**BEFORE THE**
**PENNSYLVANIUA PUBLIC UTILITY COMMISSION**

# Reply Comments Of Citizens for Pennsylvania's Future (PennFuture)

**Regarding**

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

**And**

**Docket No. L-00040169**
**Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa. C.S. § 2807(e)(2)**

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## Introduction

Citizens for Pennsylvania's Future (PennFuture) hereby submits Reply Comments pursuant to the Commission's Order reopening the comment period for its default service rulemaking in consideration of the Alternative Energy Portfolio Standards Act of 2004 (Act 213) as entered on November 18, 2005. These Reply Comments respond to a number of issues raised in comments previously submitted by other interested parties in relation to the Commission's February 8, 2006 request for comments.

## Force Majeure

The Office of Small Business Advocate (OSBA) advises the Commission to evaluate a force majeure claim on the basis of whether electricity from alternative energy sources is "physically unavailable *or* if electricity from such sources is available only at exorbitant prices". The OSBA goes on to define "exorbitant" as any price higher than that of a traditional energy supply mix in the following paragraph:

> "One alternative for determining whether a force majeure exists would be for an EDC to seek separate bids for a quantity of default service electricity, one which includes the designated percentages from alternative energy sources and one which does not. If the low bid including alternative energy exceeds the low bid without alternative energy by a percentage approved as part of the default service plan, a force majeure would be deemed to exist."

The above description of how to evaluate a claim of force majeure goes against the original legislative intent of Act 213 and will basically render the Act useless. A similar proposal for a "cost trigger" approach to evaluating force majeure was considered in the initial stages of drafting Act 213 and was rejected. In fact, the General Assembly passed Act 213 with full knowledge that while new markets are developed, alternative energy will be more expensive than traditional fossil fuel based sources. If prices were on par or less, as they will be at some future date, the Act would be unnecessary. For these reasons the General Assembly adopted a cost-recovery provision in the Act to address this issue and mitigate the concerns of EDCs and EGSs.

There is nothing in Act 213 that indicates a "cost" or "economic rational" threshold should be used in determining claims of force majeure. Only in extraordinary situations that are beyond the control of those who must comply with the Act, and only after those who must comply with the Act have shown that the Act could not be complied with, should the Commission consider a force majeure claim. If the Commission were to allow for force majeure because the requirements of complying with Act 213 were more expensive than business as usual, the requirements of the Act would never be met.

When reviewing a force majeure claim, the Commission should take into account both the price per kilowatt-hour and the number of kilowatt-hours needed to comply. For example, Act 213 requires that in the first four years the total percentage sold from solar photovoltaic technologies equal 0.0013 percent, which translates to roughly 1 megawatt per year of installed capacity. However, this 1 megawatt will be distributed across each of the Commonwealth's utilities and will only equal approximately 150 to 200 kilowatts for each of the first four years per utility. At a capital cost of $7.30 per watt installed, the cost for utilities should be minimal at only $1.5 million per utility territory and cannot create a basis for force majeure.

We understand the OSBA is concerned that the costs of complying with Act 213 will be passed down to consumers. However, if costs are passed down at all they will be minimal. The Act requires that Tier I qualifying resources supply eight percent of total electricity demand by 2020, with 1.5 percent of electricity demand two years after the effective date of the Act from Tier I resources. This translates into an annual construction requirement of about 300 megawatts of new Tier I supply, although that number could vary slightly depending on capacity factors and demand growth over the next 15 years. This is not an excessively large number when viewed in comparison to the total electric generating capacity in Pennsylvania, which is currently 46,495 megawatts. The three largest Pennsylvania utilities (FirstEnergy, Exelon, and PPL) will each need to buy the output from roughly 75 to 125 megawatts of new Tier I supply every year. Also the current supply of electricity that meets the Tier II alternative energy source definition exceeds Pennsylvania's Tier II demand, and consequently the payment cost will be very low.

The Commission needs to assure that the criteria for determining force majeure will be stringent and anything less than utilities taking an active role in developing an alternative energy resource market will not be permitted. The Commission should require that utilities submit Request for Qualifications (RFQ) well in advance of the end of their cost recovery period. Utilities should then hold a bidders meeting where they will discuss: the amount of electricity needed, procurement process, and all terms and conditions. Passive compliance attempts should not trigger force majeure. If utilities wait to send out RFQs or Request for Proposals (RFP) until the end of their cost recovery period, they will not be able to meet the requirements of Act 213, and they should not be excused from those requirements, given such inaction or tardy action.

## **Long-term Contracts**

PennFuture and others including: PPL Electric Utilities Corporation, BP Solar, the Industrial Energy Consumers of Pennsylvania, PV Now and US Wind Force agree that long-term contracts are critical to the development of alternative energy resources as required by Act 213.

Constellation Energy and UGI Utilities, however, argue against long-term contracts. Constellation Energy in particular argues that Tier I and most Tier II resources don't necessitate long-term contracts. This is in direct opposition to current industry trends not only for alternative energy resources but for traditional fossil fuel power plants as well. As we stated in our original comments, a long-term contract needs to be in place for the construction of any power plant whether it is gas-fired, nuclear, coal or wind.

This becomes increasingly important for alternative energy projects that need minimum contract lengths of 15 to 20 years as they are still developing in the marketplace. Investors are not willing to finance a project, unless there are credit worthy institutions committed to long-term off take agreements.

The need for long-term contracts is clearly shown in the marketplace today. In March of 2006, FirstEnergy announced that they entered into a 20-year power purchase agreement with US Wind Force, LLC for two wind projects with a combined output of 250 megawatts in West Virginia. In addition to market signals, governments are beginning to take regulatory action to allow for long-term contracts. The Ontario Power Authority recently announced an Advanced Renewable Tariff for standard offer that allows for homeowners, landowners, farmers, municipalities and others with projects up to 10 megawatts to sell their power to the grid at a fixed price for 20 years.

Constellation also goes on to say that long-term contracts would undermine the benefits of a competitive procurement process and make the playing field uneven. We disagree with this statement as long-term contracts are in fact needed to level the playing field between alternative energy sources and traditional energy sources given the fact that the alternative energy market is still developing.

Without allowing for long-term contracts, alternative energy projects will not be constructed and utilities will not be able to procure the necessary resources to comply with Act 213. Pennsylvania would then not receive any of the environmental and economic benefits that come with the Act including reduced pollution, reduced greenhouse gases and increased jobs and economic input.

**Solar Share**

Several parties including the Office of Small Business Advocate (OSBA) and the Office of Consumer Advocate (OCA) indicate in their comments that there is no need to treat the solar photovoltaic requirement differently from other alternative energy resources in terms of procurement and cost recovery, while others indicate it is too soon to tell.

PennFuture disagrees with that stance and concurs with the comments made by the solar industry and the Pennsylvania Department of Environmental Protection (DEP) that since the General Assembly decided the solar photovoltaic market was important enough to receive a set aside requirement under Tier I, it should be treated distinctly in terms of procurement and cost recovery.

In particular we support the DEP’s request to allow for separate banking provisions for the solar share. As the DEP points out, the solar share requirement increases in a different manner than other Tier I resources with a four-stage ramp-up, increasing sharply in years five, ten and fifteen. Since each of the four requirement stages lasts for five years, it is appropriate to allow utilities to bank solar credits for a minimum of five years as opposed to the two year allowance for Tier I and Tier II resources. This will enable utilities to prepare for the next percentage increase in year five. Allowing for a minimum five year banking period will assure that utilities will be able to meet the requirements of the solar share and is crucial to the success of Act 213 in moving the solar industry forward.

The current installed solar capacity in Pennsylvania is just under 1 megawatt, the majority of which is located in the PECO territory where there was a limited rebate program before funds were expended. This can soon change, however, as solar photovoltaics are the fastest growing energy generating technology in the world. The industry is growing at a rate of 25-35% per year, from a current installed capacity of 1500 megawatts to a projected capacity of 3200 megawatts by 2010. In addition, venture capital funding is pouring into the industry to fuel its growth (three of the last ten Initial Public Offerings were solar companies).

New Jersey, California, Japan and Germany all have seen dramatic growth in solar capacity and the resultant growth in industry due to strong rebate and incentive programs. Pennsylvania does not currently have a statewide rebate or incentive program and therefore must rely on developing its solar renewable energy credits (SRECs) market and complying with the solar set aside within Act 213 in order to duplicate the success of other states and countries. With effective execution of solar rules, Pennsylvania with our strong solar set aside will be able to join the likes of New Jersey and California.

Given the current market structure in Pennsylvania, solar project developers and customers depend on the sale and purchase of SRECs to make projects economically viable. SRECs that are created and traded on a short-term, spot market basis provide little assurance to lenders that SREC revenues will be available in future years or what their value will be. Due to the current structure and reliance on SRECs, it becomes increasingly important to allow for long-term contracts (a minimum of 15 years) for the solar set aside. It will become increasingly difficult to meet the solar share requirements of Act 213 if spot market uncertainty becomes a disincentive to developers. However, if the Commission's regulations are created in a manner that properly develops the SREC market, Pennsylvania will also experience a thriving solar industry.

Additionally, please be alert to the difference between the solar share and other Tier I resources in regards to Alternative Compliance Payments (ACP) as mentioned in comments submitted by BP Solar and MESA Environmental. It is important to account for the fact that solar project owners in New Jersey or other states may receive both an up-front capital rebate, as well as revenue from the sale of SRECs. In Pennsylvania, solar project owners do not receive an up-front capital rebate and, therefore, must finance their solar projects solely on the basis of the sale of SRECs from the project. Therefore, the "average value" used in calculating ACPs should include not only the SREC value received by solar project owners but also the levelized value of capital rebates received by the solar project owners. For example, in New Jersey an SREC trading for 20 cents/kWh actually has an average value of two-times that amount or 40 cents/kWh because of the subsidy that was provided.