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March 8, 2006

James J. McNulty, Esquire, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, Pennsylvania 17105-3265

**RE: IMPLEMENTATION OF THE ALTERNATIVE ENERGY PORTFOLIO
STANDARDS ACT OF 2004 – PUC DOCKET NO. M-00051865
and
RULEMAKING RE ELECTRIC DISTRIBUTION COMPANIES' OBLIGATION TO
SERVE RETAIL CUSTOMERS AT THE CONCLUSION OF THE TRANSITION
PERIOD PURSUANT TO 66 Pa. C.S. §2807(e)(2) – PUC DOCKET NO. L-00040169**

Dear Mr. McNulty:

Enclosed please find the original and fifteen (15) copies of the Comments of the Energy Association of Pennsylvania on the above-captioned Dockets .

Please do not hesitate to contact the undersigned with any questions.

Cordially,

A handwritten signature in black ink, appearing to read "Donna M. J. Clark".

Donna M. J. Clark
Vice President and General Counsel

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Implementation of the Alternative Energy
Portfolio Standards Act of 2004**

Docket No. M-00051865

**Rulemaking Re Electric Distribution
Companies' Obligation to Serve Retail
Customers at the Conclusion of the
Transition Period Pursuant to
66 Pa. C.S. § 2807(e)(2)**

Docket No. L-00040169

**COMMENTS OF THE ENERGY ASSOCIATION OF
PENNSYLVANIA TO THE COMMISSION'S FEBRUARY 8, 2006, ISSUES LIST**

I. INTRODUCTION

On November 18, 2005, the Pennsylvania Public Utility Commission ("PUC" or "Commission") entered an Order ("November 18 Order") reopening the public comment period for its pending Default Service Rulemaking, which was originally commenced in December of 2004. Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa. C.S. §2807(e)(2), Docket No. L-00040169 (Order entered December 16, 2004). Following the close of the original public comment period on June 27, 2005, the Independent Regulatory Review Commission ("IRRC") issued its comments regarding the proposed regulations on July 27, 2005. Pursuant to Section 745.5a of the Regulatory Review Act, as amended, 71 P.S. §745.5a, the Commission must now either withdraw the proposed regulation or issue a final-form regulation to the IRRC within two years of the close of the initial public comment period or June 27, 2007.

The November 18 Order provides that further comment is sought in the Default Service Rulemaking with regard to the Commission's implementation of the Alternative Energy Portfolio Standards Act of 2004 ("Act 213"), 73 P.S. §§1648.1-1648.8, with regard to the mandates set forth in the federal Energy Policy Act of 2005 ("EPAct 2005") and with respect to the issues raised in comments issued by the IRRC. On February 8, 2006, the Commission issued a Secretarial Letter pursuant to the November 18 Order identifying a series of questions for comment and setting forth a timeframe for comments and reply comments.

The Energy Association of Pennsylvania ("EAPA" or "Association") represents the interests of the Commonwealth's PUC-regulated electric and natural gas distribution companies and has been an active participant on behalf of its member electric distribution companies ("EDCs")¹ in this Default Service Rulemaking proceeding. EAPA submits the following comments in response to the November 18 Order and the Secretarial Letter dated February 8, 2006.

II. RESPONSES TO ISSUES IDENTIFIED BY SECRETARIAL LETTER DATED FEBRUARY 8, 2006

- 1. Should Act 213 cost recovery be addressed in the Default Service regulations as opposed to a separate rulemaking? Is it necessary to consider Act 213 cost recovery regulations on a different time frame in order to encourage development of alternative energy resources during the "cost recovery period"?**

¹ The Association's EDC members which join in these Comments include: Allegheny Power, Citizens' Electric Co., Duquesne Light Co., Metropolitan Edison Co., *A FirstEnergy Company*, Pennsylvania Electric Co., *A FirstEnergy Company*, Pennsylvania Power Co., *A FirstEnergy Company*, PPL Electric Utilities, UGI Utilities, Inc.,--Electric Division, and Wellsboro Electric Co.

EAPA member companies believe that it is not necessary for AEPS cost-recovery issues to be handled in the Default Service rulemaking; however, they do urge the Commission to run the two rulemaking processes concurrently. EAPA members believe that the Commission should promulgate both AEPS and Default Service cost-recovery rules, as detailed below in the response to Issue #7, as soon as possible so that the member companies can plan their implementation strategies accordingly. EAPA members believe that should the cost-recovery rules become finalized within a short timeframe, interim plans that were filed prior to finalization should not be affected. The EAPA supports the notion that all interim plans should be left unaltered if filed prior to any final Commission rule. The EAPA members need to continue to operate in some cases under their interim plans and would be unable to effectively implement a final rule in the middle of the Default Service plan period. Further, the Default Service regulations need to be finalized, so companies have time for planning purposes to implement them by the 2010-2011 timeframe. As for the encouragement of alternative energy resources, the EAPA members believe that the PUC must finalize all AEPS rules, including cost-recovery, in order to encourage such development. The only way for the EDCs in Pennsylvania to assist with the development of alternative energy resources is to know the rules and plan their procurement strategies in compliance with those rules.

2. Do the prevailing market conditions require long-term contracts to initiate development of alternative energy resources? May Default Service Providers employ long-term fixed price contracts to acquire alternative energy resources? What competitive procurement process may be employed if the Default Services Provider acquires alternative energy resources through a long-term fixed price contract?

The EAPA member companies believe that it is too early to discern whether or not market conditions require long-term contracts to develop alternative energy resources. The

EAPA members contend, however, that long-term contracts should remain an option for the Default Service Provider (“DSP”), and should be neither prohibited nor required. Moreover, if DSPs do decide to enter into long-term AEPS contracts, a separate non-bypassable cost-recovery mechanism supported by a non-revocable order, similar to a Qualified Rate Order, would be preferred for AEPS recovery.² Cost recovery for AEPS would necessarily be separate and distinct from the recovery mechanism for non-AEPS costs. EAPA continues to support a final regulation which would provide flexibility for DSPs to propose either non-reconcilable or reconcilable mechanisms for non-AEPS costs. EAPA members do not support a regulation whereby non-AEPS costs are automatically non-reconcilable for DSPs.

Generally speaking, the EAPA members urge the Commission to remain flexible and allow the EDCs to utilize whatever competitive procurement method they find acceptable as long as it is transparent and fair. The EAPA does not support the “one-size-fits-all” approach to the procurement of AEPS resources. However, the Commission should issue rules in advance so that the EDCs can avoid after-the-fact prudence reviews. The EAPA members are concerned, based on the industry’s experience with PURPA, that what appears economical and competitive by today’s standards may be found to be uneconomical in 10 or 20 years and may result in a second round of stranded costs. The EAPA members urge the Commission to promulgate cost-recovery rules that would sufficiently protect the industry and the consumers from such misfortune.

3. Should the force majeure provisions of Act 213 be integrated into the Default Service procurement process? Should Default Service Providers be required to make force majeure claims in their Default Service implementation filing? What

² In this regard, EAPA member companies would support an expedited declaratory order process whereby cost-recovery for a long-term AEPS contract would be determined via a final non-revocable order, so as to encourage market development.

criteria should the Commission consider in evaluating a force majeure claim? How may the Commission resolve a claim of force majeure by an electric generation supplier?

The EAPA member companies believe that AEPS force majeure provisions could be included in the Default Service procurement process. This would be consistent with a process, whereby the Commission would make a force majeure determination prior to each AEPS reporting year (June 1) so that EDCs and/or EGSs have the opportunity to procure the requisite amount of alternative energy credits (“AECs”) along with energy for default service. A determination made at the beginning of the reporting year would establish whether there are enough AECs available or likely to become available during the year to meet expected requirements and the price at which they are considered to be economically viable. Any force majeure provision ultimately adopted by the Commission must include economic criteria. If it is determined there is an insufficient level of available credits or that their price is expected to be unreasonably high, then the PUC should issue an order suspending the AEPS requirements in whole or in part depending upon the market, for that year for that particular Tier or category of resources. Since credits can come from an entire RTO, a force majeure determination for one EDC in that RTO should be applicable to every EDC and EGS in the RTO subject to AEPS.

Force majeure claims made after the beginning of the reporting year should be determined, and such determination must be done in a uniform manner, regardless of whether they are made by an EGS or an EDC. EAPA requests that differences in the options available to EGSs and EDCs when confronted with a mid-stream force majeure determination must be carefully considered. In such a circumstance, EGSs would have an opportunity to stop serving new customers and to terminate service to existing customers whereas the DSPs would continue

to serve existing customers, new customers and those customers previously served by EGSs while attempting to acquire credits in a market where credit availability is presumably tight.³

Moreover, EAPA contends the Commission should allow DSPs flexibility in their implementation plans so as to account for any force majeure declaration.

4. Given that Act 213 includes a minimum solar photovoltaic requirement as part of Tier I, should these resources be treated differently from other alternative energy resources in terms of procurement and cost recovery?

The nature of this resource may dictate that it be treated differently from other resources in terms of procurement. Given that Act 213 does have a different minimum requirement for credits derived from solar photovoltaic resources, there will have to be a separate tracking mechanism from the other Tier I resources in order to ensure compliance and adequate cost-recovery. However, these resources should not be treated differently in terms of cost recovery and all costs associated with solar PV should be recoverable on a full and current basis.

5. Should the Commission integrate the costs determined through a §1307 process for alternative energy resources with the energy costs identified through the Default Service Provider regulations? How could these costs be blended into the Default Service Providers Tariff rate schedules?

The EAPA member companies believe that the Commission should remain flexible as to how AEPS related costs are integrated with the energy costs identified through the Default Service process.

³ EAPA notes that Act 213 necessitates EGSs to appear before the Commission on a variety of issues and suggests the establishment of an annual License Fee for EGSs to cover the administrative costs that undoubtedly will arise as the Commission considers EGS initiated force majeure claims and related issues.

As for Tariff Schedules, there are a variety of options that must remain available to the EDC to blend the AEPS related costs into those schedules. For instance, a tariff schedule can combine the costs as a single blended rate or the rates can be identified separately. To the extent AEPS or default service rates are reconcilable, the “cost to compare” that customers are presented with can exclude reconciliation amounts in the same manner that “costs to compare” are presented to gas customers under reconcilable Section §1307(f) gas cost rates.

6. May a Default Service Provider enter into a long-term fixed price contract for the energy supplies produced by coal gasification based generation if the resulting energy costs reflected in the tariff rate schedules are limited to the prevailing market prices determined through a competitive procurement process approved by the Commission?

As discussed in its response to question #2, the EAPA does not believe that a DSP should either be required or prohibited from entering into a long-term contract for either coal gasification based generation, or any other alternative energy resource. Should the DSP choose to enter into a long-term contract to procure AECs, the Commission must guarantee cost-recovery in advance for the life of the agreement. The Commission must be wary of creating new stranded costs by engaging in after the fact prudency reviews. The Commission’s rules must be clear and allow for full and current cost recovery.

7. Should the Commission delay the promulgation of default service regulations until a time nearer the end of the transition period, as suggested by the Independent Regulatory Review Commission in its comments on the proposed regulations?

EAPA currently takes no position on the question of whether the promulgation of default service regulations should be delayed, but recommends that the Commission should carefully consider the individual responses of EAPA members to this question.

8. Does the Commission need to make any revisions to its proposed default service regulations to reflect the mandates of the Energy Policy Act of 2005?

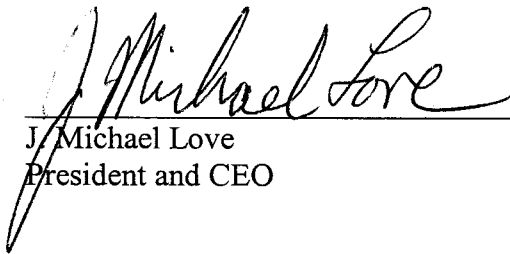
The Energy Policy Act of 2005 (“EPAct 2005”) amended the Public Utility Regulatory Policies Act of 1978 (“PURPA”) and set forth new standards that states must meet within a specified timeframe. The standards apply to areas of regulation such as net metering, interconnection, energy-efficiency and time-based metering. EPAct 2005 also includes a “prior state action” provision that exempts states from further action if it can be demonstrated that the state implemented or initiated a proceeding to consider a comparable standard. The Pennsylvania Commission through its rulemakings in both the DSP and AEPS dockets has clearly complied with this mandate. In order to affirmatively demonstrate its compliance, the Commission should consider opening a separate docket listing the standards referenced in EPAct 2005 and detailing the proceedings where they have considered and/or implemented comparable standards.

III. CONCLUSION

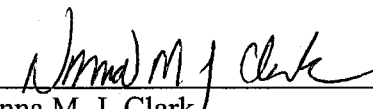
In conclusion, EAPA members do not support a delay in finalization of the Default Service regulations so long as those regulations are fairly flexible and allow implementation of interim plans which do not create disadvantaged buyers to the detriment of customers. EAPA members further support, for those EDCs which may be required to file a Default Service Implementation Plan prior to the date when all EDCs are through transition, a process whereby these interim plans would not be affected by final regulations. EAPA members further request that the Commission conduct AEPS rulemaking proceedings expeditiously so as to promote the development of alternative energy resources. The option to negotiate either a long-term or short-

term contract should remain available to EDCs and DSPs as they work to comply with the direction set by the Legislature in both the Competition Act and under Act 213.

Moreover, Force majeure provisions of Act 213 could be included in the default service procurement process. While the solar photovoltaic requirement under Act 213 may dictate that it be tracked differently for other alternative energy resources in terms of procurement, it should not be treated differently in terms of cost-recovery. With respect to the mandates set by EAct 2005, EAPA does not recommend changes to the proposed default service regulations. Finally, EAPA asks for flexibility with respect to how AEPS costs are integrated with energy costs identified through the default service process and how these costs are included in EDC tariffs.



J. Michael Love
President and CEO



Donna M. J. Clark
Vice President and General Counsel

Date: March 8, 2006

CERTIFICATE of SERVICE

I hereby certify that I have served a copy of the foregoing "*Comments of the Energy Association of Pennsylvania to the Commission's February 8, 2006, Issues List*" relating to Docket No. M-00051865, and Docket No. L-00040169, on the persons listed below, by means of hand-delivery, first-class mail or electronic mail, as indicated:

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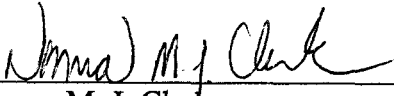
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March 8, 2006
Date



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