



April 7, 2006

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PA Public Utility Commission  
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| VIA E-MAIL

Docket No. M-00051865

Implementation of the Alternative  
Energy Portfolio Standards Act of 2004

Docket No. L-000410169

Rulemaking RE Electric Distribution Companies'  
Obligations to Serve Retail Customers at the  
Conclusion of the Transition Period Pursuant to  
*66 PA. C.S. § 2807(e)(2)*

Dear Ms Beale:

To follow, please find the reply comments of PPM Energy regarding the Implementation of the Alternative Energy Portfolio Standards Act of 2004.

Respectfully submitted,

Roby J. Roberts  
Director  
Policy and Regulatory Affairs

PENNSYLVANIA PUBLIC UTILITIES COMMISSION

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**REPLY COMMENTS OF PPM ENERGY**

PPM Energy, a developer and owner of wind power facilities, previously commented in response to the Secretarial Letter of February 8, 2008 seeking comments regarding Implementation of the Alternative Energy Portfolio Standards Act of 2004 (AEPS) and the 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). PPM Energy would like to take this opportunity to submit reply comments in this matter.

PPM Energy wishes to offer comments on two topics: (1) long-term contracts and pricing and (2) *force majeure*.

**Long-Term contracts**

Many of those who commented on this issue supported the option of long-term contracts for alternative-energy resources, as does PPM Energy, and we strongly urge the Commission to give full weight to those comments. We particularly commend to the Commission's attention the discussion of this issue by the Office of the Consumer Advocate (OCA), which rightly argues that long-term contracts for alternative energy resources will provide the consumers of the Commonwealth an important benefit: "reasonable and stable prices." As the OCA notes, long-term contracts for alternative energy resources can provide a "hedge against price volatility." The cost of fuel to operate a wind farm is *zero*. The Commission should recognize this signal virtue of wind and encourage long-term contracts for alternative resources to ensure that electricity consumers can take advantage of the price stability that this vast, local resource can provide.

In addition, PPM urges the Commission to accept the arguments of the OCA regarding the definition of “prevailing market price.” As the OCA wrote in its “Supplementary Comments” in response to the Commission’s Secretarial Letter of February 8, 2006 :

*The OCA has consistently maintained that the phrase [prevailing market price] includes a range of generation products of varying lengths and is not synonymous solely with spot prices or prices in the short-term energy markets. As long as a generation product is competitively procured, the price that is arrived at will constitute the “prevailing market price” for that product at the time it is procured . . . .*

When using the phrase “long-term contracts,” PPM Energy would define that to mean a minimum of ten (10) years, although fifteen (15) years would be preferable. Contracts of 10-15 years will be most effective in providing consumers with protection against price volatility and ensuring that project developers can arrange the financing necessary to bring new alternative energy generation on-line.

#### **Force Majeure**

In its comments, the Office of the Small Business Advocate (OSBA) has argued that the Commission should be able to declare a condition of *force majeure* to exist if prices for alternative energy were to be “unreasonable.” OSBA goes on to suggest that the Commission establish a percentage limit above commodity electricity prices as the “reasonable” price for alternative-energy sources.

OSBA is creating a proposition out of whole cloth, and it should be rejected. Nothing in the Alternative Energy Portfolio Standards Act of 2004 provides for invoking *force majeure* based on prices. The Act specifically refers to “. . . alternative energy resources [being] reasonably available in the marketplace in sufficient quantities . . .” (emphasis added). The Act allows for the recovery of costs of alternative resources, indicating that the Legislature fully understood that alternative resources could cost more than undifferentiated commodity electricity, but the Act does not explicitly set a ceiling on the price of the required resources.

The alternative compliance payment of \$45 is likely to work as effective price ceiling on alternative resources, and there is no reason or basis in the law for the Commission administratively to set a price cap on alternative resources. Robust competition among alternative energy resources will discipline

prices, and the Commission should concentrate on establishing the conditions necessary to foster the development of eligible resources.

*Force majeure* is by definition a surprising and unexpected event. PPM Energy respectfully argues that the Commission must communicate clearly to all Electricity Suppliers that the AEPS obligation is an obligation that is every bit as essential as the obligation to provide customers with a reliable supply of electrons. The goal should not be to devise ways to short-circuit the AEPS requirement but to ensure that it is met fully. There are profoundly important reasons to advance the development of alternative-energy resources, which the Legislature recognized by enacting the AEPS. As the majority of those commenting in this docket have stated, the Commission should move decisively to put rules in place to ensure that the contracting and development of new resources will occur in a timely manner. Electricity Suppliers should be required to begin their planning and procurement of alternative energy resources now, so they will be able to meet their AEPS obligations fully when the time comes.

By moving decisively and establishing the right expectations, the Commission can make certain that *force majeure* will, in fact, be unlikely ever to occur.

Thank you for your consideration of these views.