

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF SMALL BUSINESS ADVOCATE

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COPY

William R. Lloyd, Jr.
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August 22, 2005

HAND DELIVERED

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

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

Dear Secretary McNulty:

I am delivering for filing today the original plus 15 copies of the Comments on behalf of the Office of Small Business Advocate in the above-captioned matter. As directed in the Tentative Order of June 23, 2005, I am also sending an electronic copy of these comments to Carrie Beale.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink that reads "William R. Lloyd, Jr.".

William R. Lloyd, Jr.
Small Business Advocate

Enclosures

SECRETARY'S BUREAU

2005 AUG 22 PM 3:27

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
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PUC
SECRETARY'S BUREAU

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

**COMMENTS ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE
ON TENTATIVE ORDER REGARDING
DEMAND SIDE MANAGEMENT RESOURCES**

I. BACKGROUND

The act of November 30, 2004 (P.L. 1672, No. 213), known as the Alternative Energy Portfolio Standards Act (“Act”), 73 P. S. § 1648.1 et seq., requires that increasing percentages of the electricity sold in the Commonwealth be generated from designated alternative energy sources.

By Notice dated January 7, 2005, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) announced a January 19, 2005, technical conference to facilitate the implementation of the Act. The Office of Small Business Advocate (“OSBA”) submitted written comments prior to the conference, made an oral presentation at the conference, and subsequently filed written reply comments.

By Notice dated February 14, 2005, the Commission convened the Alternative Energy Portfolio Standards Working Group (“Working Group”). The OSBA has participated in Working Group meetings on March 3, 2005; March 15, 2005; April 19, 2005; May 18, 2005; and June 24, 2005.

On March 21, 2005, the Commission Staff released an Issues List regarding Demand Side Management (“DSM”) and Energy Efficiency (“EE”) and requested comments from the Working Group.¹ The OSBA submitted written comments on April 1, 2005.

On May 2, 2005, the Commission Staff released a draft proposal for DSM/EE rules and requested comments from the Working Group. The OSBA submitted written comments on May 13, 2005.

By Tentative Order entered on June 24, 2005, the Commission issued its initial proposal for enabling the participation of DSM/EE in Pennsylvania’s alternative energy market and requested comments on the proposal within 60 days. The OSBA submits the following comments in response to the Commission’s proposal.

II. COMMENTS

A. Technical Reference Manual

The OSBA agrees that it is appropriate to award alternative energy credits (“AECs”) on the basis of “deemed savings” calculated pursuant to the proposed Technical Reference Manual (“TRM”). However, the OSBA does not have sufficient familiarity with specific energy saving technologies to comment on the validity of the data and the calculation methodologies contained in the proposed TRM.

The relatively high level of Tier II alternative energy sources (e.g., waste coal and solid waste) already in use probably means that there will be relatively limited utilization of Tier II sources such as DSM/EE. Therefore, using a “catalog approach” derived from

¹ Section 2 of the Act defines “alternative energy sources” in a way which includes EE as a subset of DSM.

protocols used in other states is preferable to expending the time and effort to develop a unique “Pennsylvania plan.”

The “catalog approach” will simplify the implementation of Act 213 by eliminating the need to calculate the actual savings from each DSM/EE measure employed. AECs will be awarded on the basis of “generally accepted” estimates of the energy savings expected from specific types of DSM/EE measures. Similarly, the “catalog approach” will provide the measure lives needed for calculating depreciation.

Using the “catalog approach” will also make it easier for small businesses to participate in the AEC program. Isolating a small business’ reduction in consumption because of energy saving measures from its growth in consumption because of business expansion would require a potentially costly, time-consuming, and contested evaluation. However, the “catalog approach” will enable a small business to get the benefit of AECs without the need to perform that calculation.

B. Previously Installed Measures

The OSBA agrees that allowing AECs to be awarded for standard, metered, and custom energy saving measures installed prior to implementation of the Act is consistent with the language of the Act.

Section 2 of the Act defines “alternative energy sources” to include 13 itemized “existing and new sources for the production of electricity.” Despite the use of the word “production,” DSM (including EE) involves the reduction of electricity usage rather than the production of electricity. However, the General Assembly appears to have intended AECs from DSM to have the same status as AECs from each of the other 12 itemized sources. For example, Section 3(e)(10) of the Act states explicitly that “[a]ll verified

reductions [in the use of electricity] shall accrue credits starting with the passage of this act.” Furthermore, because of the use of the word “existing” in the definition of “alternative energy sources,” it is reasonable to infer that the legislature intended energy saving measures which were in place on the effective date of Act 213 to qualify for AECs.

As the Commission recognizes, Section 3(e)(7) of the Act allows “bankable credits” for only that amount of electricity from alternative energy sources which exceeds the amount from such sources during the 12 months immediately preceding the Act’s effective date. However, this limitation applies only to the banking of credits during the period an electric distribution company (“EDC”) is recovering stranded costs or is under another approved generation rate plan. Therefore, it is reasonable to infer that the General Assembly intended Section 3(e)(7) to be a time-specific limitation on banking and not the general rule regarding what qualifies as an AEC.

C. Eligibility to apply for AECs

As a practical matter, a small business’ willingness to invest in energy saving measures will depend largely on the extent to which that customer can reduce its electric bills. Because of the cost in relationship to the potential gain, a small business is more likely to take advantage of energy saving measures available in the retail consumer market than to take advantage of metered or custom measures. However, small business investment in metered or custom projects might be enhanced by the ready availability of an aggregator program through which the small business customer could potentially realize a gain from the sale of AECs in addition to the savings on its electric bills.² Such

² As an alternative to a direct payment to the small business customer for its share of the credits, the value of that share could be reflected in a reduction in the customer’s initial out-of-pocket costs.

an aggregator program would help educate the small business customer to the potential benefit from a particular type of energy saving measure and could lower the small business' administrative costs. The latter is of special importance because one credit equals one mWh, which is an energy savings far in excess of what a single small business would realize on its own.

The Commission's proposal specifically lists businesses which sell equipment or services, EDCs, and electric generation suppliers ("EGSs") as entities eligible to apply for AECs in connection with metered or custom measures. However, to increase the avenues for participation by small businesses, the OSBA recommends that the list be expanded to include chambers of commerce and other business associations.

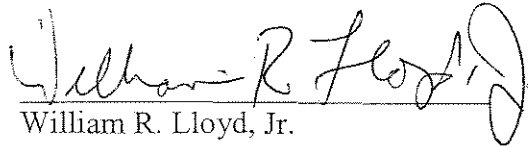
D. Value Added to Credits at Taxpayer or Ratepayer Expense

Some AECs may be associated with energy saving measures financed, at least in part, by tax breaks or by assistance from a government program or a sustainable energy fund. A customer, aggregator, EDC, or EGS should not be permitted to sell any such credit without an offset to avoid unjust enrichment. For example, the price of a percentage of the credit could be set at zero, with that percentage determined by the proportion of the underlying investment which was financed at taxpayer or ratepayer expense.

III. CONCLUSION

The OSBA respectfully requests that the Commission implement the Act in a manner consistent with the aforementioned comments.

Respectfully submitted,

A handwritten signature in cursive script, reading "William R. Lloyd, Jr.", written over a horizontal line.

William R. Lloyd, Jr.
Small Business Advocate

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Dated: August 22, 2005