BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Comments Of
Citizens for Pennsylvania's Future
(PennFuture)

Regarding

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

Submitted by:
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PennFuture appreciates the opportunity to present comments on the Tentative Order for Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards and Processes for Alternative Energy System Qualification and Alternative Energy Credit Certification; Docket Number M-00051865.

PennFuture has been working for over 3 years to pass a state law that set portfolio standards for renewable and alternative electricity generation technologies. We provided testimony to the Pennsylvania Senate and House of Representatives as they worked to craft legislation. We have had numerous conversations about this topic with the Governor and his representatives as well as many Republican and Democrat members of the General Assembly. PennFuture enjoyed a close working relationship with key members of the General Assembly such as Senator Erickson, Senator White, Senator Musto, Representative Adolph, Representative Ross, and Representative Veon as they played decisive roles in writing and passing Act 213.

PennFuture has also been involved in the implementation of Act 213, assuring the Commission's rulemaking process reflects the legislative intent of the Act and is favorable to the clean energy industry. We helped shape the Energy-Efficiency and Demand Side Management rules for Act 213; provided comments to the net metering and interconnection working groups; and submitted comments to the Commission on: Docket No. M-00051865 - Implementation of the Alternative Energy Portfolio Standards Act of 2004.

While heavily involved in the regulatory and policy aspects of Act 213, PennFuture also has an imprint in the private clean energy sector. We are helping to create solar projects to jumpstart the solar Renewable Energy Credit market, demonstrate the enterprise model that will enable further solar availability, and provide a highly visible Pennsylvania retailer with clean solar energy that will be of strong media and consumer interest. We also work collaboratively with the wind industry, commonwealth agencies and various stakeholders on such key issues as local ordinances, tax policy and wildlife interaction with wind projects.

As a result of our work in policy, regulation and markets, PennFuture understands what policy makers intended Act 213 to accomplish and what the clean energy industry needs to help fulfill the goals of the Act.

Introduction:

The Alternative Energy Portfolio Standards Act of 2004 (AEPS) passed with large bi-partisan majorities in the House and Senate and with the vigorous support of Governor Rendell. Both the General Assembly and the Governor passed AEPS to boost jobs and economic development in Pennsylvania, increase investment for alternative energy technologies in Pennsylvania, improve the environment of Pennsylvania, reduce pollution that causes sickness and death in Pennsylvania, diversify the fuels used to make electricity in Pennsylvania, and build more generation that will increase reliability of the electric system in Pennsylvania. Both the Department of Environmental Protection (DEP) and the Public Utility Commission (PUC) have been given the critical task of implementing this vital piece of legislation and insuring that AEPS delivers the maximum benefit to Pennsylvania and its people.

Section F2, the Geographic Requirement for Qualification:

PennFuture appreciates the work of both the DEP and the PUC to implement the AEPS, but Section F2 (Geographic Requirement Qualification) of the Tentative Order creates concern, even alarm. After discussing two possible interpretations of the geographic qualification language of the AEPS, the Tentative Order offers from page 18 to 20 three reasons why the AEPS should be interpreted to allow alternative energy projects located anywhere in the Midwest Independent System Operator (MISO) to qualify for AEPS compliance for every electric distribution company or electric generation supplier located anywhere in Pennsylvania. Under this interpretation of AEPS, alternative energy projects in Manitoba, Canada, North Dakota, South Dakota or anywhere else in the enormous and distant MISO could qualify for revenues paid by Pennsylvania ratepayers through the AEPS cost recovery provisions.

Under the interpretation of the AEPS that would permit projects located anywhere in MISO to meet the requirements of companies located in PJM, ratepayers would pay for alternative energy projects in Manitoba, North Dakota or Michigan, to name just three places, but would get little or no benefit from such projects. Projects so distant to Pennsylvania would not reduce meaningfully, if at all, pollution in Pennsylvania. Projects so distant from Pennsylvania would not protect meaningfully, if at all, the public health of Pennsylvania. Projects so distant from Pennsylvania would not produce any jobs or investment in Pennsylvania. And since the Penn Power service territory is the only portion of Pennsylvania that is located in MISO, projects in the distant parts of MISO may not even produce any electricity that reaches Pennsylvania and serves customers here.

The interpretation of the AEPS that would allow projects located anywhere in MISO to meet the AEPS compliance requirements of companies located in PJM would destroy the AEPS and effectively repeal it. Not surprisingly, the General Assembly and the Governor never intended that the AEPS be interpreted in the manner discussed from pages 17 to 20 of the Tentative Order.

Senator Erickson, Representative Adolph, and Representative Ross, the three legislative leaders of the AEPS, sent a letter to the Public Utility Commission, dated March 1, 2006, that says the General Assembly and they intended that projects located anywhere in MISO be allowed to serve only the portion of Pennsylvania within MISO or the Penn Power service territory (the letter is attached to these comments). The letter stated that only projects located anywhere in PJM should be allowed to meet the AEPS compliance requirements of electric distribution companies or electric generation suppliers that are delivering electricity to retail customers located within PJM.

The PUC did not have the benefit of the March 1, 2006 letter from Senator Erickson, Representative Adolph and Representative Ross prior to issuing the Tentative Order. The letter and the information in it alone provide a compelling reason to interpret the AEPS so that projects located in MISO can meet the compliance requirements of only those portions of Pennsylvania located in MISO and so that projects located within PJM can meet the compliance requirements of only those projects located in PJM.

By authorizing alternative energy projects located only within PJM to meet the compliance requirements of electric distribution companies and electric generation suppliers serving retail load in PJM, the General Assembly struck a careful balance, seeking to insure real benefits to Pennsylvania and the PJM regional power pool of which most of Pennsylvania has been a part of for more than 7 decades. Multiple reasons exist why the PJM-to-PJM and MISO-to-MISO rule makes regulatory, legal, economic, environmental sense, as well as common sense.

First, the AEPS by defining geographic qualification requirements in terms of PJM-to-PJM and MISO-to-MISO followed the physical infrastructure of the regional transmission organizations to insure that power actually fed into the pool could be physically delivered to the Pennsylvania portions of those power pools. No ratepayer should pay for any electricity if there is reasonable doubt whether that electricity is consistently deliverable to his service territory and regional transmission organization that insures reliability of his service. The PJM-to-PJM and MISO-to-MISO interpretation does insure that electricity will be deliverable. But an interpretation that would allow projects in MISO that extends thousands of miles from eastern Pennsylvania to qualify for AEPS credits and ratepayer cost recovery would not adequately insure that electricity was deliverable.

Second, the PJM-to-PJM rule and MISO-to-MISO rule insures that the reliability of PJM and MISO would improve, as the Pennsylvania AEPS creates new electric generation to serve Pennsylvania and the regional power pools.

Third, verifying whether projects are producing electric energy that meet the requirements of the AEPS and administering the AEPS will be difficult tasks. But they would become impossible tasks if projects anywhere in MISO could qualify to meet the requirements of electric distribution companies anywhere in Pennsylvania. Only PJM has the Generation Attributes Tracking System or GATS. MISO does not have an equivalent system.

Fourth, the Pennsylvania AEPS by adopting PJM-to-PJM and MISO-to-MISO rule creates the largest geographic market for alternative energy projects in the country. This interpretation or rule promotes interstate commerce and follows the geographic boundaries of the regional transmission organizations and the physical infrastructure. Indeed, most states that enacted AEPS legislation have smaller, much more limited geographic markets. None of these far more restrictive geographic definitions have even been challenged in the courts and certainly have not been struck down as violations of interstate commerce. Furthermore, under the PJM-to-PJM rule, if PJM grows again, the geographic size of the market would grow again, proving once more how interstate commerce is promoted by what the General Assembly intended.

Conclusion:

Legislative Intent:

Section A of the Tentative Order calls to attention that in statutory construction the legislative intent is of particular importance and shall control. But, the Tentative Order indicates an absence of policy direction as to that legislative intent.

The primary sponsors of the legislation that became Act 213 were quite surprised by the interpretations of the Tentative Order, found them to be at odds with the legislative intent, and have supplied a statement so indicating to the PUC. The sponsors statement clearly directs that the correct interpretation of the geographical issue is that facilities may only be qualified for compliance purposes in the RTO service territories that they are physically located in, the so called "MISO-to-MISO and PJM-to-PJM" model. A copy of their letter to the PUC is attached.

PennFuture was actively involved in that process. We completely concur with the letter signed by Senators Erickson, Representative Adolph, and Representative Ross.

Commerce Clause:

The Tentative Order mistakenly states that the MISO-to-MISO and PJM-to-PJM model is "somewhat suspect under the "Commerce Clause" of the U.S. Constitution". In fact, this model promotes interstate commerce by establishing the largest alternative energy market in the country, one that is much larger than any created by the 18 states and the District of Columbia that have passed alternative energy portfolio requirements. For example Nevada requires eligible resources to be located in Nevada or have a dedicated transmission line to an in-state utility. None of these more restrictive state laws have even been challenged, let alone struck down as unconstitutional.

The commerce for wholesale electricity is highly organized and controlled within the respective RTO serving a given electric distribution company or electric generation supplier. No qualifying generator within the relevant RTO serving that electric distribution company or electric generation supplier would be banned. This is the geographical region for application of commerce clause compliance.

At some point, a national renewable portfolio standard will emerge to normalize all state practices. Until such national legislation is enacted, commerce issues should be applied within the RTO.

The proposed MISO to MISO/PJM to PJM model does not violate the Commerce Clause.

The Competition Act:

As indicated, in passing the Competition Act, "the General Assembly concluded that Pennsylvania's economy and its retail customers would receive economic and financial benefits over the long term from the efficiencies of competitive wholesale markets." The PUC, however, should not compare the market for generic wholesale electricity that is established by national law to the state and regional markets for alternative energy. The Tentative Order makes a mistake when it says that the principle of larger wholesale energy markets should be applied to interpret the meaning of Act 213 and the intentions of the General Assembly.

Unlike the sale of wholesale electricity where reciprocal trading between states is required by federal statutory law, the PUC should remember that no such federal law exists for alternative

energy. Most states have not passed renewable portfolio standards and that is especially true of those states located in MISO. Even if transmission exists, and it may not, to move electricity from anywhere in Pennsylvania to anywhere in MISO at anytime, Pennsylvania alternative energy projects have no ability to sell credits to North Dakota, Michigan, Manitoba, Ohio or most of the MISO because those states have yet to pass renewable portfolio standards.

In contrast to Pennsylvania's ability to reach all parts of MISO, energy anywhere in PJM can be moved to Pennsylvania, and Pennsylvania projects can sell electricity throughout PJM. While not all states within PJM have renewable portfolio standards, New Jersey, Maryland, Delaware, Washington D.C. and others within PJM do have alternative energy requirements.

The AEPS and Competition Act are separate laws. The AEPS was passed after the Competition Act and it stands as independent law. There, however, is no conflict between the two laws so long as the PUC adopts the PJM-to-PJM and MISO-to-MISO rule.

For the vast majority of Pennsylvania consumers, competition is well satisfied in both wholesale and AEPS Credits markets by PJM which now includes all of Maryland, Delaware, New Jersey, Virginia, West Virginia, D.C.; essentially all of Pennsylvania; and large portions of Ohio, North Carolina, Illinois, and Indiana. The same applies to the 3% of Pennsylvania ratepayers in the Penn Power territory served by MISO.

Applicability to NYISO:

All of the comments made above apply to why alternative energy generators within NYISO do not qualify.

Additionally, although the Pike Country Power & Light Company ("Pike") is owned by Orange & Rockland Utilities, a New York electric distribution company that is a member of NYISO, NYISO staff has advised the PUC that NYISO does not manage Pike's transmission system, and because NYISO is not an RTO as required by the Act, therefore alternative energy generators within NYISO do not qualify.

Thank you for the opportunity to comment. For the reasons stated, PennFuture believes that the correct interpretation of the geographical issue is that facilities may only be qualified for compliance purposes in the RTO service territories that they are physically located in, the so called "MISO-to-MISO and PJM-to-PJM" model. Alternative energy generators within NYISO do not qualify. As discussed herein, this matter is conclusive and should not be reopened.

Attachment

March 1, 2006 letter from Senator Erickson, Representative Adolph, and Representative Ross, the three legislative leaders of the AEPS, to the Public Utility Commission