

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Comments of Energy Association of Pennsylvania

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. Introduction

By Order entered March 25, 2005, the Public Utility Commission (“PUC” or the “Commission”) issued an initial Implementation Order, detailing the schedule under which it proposes to develop rules and regulations necessary to implement the Alternative Energy Portfolio Standards Act of 2004 (the “Act”), 73 P.S. §§1648.1 – 1648.8, and the schedule for compliance with the Act’s mandates for electric distribution companies (“EDCs”) and electric generation suppliers (“EGSs”). Interested parties filed both initial comments and reply comments in response to that Order. On July 14, 2005, the Commission issued a second implementation order (“Implementation Order II”) which addresses certain comments filed in response to the initial Implementation Order, solicits comments on a number of other issues, and refers one new matter to the Alternative Energy Portfolio Standards Working Group for consideration. Implementation Order II was entered on July 18, 2005, and published in the *Pennsylvania Bulletin* on July 30, 2005. Comments on Implementation Order II are due within 60 days from the date it was published in the Bulletin, or by September 28, 2005.

The Energy Association of Pennsylvania (“EAPA”) represents the interests of the Commonwealth’s PUC-regulated electric and natural gas energy distribution companies. EAPA has been an active participant in the stakeholder process that the Commission has established to address issues relevant to the implementation of the Act. EAPA filed initial comments on the Implementation Order on May 24, 2005, and reply comments on June 23, 2005. EAPA has also filed comments under other captions at this docket that relate to matters addressed in the Commission’s Implementation Orders. Implementation Order. EAPA appreciates the opportunity to provide comments on the above-captioned Order and looks forward to continuing to work with the Commission and all other stakeholders to address issues associated with implementation of the Act. In particular, EAPA and its members encourage the Commission to act expeditiously in establishing the Alternative Energy Credit Program and the Force Majeure rules, referenced in the Implementation Order II. These areas present complex issues, the resolution of which are crucial to the implementation of the Act.

II. Comments

For the sake of efficiency, EAPA’s comments follow the headings and numbering established by the Commission in its Order.

A. Amendments to the March 23, 2005 Implementation Order

2. Banking of Alternative Energy Credits

In the subject Order, the Commission adopts an interpretation proposed by the EAPA regarding the use of Alternative Energy Credits (“Credits”) that are banked during the Cost Recovery Period that would

permit an EDC or EGS to choose to use its banked Credits during either the first two reporting periods following the end of the Cost Recovery Period (even though the first period may not be a full year) or the first two full reporting years following the end of the Cost Recovery Period. EAPA thanks the Commission for its adoption of this proposal, which should have the effect of increasing the incentive for early investment in alternative energy projects.

B. General Compliance and Cost-Recovery

1. Cost-Recovery Process for Act 213 Compliance

In the subject Order, the Commission acknowledges that interrelationships exist between (1) an EDC's obligation to procure energy at prevailing market prices to serve default service customers and (2) the procurement of alternative energy to meet its obligations under the Act. Further, the Commission acknowledges that interrelationships exist between the recovery of default service costs and the recovery of costs associated with compliance with the Act. The Commission concludes that it will refer these matters to the Alternative Energy Portfolio Standards Working Group ("AEPS WG") for input, which the Commission will then use to formulate its final default service rulemaking. EAPA believes the AEPS WG should be used to develop proposed rules, and as the AEPS WG develops the proposed rules, they should be issued for comment. After the development of the AEPS cost recovery rules, the final default service rules can simply reference the AEPS regulations on cost recovery.

EAPA looks forward to participating in the AEPS WG as well as providing comments during the AEPS cost recovery rulemaking process.

2. Alternative Energy Credits Program

In the subject Order, the Commission cites several provisions of the Act that relate to the administration of an Alternative Energy Credits program including, but not limited to, the selection of an independent entity to serve as the program administrator; the need for rules regarding certification, tracking and reporting; and the development of a cost recovery mechanism. The Commission acknowledges, correctly in the opinion of the EAPA, that these issues are among the more technically complex aspects of the implementation of the Act and, accordingly, states that these issues require close examination by Commission staff and interested stakeholders. The Order states that, in the near future, the Commission will announce its intentions regarding the process for developing and implementing these rules. The EAPA concurs that a careful and in-depth effort is appropriate and believes that both EAPA and its individual member companies should be participants in this effort.

3. Force Majeure

In the subject Order, the Commission indicates that it is continuing to closely study issues related to the Act's Force Majeure provisions and that it will provide information on its plans for developing and implementing rules. In its comments at this docket dated May 24, 2005, EAPA identified

several issues related to Force Majeure that must be addressed and recommended that the Working Group is an appropriate forum to address these issues and others related to the development and implementation of rules. EAPA incorporates its earlier comments by reference and looks forward to participating, either through the Working Group or other appropriate forum of stakeholders established by the Commission, in the development of Force Majeure rules which will be published for comment.

With that said, there are certain principles surrounding the establishment of a Force Majeure condition which EAPA believes parties should consider. First, a Force Majeure determination should be made prior to the planning period, not after. Sufficient information should exist in terms of which Tier I and Tier II resources are then available and which planned resources will become available during the planning period in order to make a Force Majeure determination at the beginning of the planning period. Such a determination, or lack thereof, will make it much easier for EDCs and EGSs to plan to meet their obligations under the Act. A second principle espoused by EAPA suggests that Alternative Compliance Payments would be required and recoverable in rates, or not required at all, if the Commission determined a Force Majeure condition existed.

C. Miscellaneous Issues for Public Comment

1. Voluntary Alternative Energy Purchases

In the Implementation Order II, the Commission invites comments on the subject of whether and, if so, how to protect the voluntary alternative energy market in which retail customers exercise “green” preferences by purchasing electricity generated by environmentally benign or beneficial means. Such purchases currently require the customer to pay a premium over traditional generation sources. It is expected that, in the future, such products may involve features such as a greater percentage of renewables than would be required under the Act or generation that complies with the Act, but is from a particular type of Alternative Energy Source. It is likely that such products will also sell at a price that is higher than the price of a standard generation mix that complies with the Act.

At the outset, the EAPA believes that the buying preferences of retail customers must be protected. Accordingly, the EAPA supports the concept of separate accounting for “green” and “non-green” sales incorporated in the Community Energy comments. However, EAPA finds the proposed language to be unclear.

As noted in the subject Order, EDCs and EGSs are afforded different treatment under the Act. In addition, they are regulated in different ways under the Electricity Generation Competition and Customer Choice Act. The EAPA believes that it is within the purview of the

Commission to review any default service option that an EDC serving as default provider may offer to default service customers including options that may offer “green” energy. The EAPA believes that it would not be unreasonable to expect the Commission to require, in such a circumstance, that the EDC make a separate accounting of “green” and “non-green” energy sales to assure that the “green” sales and associated Credits and revenues do not subsidize the compliance needs and costs arising from the “non-green” sales.

While the EAPA believes that the same concept should apply to EGSs, it is also true that the Commission does not approve EGS’ products through a tariff approval process nor does it approve cost recovery by EGSs. Clearly, the Credit Program Administrator will have a role in establishing an accounting and tracking system to address this issue and, also, in identifying non-compliance. Further, the Credit Program will address both EDCs and EGSs. Accordingly, the EAPA recommends that the resolution of this issue be referred to the effort to develop the Alternative Energy Credits Program described in Section B.2 of Implementation Order II.

2. Solar Thermal Energy

In the subject Order, the Commission notes that there is uncertainty in the Act as to the inclusion of “solar thermal energy” as an alternative energy source and whether it is a Tier I or Tier II technology. EAPA concurs with the Commission’s conclusion that “solar thermal

energy” resources are most appropriately assigned to Tier I. However, EAPA believes that qualifying Tier I technologies are appropriately limited to those that involve the generation of electricity (typically using a working fluid that is heated through solar gain) and should not include technologies such as solar water heating or passive solar architecture. Technologies, such as these, that do not involve the generation of electricity are more appropriately included in the category of energy efficiency and, consequently, as Tier II resources.

D. Future Organization of this Implementation Proceeding

EAPA concurs with the Commission’s observation that the development of the rules necessary to implement the Act is “a large and complex” proceeding. EAPA takes this opportunity to commend the Commission on its efforts thus far in managing this effort. The grouping of issues into coherent and manageable tasks, the use of the Working Group as a forum for ideas, and the timely electronic posting of comments and notices have all contributed to making this a remarkably well managed effort. EAPA looks forward to continued participation and to assisting Commission staff where possible in the management and organization of the effort.

III. Conclusion

For all of the reasons stated above, the Energy Association of Pennsylvania recommends that the Public Utility Commission proceed with

implementation of the Alternative Energy Portfolio Standards Act consistent with its March 25, 2005, and July 14, 2005, Orders, and the Energy Association's Comments.

Respectfully submitted,

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