BEFORE THE
PENNSYLVANIA PUBLIC UTILTY COMMISSION

Implementation of the Alternative Energy Portfolio Standards Act of 2004	**Docket No. M-00051865**
Rulemaking Re Electric Distribution Companies' Obligations 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 EXELON COMPANIES TO THE COMMISSION'S FEBRUARY 8, 2006 ISSUES LIST

On November 18, 2005, the Pennsylvania Public Utility Commission ("Commission") entered an Order ("November 18 Order") in the above-referenced dockets that initiated a process for considering cost-recovery issues as they relate to both the Alternative Energy Portfolio Standards Act of 2004 ("AEPS") and the Commission's default service rulemaking ("POLR Rulemaking"). In furtherance of this objective, on February 8, 2006, the Commission circulated an Issues List with specific questions and requested comments from interested stakeholders. PECO Energy Company ("PECO") and Exelon Generation Company, LLC ("ExGen") (collectively, "Exelon") hereby provide their thoughts on the specific cost-recovery issues raised by the Commission, as well as AEPS cost-recovery and procurement issues in general.

I. Executive Summary

Exelon commends the Commission for recognizing the complex and interrelated nature of the issues associated with AEPS and default service, also referred to as provider of last resort service or "POLR". Exelon encourages the Commission to issue a clear set of binding rules regarding AEPS cost-recovery, as well as other AEPS-related issues such as force majeure and the banking of alternative energy credits ("AECs"). A clear set of rules, issued in a timely manner, will support further development of renewable energy projects in Pennsylvania and is necessary to accelerate market participants' efforts to plan their procurement of renewable energy and/or AECs in a cost-effective and timely manner. It is also imperative that the Commission finalize its POLR regulations as soon as possible. Although PECO Energy's transition period does not terminate until the end of 2010, other Pennsylvania Electric Distribution Companies' (EDCs') transition periods will expire much sooner. Final POLR regulations must be in place in order for all market participants to effectively develop plans to procure or supply energy for default service customers.

Exelon recognizes the need for the Commission to provide guidance on the development of AEPS rates and cost-recovery in conjunction with its default service rules. Act 213 clearly entitles default service providers to "full recovery" of the costs they expend to comply with alternative energy portfolio standards. Exelon believes that the Commission's final POLR regulations also should permit reconciliation in order to achieve full cost recovery of POLR costs and consistency with Act 213. In short, Exelon

urges the Commission to allow EDCs to implement mechanisms that provide full cost-recovery of AEPS and POLR-related costs.

Exelon supports the use of a wholesale competitive procurement process for default service. Exelon believes that the wholesale procurement method is also appropriate for the procurement of alternative energy for the purpose of meeting AEPS obligations. However, we recognize that development of the alternative energy infrastructure needed to satisfy the requirements of Act 213 may require market participants such as EDCs and EGSs to contract directly for alternative energy supply over the next several years during EDCs' transition periods. Otherwise, Exelon continues to endorse the implementation of a transparent competitive bidding process and believes a reverse descending clock auction is a highly effective model to procure for POLR load traditional wholesale energy, either alone, or, where and when available, the requisite AEPS requirements. Exelon urges the Commission to endorse the auction for EDCs to acquire and market participants to provide both the energy and capacity necessary to serve the default load, and, as the alternative energy market develops, to meet the year-to-year AEPS requirements associated with the load. This procurement methodology meets the Electric Competition Act's "prevailing market price" standard while also providing administrative efficiencies for wholesale suppliers and EDCs, which should result in lower generation-related prices for customers.

Exelon also recognizes that multi-year contracts, e.g., five to ten-year contracts with alternative energy suppliers, may be an attractive option for EDCs to procure resources toward meeting their AEPS obligations. Contracting directly with alternative energy developers may be necessary as a transition or "bridge" strategy during the initial

years of AEPS market development. This will facilitate a smooth transition from voluntary compliance during the rate cap transition period to mandatory compliance post-transition. Exelon maintains that the long-term goal should be to bundle in the auction the POLR load-related AEPS requirements with the underlying energy and capacity obligation, however, it is aware of the benefits of multi-year contracts especially during an EDC's transition period, when it has neither filed nor yet obtained approval for its default service procurement program. Multi-year contracts may prove to be a necessary transition mechanism for EDCs to take advantage of Act 213's AEC banking provisions and may act as a catalyst for the AEC market to develop to the point where all or part of an EDC's AEC requirements may be obtained through the wholesale auction. Exelon encourages the Commission to consider these transition effects in developing its rules to allow for either method of AEC procurement. Ultimately, Exelon believes that the rules should strive to support liquidity and depth in the renewable generation market such that new construction is not dependent on the EDCs and is, instead, a function of market principles.

II. Exelon's Response to Specific Issues Set forth in the February 8th Issues List

Exelon's responses to the specific issues raised by the Commission are set forth below.

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"?

Exelon believes it would be ideal but not essential for the Commission to consider Act 213 cost-recovery in the POLR Rulemaking. However, Exelon is concerned that the

additional notice and comment period required to promulgate Act 213 cost-recovery regulations could occasion a delay in the issuance of final POLR regulations if the two matters were consolidated. Exelon believes that the well-developed POLR Rulemaking record should be used to promptly finalize those regulations. Exelon urges the Commission to take up AEPS cost-recovery expeditiously, however, it does not believe that it is necessary to delay the final POLR regulations to enable development of AEPS cost-recovery rules.

The final POLR regulations must be sufficiently robust to allow for the cost-recovery of both default service and AEPS costs in a coordinated fashion. For example, EDCs must be able to pass through all AEPS related costs consistent with Act 213. This would include the costs incurred by successful bidders in a POLR auction to procure AECs and/or an EDC's costs associated with a multi-year contract to procure AECs directly from an alternative energy project developer. Regardless of whether the Commission addresses AEPS cost-recovery in its POLR Rulemaking, it should allow for the reconciliation of all POLR related costs in its final POLR regulations. To do otherwise would effectively deny EDCs the option of consolidating their POLR and AEPS procurement activities (or, at a minimum, would introduce unnecessary complexity and cost).

The Commission asks further whether or not it is necessary to consider Act 213 cost-recovery regulations on a different time frame in order to encourage the development of alternative energy resources during the cost recovery period. Exelon believes that the prompt promulgation of AEPS rules, both cost-recovery and otherwise, is essential to furthering the development of the renewable energy market in

Pennsylvania. Act 213 allows EDCs to bank credits procured during their transition period and also allows for cost-recovery of those credits. Section 3(a)(3) of Act 213 specifically provides that "all costs" for the purchase of electricity generated from alternative energy sources and payments for alternative energy credits:

> that are voluntarily acquired by an Electric Distribution Company during the cost recovery period on behalf of its customers shall be deferred as a regulatory asset by the Electric Distribution Company and fully recovered, with a return on the unamortized balance, pursuant to an automatic energy adjustment clause under 66 Pa.C.S. § 1307 (relating to sliding scale of rates; adjustments) as a cost of generation supply under 66 Pa.C.S. § 2807 (relating to duties of Electric Distribution Companies), in the first year after the expiration of its cost recovery period.

The Commission must issue rules consistent with Act 213's legislative directive so that if an EDC chooses to acquire AECs during its transition period, it may do so and recover those costs in accordance with the Act.

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?

Exelon shares the Commission's desire to see a vigorous alternative energy market that will encourage construction of renewable generation projects in PJM. We believe that the Commission should allow EDCs to satisfy their AEPS obligations either directly from alternative energy developers through multi-year contracts or through other means such as an auction process. Exelon believes that the Commission needs to first establish clear and binding AEPS cost-recovery and other rules as soon as possible. Final rules will form the foundation for market participants to develop their procurement strategies in the most cost-effective and competitive manner. The Commission's rules

should neither prohibit, nor mandate, any particular procurement methodology or contract term for obtaining AECs. A default service provider should be able to enter into multi-year fixed price contracts for alternative energy resources if it so chooses, subject to timely Commission confirmation that such contracts reflect prevailing market prices at the time the contract was negotiated. Alternatively, default service providers should be permitted to utilize competitive procurement processes, such as requests for proposals, standard offers, or auctions, in order to procure alternative energy resources.

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 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?**

Providing clear rules for the timing and substance of force majeure claims should be viewed as an essential part of any AEPS rulemaking. Exelon believes that the force majeure provisions of Act 213 could be integrated into the POLR procurement process but that force majeure claims do not need to be made necessarily in a default service provider's implementation filing. At most, the default service implementation filing may be the appropriate place to define how such claims will be made (something that the AEPS regulations could accomplish as an amendment to the final POLR regulations) and possibly to define the market circumstances that constitute force majeure under Act 213. As claims for force majeure might not materialize until after the default service implementation filing is effective, limiting claims to the implementation filing could prevent the default service provider from properly availing itself of the force majeure protections set forth in Act 213.

In evaluating a force majeure claim, the Commission should consider, at a minimum, the supply available in the market, the price of available AECs, as well as the efforts made by the EDC or EGS claiming force majeure to procure AECs. In addition, Exelon suggests that force majeure should not be an "all-or-nothing" proposition. Each AEC requirement (Tier I Solar, Tier I Non-Solar, and Tier II) should be evaluated for force majeure independently. The Commission should review the supply and demand of AECs on a Tier-by-Tier basis. The market should be analyzed for each product so that the Commission may determine what credits are reasonably available in resolving force majeure claims. A claim of force majeure made by an EGS should not be considered any differently in this scenario.

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?

Although Exelon recognizes that Act 213 imposes a separate and different Tier I requirement for solar resources, it does not believe that a separate procurement mechanism should be required at this juncture. Solar credits can be acquired by the same means as credits derived from other alternative energy resources. However, should the market for solar fail to develop in a timely fashion, a different and/or separate procurement process may be required or force majeure declared. Exelon believes that a force majeure claim for solar should be permitted independent of other resources and considered by the Commission accordingly. Due to the fact that there is a minimum solar photovoltaic requirement, there will have to be a separate tracking mechanism from the other Tier I resources in order to ensure compliance. Moreover, as with other alternative

energy resources, the cost of solar power should be recoverable on a full and reconcilable 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 Commission could integrate AEPS and default service energy costs through the POLR regulations. More importantly, the Commission must permit costs associated with both default service and alternative energy procurement to be fully reconcilable through a §1307 process. This avoids the confusion and complexity associated with having AEPS-related costs being reconcilable and default service costs not reconcilable even though the statute requires all default service costs to be fully recovered. All eligible costs of AEPS and traditional procurement should be fully recovered by the EDC and potentially blended into the default service provider's Tariff.

To the extent that the AECs and default service energy are separate charges, then the costs of the AECs could be passed through as a surcharge on POLR customers, through an AEPS rider or other similar mechanism. The Commission's final POLR regulations should accommodate an EDC's discretion to propose to the Commission how the cost of the AECs should be passed through to its customers. What is imperative is that EDCs must be able to fully recover all of their AEPS and default service related costs through whatever cost-recovery mechanism they ultimately adopt.

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?**

The concept of "prevailing market price" has been a persistent issue for the Commission in promulgating POLR regulations and continues to be a concern for all

suppliers in their attempt to craft an appropriate procurement strategy. The issue similarly applies to procurement of alternative energy, including but not limited to that derived from coal gasification based generation. Although multi-year contracts may be the choice of some suppliers, they should be neither mandated nor discouraged. If a default service provider chooses to procure alternative energy or credits alone through multi-year contracts and the price is shown to be reasonable based on prevailing market price of the product at the time the contract is negotiated, the Commission should find that the price is consistent with the "prevailing market price" standard and guarantee full cost recovery. Coal gasification based generation should be treated in a like manner and should not be distinguished from other alternative energy supply resources in the Tier.

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?**

The promulgation of final default service regulations are of such high importance to all stakeholders involved that the Commission should not accept the delay suggested by the Independent Regulatory Review Commission. Although PECO's transition period ends in 2010, other state EDCs have rate caps that expire sooner with implementation plans due to be filed as early as 2008. EDCs need to plan and prepare well before the end of their rate cap period to ensure a successful transition. Therefore, it is imperative that the Commission promulgate final regulations so that all suppliers and EDCs can plan accordingly.

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") requires state commissions to begin consideration and make determinations regarding certain issues within specific time frames. 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 they can demonstrate that they implemented or initiated a proceeding to consider a comparable standard. The Pennsylvania Commission through both its POLR Rulemaking proceeding and AEPS dockets has clearly complied with this mandate. The POLR regulations as currently proposed do not have to be altered in order for the Commission to be compliant with the directives of EPAct 2005.

III. Conclusion

Exelon thanks the Commission for the opportunity to file comments on these important issues. Exelon commits to continue to aid the Commission in the implementation of both AEPS and its final POLR regulations.

Respectfully submitted,

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/s/ Adrian D. Newall

Adrian D. Newall, Esq.
Counsel for Exelon Corporation
2301 Market Street, S23-1
Philadelphia, PA 19103
(215) 841-5974
Adrian.Newall@exeloncorp.com