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VIA FEDERAL EXPRESS

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

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PA P.U.C.
LAW BUREAU

Re: Alternative Energy Portfolio Standards Act, Docket No.
M-00051865

Dear Mr. McNulty:

By this letter I am submitting one original and fifteen (15) copies of comments to the implementation of the Alternative Energy Portfolio Standards Act (the "Act") on behalf of River Hill Power Company LLC in response to the Notice of Technical Conference issued by the Public Utility Commission on January 7, 2005.

The attached comments address important issues affecting the public interest regarding the proposal and implementation of regulations under the Act that should have been considered for the January 19, 2005 Technical Conference. However, we only recently received confirmation from the Law Bureau of the Public Utility Commission that our comments could have been submitted and considered for that Technical Conference. Thus, we respectfully request that these comments be accepted by the Public Utility Commission for consideration at this time.

Very truly yours,


James A. Gede, Jr.

cc: Shane Rooney
Law Bureau
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 3rd Floor
Harrisburg, Pennsylvania 17120
(w/ enclosures)

WASHINGTON, DC

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\\BA-99170/0001-190021NEW YORK BALTIMORE McLEAN MIAMI DENVER BOULDER COLORADO SPRINGS LOS ANGELES

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PUBLIC UTILITY COMMISSION

In the Matter Of :
Implementation of the Alternative :
Energy Portfolio Standards Act of 2004 :

Docket No. M-00051866

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COMMENTS ON BEHALF OF RIVER HILL POWER COMPANY LLC

I. INTRODUCTION

Pennsylvania's Alternative Energy Portfolio Standards Act (the "Act") requires that a percentage of electric energy sold by a distribution company or generation supplier to Pennsylvania retail customers be generated from alternative energy sources, including waste coal.

The Act establishes statutory eligibility requirements which automatically qualify two categories of waste coal as alternative energy sources. It also confers upon the Pennsylvania Public Utility Commission (the "Commission") the authority to establish alternative eligibility requirements for the categories of waste coal that do not meet these statutory eligibility requirements. River Hill Power Company LLC ("River Hill") respectfully requests that the Commission establish alternative eligibility requirements for waste coal in a manner that qualifies all waste coal that was generated, abandoned, stored or disposed of in Pennsylvania on or after July 31, 1982, irrespective of whether the waste coal is actually disposed of in a permitted site.

II. QUALIFYING WASTE COAL

The definition of waste coal in the Act creates the statutory eligibility requirements which automatically qualify as an alternative energy source (1) waste coal that was disposed of or abandoned prior to July 31, 1982 and (2) waste coal that is disposed of in a permitted coal refuse disposal site. To meet the first requirement, the power plant operator that uses the waste coal

must establish that the waste coal was disposed of before July 31, 1982. This is often a difficult task because there are no records available to establish when waste coal became part of a culm bank or to establish that a waste coal pile consists only of pre-1982 waste coal. To meet the second requirement, waste coal must be transferred to a permitted site, then removed for use as a fuel. This is an expensive and unnecessary step in fuel use.

Waste coal that was generated after July 31, 1982 but is not disposed of in a permitted facility does not meet these statutory eligibility requirements, but the Act empowers the Commission to establish alternative eligibility requirements for this waste coal. It provides waste coal shall include "other waste coal combustion meeting alternative eligibility requirements established by regulation."¹

River Hill respectfully requests that the Commission establish alternate eligibility requirements that will qualify, as an alternative energy source, waste coal that was generated, abandoned, stored or disposed of on or after July 31, 1982, irrespective of whether the waste coal is actually disposed of in a permitted site.

Regulations adopted by the Commission establishing the requested alternative eligibility requirements will further the purposes of the Act by encouraging the remediation of all waste coal piles in the Commonwealth of Pennsylvania and will have a positive effect on the Pennsylvania environment. Waste coal that does not meet the statutory eligibility requirements is scattered throughout Pennsylvania and poses the same environmental threats as the waste coal that does meet the statutory eligibility requirements. Thus, the requested alternative eligibility requirements will benefit not only the burdened land but also the neighboring lands and the water resources that are affected by the leaching of harmful chemicals from waste coal piles. Moreover, combustion of this category of waste coal will reduce the environmental risk posed

¹ 73 PA. CONS. STAT. §1648.2

not only by existing waste coal piles, but also reduce the need for siting additional coal refuse disposal sites. In addition, permitting the disposal of waste coal generated after July 31, 1982 will encourage the disposal of waste coal that was abandoned or disposed of before July 31, 1982 but could not have otherwise qualified as an alternative energy source due to a lack of documentation as to its disposal date. If alternative eligibility requirements are not adopted to broaden the classes of qualifying waste coal, coal piles that could be eliminated will continue to harm the environment.

III. IMPLICATIONS FOR TAX EXEMPT FINANCINGS OF NEW WASTE COAL FACILITIES

In order to encourage remediation of waste coal throughout the state, alternative eligibility requirements established under the Act should encourage the development of new facilities that utilize waste coal to generate electricity. A substantial number of new facilities designed to convert waste coal into energy in the Commonwealth of Pennsylvania will be financed with tax-exempt debt. Under current IRS regulations, "waste" is defined in part as material having no value. To qualify for tax-exempt financing, the waste coal utilized by new facilities must have no value. Failing to establish alternative eligibility requirements for additional categories of waste coal will risk creating a discrete market for those categories of waste coal automatically qualified under the statutory eligibility requirements and creating obstacles for new facilities obtaining tax-exempt financing.

In line with the authority conferred upon the Commission to establish alternative eligibility requirements, River Hill respectfully requests that the Commission establish alternative eligibility requirements to permit any coal that is disposed of in a facility that qualifies as a "waste" disposal facility for federal tax exempt bond purposes to qualify as "waste coal" under the Act. Establishing alternative eligibility requirements that broaden the categories

of waste coal that qualify as an alternative energy source would allow new waste coal facilities will have access to financing and ensure continued remediation efforts in the future.

III. CONCLUSION

The Act confers upon the Commission the authority to establish alternative eligibility requirements, which if exercised will have a positive effect on the Pennsylvania environment. The Commission, by establishing alternative eligibility requirements which include waste coal that was generated, abandoned, stored or disposed of on or after July 31, 1982, irrespective of whether it is actually disposed of in such a permitted site, will ensure increased remediation of waste coal piles throughout the state. Furthermore, by establishing alternative eligibility requirements to permit any coal that is disposed of in a facility that qualifies as a "waste" disposal facility for federal tax exempt bond purposes to qualify as "waste coal" under the Act, the Commission will encourage the development of new waste coal facilities.