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**Office of Energy and  
Technology Deployment**

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***HAND DELIVERED***

Commonwealth of Pennsylvania  
Secretary's Bureau  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Docket No. M-00051865	Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards and Processes for Alternative Energy System Qualification and Alternative Energy Credit Certification
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Dear Secretary McNulty:

Enclosed please find fifteen (15) copies of the Department of Environmental Protection's comments on the Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards and Processes for Alternative Energy System Qualification and Alternative Energy Credit Certification.

Respectfully Submitted,

Eric Thumma  
Director  
Bureau of Energy, Innovations, and  
Technology Deployment

Enclosures

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMENTS OF THE PENNSYLVANIA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**

Implementation of the Alternative  
Energy Portfolio Standards Act of 2004:  
Standards and Processes for Alternative  
Energy System Qualification and Alternative  
Energy Credit Certification

Docket No. M-00051865

The Pennsylvania Department of Environmental Protection thanks the Commission for the opportunity to provide comments on the Tentative Order of January 27, 2006, Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards and Processes for Alternative Energy Systems Qualification and Alternative Energy Credit Certification; Doc. No. M-0051865.

Act 213 of 2004, the Alternative Energy Portfolio Standards Act (AEPS) places special responsibility for implementation on the Department of Environmental Protection (DEP) and encourages DEP and the PUC to work together to implement the Act. Since the Act's passage DEP and the PUC have worked collaboratively on the Act's implementation and have accomplished a number of milestones, including a Technical Guidance Manual for Demand-Side Management Resources, proposed final net-metering and interconnection rules, and interim resource qualification in the Generation Attributes Tracking System.

No procedure related to Act 213 implementation to date, however, is as critical to securing direct benefits for Pennsylvania as the issues covered in this tentative order. The final procedures for determining alternative energy system qualification and alternative energy credit certification will fundamentally determine whether Act 213

achieves the aims of the General Assembly and the Governor when they passed and signed Senate Bill 1030 of 2004-05 into law.

The Tentative Order notes the importance of effectuating the General Assembly's intent when construing a statute but states that the intent of the legislature in passing AEPS is not clear because the Act does not contain sections discussing specific declarations of policy. DEP believes that the intent of the General Assembly in passing a statute that requires increasing percentages of electricity sold to residential customers in Pennsylvania be derived from alternative energy sources is quite clear. It is to promote the development and use of alternative energy resources in Pennsylvania.

In the lead-up to the passage of Act 213, Governor Rendell and DEP Secretary Kathleen McGinty extolled the tremendous economic development potential for Pennsylvania embodied in the Act. A study by Black and Veatch Consulting sponsored independently by the Community Foundation for the Alleghenies and the Heinz Endowments examined the economic impacts of AEPS compared to a business as usual case.<sup>1</sup> The study found that alternative energy resources had a greater financial impact on Pennsylvania than the business as usual case. Specifically the report found that the AEPS portfolio would result in \$9.0 billion more in gross state revenue, a \$2.7 billion advantage in earnings, and generate approximately 3,500 more jobs over 20 years.

Other benefits of AEPS include reducing our potential future dependence on imports of liquefied natural gas by offsetting natural gas demand through demand-side management and alternative energy generation, improved system reliability resulting

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<sup>1</sup> Economic Impact of Renewable Energy in Pennsylvania: Analysis of the Advanced Energy Portfolio Standard, Black & Veatch Consulting, Inc., November 19, 2004, p. F-1.  
<http://www2.bv.com/energy/eec/renewPennStudy.htm>

from distributed generation and resource diversification and improvements in environmental quality.

Gamesa, a major Spanish-wind manufacturer took note of Pennsylvania's commitment to alternative energy and is locating its North American headquarters and two manufacturing facilities, with a total projected employment of 1,000, in Pennsylvania. AEPS provisions are also critical to promoting the next generation of base load energy in Pennsylvania to provide continued system reliability and affordable energy prices. These systems include low-cost renewables like landfill gas, biomass co-firing and wind as well as clean coal technologies such as integrated gasification combined cycle and the next generation of waste coal power plants.

For Pennsylvania to fully enjoy all of the benefits listed above it is imperative that the implementation of AEPS respect Pennsylvania's potential as an alternative energy producer to the maximum extent possible and not confound the intentions of both the Pennsylvania General Assembly and the Governor to promote economic development in Pennsylvania.

### **Alternative Energy System Qualification - Geographic Requirement**

The Tentative Order's interpretations of the Geographic Requirement, pages 14-20, fundamentally limits the potential benefits of AEPS by unnecessarily broadening the geographic area from which alternative energy resources can qualify for alternative energy credits (credits).

The Commission states its view that alternative energy resources anywhere in MISO or PJM can qualify to earn credits. This is counter to the interpretation that MISO based generation can serve MISO utility territories and PJM based generation can serve

PJM utility territories. The Commission bases part of its argument on the view that restricting MISO resources would be inconsistent with interregional trading of wholesale electricity. Markets for alternative energy credits, however, are unique and distinct from the market for wholesale energy.

Unlike electricity markets, the market for alternative energy credits is not reciprocal. In other words, there are only markets for alternative energy credits in states that have portfolio standards such as Pennsylvania. The Commission's interpretation of the geographic-scope question opens up Pennsylvania's alternative energy market to credits from MISO states, which in almost all cases do not have a portfolio standard or a portfolio standard comparable to Pennsylvania's. The result is that Pennsylvania's energy credit market will be open to those states, but there will be no reciprocal market in those states for Pennsylvania credits. Thus, the Commission's interpretation creates a "free rider" situation whereby states not allowing sale of credits from Pennsylvania are able to sell their product in Pennsylvania. Because AEPS allows for Electric Distribution Company cost-recovery, it is conceivable that Pennsylvania citizens in PJM will be paying for the development of projects from which they gain no material benefit in either system reliability for the PJM grid or economic development, and vice-versa for Pennsylvania citizens in MISO.

Only three MISO states have portfolio standards and only Minnesota's is remotely comparable to Pennsylvania's in scale. In PJM, New Jersey, Delaware, Maryland and the District of Columbia all have portfolio standards with standards comparable to Pennsylvania's.

With the possible exception of Maryland we know of no other portfolio standard that provides as large a market for alternative energy credits as would the geographic scope interpretation we have put forward. Thus, the interpretation DEP posits (which is stated in the Tentative Order) accomplishes the dual goal of an expansive market for alternative energy credits while providing the best opportunity for AEPS to support economic development, energy security and grid reliability for Pennsylvanians.

The Department strongly encourages the Commissioners to reconsider the geographic scope interpretation put forward in the Tentative Order. A failure to do so will most certainly reduce the benefits of AEPS to Pennsylvania.

#### **Alternative Energy Credit Certification Standard – Delivery Requirement**

Equally critical to advancing the purpose of AEPS through the development of alternative energy sources and realizing the attendant economic, environmental and system reliability benefits is the electricity “delivery requirement” encompassed in AEPS. The plain language of AEPS requires that electricity generated from alternative energy sources actually be sold to Pennsylvania residential customers in order to satisfy the Act.

Section 3 of AEPS states “. . .the electric energy *sold by* an electric distribution company or electric generation supplier *to retail electric customers in this Commonwealth* shall be comprised of electricity generated from alternative energy sources. . .” 73 P.S. §1648.3(a) (emphasis added). The requirement that the alternative energy actually be sold (as opposed to only purchasing credits for electricity that has been sold elsewhere) is repeated in Subsections 3(b)(1), 3(b)(2), 3(c).

This interpretation is not in conflict with Section 3(e)(4)(ii) (which describes how credits may be purchased). If an EDC or EGS sells more electricity generated from qualifying alternative energy sources to retail customers in Pennsylvania than is required by the Act, that entity would be able to sell excess alternative energy credits as envisioned by Section 3(e)(4)(ii) because the electricity would have actually been sold to Pennsylvania residential customers. Indeed, this interpretation gives effect to all the provisions in AEPS rather than ignoring the plain language of the statute that requires the electricity generated from alternative energy sources be sold to Pennsylvania retail electric customers in the specified percentages.

### **Allocation of Agency Responsibilities Regarding Alternative Energy System**

#### **Qualification and Credit Certification Process**

The Tentative Order proposes two possible roles for DEP in qualifying alternative energy systems and concludes that certification of questions of fact to DEP is more consistent with the plain language the Act. The Department submits that a third option more appropriately apportions the responsibility of the agencies without employing a process that is not contemplated by AEPS or the Public Utility Code.

DEP suggests that prior to applying to the program administrator for “qualified status”, the Department should first determine that a facility is in compliance with applicable environmental laws and the standards set forth in Section 2 of AEPS. A determination of compliance would therefore be a required component to a complete application to the program administrator. Of course, after a facility is qualified by the program administrator, the Department would have the continued responsibility of ensuring the facility’s compliance with applicable environmental laws and the standards

set forth in Section 2 of AEPS. This approach does not require the Commission to delegate any of its authority, does not create jurisdictional issues if a decision is appealed, and is supported by AEPS.

As stated in Section 2, an “alternative energy system” is:

A facility or energy system *that uses a form of alternative energy source to generate electricity* and delivers the electricity it generates to the distribution system of an electric distribution company or to the transmission system operated by a regional transmission organization.

73 P.S. §1648.2.

Thus, in order to be considered an alternative energy system (much less a qualified system), the facility must use a form of alternative energy source. The definition of “alternative energy source” provided in Section 2 lists the types of qualifying sources and the standards that must be met. Verification of these “standards” is clearly delegated to the Department by Section 7(b) of AEPS.

The department shall ensure that all qualified alternative energy sources meet all applicable environmental standards and shall verify that an alternative energy source meets the standards set forth in section 2.

73 P.S. §1648.7(b).

Also, because Section 7(b) uses the phrase “qualified alternative energy *sources*” when describing the Departments role in determining compliance with environmental standards, it is clear that compliance with these laws is also a prerequisite to being an alternative energy system.

Finally, determinations of compliance would be considered final actions of the Department, would be appealable to the Environmental Hearing Board, and would be defended by the Department.

Thank you for the opportunity to provide these comments. We look forward to working with the Commission and the other stakeholders to successfully implement AEPS.