

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**COMMENTS OF THE INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA,  
THE MET-ED INDUSTRIAL USERS GROUP, THE PENELEC INDUSTRIAL  
CUSTOMER ALLIANCE, THE PHILADELPHIA AREA INDUSTRIAL ENERGY  
USERS GROUP, THE PP&L INDUSTRIAL CUSTOMER ALLIANCE, AND THE  
WEST PENN POWER INDUSTRIAL INTERVENORS**

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Dated: September 27, 2005

## **I. INTRODUCTION**

On November 30, 2004, Governor Edward Rendell signed the Alternative Energy Portfolio Standards Act of 2004 ("AEPS" or "Act 213" or "Act"). Act 213 requires Electric Distribution Companies ("EDCs") and Electric Generation Suppliers ("EGSs") to include a specific percentage of electricity from alternative resources in the generation that they sell to Pennsylvania customers, the percentage of which is increased according to a fifteen-year schedule.

The Pennsylvania Public Utility Commission ("PUC" or "Commission") has opened a proceeding to implement the provisions of the Act, and on March 25, 2005, the PUC issued an order ("Implementation Order I") establishing the timeline for compliance with the provisions of the Act, as well as referring certain matters to the AEPS Working Group ("WG"). On July 14, 2005, the PUC issued a second implementation order ("Implementation Order II") to address comments filed in response to Implementation Order I, solicit comments on a number of other issues, and refer one new matter to the AEPS WG for consideration.

The Industrial Energy Consumers of Pennsylvania ("IECPA"), the Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), the Philadelphia Area Industrial Energy Users Group ("PAIEUG"), the PP&L Industrial Customer Alliance ("PPLICA"), and the West Penn Power Industrial Intervenors ("WPPII") (hereinafter, "IECPA, et al.") participated in the AEPS WG, provided formal and informal comments during the course of this proceeding, and reviewed the PUC's Implementation Order II.

IECPA, et al., submits these Comments to respond to specific issues in the PUC's Implementation Order II. As discussed more fully herein, IECPA, et al.: (1) agrees with the PUC's decision to allow EDCs and EGSs to defer application of banked alternative energy

credits ("AECs") until the first two full, consecutive reporting years after the conclusion of their respective exemption periods; (2) intends to participate in the AEPS WG to help develop rules for alternative energy procurement and cost-recovery; (3) believes that the AEC trading program and program administrator implementation are extremely important to the implementation of AEPS; (4) agrees that parties must have the opportunity to review and address any force majeure provisions developed by the PUC; (5) submits that the force majeure mechanism may provide adequate financial protection to EDCs so that alternative compliance payments are not recoverable from ratepayers, as long as this process does not result in a negative impact on customers; and (6) agrees that at least some portion of voluntary alternative energy purchases made by retail customers from an EGS should be counted towards that EGS's compliance obligation.

## **II. COMMENTS**

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

Pursuant to Implementation Order I, the PUC determined that credits banked during the cost-recovery period would only be available for compliance purposes for seventeen months. Various parties asked the Commission to reconsider this interpretation, and based upon a proposal by the Energy Association of Pennsylvania, the PUC determined that this interpretation could be modified.

Specifically, the PUC will allow EDCs and EGSs to defer the application of banked energy credits until the first two full, consecutive reporting years after the conclusion of their respective exemption periods. The PUC limits this deferral option by requiring banked credits be used in two consecutive compliance periods and by prohibiting deferral beyond the first

reporting year in which an EDC or EGS must meet the compliance thresholds for all twelve months.

IECPA, et al., agrees with the Commission's finding that this interpretation serves the public interest by providing EDCs and EGSs with more incentives to take advantage of reasonable procurement opportunities that might present themselves during the respective exemption periods. By allowing this additional time to EDCs and EGSs, customers will also have greater opportunities to examine available options with respect to AECs. Thus, this modification benefits all parties involved.

*B. Cost-Recovery Process*

The Commission correctly determines the need to address the development of alternative energy procurement and cost-recovery rules in the context of default service, and IECPA, et al., participated in the Provider of Last Resort ("POLR") roundtable to offer input on the development of default service rules. Accordingly, utilizing the AEPS WG to review alternative energy procurement and cost-recovery rules in the POLR context should provide a vital opportunity for interested stakeholders to address these issues. Specifically, IECPA, et al., plans to participate in such WGs in order to provide the perspective of large industrial and commercial customers with respect to these issues.

*C. Alternative Energy Credits Program*

Under Act 213, the Commission must establish an alternative energy credits trading program and retain a program administrator. Through the administrator, the program will address certification, tracking and reporting, and qualifying systems. The rules and regulations implementing the program and establishing the role of the administrator are crucial to the success

of Act 213. Moreover, the Commission is correct that developing these provisions may be especially complex in comparison to other portions of the Act.

According to Implementation Order II, the Commission plans to announce its intention to interested parties in the near future regarding the process for developing and implementing these rules. IECPA, et al., respectfully requests that interested parties be provided an opportunity to address and comment on these issues in order to ensure that the Commission is aware of the concerns and comments large industrial customers may have with respect to this implementation. The Commission has been supportive in the past of considering parties' views on various matters related to AEPS, and this issue may be one of the most important for consumers. Accordingly, comments by interested parties may provide the Commission with important information and specific insight regarding these issues.

*D. Force Majeure*

Similar to the AEC program, the Commission notes that the force majeure provision is important to implementation, and the PUC is in the process of closely studying this issue. The PUC plans to provide guidance to stakeholders in the near future on the Commission's plans for developing and implementing rules for such a mechanism.

As with the AEC program, IECPA, et al., respectfully requests that the PUC allow all interested parties the opportunity to comment on force majeure issues, including having the AEPS WG examine and address these issues. By allowing for such comments, the Commission can ensure that the concerns of customers are adequately addressed.

*E. Alternative Compliance Payments*

In Implementation Order II, the PUC tentatively finds EDCs should not be permitted to recover the costs of compliance payments from ratepayers due, in part, to the fact that these

payments are intended to serve as a penalty for failing to comply with the Act. The PUC is correct that the purpose of compliance payments is to act as a punishment in the event the EDC fails to meet the necessary requirements. Because the payment is a penalty mechanism, ratepayers should not be charged for non-compliance on the part of the EDC. Rather, the EDC should be held responsible.

Even so, the Office of Consumer Advocate notes that a potential negative exists for ratepayers if the EDC is not allowed to flow through the cost of a lesser compliance payment but is permitted to flow through the costs of a more expensive alternative energy purchase. The incentive for the EDC may be adverse to ratepayers. Accordingly, the Commission should continue to examine this issue in order to determine whether any additional protections can be implemented to ensure that customers are not indirectly harmed by this application of the Act.

*F. Voluntary Alternative Energy Purchases*

Implementation Order II also finds that Act 213 may create disincentives that lead to the elimination of voluntary renewable purchases by retail customers. Specifically, if voluntary purchases are counted towards an EDC's compliance threshold, and Act 213 cost-recovery provisions are applied, customers making voluntary purchases would be paying twice for these alternative energy attributes. While voluntary renewable purchases should not be discouraged, customers seeking to make such purchases should not be detrimentally impacted. Accordingly, the Commission should consider a mechanism that would encourage customers to continue making voluntary energy purchases from an EDC without subjecting the customer to a "double-charge" for this decision.

With respect to an EGS, the Commission is correct that, because EGSs are not afforded cost-recovery for compliance, voluntary alternative energy purchases made by their customers should be counted towards the EGS's compliance obligations. Because the EGS is not permitted to flow-through these costs, customers making voluntary purchases will not be paying twice for these purchases, and, as a result, the EGS should receive credit. Because the ability of EGSs to obtain cost-recovery for these purchases is significantly different than that provided for EDCs, treating voluntary purchases differently for EDCs and EGSs is not inappropriate. Thus, the PUC's proposal accommodates the interest of the EGS, while also protecting the rights of the consumer.

### **III. CONCLUSION**

**WHEREFORE**, the Industrial Energy Consumers of Pennsylvania, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Philadelphia Area Industrial Energy Users Group, the PP&L Industrial Customer Alliance, and the West Penn Power Industrial Intervenors respectfully request that the Pennsylvania Public Utility Commission consider the aforementioned issues in the course of implementing the Alternative Energy Portfolio Standards Act.

Respectfully submitted,

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**/s/ Charis Mincavage**

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