generate 15,000 MWh each period. The availability to the EDC or EGS of 10,000 AECs (twice 15,000 MWh minus 10,000 MWh) for compliance after the end of the cost-recovery period, in addition to the full 15,000 AECs generated during each reporting period should be sufficient to allow the EDC or EGS to comply with the AEPS requirements with little difficulty, and may required the EDC or EGS to purchase some small amount of AECs to complete their required AEC amounts. Allowing a glut of 30,000 AECs to be banked during the cost-recovery period, would overwhelmingly allow the EDC or EGS to comply with their AEPS requirement for a number of reporting periods, while not needing to participate in the market for any reason. The example EDC or EGS would also have no incentive to purchase additional AECs at all in order to demonstrate compliance. This scenario would most certainly have a negative impact on the AEC market, as it would grind the market to a sudden halt.

As a corollary to the previous issue discussed, Reliant would like to clarify how much prior to the beginning of the compliance period the EDC or EGS can bank AECs. §73 P.S. 1648.3(e)(7) seems to state that AECs may be banked for every period between the effective date and the compliance date. §73 P.S. 1648.3(e)(6) limits the use of banked AECs from one reporting period to the two successive reporting periods (allowing for the interpretation in Implementation Order II to Docket No. M-00051865 for when a compliance period ends in the middle of a reporting period). AECs in the possession of the example EDC or EGS in the reporting period ending May 31, 2005 or the one ending May 31, 2006, should not be available for compliance purposes by that EDC or EGS with a compliance date beginning January 1, 2009 with a reporting period ending May 31, 2009. Even though such AECs were banked during the cost-recovery period, the limitation on use of banked AECs in the two successive reporting periods renders those earlier AECs ineffective for compliance use by the example EDC or EGS in the period ending May 31, 2009 or beyond.

The Commission is silent on the sale of AECs in possession of an EDC or EGS during its cost-recovery period. Provided the example EDC or EGS cannot utilize the AECs it is accumulating during the periods ending May 31, 2005 and May 31, 2006 for its own compliance purposes, it may wish to sell those AECs to EDCs or EGSs in need of them. Reliant supports the ability of the EDC or EGS still in a cost-recovery period to be able to sell their AECs. However, those sales should only be of those AECs that EDC or EGS would ordinarily be allowed to bank during those periods. To paraphrase the limitation from §73 P.S. 1648.3(e)(7):

> *<u>Saleable</u> credits shall be limited to credits associated with electricity sold from Tier I or Tier II sources during the reporting year that exceeds the volume of sales from such sources by an EDC or EGS during the 12-month period immediately preceding the effective date of this act.*

If sales of AECs by an EDC or EGS are not limited in this way, and the EDC or EGS sells AECs beyond the excess volume allowed, then the AECs sold would violate §73 P.S. 1648.3(e)(6)(iii) which states that credits used to demonstrate compliance, "have not otherwise been nor will be sold, retired, claimed or represented as part of satisfying compliance with alternative or renewable energy portfolio standards in other states." This double-counting provision surely applies in this issue. The amount of AECs created below that level set during the pre-effective date period for any EDC or EGS are providing a benchmark for allowable AECs for an EDC or EGS during the cost-recovery period. As such, those AECs below the pre-effective date level are, "represented as part of satisfying compliance…." with this proposed AEPS.

Conclusion

Reliant would like to note that this rule will be implemented in an environment of multiple states and ISOs, and parties outside the classification of EDC or EGS such as independent power producers ("IPP") and power and/or AEC brokers. Recognizing the compliance obligation rests upon EDCs and EGSs, it seems logical for the rule to focus on the management of AECs in terms of their possession by EDCs or EGSs. However, as the AEC market Pennsylvania must rely upon matures, the participation, indeed the integration of that market with the other states, IPPs and brokers will be extensive, and should be recognized more completely by this AEPS rule. The Commission should clarify that the provision of default service will be governed exclusively by the Commission's POLR Rulemaking and not this AEPS Rulemaking. Default service should not be defined through piecemeal rulemaking. Reliant opposes any Commission rule that mandates or otherwise permits the default provider to offer any product other than the POLR product governed by the POLR Rule.

Reliant appreciates the efforts by the Commission and its staff to develop a rule that will provide for a fair and equitable implementation of the AEPS, and in a cost effective and beneficial manner for customers. To that end, Reliant asks that any final rule consider these comments and incorporate the views expressed herein.