



Pennsylvania Department of Environmental Protection

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October 11, 2007

Office of Energy and  
Technology Deployment

717-783-0540

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Commonwealth of Pennsylvania  
Secretary's Bureau  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Re: Docket No. L-00060180	Implementation of the Alternative Energy Portfolio Standards Act of 2004
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Dear Secretary McNulty:

Enclosed please find fifteen (15) copies of the Department of Environmental Protection's comments on the Implementation of the Alternative Energy Portfolio Standards Act of 2004.

Respectfully Submitted,

Daniel Griffiths  
Director  
Bureau of Energy, Innovations, and  
Technology Deployment

Enclosures

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMENTS OF THE PENNSYLVANIA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Implementation of the Alternative  
Energy Portfolio Standards Act of 2004

Docket No. L-00060180

The Pennsylvania Department of Environmental Protection thanks the Commission for the opportunity to provide comments on the Tentative Order of January 27, 2006, Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards and Processes for Alternative Energy Systems Qualification and Alternative Energy Credit Certification; Doc. No. L-00060180.

While Act 35 of 2007 amended several provisions of the Alternative Energy Portfolio Standards Act (AEPS), only a few of the amendments affect the proposed subchapter D regulations. The Department will limit its comments to the amendments impacting the proposed regulations and will address issues pertaining to net metering at a later date as directed in the Commission's October 4, 2007 Secretarial Letter.

**52 Pa. Code § 75.51 EDC and EGS obligations**

Act 35 amends the solar photovoltaic percentage requirements and specifies that this requirement applies to all retail sales of electricity as opposed to a percentage of Tier I sales as currently stated in 52 Pa. Code § 75.51(b)(1)-(15). The subsection should be amended as follows:

- (1) For June 1, 2006, through May 31, 2007: The Tier I requirement is 1.5% of all retail sales, the solar photovoltaic requirement is .0013% of [Tier I] all retail sales, and the Tier II requirement is 4.2% of all retail sales.

(2) For June 1, 2007, through May 31, 2008: The Tier I requirement is 1.5% of all retail sales, the solar photovoltaic requirement is [.0013%] .0030% of [Tier I] all retail sales, and the Tier II requirement is 4.2% of all retail sales.

(3) For June 1, 2008, through May 31, 2009: The Tier I requirement is 2% of all retail sales, the solar photovoltaic requirement is [.0013%] .0063% of [Tier I] all retail sales, and the Tier II requirement is 4.2% of all retail sales.

(4) For June 1, 2009, through May 31, 2010: The Tier I requirement is 2.5% of all retail sales, the solar photovoltaic requirement is [.0013%] .0120% of [Tier I] all retail sales, and the Tier II requirement is 4.2% of all retail sales.

(5) For June 1, 2010, through May 31, 2011: The Tier I requirement is 3% of all retail sales, the solar photovoltaic requirement is .0203% of [Tier I] all retail sales, and the Tier II requirement is 6.2% of all retail sales.

(6) For June 1, 2011, through May 31, 2012: The Tier I requirement is 3.5% of all retail sales, the solar photovoltaic requirement is [.0203%] .0325% of [Tier I] all retail sales, and the Tier II requirement is 6.2% of all retail sales.

(7) For June 1, 2012, through May 31, 2013: The Tier I requirement is 4% of all retail sales, the solar photovoltaic requirement is [.0203%] .051% of [Tier I] all retail sales, and the Tier II requirement is 6.2% of all retail sales.

(8) For June 1, 2013, through May 31, 2014: The Tier I requirement is 4.5% of all retail sales, the solar photovoltaic requirement is [.0203%] .0840% of [Tier I] all retail sales, and the Tier II requirement is 6.2% of all retail sales.

(9) For June 1, 2014, through May 31, 2015: The Tier I requirement is 5% of all retail sales, the solar photovoltaic requirement is [.0203%] .144% of [Tier I] all retail sales, and the Tier II requirement is 6.2% of all retail sales.

(10) For June 1, 2015, through May 31, 2016: The Tier I requirement is 5.5% of all retail sales, the solar photovoltaic requirement is .25% of [Tier I] all retail sales, and the Tier II requirement is 8.2% of all retail sales.

(11) For June 1, 2016, through May 31, 2017: The Tier I requirement is 6% of all retail sales, the solar photovoltaic requirement is [.25%] .2933% of [Tier I] all retail sales, and the Tier II requirement is 8.2% of all retail sales.

(12) For June 1, 2017, through May 31, 2018: The Tier I requirement is 6.5% of all retail sales, the solar photovoltaic requirement is [.25%] .34% of [Tier I] all retail sales, and the Tier II requirement is 8.2% of all retail sales.

(13) For June 1, 2018, through May 31, 2019: The Tier I requirement is 7% of all retail sales, the solar photovoltaic requirement is [.25%] .39% of [Tier I] all retail sales, and the Tier II requirement is 8.2% of all retail sales.

(14) For June 1, 2019, through May 31, 2020: The Tier I requirement is 7.5% of all retail sales, the solar photovoltaic requirement is [.25%] .4433% of [Tier I] all retail sales, and the Tier II requirement is 8.2% of all retail sales.

(15) For June 1, 2020, through May 31, 2021, and each successive twelve month period thereafter: The Tier I requirement is 8% of all retail sales, the solar photovoltaic requirement is .5% of [Tier I] all retail sales, and the Tier II requirement is 10% of all retail sales.

## **52 Pa. Code § 75.54 Alternative energy credit certification**

Act 35 amended Section 4 of AEPS to prohibit EDCs or EGSs from using alternative energy credits that have been voluntarily sold to consumers for AEPS compliance purposes unless the consumer sells the credit to the EDC or EGS. This in essence prevents an alternative energy source from selling the same credit twice. The Department recommends that the statutory language be incorporated into the Commission's proposed regulations as follows:

§75.54(c) An alternative energy credit may not be certified for a MWh of electricity generation or electricity conservation if:

- (i) that credit has already been used to satisfy another state's renewable energy portfolio standard, alternative energy portfolio standard, or other comparable standard or;

- (ii) that credit has already been purchased by an individual, business, or government body that does not have a compliance obligation under the Act unless the individual, business, or government body sells the credit to the EDC or EGS.

**52 Pa. Code § 75.56 Alternative compliance payments**

Act 35 amended Section 3(f)(4) of AEPS to require the Commission to factor the effect that rebates for solar photovoltaic systems have on the average market value of the solar credits. Any subsidy for solar PV systems will tend to reduce the cost of installing PV and this means that the cost of producing those credits will be lower. As such, the “average market value” that forms the basis for the solar alternative compliance payment should be increased to reflect the unsubsidized cost of solar credits. The Department recommends that § 75.56 be revised as follows:

§ 75.56(a)(1) For non-compliance with the solar photovoltaic requirements identified at § 75.51, an EDC and EGS shall make an alternative compliance payment equal to the number of additional alternative credits necessary for compliance times 200% the average market value for solar photovoltaic alternative energy credits sold during the reporting period in the RTO control area where the non-compliance occurred. The average market value for solar photovoltaic alternative energy credits shall be increased by the amount the value of the credit has been reduced, if at all, by rebates received by sellers of solar renewable energy credits in other jurisdictions in the PJM Interconnection L.L.C transmission organization.

**52 Pa. Code § 75.57 General force majeure.**

Act 35 made significant changes to the definition of force majeure in Section 2 of AEPS. These amendments require the Commission to evaluate the availability of credits throughout PJM and the efforts EDCs and EGSs make to acquire alternative energy credits prior to declaring force majeure. If an EDC or EGS has not made a good faith effort to proactively acquire credits and stimulate the market for alternative energy sources, the EDC or EGS must make alternative compliance payments pursuant to 52 Pa. Code § 75.56.

Significantly, one of these affirmative steps is procuring alternative energy or alternative energy credits through long-term contracts.<sup>1</sup> Although § 69.1806 of the Commission's final default service policy statement states that the Commission's default service regulations neither prohibit nor mandate the use of long-term contracts to satisfy the alternative energy portfolio standards obligation and § 69.1805 provides that long-term contracts should primarily be used to meet the requirements of AEPS, that same section provides that subsequent programs should employ increasing use of shorter duration full requirements contracts and spot market purchases.

Including long-term contracts among the required good faith efforts EDCs and EGSs need to take to acquire alternative energy credits gives clear legislative direction that these contracts are to not just be tolerated on a limited basis, but should be encouraged. The Department recommends that the Commission revise Sections 69.1805 and 69.1806 of its default service policy statement to *promote* the use of long-term

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<sup>1</sup> The significant statement in the definition is, "Such good faith efforts shall include, but are not limited to, banking alternative energy credits during their transition periods, seeking alternative energy credits through competitive solicitations and **seeking to procure alternative energy credits or alternative energy through long-term contracts.**" (emphasis added)

contracts for AEPS compliance purposes. In addition, the Department believes that the term "long-term contract" should be defined as a contract up to 20 years in length. This definition does not require contracts for a 20 year term but provides clear guidance that contract lengths are appropriate if the longer term allows alternative energy sources to be developed.

Relevant to the General Force Majeure regulations, the Department believes that Act 35 limits the Commission's ability to declare a general force majeure because the Commission must necessarily consider the good faith efforts of *all* EDCs and EGSs prior to making a declaration. If some EDCs fail to make good faith efforts to achieve compliance consistent with this section, the entire market may be short. This will affect the market by reducing the availability and increasing the price of credits. Thus, the Commission should encourage EDCs to actually purchase or otherwise reserve credits so that their good faith efforts directly link to compliance. In this way, an EDC that fails to aggressively work toward compliance will affect its own compliance and costs and not the efforts of companies that behave appropriately. Further, if an EDC has not made the requisite good faith effort, and petitions for special force majeure, the Commission would be authorized to require solicitations for alternative energy credits as part of a special force majeure declaration under section 75.58.

As part of its consideration, the Commission should go beyond reliance on verified statements from an EDC or EGS stating that a good faith effort has been made. Instead, the Commission should conduct an independent review of the proactive efforts taken. As such, the only time a general force majeure declaration for non-solar credits would be appropriate without an in depth analysis of the EDCs and EGSs good faith

efforts is when the price of the non-solar credit exceeds \$45 in the 6 month period ending 30 days prior to the beginning of a reporting period. The Department offers the following suggested revisions.

**§ 75.37. General force majeure.**

(a) At least 30 days prior to the beginning of a reporting period, the Commission will issue an order declaring whether force majeure exists for that reporting period. The order shall include separate force majeure determinations for the Tier I alternative energy source, Tier II alternative energy source, and solar photovoltaic requirements of § 75.51.

(b) The Commission may find that force majeure exists if there are insufficient alternative energy credits to satisfy the aggregate Tier I alternative energy source, Tier II alternative energy source, and solar photovoltaic obligation for all EDCs and EGSs pursuant to § 75.51 for that reporting period. In making a force majeure determination pursuant to this subsection, the Commission shall consider the following:

(1) The availability of alternative energy credits in the generation attributes tracking system (GATS) or its successor;

(2) The availability of alternative energy credits generally in Pennsylvania and other jurisdictions in the PJM Interconnection, L.L.C. regional transmission organization or its successor;

(3) Whether all EDCs and EGSs have made a good faith effort to procure alternative energy credits. Such good faith efforts shall include but are not limited to, banking credits during the applicable transition period, seeking credits through competitive solicitations and seeking to procure credits or alternative energy through

long-term contracts of up to 20 years. If the Commission determines that all EDCs and EGSs have not made a good faith effort to procure alternative energy credits, the Commission shall not issue an order declaring force majeure pursuant to this section.

(c) Notwithstanding subsection (b),[T]the Commission may find that force majeure exists for the non-solar photovoltaic requirement of § 75.51 if the average price for a non-solar photovoltaic alternative energy credit purchased by a Pennsylvania EDC and EGS exceeds \$45 in the 6 month period ending 30 days prior to the issuance of the order referenced in § 75.37(a).

(d) If the Commission determines that force majeure exists for a reporting period for, EDCs and EGSs shall have the option of making alternative compliance payments in lieu of compliance with § 75.51 for that reporting period.

(1) This payment shall equal \$ 45 for each alternative energy credit needed to satisfy the Tier I and Tier II requirements of § 75.51.

(2) For the solar photovoltaic requirement, EDCs and EGSs shall have the option of making an alternative compliance payment equal to the market value of solar photovoltaic credits in the applicable RTO service territory, or the Commission may choose to reduce the required level of solar photovoltaic compliance for that reporting period.

(3) A payment shall be accompanied by a statement filed with the Commission and verified by oath of affirmation, consistent with § 1.36 (relating to verification), that the EDC or EGS [has made a good faith effort to comply with the requirements of this chapter, that they are] is unable to acquire a sufficient quantity of alternative energy

credits to meet their obligations under § 75.51, and that an alternative compliance payment is the least cost method of compliance.

(4) The option to make an alternative compliance payment in lieu of compliance with § 75.51 may not be available to EDCs and EGSs that have already acquired sufficient alternative energy credits for compliance with the requirements of that reporting period.

(e) Alternative compliance payments made by EDCs pursuant to § 75.37(d) shall be deemed a cost of compliance with this chapter and may be recovered pursuant to § 75.59.

(f) EDCs and EGSs shall provide the Commission all information necessary for it to render a force majeure determination. This information shall include a detailed description of the good faith efforts the EDG or EGS took to acquire sufficient alternative energy or alternative energy credits to comply with the Act.

**52 Pa. Code § 75.58 Special force majeure.**

(a) Within 45 days of the conclusion of a reporting period for which the Commission did not find force majeure to exist for the Tier I alternative energy source, Tier II alternative energy source, and solar photovoltaic requirements of § 75.51, an EDC or EGS not in compliance with § 75.51 may petition the Commission for a force majeure determination.

(b) The Commission will provide public notice of all requests for a force majeure determination during the true-up period.

(c) The Commission may find that force majeure exists when there are insufficient alternative energy credits to satisfy the Tier I alternative energy source, Tier II alternative energy source, and solar photovoltaic obligations for all EDCs and EGSs requesting force majeure determinations under this section. In making a force majeure determination pursuant to this subsection, the Commission shall consider the following:

(1) The availability of alternative energy credits in the generation attributes tracking system (GATS) or its successor;

(2) The availability of alternative energy credits generally in Pennsylvania and other jurisdictions in the PJM Interconnection, L.L.C. regional transmission organization or its successor;

(3) Whether the EDC or EGS has made a good faith effort to procure alternative energy credits. Such good faith efforts shall, include but are not limited to, banking credits during the applicable transition period, seeking credits through competitive solicitations and seeking to procure credits or alternative energy through long-term contracts of up to 20 years. If the Commission determines that the EDC or EGS has not made a good faith effort to procure alternative energy credits, the Commission may require the EDC or EGS to solicit alternative energy credits as part of default service or deny the force majeure request.

(d) The Commission may find that force majeure exists for the non-solar photovoltaic requirement of § 75.51 when the average price for a non-solar photovoltaic alternative energy credit purchased by a Pennsylvania EDC and EGS exceeds \$45 for the just concluded reporting period in § 75.57(a).

(e) If the Commission determines that force majeure exists for the true-up period, an EDC or EGS requesting a force majeure determination shall have the option of making alternative compliance payments in lieu of compliance with § 75.51 for the just concluded reporting period, consistent with the standard identified in § 75.57. Payments shall be accompanied by a statement filed with the Commission and verified by oath of affirmation, consistent with § 1.36 (relating to verification), that the following apply

[~~(i)~~ The EDC or EGS has made a good faith effort to comply with the requirements of this chapter.]

~~[(ii)]~~ (i) The EDC or EGS is unable to acquire a sufficient quantity of alternative energy credits to meet their obligations under § 75.51.

~~[(iii)]~~ (ii) An alternative compliance payment is the least cost method of compliance.

(f) Alternative compliance payments made by EDCs under subsection (e) shall be deemed a cost of compliance with this chapter and may be recovered under § 75.59 (relating to alternative energy cost recovery).

(g) EDCs and EGSs shall provide the Commission all information necessary for it to render a special force majeure determination.

The Department thanks the Commission for the opportunity to provide these comments and looks forward to working with the Commission and the other stakeholders to continue the successful implementation of the AEPS.