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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Comments Of
Citizens for Pennsylvania's Future
(PennFuture)**

Regarding

**Implementation of the Alternative Energy Portfolio Standards Act of 2004
Docket No. L-00060180**

Submitted by:
Citizens for Pennsylvania's Future
October, 11, 2007

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Introduction:

PennFuture is a statewide public interest membership organization, working to enhance Pennsylvania's environment and economy, with offices in Harrisburg, West Chester, Philadelphia and Pittsburgh. We appreciate the opportunity to provide comments on the incorporation of Act 35 into the Implementation of the Alternative Energy Portfolio Standards Act of 2004, Docket No. L-00060180 in accordance with the Secretarial Letter issued on September 13, 2007.

PennFuture has been involved in all aspects of the implementation of Alternative Energy Portfolio Standards Act of 2004 (Act 213), assisting the Commission's rulemaking process so that it reflects the legislative intent of the Act. 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 all past Act 213 rulemakings including: Implementation of the Alternative Energy Portfolio Standards Act of 2004; Interconnection Standards for Customer-generators; Net Metering; and Standards and Processes for Alternative Energy System Qualification and Alternative Energy Credit Certification.

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.

On July 19, 2007, Governor Rendell signed Act 35 of 2007 into law, amending several important provisions within Act 213.

- Language clarifying that the solar photovoltaic requirement is defined as a percentage of an EDC or EGS's overall retail sales, assuring that 858 megawatts of solar is developed over the next 15 years, providing enough energy to power 200,000 homes.
- Criteria that an electric distribution company (EDC) or electric generation supplier EGS must meet in order to receive a determination of force majeure, and requiring that in the event a determination is made, the Commission may require them to make up the difference in future years.
- Language clarifying that ownership of Alternative Energy Credits (AECs) will remain with the customer-generator, unless a contract is in place stating otherwise.
- Voluntary market protection through clarifying language that declares that AECs already purchase by individuals, businesses, or government bodies cannot be used by EDCs or EGSs for compliance with Act 213.
- Clarification of geographic scope. Act 35 amends previous language to make it clear that alternative energy generation located only within PJM would qualify to meet Pennsylvania's Act 213 requirements of EDCs or EGSs serving retail load within PJM, and alternative energy generation located within the Midwest Independent

System Operator (MISO) is allowed to meet the Act 213 requirements of only those EDCs or EGSs that were serving retail load that was located within the Pennsylvania portion of the MISO.

The language contained within Act 35 will help assure that the full alternative energy development potential of Act 213 is realized. Yet, how the Commission incorporates the amendments into the Act 213 Final Rulemaking will set the foundation for how the alternative energy market develops in Pennsylvania over the next 15 years.

Due to the importance of the Final Rulemaking, PennFuture provides draft regulatory language below, detailing how the Commission can incorporate the provisions of Act 35 in its Proposed Rulemaking, Docket L-00060180 - Implementation of the Alternative Energy Portfolio Standards Act of 2004 (Act 213) entered in the Pennsylvania Bulletin on October 14, 2006.

I. Force Majeure:

The definition of force majeure is critical to the successful implementation of Act 213. If an electric distribution company (EDC) or an electric generation supplier (EGS) cannot meet its Act 213 requirements and is easily handed a ruling of force majeure, there will be no teeth behind the requirements of the Act, and Pennsylvania will not meet its full alternative energy potential.

The language contained on pages 20 and 21 of Act 35 helps to strengthen the definition of force majeure. While all of the language by law must be incorporated into the Commission's Final Rulemaking, PennFuture urges the Commission to take into account the following recommendations.

Good Faith Efforts:

The language within Act 35 requires the Commission to take into account a set of "good faith efforts" made by EDCs and EGSs to comply with the Act in making any determination of force majeure. The legislation states that "such efforts shall include, but are not limited to" banking of Alternative Energy Credits (AECs) during and EDC's or EDC's transition periods; seeking alternative energy credits through competitive solicitations; and procuring alternative energy credits or alternative energy through long-term contracts. The Commission is also directed to take into account the availability of AECs in the Generation Attributes Tracking System (GATS), in Pennsylvania and the greater PJM market. The Commission is also given the authority to require an EDC or EGS to include solicitations for AECs in their default service before requests of force majeure can be made.

The phrasing, "not limited to...", directs the Commission to develop a comprehensive list of effective criteria that EDCs and EGSs would need to meet in order to demonstrate they have actively participated in making the alternative energy market. Only in extraordinary situations that are beyond the control of those who must comply with the Act, and only after those who must comply with the Act have shown that the Act could not be complied with, should the Commission consider a force majeure claim. PennFuture strongly urges the Commission to incorporate the criteria included in the sample language below.

General Force Majeure and Special Force Majeure:

In the Commission's Proposed Rulemaking Order, force majeure was divided into two categories: General Force Majeure and Special Force Majeure. Based on the original legislation and the amendments contained in Act 35, there is no indication that two separate categories are needed. The Commission should not make a general declaration of force majeure without a specific request by a party. PennFuture, therefore, submits draft language below to make explicit the force majeure provisions.

Proposed language:

PennFuture believes that the language in Act 35 pertaining to force majeure is best incorporated into § 75.57 of the Commission's Proposed Rulemaking Order (Docket No. L-00060180) as shown below. Paragraphs (a) through (d) below should replace paragraphs (a) and (b) in §75.57 or the Proposed Rulemaking. The Commission should also remove §75.58 entirely as the provisions contained within can be incorporated into one force majeure section.

§ 75.57. Force majeure.

(a) The presumption shall be that the markets are functioning effectively and only after a specific petition would the Commission make a determination of force majeure. Upon a request of an EDC or EGS, the Commission, using the Criteria listed in § 75.57(a)(1) herein, may make a determination of force majeure. In that special case, 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.

(1) Criteria For force majeure Determination:

- A. Acts of God and War: fire, earthquake, hurricane, revolution, etc.
- B. Emerging market perturbations, including equipment availability or market-wide equipment failure resulting in a recall.
- C. Analysis of the availability of alternative energy credits in the Generation Attributes Tracking System (GATS) or its successor, and the availability of alternative energy credits in Pennsylvania and other jurisdictions in PJM Interconnection, L.L.C. or its successor.
- D. Demonstration of effective procurement by the EDC or EGS

- I. Banking of alternative energy credits during the transition period of an EDC or EGS
- II. Seeking alternative energy credits through competitive solicitations issued well in advance of the EDC or EGS compliance requirement
- III. Seeking to procure alternative energy credits through long-term contracts of at least 10 years and 15 years for solar.
- IV. Evidence of proper due diligence including but not limited to, a qualification screening process of bidders, examination of bidder capacity to deliver and past performance records, usage of security payments, performance bonds or penalties.
- V. Contingency plan in case of contract failure.

(b) After the examination of the criteria listed in § 75.57(a)(1), if an EDC or EGS has not acquired the necessary alternative energy credits, the Commission may require the EDC or EGS to solicit bids for Alternative Energy Credits as part of their default service prior to any determination of force majeure.

(c) If the Commission determines that force majeure exists for a reporting period pursuant to the criteria in § 75.51(a)(1), the Commission may modify the underlying obligation of the EDC or EGS or recommend to the General Assembly that the underlying obligation be eliminated. Commission modification of the EDC or EGS obligations shall be for that compliance period only and will not automatically reduce the obligation for subsequent compliance years.

(d) If the Commission modifies the EDC or EGS obligations under this Act, the Commission may require the EDC or EGS to acquire additional alternative energy credits in subsequent years equivalent to the obligation reduced due to a force majeure declaration if the Commission determines that sufficient Alternative Energy Credits exist in the marketplace.

II. Tier I and Photovoltaic Shares:

The Commission's original interpretation of Act 213 found in subsection § 75.51 (b)(1) – (15) of the Proposed Rulemaking described the solar share as a percentage of the Act 213 Tier I requirement. Act 35 clarifies the original intent of Act 213, specifying that the solar photovoltaic requirement is a percentage of an electric distribution company's (EDC) or electric generation supplier's (EGS) overall retail sales.

PennFuture provides the draft language below to assure that the percentage requirements for Tier I, Tier II and the solar requirement are incorporated correctly in the Final Rulemaking.

Proposed language:

Based on language in the Commission's Proposed Rulemaking Order (Docket No. L-00060180), PennFuture recommends the following language replace what is currently in §75.51.

§ 75.51. EDC and EGS obligations.

(b) For each reporting period, EDCs and EGSs shall acquire alternative energy credits in quantities equal to a percentage of their total retail sales of electricity to all retail electric customers for that reporting period, as measured in MWh. The required quantities of alternative energy credits for each reporting period is identified in the following schedule:

(1) For June 1, 2006, through May 31, 2007: The Tier I requirement is 1.5% of all retail sales, WHICH SHALL INCLUDE the solar photovoltaic requirement OF .0013% of 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, WHICH SHALL INCLUDE the solar photovoltaic requirement OF .0030% of 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, WHICH SHALL INCLUDE the solar photovoltaic requirement OF .0063% of 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, WHICH SHALL INCLUDE the solar photovoltaic requirement OF .0120% of 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, WHICH SHALL INCLUDE the solar photovoltaic requirement OF .0203% of 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, WHICH SHALL INCLUDE the solar photovoltaic requirement OF .0325% of 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, WHICH SHALL INCLUDE the solar photovoltaic requirement OF .0510% of 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, WHICH SHALL INCLUDE the solar photovoltaic requirement OF .0840% of 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, WHICH SHALL INCLUDE the solar photovoltaic requirement OF .1440% of 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, WHICH SHALL INCLUDE the solar photovoltaic requirement OF .25% of 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, WHICH SHALL INCLUDE the solar photovoltaic requirement OF .2933% of 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, WHICH SHALL INCLUDE the solar photovoltaic requirement OF .3400% of 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, WHICH SHALL INCLUDE the solar photovoltaic requirement OF .3900% of 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, WHICH SHALL INCLUDE the solar photovoltaic requirement OF .4433% of 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, WHICH SHALL INCLUDE the solar photovoltaic requirement OF .5% of ALL RETAIL sales, and the Tier II requirement is 10% of all retail sales.

III. Alternative Energy Credit Certification:

Voluntary Market Integrity:

Through past rulemakings, it is clear that the Commission understands the importance of the voluntary market and wants to preserve and protect it within Act 213. Act 35 builds upon this understanding by providing language that assures whoever buys and then owns an alternative energy credit gets to determine how it will be used. If that is a retail consumer who has paid more for a clean energy product, they own the credit and it may not be used by an EDC or EGS for compliance. The amendments to Act 213 clarify that an alternative energy credit sold at retail shall not be sold, retired, claimed or represented for compliance under the Act.

Geographic Scope:

Act 35 also clarifies the definition of geographic scope of eligible alternative energy generation. Past interpretations allowed alternative energy projects located anywhere in the Midwest Independent System Operator (MISO) to qualify for Act 213 compliance for every electric distribution company or electric generation supplier located anywhere in Pennsylvania. Under that interpretation, projects located anywhere in MISO could meet the requirements of companies located in PJM. This in turn would require Pennsylvania ratepayers to 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 project. Act 35 clarifies the geographic scope of alternative energy generation projects that are able to comply with Act 213.

Proposed language:

PennFuture recommends that the Commission incorporate the language pertaining to alternative energy credits on pages 14, 16, 24 and 25 of Act 35 into sections §75.54, §75.55 and §75.60 of its Proposed Rulemaking Order.

After §75.54 (b) in the Proposed Rulemaking Order, the following paragraphs should replace what is contained in paragraphs (c) and (d) in this section.

§ 75.54 Alternative energy credit certification.

(c) Unless a contractual provision explicitly assigns alternative energy credits in a different manner, the owner of the alternative energy system or a customer-generator owns any and all alternative energy credits associated with or created by the production of electric energy by such a facility or customer, and the owner or customer shall be entitled to sell, transfer or take any other action to which a legal owner of property is entitled to take with respect to the credits.

(d) To prevent double-counting, an alternative energy credit may not be certified for a MWh of electricity generation or electricity conservation that has already been used to satisfy

another state's portfolio requirements or that has been purchased by individuals, businesses, or government bodies that do not have a compliance obligation under this Act unless the individual, business or government body sells those credits to the EDC or EGS.

(e) If an EDC or EGS sells electricity in any other state and is subject to renewable energy portfolio requirements in that state, they shall list any such requirement and shall indicate how it satisfied those renewable energy portfolio requirements.

(f) Energy derived from alternative energy sources inside the geographical boundaries of this Commonwealth shall be eligible to meet the compliance requirements under this Act. Energy derived from alternative energy sources located outside the geographical boundaries of this Commonwealth but within the service territory of a Regional Transmission Organization that manages the transmission system in any part of this Commonwealth shall only be eligible to meet the compliance requirements of an EDC or EGS located within the service territory of the same Regional Transmission Organization. Alternative energy sources located in the PJM Interconnection, L.L.C. Regional Transmission Organization (PJM) or its successor service territory shall be eligible to fulfill compliance obligations of all Pennsylvania EDCs and EGSs. Energy derived from alternative energy sources located outside the service territory of a Regional Transmission Organization that manages the transmission system in any part of this Commonwealth shall not be eligible to meet the compliance requirements of this Act. EDCs and EGSs shall document that this energy was not used to satisfy another state's renewable energy portfolio standards.

§ 75.55. Alternative energy credit program administrator.

(d) (2) The program administrator may not certify alternative energy credit for a MWh of electricity generation or electricity conservation that has already been used TO SATISFY VOLUNTARY ALTERNATIVE ENERGY PURCHASES, OR another state's renewable energy portfolio standard, alternative energy portfolio standard, or other comparable standard.

§ 75.60. Alternative energy market integrity.

(a) ALL sales of electricity by EDCs and EGSs to retail electric customers OF ALTERNATIVE ENERGY CREDITS OR ELECTRICITY marketed as deriving from

alternative energy sources that exceed the requirements of § 75.51 (relating to EDC and EGS obligations) at the time of the sale shall be supported by alternative energy credits separate from and in addition to alternative energy credits counted for compliance with § 75.51.

IV. Solar Alternative Compliance Payments:

Solar project owners in New Jersey or other states may receive both an up-front capital rebate, as well as revenue from the sale of solar renewable energy credits (SRECs). However, in Pennsylvania, solar project owners are not in most cases expected to receive an up-front capital rebate and, therefore, must finance their solar projects solely on the basis of the sale of SRECs from the project.

In order to address this discrepancy, the General Assembly included an amendment in Act 35 further defining how to calculate alternative compliance payments for the solar share to include both the levelized up-front capital rebate received by SREC sellers in PJM.

Proposed Language:

PennFuture provides the following draft language as a means to incorporate the alternative compliance payments on page 26 of Act 35 to assure the solar ACP is properly calculated:

§ 75.56. Alternative compliance payments.

(b) Each EDC and EGS shall be assessed an alternative compliance payment according to the following formula:

(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, INCLUDING THE SREC VALUE AND THE LEVELIZED VALUE OF UP-FRONT REBATES RECEIVED BY SELLERS OF SRECS, AS RECORDED DURING THE REPORTING PERIOD BY PJM OR ITS SUCCESSOR.