



THOMAS, THOMAS,
ARMSTRONG & NIESEN

Attorneys and Counsellors at Law

COPY

PATRICIA ARMSTRONG
Direct Dial: 717.255.7627
parmstrong@ttanlaw.com

December 13, 2006

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

In re: Implementation of the Alternative Energy Portfolio Standards Act of 2004
Docket No. L-00060180

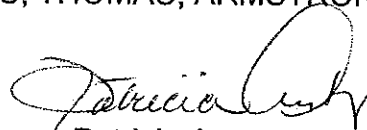
Dear Secretary McNulty:

Enclosed are an original and fifteen (15) copies of the Comments of ARIPPA in the above-referenced proceeding.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By


Patricia Armstrong

Enclosures

cc: Carrie Sheriff (w/encl. via e-mail)
Jeff McNelly (w/encl.)

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Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

COMMENTS
OF
ARIPPA

ARIPPA, on behalf of its member companies, hereby provides comments to the PA Public Utility Commission (the "Commission") concerning the above referenced proposed rulemaking. ARIPPA provides these comments concerning the Commission's proposed regulations concerning Implementation of the Alternate Energy Portfolio Standards Act ("AEP SA" or "Act") of 2004 at L-00060180 published in the Pennsylvania Bulletin on Saturday, October 14, 2006 36 Pa.B. 6289 (The "Proposed Regulation"). The Proposed Regulation would establish provisions for the compliance of electric distribution companies ("EDCs") and electric generation suppliers ("EGS") with the mandate to increase their reliance on alternative energy sources.

I. Historical significance and background:

For nearly two centuries coal has been mined in Pennsylvania. Coal mining operations continue today and will likely continue for at least another century in Pennsylvania. In the past, coal that was very low in heat content (BTU's) and accordingly undesirable in the marketplace was randomly discarded all across Pennsylvania's landscape, as a waste. This "waste coal" or "refuse coal"

accumulated and lay idle on thousands of acres of land...land that possessed a variety of aesthetic, useful, and beneficial qualities. Over time, wind, rain, and other naturally occurring environmental conditions caused the piles of "waste coal" to alter and/or expand their "environmental fingerprint" on the Commonwealth's limited land resources.

A few decades ago, with technological advancements and support from government and individual investors, a beneficial use was finally developed to utilize "waste coal" in quantity. This beneficial use today generates electricity to meet the energy needs of hundreds of thousands of Pennsylvania households. Utilizing waste coal from current and past mining activities while returning thousands of acres of our land, formerly hidden under tons of an "idle waste", back to its natural beauty and usefulness makes electricity generated from waste coal a truly unique win win situation for the Commonwealth.

Understanding the unique environmental advantages of the continued beneficial use of waste coal is not only pivotal to understanding the motives behind ARIPPA's comments but also the true partnership the waste coal industry shares with the goals and ideals of the Public Utility Commission and the PA Department of Environmental Protection. Accordingly ARIPPA appreciates the Commission's special attention to the waste coal industry, its comments, and concerns for the future of Pennsylvania.

II. Description of ARIPPA Member Facilities:

ARIPPA is a trade association comprised of fourteen (14) waste coal-fired electric generating plants located in both the anthracite and bituminous regions of

Pennsylvania. ARIPPA's fourteen member facilities constitute the overwhelming majority of the waste coal power production industry in the country. Each of the ARIPPA member facilities uses a stationary coal-fired boiler (CFB) that serves a generator with a nameplate capacity of more than 25 MWe and produces electricity for sale

The ARIPPA facilities provide a unique environmental benefit in Pennsylvania by burning waste coal as fuel and utilizing circulating fluidized bed ("CFB") technology. ARIPPA facilities utilize coal refuse from both past and current mining activities, and thereby reclaim abandoned strip mines and abate acid mine drainage from waste coal piles at no cost to Pennsylvania taxpayers. By combusting waste coal piles, ARIPPA members are removing one of the principal sources of contamination to surface water and groundwater in Pennsylvania.

In addition to the environmental benefits resulting from the consumption of waste coal, ARIPPA facilities have minimized the air emissions traditionally associated with coal-fired electricity generation by incorporating state-of-the-art, clean coal technology utilizing CFB boilers. Because the CFB units are designed as inherently clean burning sources of electricity, they emit air pollutants at significantly reduced rates relative to conventional coal-fired utility units.

ARIPPA does not oppose the promulgation of regulations concerning Alternate Energy Portfolio Standards Act and in fact supports the establishment of regulations clarifying the implementation of AEPsA. However, ARIPPA requests that the application of these regulations be equitable and consistent, and not

unduly burden waste-coal fired sources because of their high degree of performance and environmentally friendly characteristics.

ARIPPA requests that the members of the Commission consider both the unique nature of the CFB technology employed by the ARIPPA facilities, and the environmental benefit that these companies provide to the Commonwealth by combusting waste coal as they implement and enforce the Alternate Energy Portfolio Standards Act.

III. Suggested Amendments/Specific Comments:

1) AMEND: Section §75.52(b) (2).

The proposed regulation at §75.52(b)(2) provides that a permitted¹ coal refuse disposal site qualifies as an alternative energy system but then provides that for a non-permitted site, an applicant may petition for qualification as an alternative energy resource and that the Commission may grant the petitions at its discretion.

The language in the proposed regulation does not provide the waste coal industry the clarity that regulations should be designed to accomplish and will potentially dissuade use of a non-permitted site.

The proposed language, which contains no parameters, is subject to arbitrary and unfettered discretion and exposes applicants to time consuming and expensive petition filings that may very well lead to litigation regardless of the interpretations. This case-by-case approach without parameters, we submit is inconsistent with the AEPSA, which provides eligibility for "other waste coal combustion meeting alternate eligibility requirements *established by regulation.*"

¹It is understood that permitted refers to a site "permitted" by the Department of Environmental Protection under 25 Pa. Code § 90.1 et seq.

73 P. S. § 1648.2 (definition of "Alternative energy source," no. 10) (emphasis added).

ARIPPA asks the Commission to refer to the Dissenting Statement of Commissioner Terrance J. Fitzpatrick which reads:

"Second, I disagree with § 75.52(b)(2) of the proposed regulations to the extent it provides that the Commission may, in its discretion, grant petitions to allow waste coal from "non-permitted sites" to qualify for alternative energy resource status. This case-by-case approach is inconsistent with the Act, which provides eligibility for "other waste coal combustion meeting alternate eligibility requirements *established by regulation.*" 73 P. S. § 1648.2 (definition of "Alternative energy source," no. 10) (emphasis added). In my view, the language in the Act providing for eligibility requirements to be established "by regulation" precludes a case-by-case approach to determining eligibility."

Given the benefits to the Commonwealth of consuming all coal refuse, ARIPPA specifically proposes that the Commission revise the proposed Alternate Energy Portfolio Standards regulations to specifically include all "waste coal" as a qualified alternate energy source. Therefore, ARIPPA requests that Section § 75.52(b) (2) the Proposed Regulations be modified to specifically state that "coal refuse" as defined in 25 Pa. Code § 90.1 shall qualify as an alternate energy resource. The treating of all coal refuse, as so defined, as an alternative energy source will have positive environmental impacts as well as potentially resulting in more Pennsylvania generated electricity and perhaps reducing the cost of electricity generation as well.

2) Clarify Section 75.54(f):

Section 75.54(f) provides:

Alternative energy credit certification shall be verified by meter data under standards approved by the Commission.

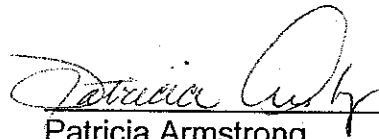
ARIPPA specifically requests that the Commission make it clear that the alternative energy system is not the entity obliged at its costs to provide meter data as required by the Commission, but rather it is the obligation of the EDC or EGS.

IV. CONCLUSION:

ARIPPA appreciates the opportunity to provide these limited comments to the Commission on the Proposed Alternate Energy Portfolio Standards Regulations. ARIPPA looks forward to continued participation with the Commission in further proceedings concerning the Proposed Alternate Energy Portfolio Standards Regulations. ARIPPA would welcome the opportunity to provide any additional information that the Commission may require to fully evaluate these comments. Please feel free to contact ARIPPA's Executive Director, Jeff McNelly, at any time at jamcnelly1@arippa.org, phone: (717) 763-7635, address: 2015 Chestnut Street, Camp Hill, PA 17011 and the undersigned should the Commission require additional information. Thank you for your consideration.

Respectfully submitted,

By



Patricia Armstrong
PA Attorney ID No. 23725

Attorneys for
ARIPPA

THOMAS, THOMAS, ARMSTRONG & NIESEN
212 Locust Street, Suite 500
Harrisburg, PA 17101
(717) 255-7600

Dated: December 13, 2006

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