

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

COMMENTS OF ARIPPA

RE:

**IMPLEMENTATION OF THE
ALTERNATIVE ENERGY PORTFOLIO STANDARDS ACT OF
2004**

Docket No. M-00051865

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Good afternoon. My name is Billie Ramsey. I am the Executive Director of ARIPPA, a

state-wide trade association comprised of 13 generating facilities in Pennsylvania that use coal refuse as their primary fuel source. In addition to ARIPPA's 13 member waste coal plants, ARIPPA also has over 90 associate member companies that are vendors and suppliers to the power generation industry, as well as six affiliated member generating companies. I very much appreciate the opportunity to appear before you today at this inaugural session of the Commission's proceeding to implement the provisions of Act 213.

ARIPPA has been participating in the evolution of Pennsylvania's programs dealing with alternative forms of generation since 1996, when the Electricity Generation Customer Choice and Competition Act was negotiated and enacted. At that time we proposed that waste coal be included in the definition of "renewable resource," which was included in the Act for the purpose of implementing a very small renewable program for low-income customers. Ultimately the Competition Act included all waste material in the definition of "renewable resource." We then built upon this precedent by participating in the restructuring proceedings of the three utilities to which our members sell power under long-term contract, where again waste coal was included in the definition of renewable resource. Following the 1998 restructuring settlements, we engaged the Department of Environmental Protection in discussions over the inclusion of waste coal generation in the Commonwealth's Green Plan. The purchase of power by the Commonwealth under the Green Plan now includes credits associated with 10,000 MWh per year of waste coal generation. Finally, ARIPPA was heavily involved in the discussions over the Advanced Energy Portfolio Standard ("AEPS") in the Legislature during the last year. As you know, the AEPS received a huge boost last February when Governor Rendell announced his support for a portfolio standard. Most prominent among the various advanced technologies that he mentioned in his announcement was waste coal. In December, Governor Rendell held the first of two ceremonial Act 213 signing ceremonies in Washington County at the site of a large coal refuse pile. Therefore, it is accurate to say that waste coal has been included in the Commonwealth's various renewable or advanced energy programs since they were initiated, and that the Administration has expressed its strong support for the

environmental benefits that waste coal brings to the table.

Among the environmental benefits provided by generation from waste coal are:

- X The removal of coal refuse piles that otherwise would remain as a blight on Pennsylvania's landscape and a serious source of acid mine drainage ("AMD"). In 2004 Pennsylvania's waste coal plants reached an important milestone – over 100 million tons of coal refuse have been removed from Pennsylvania's environment. The work is continuing at a rate of 11 – 12 million tons per year.

- X The reclamation of abandoned mine lands ("AML") at no cost to Pennsylvania's taxpayers and without reliance on Pennsylvania's rather meager share of the federal AML fund. Pennsylvania's waste coal plants have reclaimed over 3,600 acres of AML lands to date.

- X Improvement to water quality. Over 2,400 miles of streams in Pennsylvania are affected by AMD. The removal of coal refuse is improving stream quality, again at no cost to the taxpayers.

- X Clean air emissions. Coal refuse, a very difficult low-value Btu fuel, is combusted exclusively in state-of-the-art circulating fluidized bed boilers with limestone injection systems for SO₂ control and fabric filter systems for particulate control. Waste coal plants are the lowest emitters of mercury among all types of fossil fuel generating facilities, and NO_x and SO₂ emissions are much lower than conventional coal-fired generation.

In short, it is important that the Commonwealth continue to encourage the generation of power from waste coal. Without such continued encouragement, it is unlikely that Pennsylvania's AML problems ever will be cleaned up. The problems are too immense and the public funds available to address the problems are woefully inadequate. For all of these reasons, ARIPPA urges the Commission to implement Act 213 in such a manner that appropriate consideration is given to the need to encourage the continued operation of Pennsylvania's waste coal plants.

In this early stage, the issues raised by Act 213 are just being framed, and many issues will be raised and resolved before the program fully is implemented. Thus far, two issues have come to our attention that warrant consideration with the potential impact on waste coal generation in mind.

The first issue concerns the distinction between “alternative energy credits” and other commodities such as generation and emissions allowances. Act 213 is intended to establish a trading program in “alternative energy credits” that is distinct from the underlying generation, and distinct from other attributes associated with that generation, such as emission allowances for NO_x or SO₂. Section 3 sets up the alternative energy credits program and states that “[a]n [EDC] or [EGS] shall comply with the applicable requirements of this section by purchasing sufficient alternative energy credits and submitting documentation of compliance to the program administrator.” The Legislature further described an alternative energy credit as a “tradable instrument.” Emission allowances also are tradable instruments. As the Commission is aware, the market for emission allowances is separate and distinct from the market for generation. Alternative energy credits are yet again a separate commodity, and their trading should be distinguished from the trading of the other commodities (generation and emission allowances) in previously established markets. ARIPPA cautions the Commission to keep the distinction in mind as it implements the program. Suggestions that alternative energy credits already are bundled with the underlying generation would be erroneous.¹ Although generation may be bundled with other attributes voluntarily by contractual provisions, these attributes are not automatically bundled with the underlying generation absent an express contract between the generator and the purchasing entity. If, for example, an EDC self-generates qualified power, then it also generates separate credits associated with that power that it can use to demonstrate compliance with the program.

The second issue concerns the Force Majeure provision. Under this provision, upon a finding that alternative energy resources are not reasonably available in sufficient quantities, the Commission must either modify the obligations of the Act or recommend to the General Assembly that the obligation be eliminated. Although we do not have a

¹ The Federal Energy Regulatory Commission has held that attributes associated with PURPA qualifying facilities are separate from, and may be sold separately from, the power produced by the facilities. “Indeed, states in creating RECs that are unbundled and tradeable have recognized this. The very fact that RECs may be unbundled and may be traded under State law indicates that the environmental attributes do not inherently convey pursuant to an avoided cost contract to the purchasing utility.” American Ref-Fuel Company et al., Order Denying Rehearing, 107 FERC ¶ 61,016 (April 15, 2004); American Ref-Fuel Company et al., Order Granting Petition for Declaratory Order, 105 FERC ¶ 61,004 (October 1, 2003).

crystal ball, it seems very likely that the availability of Tier I credits will be constrained, at least in the early years of the program. At the same time, Tier II likely will be oversubscribed, given the large amount of large-scale hydroelectric and pumped storage generation already in place. A significant supply differential may result in prices that are much higher for Tier I than for Tier II. It is my understanding that at least one trading desk has projected prices for Tier I that are 800% higher than Tier II. Although the implementation of the Force Majeure provision lies in the future, ARIPPA would suggest that, in the event it is invoked, consideration be given to modifying Tier I and Tier II requirements (the demand for the product). In other words, in the event that sufficient Tier I credits simply are not available for a given reporting period, the Commission could modify the Act's requirements by increasing the Tier II requirements, rather than simply decreasing the Tier I requirements for that reporting year. This would help equalize Tier I and Tier II prices, and would ensure that the total alternative energy requirement was achieved for that reporting year.

In closing, ARIPPA very much appreciates the opportunity to present this testimony to the Commission today. We affirmatively supported Act 213 because of the potential encouragement that the alternative energy portfolio program can offer to waste coal generation. We look forward to continuing to work with the Commission and the other stakeholders as this process evolves.
