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May 24, 2005

**VIA FED EX**

James McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, Second Floor  
Harrisburg, PA 17120

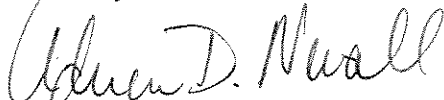
**RE: Implementation of the Alternative Energy Portfolio Standards Act of 2004  
Docket No. M-00051865**

Dear Secretary McNulty:

Enclosed is an original and fifteen copies of Exelon Corporation Comments Regarding the Pennsylvania Public Utility Commission's Implementation Order.

If additional information is needed about this matter, please contact me directly at 215-841-5974. Thank you for your assistance.

Sincerely,



Adrian D. Newall  
Assistant General Counsel

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Enclosure

**BEFORE THE**  
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMMENTS OF EXELON CORPORATION**  
**REGARDING THE PENNSYLVANIA PUBLIC UTILITY COMMISSION'S**  
**IMPLEMENTATION ORDER**

PECO Energy Company ("PECO") and Exelon Generation Company, LLC (collectively, "Exelon") hereby submit these comments with regard to the Pennsylvania Public Utility Commission's (the "Commission") *Implementation Order*, entered March 25, 2005 in the above referenced docket ("Implementation Order").

**I. INTRODUCTION**

By Order dated March 25, 2005, the Commission issued its Implementation Order regarding the Alternative Energy Portfolio Standards Act of 2004 ("Act 213") and invited interested parties to comment on the topics discussed therein. Exelon hereby submits its comments regarding certain areas of interest related to the Commission's Implementation Order as well as the Act itself.

**II. DISCUSSION**

**A. Compliance Exemption Periods**

On Page 7 of its Implementation Order, the Commission discusses the calculation issue raised by the expiration of an exemption period during the

middle of a reporting period. It uses PECO's expiration date of December 31, 2010 as an example. PECO's cost recovery period expires in the middle of the Year 5 compliance schedule under Act 213. Under Section 3(d) of the Act, PECO is not required to comply with the Year 5 schedules for Tier I and Tier II until January 1, 2011. In its' Implementation Order, the Commission states that:

[a]ccordingly, PECO's compliance for Year 5 would only be calculated on sales for electricity to retail customers made from January 1, 2011 through May 31, 2011.

Exelon would like to clarify that PECO's obligation for Year 5, in addition to its compliance, will be calculated on a pro-rata basis. In addition, Exelon would like the Commission to make clear that it only intends to rely on the actual months of January through May in order to determine PECO's compliance, as opposed to a simply taking 5/12 of all retail sales made during Year 5.

#### **B. Banking of Alternative Energy Credits**

During its discussion of the banking sections of Act 213, the Commission refers to Subsection 3(e)(7) which identifies the time period that banked credits retain their value. Subsection 3(e)(7) of the Act states:

[a]ll credits banked under this subsection shall be available for compliance with subsections (b) and (c) for no more than two reporting years following the conclusion of the cost-recovery period.

PECO's cost-recovery period expires on December 31, 2010, during Year 5 of the compliance schedule. In its Implementation Order, the Commission finds that PECO will only be able to use banked credits for Years 5 and 6. This interpretation of the Act limits the value of any credits banked by PECO. PECO, or any other EDC who emerges from its cost-recovery period in the midst of a

compliance year, will only be able to rely on banked credits for part of the year. The Commission must reconsider its interpretation of this Section of Act 213 and permit EDCs to carry over banked credits for a full two years. This will ensure that the EDCs get the complete benefit of the banking provisions as intended by the Act.

**C. Creation of an Alternative Energy Credit and Trading Platform**

Although not specifically raised in the Commission's Implementation Order, Exelon is concerned about the overall issue of how an alternative energy credit ("AEC") is created, as well as the establishment an AEC trading platform. It has come to Exelon's attention that the Commission's Law Bureau is considering requiring that a sale of AECs to a retail customer must be accompanied by a sale of unit-specific energy from the renewable generator. Exelon believes that this requirement would be wholly inconsistent with the current operation of the renewable energy credit market and would create barriers to trading AECs for compliance with Act 213. Currently, renewable energy credits ("RECs") trade in two markets, the over-the-counter market and the bilateral market. RECs are sold as financial products only and are not bundled with physical energy sales. Exelon believes that the Commission should not require that AECs sales be matched with a sale of unit-contingent energy to a retail customer.

PJM is scheduled to begin by the end of this year operation of the Generator Attributes Tracking System (GATS). The GATS will allow buyers and sellers of RECs to create standard trade confirmations that point to information

and contracts in the GATS. Information contained within GATS will support confirms that require the seller to substantiate the actual electrical production of the renewable resource during the reporting period, and will provide assurance that RECs were not double-sold. The system will be similar to the eCapacity and eSchedules systems now maintained by PJM for capacity and energy sales and purchases. Those systems allow PJM to calculate settlements for physical transactions for capacity and energy. The GATS will function in a similar manner.

A separate or newly developed trading platform for AECs may be duplicative of GATS. In addition, markets for the purchase and sale of RECs already exist as described above. Where the Commission would add value is by creating, in conjunction with other PJM states that have renewable procurement laws, (i) a registry of qualifying resources; (ii) a standard definition of a REC/AEC; and (iii) clear rules about what types of transactions will be acceptable for compliance.

Moreover, the Commission must take into consideration the fact that presently all REC trades, whether bilateral or OTC, are unbundled. The New Jersey Board of Public Utilities has required that REC sales be contained within a swap arrangement under which each party purchases and sells an identical quantity of energy at the identical delivery point. The seller simply adds the RECs to the energy sale, creating for all intents and purposes an unbundled REC sale. The swapped energy books out (since the quantity and delivery point are identical), while ownership of the RECs transfers from seller to buyer. The entire

transaction is financially settled and, like any other financially settled transaction, is not known to PJM in any way. New Jersey will eliminate the swap structure when the GATS are functional.

Exelon believes that any market rules adopted by the Commission that attempt to link REC sales to physical sales -- in the sense that a company cannot sell an unbundled REC to another company unless the sale is accompanied by a commensurate quantity of physical energy -- are counter to the way the market trades in all jurisdictions. In addition, this interpretation of Act 213 could be said to require PECO, if it were to purchase MWhs from a solar facility, to sell those MWhs -- i.e., the unit-specific, actual electrical production of the solar facility -- to a retail customer before an AEC is even created. This would severely limit the development of AECs as a viable trading commodity in the current market. Exelon believes that the Commission should follow the lead of other neighboring states with renewable legislation and utilize the existing REC market and GATS for trading and tracking AECs. Use of the GATS would provide the necessary assurance that renewable generators in the system were operational and injecting energy into the transmission system during the period of the AEC sales associated with the generators. That is the primary purpose of GATS. Linking REC sales to physical sales does not say anything meaningful about the disposition of the physical energy. The linkage merely creates a fictional contract path. From a practical perspective, the requirement would add transaction costs to all purchases and sales and would tend to discourage all but the largest purchases and sales (to realize some economy of scale).

For the same reasons, Exelon also does not support the requirement that renewable resources outside of PA, NJ, DE, MD, and W VA pass some sort of "deliverability test" to "prove" a physical path from the generator to PA load. One way to do that would be to purchase firm point-to-point transmission service from PJM, from the generator to the load, adding unnecessary cost and time to the transaction. In the interconnected pool, generation is moved to load on network service, not point-to-point.

#### **D. Interconnection and Net Metering**

Exelon commends the Commission for its decision to maintain interconnection and net metering on separate tracks. However, the Commission states in its Implementation Order that interconnection and net metering are "interrelated." *Implementation Order* at p. 10. Exelon believes that the issues raised by these topics are quite different in nature, interconnection raising mostly technical issues while net metering typically involves issues that are rate sensitive, and that they should continue to be treated separately by the Commission.

In its Implementation Order, the Commission also tells of its intention to base its interconnection and net metering rules on IEEE 1547. Exelon agrees that IEEE 1547 represents the best technical standard upon which the Commission should base its interconnection and net metering rules. However, the Commission should continue to be flexible while developing such rules and take into consideration the nature of the EDCs' systems located within Pennsylvania.

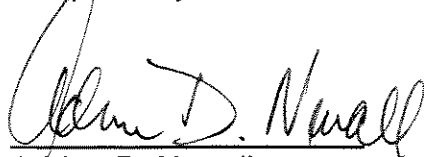
### **E. Issues for the Working Group**

Exelon has been an active member of the AEPS Working Group and will continue to be as the issues related to Act 213's implementation arise. The Working Group has commented on several matters, including interconnection as well as demand side management and energy efficiency. The Commission states in its Implementation Order that it is also considering referring the development of rules for an AEC trading platform to the Working Group. Exelon supports this concept and believes that the Working Group is the best forum for these issues to be considered.

### **III. CONCLUSION**

Exelon appreciates the Commission's efforts with regard to the implementation of Act 213. Exelon's comments focus on some of the basic issues that require resolution in order to successfully complete this task. Exelon commits to aiding the Commission in this regard.

Respectfully submitted,



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