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March 17, 2006

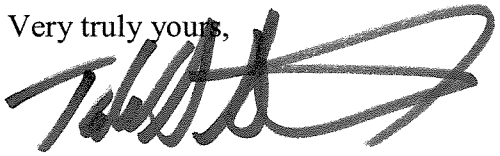
VIA HAND DELIVERY
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

Re: Standards and the Processes for Alternative Energy System Qualification and Alternative Energy Credit Certification; Docket No. M-00051865; **COMMENTS OF RIVER HILL POWER, LLC TO JANUARY 27, 2006 TENTATIVE ORDER**

Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and ten (10) copies of River Hill Power LLC's Comments in the above-captioned matter. As indicated by the attached Certificate of Service, copies of the Comments have been served upon Staff by electronic mail, as requested.

Very truly yours,



Todd S. Stewart
Counsel for River Hill Power, LLC

TSS/kml
Enclosures

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF RIVER HILL POWER, LLC TO JANUARY 27, 2006 TENTATIVE ORDER

River Hill Power, LLC ("River Hill") hereby offers its Comments to the Tentative Order issued by the Pennsylvania Public Utility Commission ("Commission") on January 27, 2006 in the above-captioned matter. The Commission's Order seeks comment on several aspects of its implementation of the Alternative Energy Portfolio Standards Act of 2004 ("AEPSA" or "Act"), 73 P.S. §§ 1648.1-8, and in particular, on standards and processes for qualifying alternative energy systems and certifying alternative energy credits.

As a project developer, River Hill's primary concern is with the specifics of any standards promulgated by the Commission or the Department of Environmental Protection ("Department" or "DEP") as well as the means by which those standards are applied to individual projects. River Hill notes with interest the Tentative Order's acknowledgement that the Department currently has a draft technical guidance document concerning standards on its website. River Hill understands that any such standards must be established through a rulemaking process, but remains concerned that the lack of specific standards at this time may be hampering the efforts of project developers by creating uncertainty as to the viability of specific projects.

River Hill previously presented comments at this docket concerning the definition of waste coal.[1] Those comments urge an interpretation of the AEPSA requirements for qualifying waste coal facilities that would include waste coal generated after July 31, 1982, regardless of where that waste coal is presently deposited and/or stored. River Hill submits that there are several benefits to be gained from such an approach, not the least of which will be to encourage the removal of waste coal, and its attendant hazards, from many more locations throughout the Commonwealth. River Hill would like to take this opportunity to once again suggest adoption of a broad definition of waste coal as discussed in its earlier comments, and to urge the promulgation of specific standards, for each resource type, as expeditiously as possible, so that regulatory uncertainty can be removed and projects can move forward.

In Section C of the Tentative Order, the Commission discusses the role of the DEP in the qualification of alternative energy systems. River Hill suggests that any process must provide for a known and well-ordered approval path, must be transparent and must reach a single, final determination in a predictable timeframe. That is, any process must have a defined track, specific time frames for approval from all involved agencies, and a single, final arbiter and decision. Otherwise, the process would increase the regulatory risks associated with the implementation of any project and would lessen the likelihood of any project producing or utilizing alternative energy being built.

River Hill believes that any standards adopted must be as flexible as possible within the confines of the AEPSA, and should include at the broadest criteria permissible. Moreover, where the Act allows for regulations to expand statutory definitions, the process for establishing the standards in the first instance should consider all relevant arguments for broadening the application of the statute in keeping with its spirit. The goal should be inclusion, not exclusion.

[1] A copy of the previously submitted comments is attached hereto.

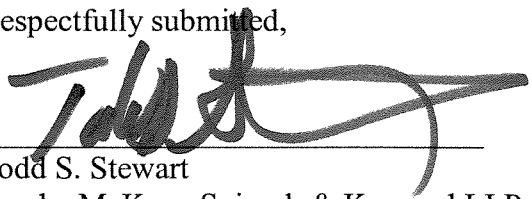
River Hill does not have a specific opinion as to whether it would be better for the Commission to perform the entire determinative process or to pass the determination of qualification with statutory requirements for any particular project to the DEP. However, River Hill is concerned that any such process must make clear that there is only one final arbiter and one entity from which any appeal that may be necessary would be taken. Particularly troubling in this regard is the last sentence in Paragraph 1 of Section C of the Tentative Order: "The program administrator would be bound by DEP's Findings of Fact or law on a particular application in its initial determination." (Tentative Order at 10). The concern is the uncertainty that would ensue if the DEP determines conclusively that particular aspects of proposed projects qualify or do not qualify under the statutory standards. It appears that the statute confers the ultimate determination of qualification to the Commission. Accordingly, it is unclear whether any DEP determination would be a final and appealable order. If not, would the Commission then be required to adopt the DEP determination and even defend it on appeal, or would the Commission be able to depart from such a determination if it wished to do so? From the perspective of a project developer such questions create regulatory uncertainty and may well serve to defeat the purposes of the AEPSA to increase the production of electricity from alternative and renewable resources. For example, if a project developer desires to employ a new technology or a new approach to generating electricity and it was uncertain whether such a project would be approved, an uncertain approval process may increase the risk to a level where such necessities as financial backing may be unattainable. In such a case, the economic reality is that the project would not be built, to the detriment of the developer and the Commonwealth, even if it may have passed muster eventually.

In light of the detrimental effects of such uncertainty, it may be more effective simply to allow or require the DEP to present evidence of compliance with qualification standards as part of the ultimate determination process before the Program Administrator and/or the Commission.

River Hill does concede, however, that the statute is ambiguous in one manner that should be addressed as part of any standards that are promulgated. The AEPSA provides for alternative standards to be employed in deciding whether certain facilities qualify for approval, but at the same time, the AEPSA is silent as to which agency would be responsible for promulgating such standards. Since the Commission ultimately is charged with responsibility of determining if facilities qualify under the AEPSA, it may be difficult for the Commission to enforce and apply regulations promulgated by a sister agency. Similarly, it is difficult to envision two sets of qualification standards, one DEP, one Commission as being the most efficient process. River Hill urges the Commission to retain the ultimate decision making role so as to avoid the possibility of projects having to face the possibility of multiple appeals from multiple decisions on project qualification.

In short, River Hill's goal is regulatory certainty and qualification standards that are as inclusive as the AEPSA allows. Only then can the goals of the AEPSA to generate a significant portion of Pennsylvania's electricity from alternative and renewable resources be realized.

Respectfully submitted,



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DATED: March 17, 2006

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PUBLIC UTILITY COMMISSION

In the Matter Of	:	
Implementation of the Alternative	:	Docket No. M-00051865
Energy Portfolio Standards Act of 2004	:	

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.