



designation. The OSBA submits the following comments in response to the Commission's invitation.

## COMMENTS

### 1. Selection of GATS

The OSBA is without sufficient knowledge or information to be able to compare GATS to any alternative registry which may be available. However, even assuming arguendo that GATS is the best alternative, the OSBA recommends that the Commission expressly limit the authority granted to PJM EIS.

First, as summarized in the Tentative Order, at 5, "GATS is able to document the creation, transfer, banking and retirement of alternative energy credits." Although the OSBA agrees that those functions must be performed, the Tentative Order implies that PJM EIS may be making substantive policy decisions. Section 3(e)(2) of the Act requires that the Commission make those decisions through regulations and implement them through the "alternative energy credits program administrator." Therefore, the OSBA questions whether it would be preferable to defer the designation of GATS, at least until the Commission has selected a program administrator.

Second, what constitutes an "alternative energy source"—and, hence, what qualifies as an AEC—under Act 213 is different from what may constitute a renewable energy credit ("REC") under the laws of other states. For example, Tier II alternative energy sources can give rise to AECs under Act 213 but apparently do not give rise to RECs under the laws of at least some other states. Similarly, Act 213 treats demand side management ("DSM") as an alternative energy source—and the basis for AECs—even though at least some other states do not recognize DSM in that way. Therefore, it is

critical that tracking by GATS conform with what is, and what is not, an AEC under Act 213.

Third, the Tentative Order implies that PJM EIS may play a role in determining how credits for energy from non-utility generators (“NUGs”) are “created,” “transferred,” “banked,” and “retired.” However, the creation, transfer, banking, and retirement of AECs from NUGs are part of the NUG credit ownership question which is pending before the Commission in Petition For A Declaratory Order Regarding the Ownership of Alternative Energy Credits and any Environmental Attributes Associated with Non-Utility Generation Facilities Under Contract to Pennsylvania Electric Company and Metropolitan Edison Company, Docket No. P-00052149. Therefore, how NUG credits are created, transferred, banked, and retired are matters of state law to be determined by the Commission and not decisions to be made by PJM EIS.

## **2. Value Added to Credits at Taxpayer or Ratepayer Expense**

Some AECs may be associated with DSM projects which were financed, at least in part, by tax breaks or by assistance from a government program or a sustainable energy fund. A customer, aggregator, electric distribution company, or electric generation supplier should not be permitted to sell any such credit without an offset, or a refund, to avoid unjust enrichment. Unfortunately, the Tentative Order implies that GATS will simply track and report the price at which an AEC was sold and that there will be no opportunity for the Commission to require an offset or a refund to reflect that the AEC was created with a subsidy from taxpayers or utility ratepayers.

WHEREFORE, the OSBA respectfully requests that the Commission either defer the designation of GATS as the credits registry or make that designation contingent upon an agreement requiring PJM EIS to adhere to the Commission's regulations and policy statements regarding the creation, transfer, banking, and retirement of AECs.

Respectfully submitted,

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Dated: November 28, 2005