BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of the Alternative Energy Portfolio Standards Act Of 2004: Standards and Processes For Alternative Energy System Qualifications and Alternative Energy Credit Certification	Docket No. M-00051865

Comments of the Electric Power Generation Association

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. Introduction

By tentative order entered January 31, 2006, the Pennsylvania Public Utility Commission ("PUC" or the "Commission") seeks comments on proposed standards and processes for qualifying alternative energy systems ("AESs") and certifying alternative energy credits ("AECs"). The Tentative Order addresses a number of issues including the allocation of agency responsibility regarding AES qualification and AEC certification process, the Department of Environmental Protection's (DEP) role in qualification of AESs, the need for AESs to be in compliance with environmental regulations, the process for approval and review of AES qualification decisions, maintaining AES status, fuel source and geographic requirements for AES qualification, deliverability requirements for AEC certification, and health and safety standards.

The Electric Power Generation Association (EGPA) appreciates the opportunity to submit these comments to the Commission regarding implementation of the Alternative Energy Portfolio Standards (AEPS) Act of 2004 (Act 213). EPGA is a regional trade association of electric generating companies with headquarters in Harrisburg, Pennsylvania. Our member companies include:

Allegheny Energy Supply Co. LLC

Cogentrix Energy

Exelon Generation

FirstEnergy Generation Corporation

Edison Mission Group

Mirant Corporation

PPL Generation, LLC

Reliant Energy

UGI Development Company

These companies own and operate more than 122,000 megawatts (MW) of electric generating capacity in the United States, more than half of which is located in Pennsylvania and surrounding states. These comments represent the views of EPGA as an Association of generating companies, not necessarily the views of any particular member company with respect to any specific issue.

EPGA's position on most issues related to AEPS is driven largely by its overriding interest in insuring that the development of AESs is consistent with the efficient functioning of the wholesale and retail electricity market. The General Assembly, the Commission, EPGA members, and many other stakeholders have gone to great lengths to foster development of competitive wholesale and retail markets, and EPGA feels that the Commission should avoid, as much as possible, implementing Act 213 in ways that insulate suppliers from routine market forces or that provide perverse operating incentives.

In deciding the many issues before it, the Commission should also be guided by the goal of minimizing the potential cost of implementing Act 213. The Tentative Order recognizes that because costs associated with Act 213 are to be recovered from Pennsylvania ratepayers, one could argue that the AEPS legislation should be interpreted in a way that insures the most competitive price for alternative energy EPGA believes that most public policymakers, including the sponsors of Act 213, will agree that we should not implement Act 213 in ways that unnecessarily threaten to raise prices, and that we should strive to minimize the cost of compliance with AEPS as much as practicable.

It is with these guiding principles in mind that EPGA offers the following comments.

II. Comments

Allocation of Agency Responsibility Regarding AES Qualification and Credit Certification Processes

EPGA agrees with the conclusion that Act 213 vests the PUC with the power to promulgate regulations establishing standards and processes for resources qualification and processes and AEC creation.

The Tentative Order further states that the final determinations on resource qualification will be made by the PUC or its program administrator, including geographic eligibility. The administrator will refer the question of whether the resource is consistent with Section 1648.2 definition of AES, as well as an assessment of whether the resource is in compliance with state and federal environmental laws and regulations, to the DEP. EPGA can generally agree with this approach, but only conditionally.

The Tentative Order notes that DEP has released certain technical guidelines on standards for compliance with the AES definition. EPGA is aware of this document and, to its knowledge, it is still a draft which has not been formally circulated for public comment. EPGA submits that if the Commission intends to delegate some of its authority to DEP in this critical area of resource eligibility, the technical guidance document referred to in the Tentative Order should be formally issued for public comment and should be subject to the regulatory review process as part of the Act 213 implementing regulations. Both resource developers and affected load serving entities (LSEs) need greater assurance that Act 213 will be implemented and enforced more consistently and predictably than reliance on a draft guidance document currently affords them.

If the Commission and DEP do not intend to follow this recommended course of action with respect to the guidance document, EPGA respectfully suggests that DEP's role be limited to that of an "expert witness" so that if there is disagreement regarding a particular resource's eligibility, the source would still have the ability to appeal its case to the administrator.

Compliance with Environmental Regulations

EPGA generally agrees with the Tentative Order that compliance with environmental regulations is a condition for the granting of AES status, and that failure to maintain compliance with applicable environmental laws should lead to loss of qualified status for an AES. We further agree that DEP is the appropriate agency to determine whether an AES is in compliance with state and federal environmental regulations. However, the circumstances that would trigger the loss of AES status need to be defined.

EPGA believes that only major environmental compliance violations, defined as a state or federal government initiated enforcement action, should be cause for automatic revocation of AES status. Any disqualification of AECs should be limited to the number of megawatt-hours generated during the period of non-compliance, and should be enforced in such a way that minimizes the impact on the nascent AEC market, and the possibility that it could give rise to the force majeure provisions of Act 213. This issue provides only one example of why the DEP draft guidance document, or a separate resource eligibility order under this docket, should be part of the Act 213 implementing regulations or at least formally opened for public comment. The only guidance afforded by the Act is "that qualified energy sources meet all applicable environmental standards."

Process for Approval and Review of AES Qualification Decisions

EPGA agrees with the process outlined in the Tentative Order for approval, review and appeal of AES qualification decisions. There should be a provision in the rules, however, for an AES that successfully challenges a non-qualification finding to petition for AECs that may have been lost during the period of its challenge.

Maintaining AES Status

With respect to maintaining AES qualification status, EPGA agrees that sources should be required to provide certain information annually to DEP and that failure to provide such information may result in loss of qualifying status. EPGA further agrees that prior to revoking the AES status of a facility, the Commission should provide notice and the opportunity to be heard to the owner/operator. We further suggest that regulatory language be added that specifically provides the owner of an AES a deficiency

warning and an opportunity to correct the deficiency within a certain time frame without loss of AES status or validity of AECs produced.

AES Qualification Standard – Fuel Source and Geographic Requirement

The Tentative Order states that it may be appropriate to incorporate the DEP draft technical guidelines for fuel source requirement into the Commissions Act 213 related rulemakings. As previously stated, EPGA believes the technical guidelines should be formally issued for public comment and should be subject to the regulatory review process as part of the Act 213 implementing regulations. Also, as currently drafted, the technical guidelines include recommendations and requirements that appear to be within the purview of the PUC to determine.

EPGA agrees with the finding in the Tentative Order that all resources within PJM and MISO should be eligible to meet the qualification requirements and to provide AECs in Pennsylvania. In addition, we believe that inclusion of resources from an ISO, such as the NYISO and ISO New England, would not be inconsistent with the objectives of Act 213 or the Tentative Order's stated consideration that the Act should be interpreted in a way that ensures the most competitive price for alternative energy.

EPGA disagrees with the view that resources located outside of PJM should be excluded from eligibility. Also, alternative energy resources from outside a LSE's RTO (or ISO) should not be excluded from eligibility. Such exclusions do not advance the purpose of Act 213, are inconsistent with how competitive electric markets operate, and they undermine the development of seamless regional markets. In addition, as the Tentative Order notes, and in view of the interconnected nature of the regional transmission grid, geographic limitations on resource eligibility could impermissibly restrict interstate commerce and amount to unconstitutional discrimination against out-of-state competitors.

EPGA believes that LSEs in Pennsylvania should be permitted to access alternative energy sources in PJM, MISO, the NYISO or ISO New England, provided they can otherwise demonstrate compliance with Act 213. Indeed, this is one of the attractive features of relying on a centralized AEC system like the PJM Generator Attributes Tracking System (GATS) to track compliance, because it will allow for

tracking of AECs over a broader area, including neighboring regions, and not necessitate development of AES resources where it may not be economically or otherwise feasible or desirable (e.g., because of relatively poor wind conditions, local opposition or siting restrictions).

Early versions of the AEPS legislation contained language restricting the geographic scope of the market to the original footprint of PJM. That language was rejected in favor of the present amended language that does not unnecessarily restrict access to other markets. The Commission must also be mindful that if it restricts access to AES generators in other states and regions those states may, in turn, restrict access to sources in Pennsylvania, limiting export potential from the Commonwealth. Both ISO New England and the NY ISO allow trades of AECs (or RECs) with sources in PJM. And PJM continues with the development of a "joint and common market" with MISO. EPGA sees no compelling reason why Pennsylvania should adopt a more balkanized approach to the development of the market for AECs.

AEC Certification Standard

The Tentative Order notes that some parties have suggested that Act 213 contains an alternative energy "delivery requirement." Also, DEP's draft technical guidance stated that "acquisition of credits or energy attributes alone is not sufficient to qualify as eligible generation" and suggests eligible generation must be actually delivered to retail customers in Pennsylvania.

EPGA cannot agree with the Tentative Order's finding that electricity from a qualified facility must be delivered to a Pennsylvania EDC's distribution system or to a transmission system managed by an RTO that manages a portion of the Pennsylvania transmission system in order to qualify for AECs. Section 3 (e) (4) of Act 213 addresses documentation of compliance and clearly states that "one alternative energy credit shall represent one megawatt hour of qualified alternative electric generation, whether self-generated, purchased along with the electric commodity or separately through a tradeable instrument…" Clearly, generators and LSEs are permitted to trade energy and AECs bundled, or as separate commodities. This language in Act 213 would have no purpose unless the legislative intent was to allow either option to satisfy compliance requirements.

This issue is so vital to minimizing the cost of implementing Act 213 that it warrants extensive discussion.

Pursuant to the Commonwealth's policies to encourage competition and to develop markets with many buyers and sellers, AECs should be allowed to trade in Pennsylvania without requiring the delivery of the associated energy into the state. An efficient and broad-based market for AES resources can develop more quickly if developers have greater freedom to choose sites for their facilities. Broader site opportunities will also surely improve the economic viability of AES technologies and hasten the development of alternative resources.

A requirement that AECs be bundled with energy deliveries from out-of-state resources is also contrary to the development of efficient markets. Such a requirement will make it likely that very few AECs will be acquired from out-of-state resources, due to the added cost of transmission. Also, requiring physical delivery discriminates against external intermittent resources (i.e., wind) due to the unpredictable nature of their electric output which does not lend itself to the physical scheduling necessary for delivery unabated into Pennsylvania. Thus, a deliverability requirement for imports could very well stunt AES development, contrary to the intent of Act 213.

PJM is currently involved in a number of collaborative efforts with neighboring ISOs and RTOs that are intended to reduce or eliminate barriers to the interstate commerce of electricity in the Northeast and Midwest. Such efforts to eliminate the "seams" between control areas are a high priority for all the regions' ISOs and RTOs and for the Federal Energy Regulatory Commission (FERC). EPGA is concerned that the adoption of a strict deliverability requirement would not only hamper existing efforts, but could result in the creation of an entirely new "seam" applicable to importing and exporting intermittent resources. A basic tenet of electric restructuring is that broadly traded, liquid markets produce more efficient resource allocation and pricing. The electricity markets in Pennsylvania have not operated in isolation from those of its neighbors, and neither should a Pennsylvania AEC market.

As the Commission knows, pollution does not recognize state boundaries. AES technologies across the region, indeed the country, can serve to improve the air and water quality for all. The state's policy should be to encourage AES resources both inside and

outside of the state. Pennsylvania could see greater environmental benefits (and lower costs) from the AEPS if there was no market-constricting deliverability requirement. Pennsylvania has often argued that power plants outside of the state need to reduce emissions and invest in state-of-the-art pollution control technologies. To the extent Pennsylvania seeks to improve air quality by influencing out-of-state generation, it should also seek to encourage AES generation by free and open regional trading of AECs without deliverability requirements. While AESs may not sell electricity directly into Pennsylvania, their output, made economic by the revenues they receive from selling their AECs in Pennsylvania, may displace the output from other generators that Pennsylvania and other adjacent states are attempting to clean up.

Allowing the AEC market to function across state boundaries, as a separate commodity market without a deliverability requirement, avoids transmission constraints, widens the potential geographic market, eases compliance for LSEs, and helps ensure that higher quality and potentially lower cost AES resources are utilized.

Health and Safety Standards

EPGA does not believe that the operation of AES resources raises any health and safety issues that are inherently different from non-alternative sources. Therefore, we recommend that any rules governing health and safety should be developed by the Department of Labor and Industry, or other agency of competent jurisdiction, and that such rules be administered and enforced in the same manner as for other electric energy suppliers. EPGA does not believe that facility qualifications should be made contingent on health and safety compliance. Health and safety issues should be addressed directly through the enforcement actions of the appropriate responsible agency and not through the threat of loss of qualifying status under Act 213.

Again, EPGA appreciates the opportunity to comment on these important issues, and its members look forward to working with the Commission to implement Act 213 in an orderly and cost-effective manner.