

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF THE OFFICE OF CONSUMER ADVOCATE

I. INTRODUCTION

On January 31, 2006, the Public Utility Commission (“Commission”) issued a Tentative Order which is one of a series of Orders the Commission has issued at this docket in its ongoing effort to implement the requirements of Act 213 of 2004, the Alternative Energy Portfolio Standards Act (“AEPS” or “Act”), 73 P.S. § 1648.1 *et seq.* This particular Tentative Order addresses issues involving allocation of agency responsibilities between DEP and the Commission regarding alternative energy system qualification and credit certification processes; the process for approval and review of alternative energy qualification decisions; the standards for qualifying alternative energy systems to participate under AEPS; and health and safety standards. In addressing these issues and the various sub-issues raised in the Order, the Commission found it necessary to interpret various provisions of AEPS and, recognizing that interested parties may have differing views on those interpretations, the Commission decided to

first issue a Tentative Order seeking public comment. The Tentative Order was published in the February 11, 2006 issue of the *Pennsylvania Bulletin* with a request that interested parties file comments within 30 days of publication. It is in response to that request that the Office of Consumer Advocate (“OCA”) offers the following comments.

The OCA will comment on two issues raised in the Tentative Order: (1) the Geographic Requirement under the Alternative Energy System Qualification Standard (“Geographic Requirement”) and (2) the Alternative Energy Credit Certification Standard (“Delivery Requirement”). While the OCA agrees with the Commission’s statutory interpretations on both of these issues, the interpretations nevertheless give rise to what is by far the OCA’s most serious concern regarding this Tentative Order – the severe limitations placed on the ability of Pike County Light and Power Company (“Pike”) to comply with the requirements of AEPS.

As will be discussed more below, the Commission’s determinations may seriously impact the ability of Pike to comply with AEPS in a cost-effective manner. The OCA submits that the inability of Pike to comply in a cost-effective manner, or for any EGS serving in Pike’s territory to comply in a cost-effective manner, may warrant the declaration of a force majeure for Pike’s service territory until a long term solution to numerous Pike problems can be developed. The need to comply with the AEPS requirement, however, provides another key reason for Pike to interconnect with PJM or be acquired by another Pennsylvania utility or rural electric cooperative prior to January 1, 2008 when Pike will need to comply with the AEPS requirements.

Finally, the OCA will comment on the need for having information about the alternative energy credit certification process available to both applicants and the public. The OCA recommends that the Commission require that information about the standards, the process, and the approval of credits by Tier be readily accessible to all interested stakeholders and the public in an easy to understand manner.

II. COMMENTS

A. The Geographic Requirement

Under the section of the Tentative Order entitled Geographic Requirement, the Commission made three determinations based on Section 1648.4 of the AEPS, which establishes the geographic boundaries where an alternative energy resource must be located to be certified under the Act. Section 1648.4 of the Act provides:

Energy derived only from alternative energy sources inside the geographical boundaries of this Commonwealth or within the service territory of any regional transmission organization that manages the transmission system in any part of this Commonwealth shall be eligible to meet the compliance requirements of this act.

73 P.S. §1648.4

The Commission first determined that the language is clear that any alternative energy resource located within Pennsylvania can be used to satisfy the requirements of the Act. The OCA agrees with this determination as it is clear from the language of the Act.

The Commission next determined that alternative energy resources that are located within the geographic boundaries of either the PJM Interconnection, LLC (“PJM”) or the Midwest Independent Transmission System Operator, Inc. (“MISO”) can be used by all electric distribution companies (“EDCs”) and electric generation suppliers (“EGSs”) in the

Commonwealth to meet AEPS requirements. The Commission based this determination on the fact that both PJM and MISO are regional transmission organizations (as defined by the Act) and thus resources within their boundaries would qualify as alternative energy resources for Pennsylvania statutory purposes under the plain language of the Act. The OCA also concurs with this determination. The OCA fully supports the reasoning voiced by the Commission that “the Act should be interpreted in a way that ensures the most competitive price for alternative energy.” Tentative Order at 20. As the Commission notes in its Tentative Order, such a price can best be achieved by allowing the broadest possible market for alternative energy products. Tentative Order at 19. The Commission’s interpretation, making all PJM and MISO resources available to all Pennsylvania EDCs and EGSs, is consistent with achieving the most competitive price for alternative energy, and is consistent with the language of the Act.

Finally, the Commission determined that alternative energy resources located in the New York Independent System Operator (“NYISO”) would not be considered for eligibility in meeting the requirements of AEPS. The Commission found that since the NYISO is not a regional transmission organization, as that term is defined in the Act, the alternative energy resources located in the NYISO cannot qualify. While the OCA agrees with the Commission that the term “regional transmission organization” is very specifically defined in the Act as an entity that has been approved to operate and manage an electrical transmission grid pursuant to FERC Order 2000 and that the NYISO does not meet this definition, the Commission’s decision could nevertheless be detrimental for Pike County Light & Power Company customers. As discussed in more detail in Section II.C, the impact of the geographic requirement, along with the delivery requirement, must be addressed by the Commission for Pike’s customers.

B. The Alternative Energy Credit Certification Standard (The Delivery Requirement)

Pursuant to Sections 1648.2 and 1648.3, the Commission also finds that in addition to the geographic requirement, the Act establishes a “delivery requirement” for the energy produced by the alternative energy resources. The Commission discusses two approaches to satisfying the delivery requirement: 1) a requirement that the energy be delivered in Pennsylvania for the alternative energy credit to be used to meet Pennsylvania requirements; or 2) a requirement that the energy be delivered either to an EDC in Pennsylvania or to the transmission system of either PJM or MISO for the alternative energy credit to be used to meet Pennsylvania requirements. The Commission appears to adopt a broader delivery requirement for alternative energy whereby, in order for alternative energy to satisfy the Pennsylvania requirements, it must be delivered into either a Pennsylvania EDC’s distribution system or into the transmission system of PJM or MISO. Tentative Order at 22. The OCA submits that this broader delivery requirement is more consistent with technical aspects of energy delivery, gives effect to all provisions of the Act, and allows for more cost effective compliance.

As the Commission points out, interpreting the Act to require a Pennsylvania-specific delivery standard suffers from the technical difficulty that electrons cannot be traced; that is, no one, not even an RTO, can say that electricity generated at a particular power plant was delivered to a specific location when there is an interconnected system. Tentative Order at 23. When electric lines are energized, electrons follow the path of least resistance in accordance with the laws of physics; they are not directed along any particular route. For this reason, it is not possible to tell whether energy from an alternative energy source is “delivered” to any customer in Pennsylvania.

Entities involved in power marketing make use of a “contract path,” under which they assume that, notwithstanding the actual flow, electricity will be delivered to the purchaser at an agreed to price. The “contract path” is a physical fiction, *i.e.*, it is a financial arrangement between two parties, not a physical one. Given the nature of the flow of electricity, no seller could or would guarantee physical delivery from a generator or set of generators to a specific customer. To enforce a Pennsylvania-specific delivery requirement would require that all energy from alternative energy resources be procured through the financial arrangement of a contract path to Pennsylvania. This could have two results: 1) it could increase the costs of compliance, as there could be an additional cost to secure a specific contract path to Pennsylvania; and 2) it would seemingly preclude the separate trading of alternative energy credits contemplated under the Act (73 P.S. §1648.3(e)(4)) because the alternative energy credits would be packaged with the underlying energy in order to verify “contract delivery” to Pennsylvania.

The OCA submits that an interpretation of the Act that allows energy to be delivered either in Pennsylvania or anywhere into the transmission system of PJM or MISO is the most reasonable interpretation of the Act. Such an interpretation gives effect to all provisions of the Act, including those that allow alternative energy credits to be traded separately from the energy. It will also allow a broader market which should reduce the cost of compliance.

C. The Pike Situation

While the OCA is in agreement with the Commission’s determinations on the geographic and delivery requirements applicable to alternative energy systems, it is nevertheless a fact that those interpretations leave Pike and its customers in an extremely untenable position regarding compliance with AEPS. Pike’s options for compliance are limited to the following: (1) having alternative energy systems locate in its service territory, contracting for the output and

interconnecting with the facility; or (2) purchasing tradable unbundled alternative energy credits associated with projects in PJM or MISO. Because the NYISO is excluded from the Act, Pike does not have the option, as do all other EDCs, of contracting for the energy output of an alternative energy resource located within its own transmission control organization. Nor can Pike contract for the purchase of alternative energy from a resource in neighboring PJM, as there is no direct transmission interconnection between PJM and Pike. Thus Pike is left with buying unbundled credits from PJM and MISO while buying energy from the high priced NYISO market – energy that may actually include supply from alternative energy resources.

Of the two options available to Pike, neither seems a particularly likely avenue for achieving compliance with AEPS at a reasonable cost at this time. To fully meet the requirements of all Tiers of AEPS through locating facilities in its small service territory, Pike would have to attract several different alternative energy resources to comply. This seems unlikely and expensive. With regard to the purchase of separate credits from PJM or MISO, it is at this point completely uncertain what quantities, if any, of these credits will be available separately from the energy for purchase since no market is even established. If purchasing a bundle of energy and credits becomes the predominant means by which alternative energy credits are procured, separately tradable credits may not be available in sufficient quantity to allow Pike to comply. Under such a scenario, the price of separately tradable credits could be driven quite high.

In short, the OCA foresees that compliance with AEPS will be difficult, and, if possible at all, potentially costly for Pike’s customers. Fortunately, the Act provides a “safety valve” for such a situation in the form of the “force majeure” provision of Section 1648.2. Because of the difficulty of compliance, the OCA anticipates that Pike (which must begin to

comply on January 1, 2008) or an EGS in its service territory may be in a position of having to seek a force majeure declaration. Mindful of the particular difficulties Pike customers already face in terms of the extremely high prices they pay under the company's current POLR plan, the OCA would urge the Commission to favorably consider any petition for force majeure under AEPS. These customers are already paying the highest electric prices in the Commonwealth, with dire consequences to customers individually and to the local economy. Adding high AEPS costs to that burden will only exacerbate conditions there. This situation also demonstrates the importance of pursuing efforts to bring Pike into PJM, either through construction of a direct interconnection, or acquisition by a larger Pennsylvania utility or an electric cooperative corporation. Having access to PJM-delivered alternative energy could significantly improve Pike's prospects for complying with AEPS.

D. Availability of Information to Alternative Energy Credit Applicants and the Public

On page 12 of the Tentative Order, the Commission discusses the process for approval and review of alternative energy system qualification decisions. Those decisions will, in turn, determine the qualification of alternative energy credits. The OCA considers it very important that information about this process be available to both applicants and the public.

The range of resources accepted under the AEPS includes a number of small customer generators whose expertise is not in regulatory compliance and who will require clear information in order to participate effectively. Specifically, there should be information available for applicants describing all necessary detail of the application process, including the timing of applications, the content of applications, including forms and required specific documentation, and the disposition of applications. In addition, the public should have information on the results of the process, including information on the number of credits

approved in each Tier and, to the extent that proprietary information is not released, detailed information about the number of credits approved for each resource enumerated under the act. Finally, both applicants and the public will need easy access to information regarding the process for appealing the administrator's determinations.

The OCA asks that the Commission include in the Final Order a specific delineation of the information to be provided related to certification and, in any later directive, that the administrator be required to make this information readily available.

III. CONCLUSION

The Office of Consumer Advocate looks forward to continuing to work on these important implementation issues regarding the Alternative Energy Portfolio Standards Act with the Commission and all interested stakeholders. The Commission's resolution of the implementation issues set forth in this Tentative Order appears to be consistent with the Act and will allow for the development of a broad market for alternative energy credits in Pennsylvania. The Office of Consumer Advocate cautions, however, that the Commission must address the unique circumstances of Pike County Light & Power Company and its customers as implementation of the Act continues.

Respectfully Submitted,

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