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July 13, 2007

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
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VIA HAND DELIVERY

Re: Petition of PECO Energy for Approval of (1) A Process to Procure Alternative Energy Credits During the AEPS Banking Period, and (2) A Section 1307 Surcharge and Tariff to Recover AEPS Costs; Docket No. P-00072260

Dear Secretary McNulty:

Please be advised that the Philadelphia Area Industrial Energy Users Group ("PAIEUG") will not be filing a Main Brief in the above-referenced proceeding. PAIEUG reserves the right, however, to file a Reply Brief in response to issues raised in other parties' Main Briefs.

As evidenced by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this transmittal letter and kindly return it to our messenger for our filing purposes.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Charis Mincavage
Barry A. Naum

Counsel to the Philadelphia Area
Industrial Energy Users Group

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Enclosure

c: Hon. Marlane A. Chestnut, Administrative Law Judge (Via E-Mail and First Class Mail)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

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Dated this 13th day of July, 2007 in Harrisburg, Pennsylvania.

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SECRET
2007 JUL 13 PM 3:47

Re: Petition of PECO Energy Company for
Approval of (1) A Process to Procure
Alternative Energy Credits During the
AEPS Banking Period and (2) A Section
1307 Surcharge and Tariff to recover AEPS
Costs
Docket No. P-00072260

Dear Secretary McNulty:

Enclosed for filing are an original and nine (9) copies of the Office of Consumer
Advocate's Main Brief, in the above-referenced proceeding.

Copies have been served on the parties of record as indicated on the enclosed
Certificate of Service.

Sincerely,

Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044

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cc: Parties of Record
Hon. Marlane R. Chestnut/ALJ
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Petition of PECO Energy Company :
for Approval of (1) A Process to :
Procure Alternative Energy Credits : Docket No. P-00072260
During the AEPS Banking Period and :
(2) A Section 1307 Surcharge and :
Tariff to recover AEPS Costs :

MAIN BRIEF OF THE
OFFICE OF CONSUMER ADVOCATE

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I. Introduction

On March 19, 2007 PECO Energy Company (PECO or the Company) filed a Petition seeking approval of a process to procure 450,000 non-solar Tier I alternative energy credits pursuant to the Alternative Energy Portfolio Standards Act (AEPS Act). 73 P.S. § 1648.1, et seq. Under the AEPS Act, certain percentages of the electricity sold to retail customers in Pennsylvania must be derived from alternative energy resources. PECO St. 1 at 5; 73 P.S. §1648.3(a). The alternative energy resources are divided into two categories referred to as Tier I and Tier II resources. 73 P.S. §1648.2. Among the Tier I resources, which are at issue in this proceeding, are wind, low-impact hydro, geothermal, biomass, coal mine methane, biologically derived methane gas, fuel cells, and solar resources. Id. PECO's obligation under the AEPS Act begins on January 1, 2011, which is the end of PECO's generation rate cap. For the compliance period from January 1, 2011 to May 31, 2011, PECO will be required to show that at least 3% of the retail electricity sold, as measured by alternative energy credits, is from the Tier I resources. PECO St. 1 at 6; 73 P.S. §1648.3(d).

During the current generation rate cap period, also referred to as the "cost recovery period" in the AEPS Act, an Electric Distribution Company (EDC) is permitted to acquire alternative energy credits and "bank" the credits for use at the expiration of the rate cap period, if certain conditions are met. 73 P.S. §1648.3(e)(7). The costs of the banked alternative energy credits procured during the "cost recovery period" are recoverable after the end of the generation rate cap when the AECs are used. 73 P.S. §1648.3(a)(3). Through its Petition, PECO proposes to procure approximately 60% of the non-solar Tier I alternative energy credits that it will require in the compliance years following the expiration

of its generation rate cap through a multi-year competitive procurement process in 2007-2009 and “bank” those AECs for future use. PECO St. 1 at 7-8; PECO St. 3 at 13-14.

PECO witness McCawley explained the reasoning behind PECO’s proposal:

PECO believes that, considering the developing nature of the renewable energy marketplace and increasing renewable portfolio standards requirements in other states, there may be increasing competition for the energy and AECs generated by Alternative Energy Systems in the Tier I category. For some alternative energy resources, the more cost effective projects will likely be developed first.

Therefore, PECO believes that it is reasonable to initiate a process now to attempt to begin to acquire a portion of PECO’s expected future AEPS requirements. Moreover, initiating a multi-year competitive procurement process over 2007 and 2008 will allow PECO to take advantage of Act 213’s AEC banking provisions in order to build an AEC inventory in a way that mitigates the possibility of having to buy more AECs at a later time and over a shorter procurement period, when the demand for credits might be higher. If PECO were to wait and attempt to procure credits to satisfy all of its AEPS requirements at one time, then PECO would miss out on this unique opportunity enabled by Act 213.

PECO St. 1 at 8.

The Office of Consumer Advocate (OCA) supports PECO’s initiative to utilize the banking provisions of the AEPS Act to begin the procurement of the alternative energy credits needed to comply with the AEPS Act at the end of the generation rate cap period. The OCA submits that the multi-year competitive procurement process, as amended and clarified by the Stipulation between the Office of Small Business Advocate (OSBA) and PECO, is a reasonable way to proceed under the AEPS Act. By taking advantage of the banking provisions, PECO’s proposal should assist in mitigating the cost of the AECs and

should provide early support for the developing alternative energy market. PECO St. 3 at 13-15.

As part of its Petition, PECO has also requested approval of a Section 1307 surcharge for recovery of the cost of the alternative energy credits (AECs). The surcharge mechanism is to be included in PECO's tariff and is entitled "Provisions for the Recovery of Alternative Energy Portfolio Standards Costs." PECO St. 2 at 2; Exh. 2.1. The tariff will not become effective until January 1, 2011 -- the end of the generation rate cap period -- when PECO is permitted to recover the deferred costs for the AECs that it banks during the rate cap period. The surcharge is designed to recover the costs of the AECs banked prior to the conclusion of PECO's generation rate cap and the on-going AEPS compliance costs following the generation rate cap period. PECO St. 2 at 3. While the OCA supports PECO's proposed procurement and banking of AECs, and supports full cost recovery under the provisions of the AEPS Act, the OCA submits that it is premature at this time to approve a specific tariff and surcharge recovery mechanism.

As discussed more fully below, the AEPS cost recovery mechanism will need to be consistent with the Commission's final regulations in Implementation of the Alternative Energy Portfolio Standards Act of 2004, at Docket No. L-00060180 (Order entered July 25, 2006) and properly coordinated with cost recovery for on-going default service costs under the Final Order in 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) Docket No. L-00040169 (Order entered May 10, 2007).

Importantly, the AEPS Act specifically notes that AEPS compliance costs are to be treated as a cost of generation supply under 66 Pa.C.S. §2807, the default service provision of the

Public Utility Code, and the Commission's Final Rulemaking Order regarding default service contemplates the presentation of a single price to the customer for all generation supply, both AEPS and non-AEPS supply. The OCA submits that it is more appropriate to take up the specific form of cost recovery mechanism for AEPS compliance costs when PECO files its default service plan closer to the end of its generation rate cap period. In that way, cost recovery for AEPS compliance and default service supply can be fully integrated and consistent with all final Commission Orders and regulations.

The OCA hereby submits its Brief in support of its position. The OCA would note that it does not intend to address the other two legal issues that were set for briefing by Stipulation of the parties in this Main Brief.

II. Whether the Commission should approve, as part of this proceeding, PECO's proposed Section 1307 AEPS cost recovery mechanism or, instead, defer consideration of such mechanism until a future proceeding when PECO submits, for the Commission's review and approval, its proposed default service plan.

As noted, the OCA supports PECO's efforts to acquire alternative energy credits under the AEPS Act in advance of 2011 when PECO's obligation to comply with the Act begins. Through early procurement, PECO should be able to mitigate the cost of compliance, and its efforts should help to stimulate the developing market. The OCA also agrees that PECO is permitted, and will receive, full recovery of the costs it incurs to procure the AECs through the deferral and recovery mechanism provided for in the AEPS Act. 73 P.S. §1648.3(3). The AEPS Act specifically allows for the recovery of these costs through an automatic adjustment mechanism after the expiration of the generation rate cap.

What is of concern to the OCA is that the AEPS cost recovery and the default service cost recovery in the post-transition time period be properly integrated. It will be critical, from both a customer understanding perspective and an optimal procurement perspective, that cost recovery for non-AEPS supply and cost recovery for AEPS supply are properly coordinated. Indeed, the AEPS Act itself recognizes that AEPS compliance costs are a cost of default generation supply under 66 Pa.C.S. §2807. The Act, in providing for full recovery, states as follows:

All costs for:

- (i) the purchase of electricity generated from alternative energy sources, including the costs of the regional transmission organization, in excess of the regional transmission organization real-time pricing, or its successor, at the delivery point of the alternative energy source for the electrical production of the alternative energy sources; and

(ii) payments for alternative energy credits,

in both cases are voluntarily acquired by an electric distribution company during the cost recovery period on behalf of its customers shall be deferred as a regulatory asset by the electric distribution company and fully recovered, with a return on the unamortized balance, pursuant to an automatic energy adjustment clause under 66 Pa. C.S. § 1307 (relating to sliding scale of rates; adjustments) as a cost of generation supply under 66 Pa. C.S. § 2807 (relating to duties of electric distribution companies) in the first year after the expiration of its cost-recovery period. After the cost recovery period, any direct or indirect costs for the purchase by electric distribution of resources to comply with section, including, but not limited to, the purchase of electricity generated from alternative energy sources, payments for alternative energy credits, costs of credits banked, payments to any third party administrators for performance under this act and costs levied by a regional transmission organization to ensure that alternative energy sources are reliable, *shall be recovered on a full and current basis pursuant to an automatic energy adjustment clause under 66 Pa. C.S. § 1307 as a cost of generation supply under 66 Pa. C.S. § 2807.*

73 P.S. § 1648.3 (a)(3)(emphasis added). As can be seen, the Act intends for these costs to be recovered as, and treated as, a cost of default generation supply.

The OCA submits that the establishment of a separate tariff and separate surcharge mechanism for the AEPS compliance costs in this proceeding, outside of the context of PECO's post-transition default service recovery mechanism and before all Commission regulations on cost recovery are final, is premature.¹ Rather than put into place a tariff that will not be used until 2011, and later try to address any conflicts with the final default service regulations or the default service recovery mechanism, the OCA submits that

¹ The OCA would note that AEPS cost recovery mechanisms are being addressed in two Commission rulemaking proceedings. The issue is part of the rulemaking entitled Implementation of the Alternative Energy Portfolio Standards Act of 2004 at Docket No. L-00060180 in Proposed Regulation 75.39 (Order entered July 25, 2006). At this time, the Commission has not issued a final order or final regulations in the docket. Cost recovery is also address in 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), Docket No. L-00040169 in Proposed Regulation 54.187 (Order entered May 10, 2007). The Commission has issued a final rulemaking order at Docket No. L-00040169 that is pending before IRRC.

it is more reasonable for the specific form of cost recovery mechanism for AEPS compliance costs to be addressed when PECO files its full default service plan closer to the end of the generation rate cap. Through consideration with the default service plan, the Commission can ensure that cost recovery is fully integrated into PECO's post-transition service plans and that cost recovery occurs in a coordinated manner.

The Commission's final rulemaking on default service appears to contemplate such an approach. Under the Commission's final rulemaking on default service at Docket L-00040169, the Commission has directed that all costs of default service be included in a single rate, called the price to compare (PTC). The regulations, in important part, provide:

- (a) The costs incurred for providing default service shall be recovered through a default service rate schedule. The rate schedule shall be designed to recover fully all reasonable costs incurred by the DSP during the period default service is provided to customers, based on the average cost to acquire supply for each customers class.
- (b) Except for rates available consistent with 54.187(f), a default service customer shall be offered a single rate option, which shall be identified as the PTC and displayed as a separate line item on the customer's monthly bill.
- (d) The PTC shall be designed to recover all default service costs, including generation, transmission, and other default service cost elements, incurred in serving the average member of a customer class.

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), Docket No. L-00040169, Proposed 52 Pa. Code §54.187 (Order entered May 10, 2007). The regulations reflect the AEPS Act requirement that recovery of AEPS compliance costs be through an

automatic energy adjustment clause, but also recognize the need for one coordinated price-to-compare.

At this time, PECO is only procuring a portion of its needed AEPS resources and it is assured recovery of those costs through the AEPS Act. 73 P.S. §1648.3(a)(3). There is no need to now put into place a separate cost recovery mechanism that will not become effective until 2011 and may need to be modified or redesigned at a later date before even a dollar of cost is recovered through the mechanism.²

If the Commission allows the tariff mechanism to be implemented as part of this proceeding, the Commission's Order should make clear that approval of the AEPS cost recovery mechanism at this time is subject to the right of all parties to further consider the design of this initial AEPS cost recovery mechanism when PECO makes its filing to implement its default service plan for its post-transition service. The Commission should also make clear that PECO retains the burden of proof in future proceedings to demonstrate that the AEPS tariff is reasonable, consistent with all statutes, Commission regulations and Orders, and properly integrated with PECO's default service procurement plan and cost recovery plan.

III. Conclusion

The Office of Consumer Advocate supports PECO's request to begin to procure alternative energy credits to meet its Tier I obligation in the post-transition period and agrees that PECO is permitted full recovery of the costs it incurs under the AEPS Act.

² By way of example, the OCA would note that PECO proposes that the AEPS surcharge change annually while the Commission has encouraged more frequent changes for default service rates. See, e.g., Final Policy Statement Re: Default Service and Retail Electric Markets, Docket No. M-00072009, Section 69.1809 (Order entered May 10, 2007). While the OCA does not support frequent changes in default service rates, the difference in recovery mechanism may be confusing at best. These are the types of issues that should be addressed in a comprehensive fashion in PECO's default service proceeding.

The OCA respectfully submits, however, that PECO's request for approval of a specific cost recovery mechanism for alternative energy credits should not be approved at this time. The issue of the appropriate cost recovery mechanism should be addressed when PECO files its default service plan pursuant to the Commission final regulations in 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) at Docket No. L-00040169 (Order entered May 10, 2007). The mechanism should also be consistent with any final Commission regulations in Implementation of the Alternative Energy Portfolio Standards Act of 2004, at Docket No. L-00060180.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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Petition of PECO Energy Company :
for Approval of (1) A Process to :
Procure Alternative Energy Credits : Docket No. P-00072260
During the AEPS Banking Period and :
(2) A Section 1307 Surcharge and :
Tariff to recover AEPS Costs :

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Main Brief upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 13th day of July 2007.

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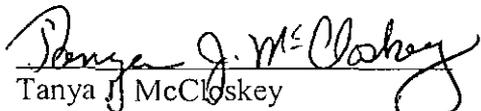
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July 13, 2007

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ORIGINAL

**Re: Petition of PECO Energy Company for Approval of (1) A Process to Procure Alternative Energy Credits During the AEPS Banking Period and (2) A Section 1307 Surcharge and Tariff to Recover AEPS Costs
Docket No. P-00072260**

Dear Secretary McNulty:

Enclosed for filing are the original and nine (9) copies of the Main Brief on behalf of the Office of Small Business Advocate in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please do not hesitate to contact me.

Sincerely,

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Attorney ID No. 73995

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Enclosures

SECRETARY'S BUREAU

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company for Approval :
of (1) A Process to Procure Alternative Energy :
Credits during the AEPS Banking Period and : DOCKET NO. P-00072260
(2) A Section 1307 Surcharge and Tariff :
to Recover AEPS Costs :

MAIN BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

ORIGINAL

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I. INTRODUCTION-PROCEDURAL HISTORY

On March 19, 2007, PECO Energy Company (“PECO” or the “Company”) filed a Petition seeking expedited review and approval by the Pennsylvania Public Utility Commission (“Commission” or “PUC”) of a process to procure alternative energy credits pursuant to the Alternative Energy Portfolio Standards Act (“AEPS Act”), 73 P.S. §1648.1 *et seq.*, while PECO’s generation rates are capped. Additionally, PECO’s Petition seeks approval of a surcharge mechanism and tariff, pursuant to Section 1307 of the Public Utility Code, 66 Pa. C.S. §1307, through which the Company will recover its costs of complying with the AEPS Act.

The Office of Small Business Advocate (“OSBA”) filed an Answer and New Matter to PECO’s Petition on April 9, 2007. The Office of Consumer Advocate (“OCA”) and the Commission’s Office of Trial Staff (“OTS”) filed an Answer and an Intervention, respectively.

On April 16, 2007, the Commission issued a Secretarial Letter which denied the Company’s request for expedited review but assigned the Petition to the Office of Administrative Law Judge for hearings and a recommended decision. Thereafter, the matter was assigned to Administrative Law Judge (“ALJ”) Marlane R. Chestnut.

On May 4, 2007, a prehearing conference was held before ALJ Chestnut and a procedural schedule was established. Pursuant to the established schedule, the OSBA submitted the direct testimony of its witness, Brian Kalcic, on June 4, 2007.

The parties engaged in settlement discussions and were able to resolve all factual issues. On or about June 22, 2007, the parties executed two stipulations which permitted

the cancellation of the scheduled hearings and allowed the parties to brief three remaining issues.

The OSBA submits this main brief pursuant to the procedural schedule set forth in the Joint Stipulation submitted to the Commission on June 22, 2007. The OSBA is addressing only the first two issues reserved for briefing by the Joint Stipulation.

II. ARGUMENT

A. **Background**

Section 3 of the AEPS Act, 73 P.S. §1648.3, requires that increasing percentages of the electricity sold to Pennsylvania retail customers by an electric distribution company (“EDC”) or an electric generation supplier (“EGS”) be generated from alternative energy sources. In lieu of selling electricity generated from alternative energy sources, Section 3(e)(4) of the AEPS Act allows an EDC or an EGS to purchase alternative energy credits (“AECs”) without purchasing the electricity associated with those AECs.

Section 3(d) exempts an EDC from meeting the alternative energy requirements during its “cost-recovery period.” Section 2 of the AEPS Act, 73 P.S. §1648.2, defines “cost-recovery period” as the period during which the EDC’s generation rates are capped. Therefore, an EDC is under no obligation to purchase electricity generated from alternative energy sources, or to purchase AECs associated with such electricity, while its generation rates are capped.

PECO's generation rates will be capped through December 31, 2010. (PECO Petition, p. 2; PECO Statement No. 1, p. 6) However, PECO is seeking to get a head start on meeting its AEPS Act requirements by purchasing AECs during the Company's rate cap period for use after the rate cap has expired. Section 3(e)(7) of the AEPS Act allows such an advance purchase of AECs during a rate cap period and the "banking" of those AECs for use once the rate cap has expired. Therefore, the OSBA does not dispute PECO's right to purchase AECs during the rate cap period. However, PECO and the OSBA do not agree about which AECs will qualify for banking.

PECO's Petition assumes that any otherwise eligible AEC will qualify for banking because PECO did not sell electricity generated from alternative energy sources during the base year, *i.e.*, the twelve months immediately preceding the effective date of the AEPS Act. PECO's Petition also assumes that an AEC will qualify for banking regardless of whether or not the associated electricity is sold to Pennsylvania retail customers. The OSBA disagrees with both of those assumptions.

The AEPS Act contains separate provisions for the procurement and banking of alternative energy credits *during* the rate cap period and *after* the rate cap period has expired. The assumptions in PECO's Petition appear to be based on prior Commission interpretations of what qualifies as an AEC *after* the expiration of the rate cap. In that regard, Section 3(e)(6) governs which AECs will qualify for banking after the generation rate cap has expired. However, PECO's Petition must be adjudicated on the basis of Section 3(e)(7), which is the legal authority for banking AECs during the generation rate cap period. Based on the plain language of Section 3(e)(7), the OSBA submits that some (or all) of the AECs that PECO proposes to purchase may not qualify for banking.

B. Question No. 1: To qualify for banking, must the AEC be associated with electricity in excess of the amount of electricity generated from alternative energy sources and sold during the base year (*i.e.*, February 28, 2004, through February 27, 2005) by the EDC seeking to bank the AEC?

Suggested Answer: Yes, but that is not sufficient.

Section 3(e)(7) of the AEPS Act, 73 P.S. §1648.3(e)(7), provides that [a]n electric distribution company...may bank credits for retail sales of electricity generated from Tier I and Tier II sources made prior to the end of the cost recovery [*i.e.*, the rate cap] period....Bankable credits shall be limited to credits associated with electricity sold from Tier I and Tier II sources...*which exceeds the volume of sales from such sources by an electric distribution company or electric generation supplier during the 12-month period immediately preceding the effective date of this act....*" (emphasis added)

Admittedly, PECO did not sell any electricity from Tier I or Tier II sources during the base year. (PECO Statement No. 1, p. 6) However, that is not dispositive of the question of whether PECO may bank any particular AEC. Rather, Section 3(e)(7) requires that, to be bankable during the rate cap period, an AEC must be associated with electricity sold by *an* EDC or *an* EGS.¹ Therefore, in order for PECO to bank an AEC during the rate cap period, that AEC must be associated with electricity which exceeds

¹ Section 2 of the AEPS Act, 73 P.S. §1648.2, defines "electric distribution company" and "electric generation supplier" as they are defined in Chapter 28 of the Public Utility Code. Section 2803 of the Public Utility Code, 66 Pa. C.S. §2803, defines "electric distribution company" as "[t]he public utility providing facilities for the jurisdictional transmission and distribution of electricity to retail customers...." Section 2803 defines an "electric generation supplier" as "[a] person or corporation...that sells to end-use customers electricity or related services utilizing the jurisdictional transmission or distribution facilities of an electric distribution company or that purchases, brokers, arranges or markets electricity or related services for sale to end-use customers utilizing the jurisdictional transmission and distribution facilities of an electric distribution company."

the total amount of electricity that the seller of the AEC delivered to its Pennsylvania customers from Tier I and Tier II during the base year.

The OSBA's conclusion is consistent with the plain language of Section 3(e)(7). Similarly, it is also consistent with the Commission's finding that the purpose of the AEPS Act is to *increase* the utilization of alternative energy as a source of electricity sold to Pennsylvania consumers. *See Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Docket No. L-00060180 (Order entered July 25, 2006), p. 7.

PECO's interpretation of the AEPS Act turns on the fact that the Company did not sell any alternative energy during the rate cap period and on the incorrect assumption that PECO may, therefore, bank any AECs it acquires because they will all be incremental to PECO. (PECO Statement No. 1, p. 10) The Company's interpretation would frustrate the intent of the AEPS Act because PECO would be able to comply even though there had been no increase in the amount of alternative energy sold in Pennsylvania since the base year.

PECO's interpretation also is inconsistent with the Commission's own tentative conclusions on this question. *See Implementation of Alternative Energy Portfolio Standards Act of 2004* (Order entered July 25, 2006), pp. 20-21, which provides as follows:

This section [of the proposed alternative energy regulations] codifies prior interpretations of the banking provisions of the Act from the First and Second Implementation Orders. The most problematic part of the banking provisions involves the apparent restriction placed on banking credits from alternative energy systems existing at the time of the Act's effective date during the cost-recovery period. 73 P.S. §1648.3(e)(7). The Act appears to prohibit the banking of credits from these alternative energy systems in quantities equal to their sales to Pennsylvania retail customers during the twelve month period preceding the effective date of the Act, February 28, 2005....

The Commission has considered as an example an alternative energy system that sold 10,000 MWh of alternative energy to an EDC, which was in turn sold to Pennsylvania retail customers, during the period of February 28, 2004 through February 28, 2005. The language of the Act would appear to suggest that an EDC or EGS could only bank alternative energy credits for sales made by that same alternative energy system in excess of 10,000 MWh per reporting period during their cost recovery period. Such an interpretation effectively discourages the acquisition of alternative energy and credits from resources already existing at the time of the Act's effective date. While this incremental requirement may encourage the development of new resources, it largely nullifies the cost-recovery period banking provision of the Act....

The Commission appears to have tentatively concluded that, to be bankable, an AEC must be associated with electricity incremental to the output of the specific alternative energy facility in the base year. The OSBA respectfully disagrees with that interpretation. Based on the plain language of the AEPS Act, the OSBA contends that, in order for an AEC to be bankable, the underlying electricity must be incremental to the amount of electricity from alternative energy sources delivered to Pennsylvania retail consumers during the base year by the EDC or EGS which is offering to sell the AEC. However, under either the Commission's tentative interpretation or the OSBA's interpretation, the fact that the underlying alternative energy or the associated AEC would be incremental to PECO is not sufficient to qualify the AEC as bankable.

C. Question No. 2: To qualify for banking, must the AEC be associated with electricity that is (or will be) delivered and sold to Pennsylvania retail customers?

Suggested Answer: Yes.

Section 3(e)(7) of the AEPS Act, 73 P.S. §1648.3(e)(7), provides that “[a]n electric distribution company...may bank credits for retail *sales* of electricity generated

from Tier I...sources *made* prior to the end of the cost-recovery [*i.e.*, the rate cap] period....Bankable credits shall be limited to credits associated with electricity *sold* from Tier I...sources...which exceeds the volume of *sales* from such sources by an *electric distribution company or electric generation supplier* during the 12-month period immediately preceding the effective date of this act....” (emphasis added)

The language of the AEPS Act is clear. The first sentence of Section 3(e)(7) provides that, to be bankable, an AEC must be associated with “retail *sales*.” The second sentence of Section 3(e)(7) provides that, to be bankable, an AEC must be “associated with electricity *sold*” by an EDC or EGS.

While the AEPS Act does not include a definition of “retail sales,” Section 2 does define “retail electric customer” as having the meaning provided under Chapter 28 of the Public Utility Code. Section 2803 of the Public Utility Code, 66 Pa. C.S. §2803, defines “retail electric customer” as “[a] direct purchaser of electric power.” Nothing in Chapter 28 states or implies that Chapter 28 is intended to govern the direct purchase of electric power by a customer located in some other state. Furthermore, as discussed above, an EDC is a Pennsylvania public utility; an EGS is an entity which sells electricity using the EDC’s facilities. Therefore, it is reasonable to infer that “retail sales” as used in Section 3(e)(7) refers to sales to Pennsylvania customers.

The conclusion that, to be bankable, an AEC must be associated with electricity delivered and sold in Pennsylvania is consistent with the plain language of Section 3(e)(7). It is also consistent with the Commission’s finding that the purpose of the AEPS Act is to *increase* the utilization of alternative energy as a source of electricity sold to

Pennsylvania consumers. *See Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Docket No. L-00060180 (Order entered July 25, 2006), p. 7.

PECO's interpretation is that the AEPS Act contains no restriction on to whom the associated energy is sold—whether to Pennsylvania retail customers or to customers outside of Pennsylvania. PECO's interpretation would frustrate the legislative intent to increase retail sales of alternative energy within the Commonwealth because PECO would be able to comply with the AEPS Act even though there had been no increase in the amount of alternative energy sold in Pennsylvania since the base year.

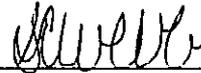
III. CONCLUSION

In view of the foregoing, the OSBA respectfully requests that the Commission reject PECO's interpretation of Section 3(e)(7) and require the following:

1. In order to qualify for banking during the rate cap period, the AEC must be associated with electricity which exceeds the total amount of electricity that the seller of the AEC delivered to its Pennsylvania customers from Tier I and Tier II sources during the base year; and

2. In order to qualify for banking during the rate cap period, the AEC must be associated with electricity sold by an EDC or an EGS to Pennsylvania customers.

Respectfully submitted,



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For: William R. Lloyd, Jr.
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Office of Small Business Advocate
Suite 1102, Commerce Building
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Dated: July 13, 2007

IV. PROPOSED FINDINGS OF FACTS

1. The Office of Small Business Advocate is an agency of the Commonwealth of Pennsylvania authorized by the Small Business Advocate Act (Act 181 of 1988) to represent the interest of small business consumers as a party in proceedings before the Pennsylvania Public Utility Commission. 73 P.S. §§399.41 - 399.50

2. PECO is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. (PECO Petition, p. 2, para. 1)

3. PECO provides electric delivery service to customers in Pennsylvania. (PECO Petition, p. 2, para. 1)

4. PECO is a Pennsylvania electric distribution company (“EDC”) regulated by the Public Utility Commission. (PECO Petition, p. 2, para. 1)

5. The act of November 30, 2004 (P.L. 1672, No. 213), known as the Alternative Energy Portfolio Standards Act (“AEPS Act”), provides for an increasing percentage of the electricity sold to retail customers in Pennsylvania by an EDC or an electric generation supplier (“EGS”) to be generated from alternative energy sources. 73 P.S. §1648.3

6. Section 3(e)(7) of the AEPS Act provides a process by which EDCs may acquire and bank alternative energy credits (“AECs”) during their Cost-Recovery Periods (*i.e.*, when their generation rates are capped). 73 P.S. §1648.3(e)(7)

7. Section 3(e)(6) of the AEPS Act provides a process by which EDCs may acquire and bank AECs after their Cost-Recovery Periods (*i.e.*, after their generation rate caps have expired). 73 P.S. §1648.3(e)(6)

8. PECO's generation rates will be capped through December 31, 2010. (PECO Petition, p. 3)

9. During its Cost-Recovery Period, PECO proposes to solicit bids for a five year annual supply of up to 450,000 non-solar, Tier I AECs from facilities qualified as Alternative Energy Systems under the AEPS Act. (PECO Petition, p. 5)

10. PECO proposes to use the AECs purchased during its Cost Recovery Period to help meet PECO's alternative energy requirements under the AEPS Act after PECO's Cost-Recovery Period has expired. (PECO Petition, p. 4)

11. PECO anticipates conducting two procurements of AECs during the Cost-Recovery Period, as described more fully in the testimony of PECO's witnesses. (PECO Petition, p. 5, para. 10)

12. PECO intends to procure only AECs and not energy or capacity. (PECO Petition, p. 6, para. 11)

13. PECO proposes that the successful bidders will retain title to the electricity associated with the AECs. (PECO Petition, p. 6, para. 11)

14. PECO and the OSBA filed a joint stipulation to resolve the factual issues addressed in the testimony of OSBA witness Brian Kalcic. (Joint Stipulation between OSBA and PECO filed June 22, 2007)

15. To resolve the OSBA's concerns over the absence of a maximum acceptable bid price for the AECs, PECO agreed to revise Paragraph 7.8 of its Request for Proposals to include a maximum acceptable bid price of \$45.00 per AEC. (Joint Stipulation between OSBA and PECO filed June 22, 2007)

16. To resolve the OSBA's concerns over the quantity of AECs to be purchased and banked, PECO, through informal discovery, has demonstrated that the 450,000 non-solar Tier I AECs which PECO is proposing to procure represents a reasonable quantity of AECs in light of PECO's 2011 and 2012 compliance requirements under the AEPS Act. (Joint Stipulation between OSBA and PECO filed June 22, 2007)

17. The parties to this proceeding entered a briefing stipulation which limited the briefing to three issues specifically identified in the stipulation. (June 22, 2007, Briefing Stipulation, para. 3)

18. The parties to this proceeding are not required to brief all of the issues. (June 22, 2007. Briefing Stipulation, para. 4)

V. PROPOSED CONCLUSIONS OF LAW

1. Section 3(e)(7) of the AEPS Act sets forth the requirements that a Pennsylvania EDC must follow in order to bank AECs during its Cost-Recovery Period.

2. Section 3(e)(7) of the AEPS Act does not permit the banking of any AEC during the Cost-Recovery Period which is associated with electricity sold outside of Pennsylvania.

3. Section 3(e)(7) of the AEPS Act provides that, in order for an AEC to be bankable during the Cost-Recovery Period, the underlying electricity must be incremental to the amount of electricity from alternative energy sources delivered to Pennsylvania retail consumers during the base year by the EDC or EGS which is offering to sell the AEC.

VI. PROPOSED ORDERING PARAGRAPHS

1. During its Cost-Recovery Period, PECO shall not bank any AEC unless that AEC is associated with electricity which exceeds the total amount of electricity that the seller of the AEC delivered to its Pennsylvania customers from Tier I and Tier II sources during the base year.

2. During its Cost-Recovery Period, PECO shall not bank any AEC unless that AEC is associated with electricity sold by an EDC or an EGS to Pennsylvania customers.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company for Approval :
of (1) A Process to Procure Alternative Energy :
Credits during the AEPS Banking Period and : DOCKET NO. P-00072260
(2) A Section 1307 Surcharge and Tariff :
to Recover AEPS Costs :

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Main Brief, on behalf of the Office of Small Business Advocate, in the above-captioned proceeding, by e-mail and first class mail (unless otherwise indicated) upon the persons addressed below:

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July 13, 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VIA FEDERAL EXPRESS

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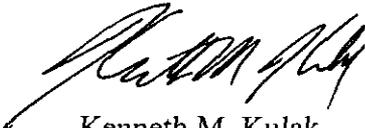
DOCUMENT
FOLDER

**Re: Petition Of PECO Energy Company For Approval of (1) A Process to Procure
Alternative Energy Credits During the AEPS Banking Period And (2) A Section
1307 Surcharge and Tariff to Recover AEPS Costs, Docket No. P-00072260**

Dear Secretary McNulty:

Enclosed for filing are an original and nine copies of the Initial Brief of PECO Electric Company in the above-captioned matter. Pursuant to 52 Pa. Code §1.11(a), the date of filing shall be the date shown on the express delivery receipt attached to the envelope containing this letter and enclosures. An additional copy of the Main Brief and this letter are enclosed, which we request that you date-stamp and return to us as evidence of filing in the enclosed envelope. As evidenced by the Certificate of Service enclosed with this letter, copies of the Initial Brief have been served on the Administrative Law Judge and all parties.

Sincerely,



Kenneth M. Kulak
Enclosures

BTL

c: The Honorable Marlane R. Chestnut
Certificate Of Service

ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF (1) A :
PROCESS TO PROCURE :
ALTERNATIVE ENERGY CREDITS : DOCKET NO. P-00072260
DURING THE AEPS BANKING :
PERIOD AND (2) A SECTION 1307 :
SURCHARGE AND TARIFF TO :
RECOVER AEPS COSTS :**

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**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

**MAIN BRIEF OF
PECO ENERGY COMPANY**

**Before Administrative Law Judge
Marlane R. Chestnut**

**DOCUMENT
FOLDER**

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DOCKETED
JUL 13 2007

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73 Pa.C.S.A. § 1648.3	<i>passim</i>

I. INTRODUCTION

In this proceeding, PECO Energy Company ("PECO") seeks the approval of the Pennsylvania Public Utility Commission (the "Commission") for an early, voluntary procurement of up to 450,000 non-solar, "Tier I" alternative energy credits ("AECs") annually, for a five-year period, to satisfy a portion of PECO's future requirements under Pennsylvania's Alternative Energy Portfolio Standards Act of 2004, 73 Pa.C.S.A. § 1648.1 *et seq.* ("AEPS" or "Act 213"). Specifically, PECO requests the Commission to:

- (1) Find that PECO's proposed Request for Proposals ("RFP") for AECs will result in reasonable prices for the AECs purchased under contracts entered into pursuant to the RFP for cost recovery under 66 Pa.C.S.A. § 1307;
- (2) Approve PECO's banking of such AECs, as permitted by Act 213;
- (3) Approve PECO's form AEC purchase and sale agreement for execution with successful bidders, including any PECO affiliate;
- (4) Approve PECO's proposed AEPS tariff provision imposing a Section 1307 mechanism (on a per kWh basis) to fully recover PECO's on-going AEPS compliance costs, including, for a one-year period commencing January 1, 2011, all costs associated with banked credits, with a return on the unamortized balances of such costs; and
- (5) Provide a waiver of future AEPS regulations issued after this proceeding to the extent those regulations are inconsistent with the proposed RFP and the contracts PECO executes in accordance therewith.

After extensive discussions, PECO and the parties who intervened in this proceeding were able to resolve all factual disputes and to reduce their differences to resolution of the following three legal issues:

- (1) Whether Section 3(e)(7) of AEPS provides that credits from a Tier I or Tier II source, in order to be bankable, must be associated with electricity in amounts that exceed the electricity from all Tier I and Tier II sources sold to retail customers during the 12-month period immediately preceding the effective date of the Act by the electric distribution company seeking to bank the credits;

- (2) Whether Section 3(e)(7) of AEPS also requires electric distribution companies seeking to bank alternative energy credits to establish that the associated electricity will be (or was) delivered and sold to retail customers within the Commonwealth of Pennsylvania; and
- (3) Whether the Commission should approve, as part of this proceeding, PECO's proposed Section 1307 AEPS cost recovery mechanism or, instead, defer consideration of such mechanism until a future proceeding when PECO submits, for the Commission's review and approval, its proposed default service implementation plan.

See Prehearing Order #3 (entered June 26, 2007); Stipulation of PECO, the Office of Trial Staff ("OTS"), the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Philadelphia Area Industrial Energy Users Group ("PAIEUG"), and Citizens for Pennsylvania's Future ("PennFuture") (June 25, 2007) (the "Briefing Stipulation").

This proceeding is the first request by a Pennsylvania electric distribution company ("EDC") for approval of early procurement and banking of AECs and, as noted previously, there are only three limited legal issues that need to be addressed and no remaining factual controversies. Because the resolution of the identified legal issues is clear as a matter of law as explained hereinafter, the Commission should grant PECO's requested approvals in accordance with the proposed findings of fact, conclusions of law, and ordering paragraphs set forth herein.

II. STATEMENT OF THE CASE

On March 15, 2007, PECO filed its *Petition of PECO Energy Company for Approval of (1) A Process to Procure Alternative Energy Credits During the AEPS Banking Period and (2) A Section 1307 Surcharge and Tariff to Recover AEPS Costs* (Docket No. P-00072260) (the “Petition”). The Petition sought certain approvals to permit PECO to procure and bank AECs for future AEPS compliance, and to recover the full costs thereof, as is its entitlement under Act 213.

For retail default service generation sales between January 1, 2011 and May 31, 2011, PECO will be required to procure AECs from Tier I resources (e.g., wind, geothermal, biomass) equal to three percent (3%) of the electricity sold by PECO to retail customers in Pennsylvania. That requirement becomes 3.5% on June 1, 2011 and gradually increases thereafter to 8%.

Act 213 encourages EDCs, like PECO, to take steps during their Cost-Recovery Periods towards satisfaction of these future requirements¹ by authorizing the “banking” of AECs. More specifically, the AEPS banking provisions permit an EDC to acquire AECs during its Cost-Recovery Period, which can then be used for compliance purposes during two consecutive AEPS reporting periods in the first three reporting periods following the conclusion of an EDC’s Cost-Recovery Period. *See* 73 Pa.C.S.A.

¹ The “Cost-Recovery Period” under Act 213 refers to the period in which an EDC is still collecting competitive or intangible transition charges established during that EDC’s restructuring under Pennsylvania’s Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S.A. §§ 2801 *et seq.* (the “Competition Act”). PECO’s Cost-Recovery Period ends December 31, 2010. During this Cost-Recovery Period, PECO’s AEPS obligations are deferred, but PECO is permitted to “bank” AECs for future AEPS compliance. *See* 73 Pa.C.S.A. § 1648.3(e)(7).

§ 1648.3(e)(7); Implementation Order II, *Implementation of the Alternative Energy Portfolio Standards Act*, Docket No. M-00051865 (July 18, 2005) at 7.

In support of its Petition, PECO submitted the testimony of John McCawley, PECO's Director of Energy Acquisition, who described PECO's proposed AEC procurement. *See* PECO St. No. 1 (McCawley). Mr. McCawley's testimony included an exhibit detailing the Request for Proposals ("RFP") PECO would use to procure AECs, as well as a form purchase and sale agreement for AECs which PECO would execute with successful bidders. PECO also submitted the testimony and accompanying exhibits of Alan Cohn, Manager, Revenue Analysis, Retail Rates, which described and set forth PECO's proposed tariff provision for recovery of AEC costs, a worksheet explaining the operation of the tariff provision, and a copy of the notice of this filing provided to PECO customers. *See* PECO St. No. 2 (Cohn). Finally, PECO submitted the testimony of Dr. Susan F. Tierney, a managing principal of the Analysis Group and a recognized expert in energy markets and renewable energy, who testified to the reasonableness of PECO's proposed procurement. *See* PECO St. No. 3 (Tierney).²

As described in detail in the testimony of Messrs. McCawley and Cohn and Dr. Tierney, PECO seeks approval to competitively procure a five-year annual supply of up to 450,000 non-solar, Tier I AECs (corresponding to the annual output of approximately 240 MW of wind power) from facilities qualified as "Alternative Energy Systems" under

² The Petition and accompanying statements and exhibits were served on sixty-six companies and individuals, including other Pennsylvania EDCs and developers of alternative energy systems.

Act 213.³ The first procurement, in 2007, will solicit contracts to deliver up to 250,000 AECs annually; the second procurement, in 2008, will solicit contracts for the remaining amount of AECs necessary for PECO to receive a total of 450,000 AECs annually. All bidders in response to PECO's RFP must be owners of Alternative Energy Systems or have the rights to energy and the associated AECs from such systems, and both existing systems and projects under development are eligible to participate. All deliveries of AECs must be through the PJM Generation Attribute Tracking System, from Alternative Energy Systems interconnected to PJM or located within the Commonwealth of Pennsylvania. *See* PECO St. No. 1 (McCawley) at 12-13.

PECO's competitive procurement process has several features designed to obtain reasonable prices for AECs and to address the current state of alternative energy markets and resources. These features include no discrimination among AEPS non-solar Tier I resources; a fixed contract price for AECs only, for a five-year term; staggered procurement and flexibility on project in-service dates; a two-stage bid procedure, with an independent RFP monitor and Commission review and approval of final AEC prices; and reasonable project development and performance requirements for bidders. As explained by Mr. McCawley (PECO St. No. 1 at 18), PECO is proposing to purchase only AECs, and **not** the underlying electricity, because PECO does not need the associated energy to fulfill its default service obligations during the remainder of its Cost-Recovery Period.

³ PECO is continuing to evaluate the development of the solar marketplace and may seek approval in the future for early procurement of Tier I solar AECs. *See* PECO St. No. 1 (McCawley) at 18-19.

As described by Mr. Cohn (PECO St. No. 2 at 5-6), PECO also seeks approval of a tariff provision to recover its AEPS costs. Under Act 213, AEPS-related costs incurred during an EDC's Cost-Recovery Period are to be deferred as a regulatory asset and fully recovered, with a return on the unamortized balance of those costs, during the first year after the expiration of the EDC's Cost-Recovery Period. For PECO, that deferral would include all costs associated with this proposed voluntary AEC procurement. In contrast, all costs for alternative energy and/or AECs incurred *after* the Cost-Recovery Period, *i.e.* in PECO's case, after December 31, 2010, are to be recovered on a "full and current basis" through the Section 1307 cost recovery mechanism. Accordingly, PECO's proposed tariff would begin recovery of both deferred and then current AEPS costs from customers on January 1, 2011 on a per-kWh basis, at an estimated rate of approximately \$0.0011 per kWh. *See* PECO St. No. 2 (Cohn) at 4-6 & 12.

PECO's Petition was assigned to the Law Bureau on March 21, 2007. Thereafter, the OCA, OSBA, and OTS filed timely answers to the Petition and PAIEUG and PennFuture filed timely notices of intervention.

On April 16, 2007, the Secretary of the Commission issued a letter assigning PECO's Petition to the Office of the Administrative Law Judge. The proceeding was then assigned to Administrative Law Judge Marlane R. Chestnut, who issued Pre-Hearing Order #1 on April 19, 2007. A Pre-Hearing Conference, attended by all parties, was held on May 4, 2007, following which Judge Chestnut issued Pre-Hearing Order #2, setting forth a litigation schedule for this proceeding and providing other guidance to the parties.

On June 22, 2007, the OSBA filed the testimony of Brian Kalcic (OSBA St. No. 1), who contended, *inter alia*, that a maximum cap should be placed on the acceptable

price to be paid by PECO for AECs and who questioned the amount of AECs PECO sought to procure. All other parties informed the Administrative Law Judge that they would not be filing direct testimony in this proceeding.

Subsequently, PECO and the OSBA entered into a stipulation (the "PECO-OSBA Stipulation") in which PECO agreed to amend its proposed RFP to include a maximum acceptable price for AECs equal to Forty-five Dollars (\$45), the amount of the alternative compliance payment required under Act 213. *See* PECO St. No. 1 (McCawley), Exhibit 1.1, Request for Proposals § 7.8; 73 Pa.C.S.A. § 1648.3(f). In addition, PECO and the OSBA acknowledged that PECO had demonstrated that the amount of AECs PECO proposed to procure was reasonable. A copy of the PECO-OSBA Stipulation was filed with the ALJ and the Commission on June 25, 2007.

In addition, PECO and all intervening parties entered into the Briefing Stipulation, in which it was agreed that the scheduled hearings could be cancelled and briefing limited to the three issues identified *supra*. More specifically, the Briefing Stipulation provided that "Except for the legal issues [identified for briefing], the Parties will support PECO's filing and PECO's request for approvals therein upon admission of all testimony and exhibits." Briefing Stipulation ¶ 6. A copy of the Briefing Stipulation was also filed with the ALJ and the Commission on June 25, 2007.

On June 26, 2007, Judge Chestnut issued Pre-Hearing Order #3, which cancelled the scheduled hearings, admitted the statements and exhibits filed by PECO and OSBA and admitted the PECO-OSBA and Briefing Stipulations. Pre-Hearing Order #3 also established a schedule for briefing the three issues identified in the Briefing Stipulation.

III. SUMMARY OF ARGUMENT

Resolution of the three legal issues identified by the parties for briefing is straightforward. The first question is simply whether the limitation imposed by Act 213 on the banking of alternative energy credits should be based upon the prior period sales of the EDC seeking to bank the credits or the sales of the individual alternative energy systems generating the credits. PECO respectfully submits the limitation should be quantified by reference to the former. Indeed, any other ruling would not only contravene clear statutory language, but also likely preclude PECO from procuring AECs from existing Alternative Energy Systems. Notably, as the Commission previously concluded, the OSBA's proposed construction of the operative language would "largely nullif[y]the cost-recovery period banking provision of the Act." See Proposed Rulemaking Order, *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Pa. P.U.C. Docket No. L-00060180 (July 25, 2006) ("*Proposed Rulemaking Order*"), at 20.

With respect to the second issue presented by the parties, the Commission has already determined that, *after* the Cost-Recovery Period, EDCs can purchase AECs for AEPS compliance purposes without delivering the energy underlying those AECs to Pennsylvania retail customers. See *Petition of Pennsylvania Power Company for Approval of Interim POLR Supply Plan*, Docket No. P-00052188 (April 20, 2006), at 150-51 ("*Penn Power*"); *Proposed Rulemaking Order*, at 12 & § 75.34(d). The legal issue to be determined here, therefore, is whether a different rule should apply to energy and AECs generated *during* an EDC's Cost-Recovery Period. For the reasons discussed below, PECO respectfully submits that the distinction which the OSBA seeks to draw

between the two periods is inconsistent with provisions of Act 213 and should be rejected.

The final issue for determination is whether the Commission should defer approval of PECO's proposed tariff mechanism for recovery of AEPS compliance costs, including the costs associated with this early AEC procurement. Although all parties agree that PECO is entitled to full recovery from customers of all its costs for procuring banked credits during its Cost-Recovery Period, including a return on the unamortized balances of such costs, the OCA asserts that, as a matter of policy, approval of the actual mechanism for recovery of such costs should be deferred until consideration of PECO's default service plan. There is, however, no legal basis for rejecting PECO's proposed tariff under either the Public Utility Code or Act 213; indeed, Act 213 specifies Section 1307 as the mechanism EDCs must utilize to recover their AEPS costs. *See* 73 Pa.C.S.A. § 1648.3(a)(3). Furthermore, PECO will not proceed with any early AEC procurement absent express approval of a mechanism assuring full recovery of its AEPS costs.

IV. ARGUMENT

A. **Act 213's Limitation on Banking of Alternative Energy Credits Applies to Prior Period Sales by EDCs, Not Sales by Alternative Energy Systems**

Section 3(e)(7) of Act 213 provides that:

An electric distribution company or an electric generation supplier may bank credits for retail sales of electricity generated from Tier I and Tier II sources made prior to the end of the cost-recovery period and after the effective date of this act. Bankable credits shall be limited to credits associated with electricity sold from Tier I and Tier II sources during a reporting year *which exceeds the volume of sales from such sources by an electric distribution company or electric generation supplier during the 12-*

month period immediately preceding the effective date of this act.

73 Pa.C.S.A. § 1648.3(e)(7) (emphasis added).

The OSBA contends that under Section 3(e)(7), AECs from an existing Alternative Energy System can only be banked by PECO during its Cost-Recovery period if those AECs are associated with energy generated by that system in excess of the energy from that system which was sold to Pennsylvania customers in the year prior to the effective date of Act 213. However, under Section 3(e)(7)'s plain language, Section 3(e)(7)'s restriction applies to EDCs and EGSs, not the generators of alternative energy. EDCs and EGSs may not bank AECs from Alternative Energy Systems during their Cost-Recovery Period unless the AECs are associated with electricity sold by EDCs and EGS from such sources – i.e., *generally* from Tier I and Tier II sources, not specific sources – over and above the volume of their retail sales for the year prior to the effective date of the Act (*i.e.*, the sales of the EDC or EGS, not the Alternative Energy Systems, which have no retail sales) that were provided from Tier I and Tier II resources. The phrase “such sources” should not be interpreted to mean “those identical sources.” *See, e.g.*, 1 Pa.C.S.A. § 1903(a) (“Words and phrases shall be construed according to rules of grammar and according to their common and approved usage. . . .”); BLACK’S LAW DICTIONARY, at 1473 (defining “such” to be “[o]f this or that kind”).

In fact, the Commission has explained exactly how banking of Tier I credits would work using PECO as an example. *See Implementation Order, Implementation of the Alternative Energy Portfolio Standards Act*, Docket No. M-00051865 (March 23, 2005), at 9 (“For example, if 1% of the energy sold by PECO to its retail customers in the period February 28, 2004 through February 28, 2005 was derived from Tier I resources,

PECO could only earn and bank credits during the exemption period for those Tier I sales in excess of 1% in the period following the effective date of the Act.”⁴

In the *Proposed Rulemaking Order*, the Commission expressed its concern that Section 3(e)(7) may limit bankable AECs from an Alternative Energy System to AECs associated with electricity produced by *that system* in excess of the amount of electricity produced by *that same system* during the twelve-month period immediately preceding the effective date of Act 213 (February 28, 2005). *See Proposed Rulemaking Order*, at 20-21. But the Commission also noted that such an interpretation would “largely nullif[y]the cost-recovery period banking provision of the Act” since “[s]uch an interpretation effectively discourages the acquisition of alternative energy and credits from resources already existing at the time of the Act’s effective date.” *Id.*

The Commission’s proposed regulations make clear that under Section 3(e)(7), the amount of alternative energy sold to retail customers by an EDC or EGS prior to the effective date of Act 213 determines the amount of AECs that EDC or EGS can bank, not the sales of a Tier I or Tier II source, which do not make sales to retail customers.

Section 75.41(d) of the proposed regulations provides:

The Commission will determine the volume of sales, measured in MWh, ***by EDCs and EGSs to retail customers in the 12 month period*** that immediately preceded the effective date of the Act derived from specific alternative energy systems. EDCs and EGSs may bank credits during the cost-recovery period for the generation output of qualified alternative energy systems that exceed ***their***

⁴ While the issue identified in the Briefing Stipulation is legal in nature, PECO notes that there is no dispute that a more restricted construction of Section 3(e)(7) would likely result in higher AEC compliance costs for PECO customers. *See PECO St. No. 1 (McCawley)* at 10.

volume of alternative energy sales to retail customers
during this 12 month period.

Proposed Rulemaking Order, § 75.41(d) (emphasis added). While these proposed regulations are not binding, they should provide guidance to the Commission on this issue.

In this proceeding, all parties agree that PECO made no retail sales of Tier I alternative energy in the year prior to the effective date of Act 213. See Briefing Stipulation ¶ 5. Accordingly, the Commission should rule that Section 3(e)(7) permits PECO to bank all Tier I AECs purchased from Alternative Energy Systems, regardless of the amount of electricity that may have been generated by one or more of those systems during the year prior to the effective date of Act 213.

B. An Electric Distribution Company May Bank AECs During its Cost-Recovery Period Without Proving that the Underlying Electricity was Delivered to Pennsylvania Retail Customers

In *Penn Power*, the Commission considered – and rejected – arguments by Pennsylvania’s Department of Environmental Protection (“DEP”) that Act 213 required an EDC to deliver electricity generated by Alternative Energy Systems to retail electric customers within Pennsylvania in order for the AECs associated with that alternative energy to be used for AEPS compliance purposes. *Penn Power*, at 145-51. Consistent with its earlier *Tentative Order*,⁵ the Commission concluded that DEP’s interpretation was contrary to the explicit language of Act 213 and “inconsistent with the current operation of the renewable energy market.” *Id.* at 151.

⁵ *Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards and Processes for Alternative Energy System Quantification and Alternative Energy Credit Certification*, Pa. P.U.C. Docket No. M-00051865 (Tentative Order entered January 27, 2006, at 20-23).

The Commission subsequently codified its interpretation of Act 213's delivery requirement in the *Proposed Rulemaking Order*, which provides that:

An alternative energy credit shall be certified for that portion of a qualified alternative energy system's electric generation that is consumed within or delivered to the distribution system of a Pennsylvania EDC *or* the control area of [an RTO] that manages a portion of Pennsylvania's transmission system.

Proposed Rulemaking Order, § 75.35(d) (emphasis added). Consistent with the Commission's rulings and the proposed rules, PECO's RFP calls for the purchase of AECs and requires that successful bidders deliver the energy associated with such AECs to PJM. See PECO St. No. 1 (McCawley) at 12.⁶

The OSBA, in this proceeding, does not dispute that, after the conclusion of an EDC's Cost-Recovery Period, the EDC need not demonstrate that the energy associated with AECs was delivered to a Pennsylvania retail customer (and not simply to PJM). Rather, it contends that a different delivery requirement attaches in the case of an EDC that voluntarily procures and seeks to bank AECs during its Cost-Recovery Period. While the Commission has not explicitly addressed this issue, the Commission's prior rulings interpreting Act 213 demonstrate that the OSBA's construction of Section 3(e)(7) is wrong as a matter of law.

⁶ DEP appealed the Commission's ruling on its proposed delivery requirement to Commonwealth Court but subsequently withdrew its appeal. PECO notes that the Commission's ruling in *Penn Power* imposing a separate "geographic requirement" – i.e., that the energy underlying AECs an EDC seeks to bank must be delivered to the RTO connected to the EDC's distribution system, and not any RTO serving Pennsylvania – remains on appeal to Commonwealth Court. *Pennsylvania Power Company v. Pennsylvania Public Utility Commission*, 1085 CD 2006. Because PECO will require all Alternative Energy Systems providing AECs to deliver the underlying energy to PJM, resolution of the geographic requirement is unnecessary for purposes of this proceeding.

As described in the *Tentative Order* and in *Penn Power*, Act 213 measures an EDC's compliance by its purchase of AECs, not AECs and energy, and AECs may be traded separately from underlying energy. *Tentative Order*, at 22; *Penn Power*, at 151. Section 3(e)(4)(i) of Act 213 expressly provides that “[a]n electric distribution company or electric generation supplier shall comply with the applicable requirements of this section *by purchasing sufficient alternative energy credits* and submitting documentation of compliance to the program administrator.” 73 Pa.C.S.A. § 1648.3(e)(4)(i) (emphasis added). Act 213 also states that “one alternative energy credit shall represent one megawatt hour of qualified alternative electric generation, *whether self-generated, purchased along with the electric commodity or separately through a tradable instrument* and otherwise meeting the requirements of commission regulations and the program administrator.” *Id.* at § 1648.3(e)(4)(ii) (emphasis added); *see also id.* at § 1648.3(e)(5) (permitting an EDC to purchase AECs to meet a shortfall in satisfying compliance requirements). Nothing in these provisions suggests that the AECs an EDC purchases *during* its Cost-Recovery Period to meet AEPS requirements *after* its Cost-Recovery Period should be treated differently than the AECs an EDC purchases *after* its Cost-Recovery Period to meet those same requirements.

The OSBA relies on the language of Section 3(e)(7) which states that bankable credits “shall be limited to credits associated with electricity sold from Tier I and Tier II sources.” The Commission, however, has concluded that the more explicit “sale” requirement of Section 3(a) – namely that “electric energy sold by an [EDC or EGS] to retail electric customers in this Commonwealth *shall be comprised of electricity generated from alternative energy sources*” – is consistent with delivery to *either* an

EDC's distribution system *or* an RTO managing a portion of Pennsylvania's transmission system. *See Tentative Order*, at 21-22; 73 Pa.C.S.A. § 1648.2. There is therefore no reason to construe the "sale" requirement in Section 3(e)(7) any differently than the more specific "sale" requirement in Section 3(a) to impose a different energy delivery requirement for EDCs purchasing AECs during their Cost-Recovery Period.

Further, as the Commission explained in the *Tentative Order*, a Pennsylvania delivery requirement would not only be inconsistent with Act 213, but also would be technically problematic in current energy markets:

There also appear to be certain technical problems with mandating a Pennsylvania delivery standard. Specific electrons produced by a generation facility are not tracked from a generation station across political boundaries or to a physical location. PJM can measure the energy metered into its system from another control area, but it does not track whether an electron from a Wisconsin wind facility is going to a specific retail customer in Pennsylvania or Maryland. The only apparent way to enforce a Pennsylvania delivery requirement would be to require a contract for energy and credits between out-of-state alternative energy systems and Pennsylvania EDCs. Yet this interpretation would seem to be contrary to Section 1648.3(e)(4), which provides that compliance can be satisfied by the acquisition of credits, "whether self-generated, purchased along with the electric commodity or separately through a tradable instrument." (Emphasis added).

Tentative Order, at 23; *see also Penn Power*, at 148 (observing that a delivery requirement "would impose artificial barriers to the creation and trading of alternative energy credits and would serve to hinder the very renewable energy credit market that the AEPS Act seeks to develop").

In view of the foregoing, the Commission should conclude that an EDC seeking to procure AECs during its Cost-Recovery Period under Section 3(e)(7) is not obligated to demonstrate that the energy underlying those AECs was delivered to a Pennsylvania retail customer.

C. The Commission Should Not Defer Approval of PECO's Proposed Tariff for Recovery of AEPS Costs

An EDC is entitled to full recovery of its costs of AEPS compliance, including costs incurred in the procurement of AECs during the EDC's Cost-Recovery Period that are banked for future compliance. *See generally* 73 Pa.C.S.A. § 1648.3. Indeed, Act 213 makes clear that these costs are a cost of "generation supply," and are to be recovered pursuant to an automatic adjustment clause under Section 1307 of the Public Utility Code, 66 Pa.C.S.A. § 1307(a). As previously explained, the specific costs associated with PECO's proposed AEC procurement will be deferred as a regulatory asset and fully recovered, with a return on the unamortized balance of such costs during 2011, i.e. the first year following the expiration of PECO's Cost-Recovery Period.

In this proceeding, there is no dispute that PECO is entitled to full recovery of its early compliance costs or that those costs may be deferred and recovered with a return on the unamortized balance of such costs. *See* PECO St. No. 2 (Cohn) at 10. Moreover, no party has questioned the mechanics of the proposed tariff provision sponsored by Mr. Cohn. *See generally* PECO St. No. 2. However, the OCA suggested that approval of PECO's tariff provision might be "premature" and that it might be more "reasonable" to consider PECO's AEPS recovery mechanism in the context of PECO's yet-to-be-submitted default service implementation plan filing. *See* Answer of the Office of

Consumer Advocate to the Petition of PECO Energy Company (Docket No. P-00072260), at 2-3.

The Commission should reject the OCA's request to defer consideration of PECO's proposed tariff-based AEPS cost recovery mechanism. Any concerns the OCA may have in the future regarding the interplay of PECO's AEPS cost recovery provision and the design of default service rates can be addressed when PECO's default service plan is filed properly before the Commission.

In the interim, OCA's proposal, if adopted by the Commission, will effectively deny PECO the certainty it requires that it will recover its AEPS costs. As Mr. McCawley explained in his testimony, PECO – and AEC suppliers – cannot and will not proceed with PECO's voluntary procurement of AECs without knowing, in advance, precisely how PECO will recover the related costs. *See* PECO St. No. 1 (McCawley) at 22. The OCA's concerns are misplaced and PECO's proposed tariff change should be approved.

V. PROPOSED FINDINGS OF FACT

1. PECO's voluntary Request for Proposals ("RFP") for up to 450,000 Tier I non-solar alternative energy credits ("AECs") annually for a five-year period, including the form Alternative Energy Credit Purchase Agreement in PECO St. No. 1, Ex. 1.1, will allow PECO to purchase AECs at reasonable prices. PECO St. No. 1 (McCawley) at 7-8, 13-18; PECO St. No. 3 (Tierney) at 4-5, 7-23.

2. A return of six percent (6%) on the unamortized balance of all costs of PECO's procurement of AECs during its Cost-Recovery Period is reasonable. PECO St. No. 2 at 9-10.

VI. PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 73 Pa.C.S.A. § 1648.7(a); 66 Pa.C.S.A. § 1301.
2. PECO is permitted to bank all AECs purchased pursuant to the RFP in accordance with 73 Pa.C.S.A. § 1648.3(e)(7).
3. PECO is entitled to defer all costs associated with the procurement of AECs during its Cost-Recovery Period as a regulatory asset and to accrue carrying charges on the unamortized balance of such costs at the rate of 6.0% per annum. 73 Pa.C.S.A. § 1648.3.
4. PECO is entitled to recover, in full and over a one-year period commencing January 1, 2011, the costs deferred under paragraph 3 *supra*, through a Section 1307 cost recovery mechanism. 73 Pa.C.S.A. § 1648.3.
5. PECO's proposed Section 1307 AEPS cost recovery mechanism is reasonable and should be approved. 66 Pa.C.S.A. § 1307; 73 Pa.C.S.A. § 1648.3.
6. In the event that any affiliate of PECO is a successful bidder in response to the RFP, the form Alternative Energy Credit Purchase Agreement attached in PECO Statement No. 1 Ex. 1-1 is approved for purposes of 66 Pa.C.S.A. § 2102 and also approved for use with any other successful bidder. 66 Pa.C.S.A. § 2102.

VII. PROPOSED ORDERING PARAGRAPHS

1. PECO shall file a tariff supplement consistent with PECO St. No. 2 (Cohn) Exhibit 2.1 (Provision for Surcharge Recovery of Alternative Energy Portfolio Costs) within thirty days.
2. To the extent the Commission issues regulations interpreting Act 213 which are inconsistent with the provisions of PECO's RFP or AEC purchase and sale agreement prior to or during the term of any agreement to purchase AECs entered into by PECO in accordance with the RFP, PECO shall be entitled to a waiver of such regulations.

VI. CONCLUSION

For the reasons set forth herein, PECO respectfully requests the Commission enter the proposed findings of fact and conclusions of law and requested relief set forth herein and thereby permit PECO to proceed with its voluntary procurement of alternative energy credits for compliance with Pennsylvania's Alternative Energy Standards Act of 2004.

Respectfully submitted,


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For PECO Energy Company

Date: July 13, 2007

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for :
Approval of (1) A Process to Procure :
Alternative Energy Credits During the :
AEPS Banking Period and (2) A Section : **Docket No. P-00072260**
1307 Surcharge and Tariff to Recover :
AEPS Costs :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the Main Brief of PECO Energy Company in the manner indicated below in accordance with the requirements of 52 Pa. Code §1.54.

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July 27, 2007

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Re: Petition of PECO Energy Company for Approval of (1) A Process To Procure Alternative Energy Credits During The AEPS Banking Period and (2) A Section 1307 Surcharge and Tariff to Recover AEPS Costs
Docket No. P-00072260

Dear Secretary McNulty:

Enclosed please find an original and nine copies of the Reply Brief of Citizens for Pennsylvania's Future. Copies are being served on the parties as set forth in the Certificate of Service.

If you have any questions, please contact me at (412) 258-6684.

DOCUMENT
FOLDER

Sincerely,

George Jugovic Jr.
Senior Attorney

cc: Hon. Marlane Chestnut
Certificate of Service

BTL

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF :
(1) A PROCESS TO PROCURE :
ALTERNATIVE ENERGY CREDITS : DOCKET NO. P-00072260
DURING THE AEPS BANKING :
PERIOD AND (2) A SECTION 1307 :
SURCHARGE AND TARIFF TO :
RECOVER AEPS COSTS :

REPLY BRIEF OF PENNFUTURE

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INTRODUCTION

On March 19, 2007, PECO filed its Petition seeking approval to procure 450,000 non-solar Tier I alternative energy credits (AECs) under the Alternative Energy Portfolio Standards Act (AEPS Act). 73 P.S.C.A. § 1648.1 *et. seq.*

On July 13, 2007, PECO, the Office of Small Business Advocate (OSBA), and the Office of Consumer Advocate (OCA) submitted their Main Briefs on the legal issues that the parties agreed to submit to the Commission by stipulation. Citizens for Pennsylvania's Future (PennFuture) did not submit a Main Brief, but reserved its right to submit a Reply Brief.

PennFuture hereby submits its Reply Brief, which responds to arguments raised by the Main Briefs of the OSBA and OCA.

ARGUMENT

1. **Section 3(e)(7) establishes criteria for the purchase of alternative energy credits based on PECO's pre-Act sales of alternative energy, not based on the pre-Act sales of the sellers of the credits.**

The Office of Small Business Advocate (“OSBA”) argues that Section 3(e)(7) only allows PECO to bank credits associated with electricity in excess of “the total amount of electricity *that the seller of the AEC delivered to Pennsylvania customers* from Tier I and Tier II [sources] during the base year.” OSBA Main Brief at 5 (emphasis added). OSBA asserts that its reading is consistent with the plain language of Section 3(e)(7).

Section 3(e)(7) states in pertinent part:

Bankable credits shall be limited to credits associated with electricity sold *from* Tier I and Tier II sources during a reporting year which exceeds the volume of sales from such sources *by* an electric distribution company or electric generation supplier during the 12-month period immediately preceding the effective date of this act.

73 Pa.C.S.A. § 1648.3(e)(7) (emphasis added).

OSBA does not explain what words or sentence structure in Section 3(e)(7) compels the conclusion that: (a) the credits to be banked is dependent on the volume of electricity delivered by the *seller of the AEC*; and (b) that the electricity that forms the baseline for purposes of banking credits had to be delivered to *Pennsylvania* customers.

Section 3(e)(7) defines bankable credits in relation to alternatively generated electricity previously sold by the EDC or EGS seeking to bank the credits, and not in relation to the seller of the AECs. The reference to “electricity *from* Tier I and Tier II sources” merely identifies the electricity to which Section 3(e)(7) applies, that is, alternatively generated electricity. The substance of Section 3(e)(7) has to do with the

volume limitation, which requires that the credits to be banked must be associated with a volume of electricity that exceeds that previously sold “*by an electric distribution company or electric generation supplier*” during the 12 month period preceding the Act’s effective date. Nowhere does Section 3(e)(7) state that the electricity associated with the credits must exceed the volume of alternatively generated electricity sold *by the seller of the AEC*, or that the baseline electricity must have been delivered *to Pennsylvania* customers. Indeed, rather than fulfilling the purposes of the statute, OSBA’s interpretation would defeat the intent of the statute.

The AEPS Act specifically defines AECs as “a tradable instrument.” 73 Pa.C.S.A. § 1648.2. The AEPS Act intended to create a market for these instruments, and in order to do so, defined an AEC as one megawatt hour of qualified electric generation, regardless of whether it was self-generated, purchased along with the electricity, or purchased separately. 73 Pa.C.S.A. § 1648.3(e)(4)(ii). OSBA’s argument conflicts with the concept of freely tradable AECs, because OSBA’s interpretation assumes that only pre-Act EDCs or EGSs – those that sold measurable amounts of electricity – are able to sell AECs to be banked during the Cost Recovery Period. OSBA points to nothing in Section 3(e)(7) or the AEPS Act in general that compels this conclusion.

In comparison, PECO’s interpretation is consistent with the purposes of AEPS Act. Section 3(e)(7) provides that an EDC or EGS may only bank credits that represent volumes of alternatively generated electricity sold in excess of what the EDC or EGS sold prior to enactment of the AEPS Act. Section 3(e)(7) thereby establishes a floor, as of the enactment date, for each EDC or EGS that seeks to bank credits during the Cost-

Recovery Period for alternatively generated electricity. This interpretation incentivizes the production of alternatively generated electricity to meet AEC demand, without nullifying the provision by discouraging acquisition of that electricity from sources that existed upon enactment of the AEPS Act. *See Proposed Rulemaking Order*, at 20-21. Promoting the development of alternatively generated electricity through early banking of AECs during the Cost-Recovery Period plainly furthers the purposes of the AEPS Act. *See* 1 Pa.C.S. § 1921(a).

For the foregoing reasons, the Commission should rule that Section 3(e)(7) allows PECO to bank all Tier I AECs purchased through its proposed procurement process, regardless of the amount of alternatively generated electricity, if any, previously sold by the bidders seeking to provide the AECs that PECO seeks to procure.

2. **The AEPS Act and Section 3(e)(7), in particular, does not mandate that alternatively generated electricity be delivered to Pennsylvania customers.**

OSBA argues that AECs to be banked during the Cost Recovery Period must be associated with electricity delivered *to Pennsylvania* customers. OSBA Main Brief at 6. Although OSBA initially asserts that this mandate is plainly required by Section 3(e)(7), it later admits that such a requirement must be “inferred” by referencing the term “retail sales” in Section 3(e)(7), and the definition of “retail electric customer” in Chapter 28 of the Public Utility Code. *Id.* at 7.

Any application of a statute must begin with the plain meaning of the statutory language. There is no reason to interpret the language of a statute unless its meaning is unclear and ambiguous. 1 Pa.C.S. § 1921(b); *O'Rourke v. Commw. Dept. of Corrections*, 788 A.2d 1194, 1201 (Pa. 2001). The primary function of any statutory interpretation

must be to give effect to the intent of the General Assembly. *Commw. v. Dickson*, 918 A.2d 95 (Pa. 2007).

Neither the AEPS Act, nor Section 3(e)(7) in particular, mandates that AECs to be banked during the Cost Recovery Period be associated with electricity delivered to Pennsylvania customers. The General Assembly expressly defined the term “Alternative Energy Credit,” and devoted an entire section of the Act to describing how the AEC program was intended to function. *See* 73 Pa.C.S.A. § 1648.3(e). The General Assembly did not expressly mandate that a qualifying credit must be associated with electricity delivered to Pennsylvania customers. The General Assembly’s silence on that point is particularly pertinent when considering that it did choose to put other specific qualifications on AECs. For example, the General Assembly required that bankable credits had to be associated with “electricity sold to retail customers during the year in which they were generated”. *See* 73 Pa.C.S.A. § 1648.3(e)(7). Had the General Assembly intended to impose a Pennsylvania delivery requirement on AECs, it surely would have done so explicitly, and not relied on the Commission to interpret the statute in order to impose such a significant limitation. *See also, Proposed Rulemaking Order, Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Pa.P.U.C. Docket No. L-00060180 (July 25, 2006), § 75.35(d) (no requirement that energy be delivered to Pennsylvania retail customers).

The AEPS Act lacks an express statutory requirement imposing a Pennsylvania delivery requirement on electricity associated with AECs. OSBA points to no ambiguous language that requires interpretation by the Commission. The Commission should not impose a limit on bankable credits that the General Assembly did not choose to impose

when enacting the AEPS Act. Consequently, the Commission should conclude that an EDC need not demonstrate that credits it seeks to bank are associated with electricity delivered to Pennsylvania retail customers.

3. **The Commission Should Not Defer Approval of PECO's Proposed Tariff for Recovery of AEPS Costs.**

The AEPS Act allows PECO to recover costs associated with its procurement of AECs as a cost of "generation supply," to be recovered pursuant to an automatic adjustment clause. 73 P.C.S.A. §1648.3. The Office of Consumer Advocate has expressed concern that approval should be addressed when PECO files its default service plan. OCA Main Brief at 9.

The issue regarding approval of PECO's cost recovery mechanism is one of timing – the parties have not raised concerns about the mechanism itself. PennFuture's concern is that delaying approval of the cost recovery mechanism will create uncertainty in the marketplace that will hinder the effectiveness of the RFP, or preclude it entirely. *See e.g.* PECO Statement No. 1 (McCawley) at 22-23. OCA's concern is that approval of the mechanism now may require an amendment in 2011 when PECO seeks approval of its default service plan. OCA Main Brief at 8. Considering the substantial costs associated with delaying approval, compared to the minimal costs associated with approval – namely, the possibility that the mechanism may need to be adjusted during PECO's default service plan, it seems plain that the Commission should approve PECO's proposed cost recovery mechanism in this proceeding. If necessary, the Commission may allow for the filing of petitions to amend the design of the recovery mechanism during default service proceedings to ensure conformity after the Cost Recovery Period.

CONCLUSION

Citizens for Pennsylvania's Future support PECO's petition to procure AECs to meet its Tier I obligation under the AEPS Act. The Commission should reject OSBAs proposed interpretations of Section 3(e)(7) of the AEPS Act. Section 3(e)(7) allows PECO to bank credits associated with electricity sold in excess of the volume of alternatively generated electricity that PECO sold during the 12 month period preceding the Act's effective date. Section 3(e)(7) also does not impose a Pennsylvania delivery requirement on the electricity associated with AECs to be banked during the Cost Recovery Period. Finally, PennFuture supports approval of PECO's proposed cost recovery mechanism.

Respectfully submitted



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DATED: July 27, 2007

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July 27, 2007

James J. McNulty, Secretary
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Commonwealth Keystone Building
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VIA HAND DELIVERY

Re: Petition of PECO Energy for Approval of (1) A Process to Procure Alternative Energy Credits During the AEPS Banking Period, and (2) A Section 1307 Surcharge and Tariff to Recover AEPS Costs; Docket No. P-00072260

Dear Secretary McNulty:

Please be advised that the Philadelphia Area Industrial Energy Users Group ("PAIEUG") will not be filing a Reply Brief in the above-referenced proceeding. PAIEUG reserves the right, however, to reserves the right to file Exceptions or Reply Exceptions, as necessary.

As evidenced by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this transmittal letter and kindly return it to our messenger for our filing purposes.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Charis Mincavage

Counsel to the Philadelphia Area
Industrial Energy Users Group

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JUL 30 2007

CM/lhi
Enclosure

c: Hon. Marlane A. Chestnut, Administrative Law Judge (Via E-Mail and First Class Mail)
Certificate of Service

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

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Charis Mincavage

Dated this 27th day of July, 2007 in Harrisburg, Pennsylvania.

SECTION 1.54 (RELATING TO SERVICE BY A PARTICIPANT)
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July 27, 2007

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DOCUMENT
FOLDER

Re: Petition of PECO Energy Company for
Approval of (1) A Process to Procure
Alternative Energy Credits During the
AEPS Banking Period and (2) A Section
1307 Surcharge and Tariff to recover AEPS
Costs
Docket No. P-00072260

Dear Secretary McNulty:

Enclosed for filing are an original and nine (9) copies of the Office of Consumer Advocate's Reply Brief, in the above-referenced proceeding.

Copies have been served on the parties of record as indicated on the enclosed Certificate of Service.

Sincerely,

Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044

Enclosures

cc: Parties of Record
Hon. Marlane R. Chestnut/ALJ
00093347

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company for
Approval of (1) A Process To Procure
Alternative Energy Credits During the
AEPS Banking Period and (2) Section
1307 Surcharge and Tariff to Recover
Costs

Docket No. P-00072260

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REPLY BRIEF
OF THE
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SECTION 1'S BUREAU

I. Introduction

On July 13, 2007, Philadelphia Electric Company (PECO or the Company), Office of Consumer Advocate (OCA) and Office of Small Business Advocate (OSBA) filed Main Briefs in this proceeding. Citizens for Pennsylvania's Future (PennFuture) filed a letter, supporting PECO's Main Brief and taking no position on the issue raised by OCA. The Philadelphia Area Industrial Energy Users Group (PAIEUG) and Office of Trial Staff (OTS) respectively filed letters that they would not file a Main Brief.

In this Reply Brief, the OCA will respond to the arguments made by PECO with respect to PECO's proposal to implement a specific cost recovery mechanism for banked Alternative Energy Portfolio Standard (AEPS) credits as part of this proceeding. Alternative Energy Portfolio Standards Act (AEPS Act), 73 P.S. § 1648.1, et seq. In its Main Brief, the OCA argued that while it agreed with PECO that full recovery through a Section 1307 mechanism was guaranteed under the AEPS Act, it was premature to approve

the specific form of cost recovery mechanism for the AEPS costs since the AEPS cost recovery mechanism will need to be consistent with the Commission's final regulations in Implementation of the Alternative Energy Portfolio Standards Act of 2004, at Docket No. L-00060180 (Order entered July 25, 2006) and properly coordinated with cost recovery for on-going default service costs under the Final Order in 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) Docket No. L-00040169 (Order entered May 10, 2007). As an alternative, the OCA recommended that if the Commission approves this specific mechanism in this proceeding, the Commission's Order should make clear that approval of the AEPS cost recovery mechanism at this time is subject to the right of all parties to further consider the design of this initial AEPS cost recovery mechanism when PECO makes its filing to implement its default service plan for its post-transition service, and that PECO retains the burden to show that the AEPS tariff is reasonable, consistent with all statutes, Commission regulations and Orders, and properly integrated with PECO's default service procurement plan and cost recovery plan.

The OCA continues its position that it is premature at this time to approve a cost recovery mechanism that will not be utilized until 2011. The OCA will briefly respond to PECO's arguments to the contrary in this Reply Brief. The OCA does not address the other two legal issues that were addressed by the OSBA and PECO Main Briefs.

II. Whether the Commission should approve, as part of this proceeding, PECO's proposed Section 1307 AEPS cost recovery mechanism or, instead, defer consideration of such mechanism until a future proceeding when PECO submits, for the Commission's review and approval, its proposed default service plan.

The OCA supports PECO's initiative to utilize the banking provisions of the AEPS Act to procure alternative energy credits during the cost recovery period. The OCA agrees with PECO that an Electric Distribution Company (EDC) is entitled to full recovery of its costs of AEPS compliance, including the costs that are incurred due to the banking of alternative energy credits for future compliance, through a Section 1307 automatic recovery mechanism. 73 P.S. § 1648.3(a)(3). OCA M.B. at 1-2; PECO M.B. at 16. As noted in its Main Brief, the OCA's concern is that the AEPS cost recovery mechanism be properly integrated with the default service recovery mechanism developed pursuant to the Commission's final regulations in 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) at Docket No. L-00040169 (Order entered May 10, 2007). The AEPS cost recovery mechanism will also need to be in accord with the final regulations in Implementation of the Alternative Energy Portfolio Standards Act of 2004, at Docket No. L-00060180. The only issue in dispute is whether such a mechanism should be implemented now, when cost recovery will not commence until 2011, or whether the recovery mechanisms should be implemented later when PECO files its default service plan and default service recovery mechanism.

In its Main Brief, PECO argues that the OCA's proposal to delay consideration of the form of the automatic recovery mechanism would effectively deny PECO certainty in recovering the AEPS costs. PECO M.B. at 16-17. PECO asserts that it

believes that suppliers will not participate in the procurement process without knowing in advance exactly *how* these costs will be recovered from ratepayers after 2011. PECO M.B. at 16-17; See also, PECO St. No. 1 at 22. The OCA submits that the certainty that should be afforded is that PECO will receive full recovery of the costs incurred by PECO after 2011 and it is undisputed in this proceeding that the statute guarantees full recovery of these costs.

PECO's argument that suppliers need certainty as to the detailed cost recovery mechanism to participate in a procurement is belied by its own arguments in brief. At page 17 of its Brief, PECO acknowledges that the interplay of PECO's AEPS cost recovery provision and the design of the default service rates will have to be addressed in the default service proceeding. PECO M.B. at 17. In other words, PECO acknowledges that, before there is any actual cost recovery under the mechanism, it will be revisited and changes could be made in the default service proceeding. PECO's argument that its proposal somehow provides certainty that is critical to the bid process does not withstand scrutiny.

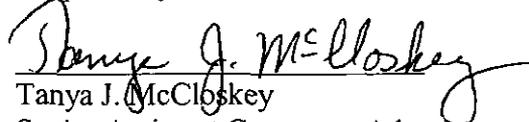
As more fully discussed in its Main Brief, the OCA submits that, at this time, it is premature to put in place a specific mechanism that may be inconsistent with another mechanism developed during PECO's default service proceeding. PECO's argument that it needs the certainty of a tariffed mechanism now, that it acknowledges could be changed before cost recovery begins should be rejected. If the Commission determines to approve the specific form of the mechanism at this time, the Commission should provide for further consideration of the mechanism during PECO's default service plan filing and make clear that PECO retains the burden to prove that the AEPS tariff is reasonable, consistent with all

statutes, Commission regulations and Orders, and properly integrated with PECO's default service procurement plan and cost recovery plan.

III. Conclusion

For the foregoing reasons and the reasons stated in the OCA's Main Brief, the Office of Consumer Advocate respectfully submits that PECO's request for approval of a specific cost recovery mechanism for alternative energy credits is premature. The specific form of recovery mechanism should be addressed in PECO's default service proceeding.

Respectfully submitted,



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Date: July 27, 2007
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CERTIFICATE OF SERVICE

Petition of PECO Energy Company :
for Approval of (1) A Process to :
Procure Alternative Energy Credits : Docket No. P-00072260
During the AEPS Banking Period and :
(2) A Section 1307 Surcharge and :
Tariff to recover AEPS Costs :

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Reply Brief upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 27th day of July 2007.

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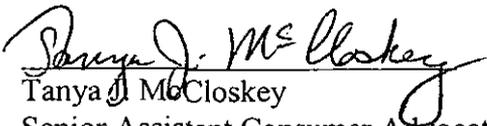
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July 27, 2007

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**Re: Petition of PECO Energy Company for Approval of (1) A Process to Procure Alternative Energy Credits During the AEPS Banking Period and (2) A Section 1307 Surcharge and Tariff to Recover AEPS Costs
Docket No. P-00072260**

Dear Secretary McNulty:

Enclosed for filing are the original and nine (9) copies of the Reply Brief on behalf of the Office of Small Business Advocate in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995

BTL

Enclosures

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company for Approval :
of (1) A Process to Procure Alternative Energy :
Credits during the AEPS Banking Period and : DOCKET NO. P-00072260
(2) A Section 1307 Surcharge and Tariff :
to Recover AEPS Costs :

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OFFICE OF SMALL BUSINESS ADVOCATE

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DOCKETED
JUL 30 2007

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For: William R. Lloyd, Jr.
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Dated: July 27, 2007

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I. INTRODUCTION-PROCEDURAL HISTORY

On March 19, 2007, PECO Energy Company (“PECO” or the “Company”) filed a Petition seeking expedited review and approval by the Pennsylvania Public Utility Commission (“Commission” or “PUC”) of a process to procure alternative energy credits pursuant to the Alternative Energy Portfolio Standards Act (“AEPS Act”), 73 P.S. §1648.1 *et seq.*, while PECO’s generation rates are capped. Additionally, PECO’s Petition seeks approval of a surcharge mechanism and tariff, pursuant to Section 1307 of the Public Utility Code, 66 Pa. C.S. §1307, through which the Company will recover its costs of complying with the AEPS Act.

The Office of Small Business Advocate (“OSBA”) filed an Answer and New Matter to PECO’s Petition on April 9, 2007. The Office of Consumer Advocate (“OCA”) and the Commission’s Office of Trial Staff (“OTS”) filed an Answer and an Intervention, respectively.

On April 16, 2007, the Commission issued a Secretarial Letter which denied the Company’s request for expedited review but assigned the Petition to the Office of Administrative Law Judge for hearings and a recommended decision. Thereafter, the matter was assigned to Administrative Law Judge (“ALJ”) Marlane R. Chestnut.

On May 4, 2007, a prehearing conference was held before ALJ Chestnut and a procedural schedule was established. Pursuant to the established schedule, the OSBA submitted the direct testimony of its witness, Brian Kalcic, on June 4, 2007.

The parties engaged in settlement discussions and were able to resolve all factual issues. On or about June 22, 2007, the parties executed two stipulations which permitted

the cancellation of the scheduled hearings and allowed the parties to brief three remaining issues.

The OSBA, the OCA and the Company submitted main briefs on July 13, 2007, pursuant to the procedural schedule set forth in the Joint Stipulation. The OSBA addressed only the first two issues reserved for briefing by the Joint Stipulation. The OSBA stands by the arguments set forth in its main brief but submits this reply brief in response to arguments raised in the Company's main brief.

II. ARGUMENT

A. **The disagreement over what is “incremental” pertains to the identity of the entity whose sales are being measured in the base year.**

It appears that PECO has misunderstood the OSBA's position regarding the requirement that, to be bankable, an alternative energy credit (“AEC”) must be associated with electricity which is “incremental.” PECO's Petition and the arguments in its main brief are based on the assumption that any otherwise eligible AEC will qualify for banking because PECO did not sell electricity generated from alternative energy sources during the base year, *i.e.*, the twelve months immediately preceding the effective date of the AEPS Act.¹ PECO also assumes that an AEC will qualify for banking regardless of whether or not the associated electricity is sold to Pennsylvania retail customers.² PECO and the OSBA disagree on both of those assumptions. However, the Company misunderstands, and therefore misstates, the OSBA's basis for disagreement.

¹ OSBA Main Brief at 3; PECO Main Brief at 12.

² *Id.*

According to PECO, the OSBA agrees with the Commission that, to be bankable, the electricity associated with the AEC must be incremental to the base year output of the alternative energy facility generating that electricity.³ To the contrary, the OSBA actually agrees with PECO that the underlying electricity must be incremental to the amount sold by an electric distribution company (“EDC”) or an electric generation supplier (“EGS”) in the base year and not incremental to the amount generated by the alternative energy facility in the base year.

The OSBA’s disagreement with PECO is over which EDC or EGS’s sales in the base year are used to determine what it is “incremental.” As set forth in the OSBA’s main brief, Section 3(e)(7) of the AEPS Act, 73 P.S. §1648.3(e)(7), requires that, to be bankable *during the rate cap period*, an AEC must be associated with electricity sold by *an* EDC or *an* EGS.⁴ PECO takes the position that an AEC is bankable if the underlying electricity is incremental to PECO.⁵ The OSBA’s position is that in order for PECO to bank an AEC during the rate cap period, the AEC must be associated with electricity which exceeds the total amount of electricity from alternative energy sources delivered to Pennsylvania retail consumers during the base year by the EDC or EGC which is offering to sell the AEC to PECO.⁶

As set forth in the OSBA’s main brief, the AEPS Act contains separate provisions for the procurement and banking of alternative energy credits *during* the rate cap period

³ PECO Main Brief at 10.

⁴ OSBA Main Brief at 4.

⁵ PECO Main Brief at 12.

⁶ OSBA Main Brief at 6.

and *after* the rate cap period has expired.⁷ PECO's interpretation would frustrate the intent of the AEPS Act because PECO would be able to comply even though there had been no increase in the amount of alternative energy sold in Pennsylvania since the base year.⁸

B. The Commission's decision in *Penn Power* is not dispositive of the question of whether the underlying electricity must be sold in Pennsylvania during the rate cap period.

PECO argues that an EDC may bank an AEC during the rate cap period without the requirement that the underlying electricity was delivered to Pennsylvania consumers. As justification for its position, PECO relies on the Commission's decision in *Petition of Pennsylvania Power Company for Approval of Interim POLR Supply Plan*, Docket No. P-00052188 (Order entered April 20, 2006).⁹ However, the OSBA disagrees that *Penn Power* is dispositive of the question of whether the underlying electricity must be sold in Pennsylvania during the rate cap period.

The OSBA agrees with PECO that Section 3(e)(4) of the AEPS Act, 73 P.S. §1648.3(e)(4), allows an EDC to comply with the AEPS Act through the purchase of AECs rather than through the purchase of the underlying electricity. The OSBA also agrees with PECO that nothing in Section 3(e)(4)(i) suggests a different rule for the purchase of AECs during the rate cap period. More specifically, Section 3(e)(4)(i) allows for an EDC to comply with the requirements of the AEPS Act both during and after the expiration of its rate cap period through the purchase of AECs in lieu of actually

⁷ OSBA Main Brief at 3.

⁸ OSBA Main Brief at 5.

⁹ PECO Main Brief at 12.

purchasing and delivering to its customers electrons that were generated from alternative energy sources.

The OSBA also acknowledges that the Commission's conclusion in *Penn Power* clarifies that the word "sold" in Section 3(a) of the AEPS Act, 73 P.S. §1648.3(a), does not require that an AEC be associated with electricity delivered to Pennsylvania consumers. However, that conclusion is not dispositive here because Section 3(e)(7) imposes restrictions on banking during the rate cap period that are not present in Section 3(a).

Admittedly, both Sections 3(a) and 3(e)(7) address retail sales to Pennsylvania consumers. However, unlike Section 3(a), Section 3(e)(7) contains explicit language regarding which AECs are bankable. More specifically, Section 3(e)(7) provides that "[b]ankable credits shall be limited to credits associated with electricity sold from Tier I and Tier II sources. . . which exceeds the volume of sales from such sources by *an electric distribution company or electric generation supplier* during the [base year]." (emphasis added)

The aforementioned language in Section 3(e)(7) means that, to be bankable during the rate cap period, an AEC must be associated with electricity sold by an EDC or an EGS. The terms "electric distribution company" and "electric generation supplier" are defined, respectively, as a *Pennsylvania* public utility and an entity which uses the facilities of a jurisdictional public utility, *i.e.*, a *Pennsylvania* public utility.¹⁰ That means, to be bankable during the rate cap period, an AEC must be associated with electricity sold to *Pennsylvania* retail customers.

¹⁰ OSBA Main Brief at 7.

Contrary to PECO's argument, the OSBA's interpretation of Section 3(e)(7) would not be unworkable. Under the OSBA's interpretation, it would be necessary for PECO to prove that the seller of the AEC acquired the underlying electricity in order to meet the load of that entity's Pennsylvania retail customers. It would also be necessary for PECO to prove that the electrons purchased were placed onto the grid. However, it would *not* be necessary for PECO to prove that those same electrons were actually delivered to consumers in Pennsylvania.

The OSBA agrees with PECO that the electrons purchased by an EDC or EGS are not necessarily the same electrons delivered to the retail customers of that EDC or EGS. The Commission has adopted the Generation Attribute Tracking System ("GATS") as the mechanism for assuring that an AEC qualifies under the AEPS Act. In that regard, GATS is intended to assure that the underlying electrons placed onto the grid were generated from a qualifying alternative energy source.¹¹ GATS does not, and cannot, assure that those very electrons actually flow to the retail customers of the EDC or EGS. The Commission appears to be satisfied that it is unnecessary to track the actual electrons to assure that an EDC or EGS is in compliance with Section 3(a). Therefore, the inability to track the actual electrons should not be a consideration in deciding how to construe Section 3(e)(7).

¹¹ See *Implementation of the Alternative Energy Portfolio Standards Act of 2004* (Tentative Order entered October 28, 2005) at 4, and (Final Order entered January 31, 2006).

III. CONCLUSION

In view of the foregoing, the OSBA respectfully requests that the Commission reject PECO's interpretation of Section 3(e)(7) and require the following:

1. In order to qualify for banking during the rate cap period, the AEC must be associated with electricity which exceeds the total amount of electricity that the seller of the AEC delivered to its Pennsylvania customers from Tier I and Tier II sources during the base year; and

2. In order to qualify for banking during the rate cap period, the AEC must be associated with electricity sold by an EDC or an EGS to Pennsylvania customers.

Respectfully submitted,



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Dated: July 27, 2007

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company for Approval :
of (1) A Process to Procure Alternative Energy :
Credits during the AEPS Banking Period and : DOCKET NO. P-00072260
(2) A Section 1307 Surcharge and Tariff :
to Recover AEPS Costs :

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Reply Brief, on behalf of the Office of Small Business Advocate, in the above-captioned proceeding, by e-mail and first class mail (unless otherwise indicated) upon the persons addressed below:

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SECTION 1307 COMPLAINT
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July 27, 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VIA FEDERAL EXPRESS

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**Re: Petition Of PECO Energy Company For Approval of (1) A Process to Procure
Alternative Energy Credits During the AEPS Banking Period And (2) A Section
1307 Surcharge and Tariff to Recover AEPS Costs, Docket No. P-00072260**

Dear Secretary McNulty:

Enclosed for filing are an original and nine copies of the Reply Brief of PECO Energy Company in the above-captioned matter. Pursuant to 52 Pa. Code §1.11(a), the date of filing shall be the date shown on the express delivery receipt attached to the envelope containing this letter and enclosures. An additional copy of the Reply Brief and this letter are enclosed, which we request that you date-stamp and return to us as evidence of filing in the enclosed envelope. As evidenced by the Certificate of Service enclosed with this letter, copies of the Reply Brief have been served on the Administrative Law Judge and all parties.

Sincerely,



Kenneth M. Kulak
Enclosures

**DOCUMENT
FOLDER**

BTL

c: The Honorable Marlane R. Chestnut
Certificate Of Service

60

ORIGIN

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY
COMPANY FOR APPROVAL OF (1) A
PROCESS TO PROCURE
ALTERNATIVE ENERGY CREDITS
DURING THE AEPS BANKING PERIOD
AND (2) A SECTION 1307 SURCHARGE
AND TARIFF TO RECOVER AEPS
COSTS**

DOCKET NO. P-00072260

RECEIVED

JUL 27 2007

**REPLY BRIEF OF
PECO ENERGY COMPANY**

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

**Before Administrative Law Judge
Marlane R. Chestnut**

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DOCKETED
JUL 31 2007

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I. INTRODUCTION

As explained in its Main Brief filed July 13, 2007, PECO Energy Company (“PECO”) is voluntarily seeking to procure, and “bank” over the next several years, non-solar, “Tier I” alternative energy credits (“AECs”) which it can then utilize to comply with the requirements of Pennsylvania’s Alternative Energy Portfolio Standards Act, 73 Pa.C.S.A. § 1648.1 *et seq.* (“AEPS” or “Act 213”) once PECO’s “Cost-Recovery Period” concludes on December 31, 2010. It is undisputed that PECO’s proposed early purchase of AECs will support the regional alternative energy market and thereby enhance Pennsylvania’s use of alternative energy resources. *See* PECO Statement No. 3 (Tierney) at 22. Indeed, there are no factual disputes that need to be resolved. At the same time, however, the Office of Small Business Advocate (“OSBA”) and Office of Consumer Advocate (“OCA”) have staked out legal positions, which, if adopted, would undermine, or entirely foreclose, PECO’s early procurement efforts.

Under Section 3(e)(7) of Act 213, an electric distribution company (“EDC”) is permitted to bank AECs during its cost-recovery period for use during the first two reporting years after its cost-recovery period ends. 73 Pa.C.S.A. § 1648.3(e)(7). Bankable credits must be for retail sales of electricity from alternative energy sources during the EDC’s cost-recovery period that exceed the amount of electricity sold from such sources by the EDC seeking to bank the credit. *Id.* Because Act 213 permits an EDC (or an electric generation supplier (“EGS”)) to satisfy “retail sale” requirements by separately procuring AECs without purchasing the underlying electricity, and because PECO had no sales from Tier I alternative energy sources prior to the effective date of

Act 213, PECO seeks approval to bank all of the non-solar, Tier I credits it will obtain to meet its future AEPS obligations. *See* PECO Main Brief at 11-12 & 14-15.

While no party disputes the availability of early banking for EDCs under Act 213, the OSBA contends in its Main Brief (pp. 4 and 7) that PECO cannot procure and bank AECs under Act 213's early banking provisions unless a "Pennsylvania delivery requirement" is met. According to the OSBA, AECs must not only be associated with electricity (1) generated by an alternative energy source, *but also* (2) delivered and sold by an EDC or EGS to Pennsylvania retail customers. In addition, the OSBA asserts that any AEC to be banked by PECO must satisfy a third requirement: the underlying electricity must be "incremental" to the amount of electricity from alternative energy sources that the seller of the AEC, not PECO, delivered to Pennsylvania retail customers in the year before the effective date of Act 213. *Id.* at 4-5.

The OCA generally supports PECO's efforts to acquire and bank AECs now. Moreover, the OCA does not challenge PECO's statutory right to fully recover its AEPS costs. *See* OCA Brief at 2-3. Rather, the OCA solely contends that PECO's proposed Section 1307 cost recovery charge is "premature" and that its consideration should be deferred until PECO submits its default service implementation plan at some point in the future.

The Commission should reject the arguments advanced by the OSBA and OCA and grant the relief PECO has requested. The OSBA's proposed Pennsylvania delivery requirement – that the electricity underlying an AEC must be delivered to Pennsylvania customers for PECO to bank the AEC during its cost-recovery period – is inconsistent with other provisions of Act 213 and prior Commission rulings. Furthermore, following

the submission of the parties' Main Briefs in this proceeding, the Pennsylvania General Assembly amended Act 213 to more clearly provide that energy from alternative energy sources located throughout PJM may be used for AEPS compliance purposes by all EDCs and EGSs, but did **not** specify that the energy had to be physically delivered to Pennsylvania retail customers.¹ As the Commission has previously noted, specific electrons are not tracked across state boundaries within PJM, and therefore, OSBA's interpretation is not only inconsistent with Act 213 and Commission precedent, but is unworkable.² OSBA's interpretation would frustrate the legislature's intention to encourage EDCs to bank AECs from alternative energy sources in advance of their compliance obligations.

The OSBA's additional contention – that PECO can only bank AECs from alternative energy sources that are “incremental” to the EDC or EGS selling the underlying electricity to Pennsylvania customers, not PECO – is similarly inapposite. Section 3(e)(7) is intended to encourage EDCs and EGSs to procure and bank AECs during their cost-recovery period, and its “incremental” requirement should be applied to those same EDCs and EGSs, not the sellers of AECs. Because there is no Pennsylvania delivery requirement, and PECO had no sales of electricity from Tier I sources prior to the effective date of Act 213, PECO should be permitted to bank all AECs obtained through its proposed procurement.

¹ See Act 35, Pa. House Bill No. 1203 (Printer No. 2343) (July 17, 2007) (the “2007 AEPS Amendments”) (attached as Exhibit A).

² Tentative Order, *Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards and Processes for Alternative Energy System Quantification and Alternative Energy Credit Certification*, Pa. P.U.C. Docket No. M-00051865 (January 31, 2006) (“Tentative Order”) at 20-23.

In support of its recommendation that the Commission defer consideration of the cost-recovery issue, the OCA argues that PECO's proposed AEPS charge must be "integrated" with whatever cost recovery mechanism emerges from PECO's default service implementation proceeding. However, the OCA has it backwards – Act 213 specifies how AEPS costs are to be recovered, while the Electric Competition Act leaves the means of recouping non-AEPS default service costs to the Commission's discretion. Indeed, this critical distinction is acknowledged in the Commission's final default service rulemaking order, which expressly provides that EDCs *must* use a Section 1307 mechanism to recover AEPS costs, but *may* or *may not* use a Section 1307 mechanism to recover non-alternative energy default service costs.³

The 2007 AEPS Amendments underscore the importance of an EDC undertaking the banking of AECs during its cost-recovery period. *See* Act 213 and 35 at § 1648.2 (amending the definition of "force majeure" to reference early banking of AECs as demonstration of "good faith" efforts of an EDC to comply with AEPS requirements). PECO's proposed procurement is entirely consistent with the provisions of Act 213 and should, therefore, be approved.

II. ARGUMENT

A. The Commission Should Reject The OSBA's Proposed "Pennsylvania Delivery Requirement"

In its Main Brief, OSBA agrees that under Act 213, an EDC or EGS can purchase AECs without purchasing the underlying electricity to meet AEPS requirements for

³ Final Rulemaking Order, *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)*, Docket No. L-000040169 (May 10, 2007) at 28 & § 54.187(e)-(f). ("*Final Default Service Rulemaking Order*").

selling electricity from alternative energy sources. *See* OSBA Main Brief at 2. With respect to banking AECs during an EDC's cost-recovery period, the OSBA's position is as follows:

[I]n order for PECO to bank an AEC during the rate cap period, that AEC must be associated with electricity which exceeds the total amount of electricity that the seller of the AEC delivered to its Pennsylvania customers from Tier I and Tier II during the base year (pp. 4-5).

[T]he underlying electricity must be incremental to the amount of electricity from alternative energy sources delivered to Pennsylvania retail customers during the base year by the EDC or EGS which is offering to sell the AEC (p. 6).

When these statements are read in conjunction, PECO could only procure and bank AECs during its cost-recovery period, according to the OSBA, if AECs are associated with electricity (1) generated by an alternative energy source, and also (2) delivered and sold by an EDC or EGS to Pennsylvania retail customers.⁴ This "Pennsylvania delivery requirement" precludes PECO – which is not purchasing the electricity underlying AECs in light of PECO's existing full requirements contract – from buying AECs directly from an alternative energy source. In fact, if OSBA were correct, PECO could only bank those AECs during its cost-recovery period that it purchases from **other** EDCs and EGSs, who would have to purchase a bundled product (i.e., electricity and AECs), deliver the electricity to Pennsylvania customers, and then choose to resell the AECs to PECO. This seems an unlikely and overly burdensome scenario in light of increasing AEPS obligations of all Pennsylvania EDCs and EGSs and their own early

⁴ OSBA's additional requirement – that the AEC be associated with energy sold to Pennsylvania customers from alternative energy sources which is "incremental" to "the seller of the AEC" – is discussed in Section II.B *infra*.

banking opportunities. Thus, rather than promoting the increased utilization of alternative energy by Pennsylvania customers, the OSBA's interpretation of Act 213 would impede the orderly development of the alternative energy market. *See* PECO Main Brief at 15. PECO respectfully submits that this is not what the Legislature intended in establishing AEC banking provisions for EDCs during their cost-recovery periods.

The OSBA's proposed "Pennsylvania delivery requirement" is further undermined by the recent amendments to Act 213 wherein the General Assembly clarified that out-of-state alternative energy systems may be used to fulfill AEPS compliance obligations. *See* 2007 AEPS Amendments, § 4. As the Commission has previously noted, specific electrons are not tracked across state boundaries within PJM.⁵ In addition, mandating contracts for both energy and AECs with Pennsylvania delivery requirements for satisfaction of AEPS "retail sale" requirements is inconsistent with other AEPS provisions. *See Tentative Order* at 23; PECO Main Brief at 14. It seems inconceivable that the General Assembly would take steps to ensure expanded access to alternative energy sources throughout PJM and encourage the early banking of AECs by amending the Act's "force majeure" provisions to specifically reference early banking of AECs as a demonstration of good faith efforts of an EDC to comply with AEPS if it intended to limit the "bankability" of AECs in the manner proposed by the OSBA.

⁵ As the Commission explained, "[s]pecific electrons produced by a generation facility are not tracked from a generation station across political boundaries or to a physical location. PJM can measure the energy metered into its system from another control area, but it does not track whether an electron from a Wisconsin wind facility is going to a specific retail customer in Pennsylvania or Maryland." *Tentative Order* at 23.

Finally, the OSBA does not explain why the electricity underlying an AEC that PECO seeks to bank during its cost-recovery period must be sold to a Pennsylvania customer when no such requirement attaches to electricity associated with an AEC that PECO buys immediately after its cost-recovery period ends. In both cases, the AEC is being used to meet the same AEPS compliance obligation. *See* PECO Statement No. 2 (Cohn) at 11 (explaining that PECO will use the AECs procured through the RFP after the cost-recovery period). And the AEPS provision governing banking *after* PECO's cost-recovery period also includes the same requirement that the electricity associated with an AEC must be "sold" to retail customers. *See* 73 Pa.C.S.A. § 1648.3(e)(6)(ii) (providing that credits may only be banked if the credits are in excess of compliance requirements and "were produced by the generation of electrical energy by alternative energy sources and sold to retail customers"). The Commission has repeatedly concluded that the "retail sale" requirements for EDCs and EGSs may be satisfied by procurement of AECs where the electricity underlying the AECs is delivered to PJM and not directly to Pennsylvania customers, and OSBA provides no basis for construing this requirement differently in Section 3(e)(7). *See* PECO Main Brief at 14-15.

For these reasons, the Commission should reject the OSBA's proposed "Pennsylvania delivery requirement."

B. PECO Should Be Permitted To Bank All AECs Obtained During Its Cost-Recovery Period

Section 3(e)(7) of Act 213 provides that “[b]ankable credits shall be limited to credits associated with electricity sold from Tier I and Tier II sources during a reporting year which exceeds the volume of sales from such sources by an electric distribution company or electric generation supplier during the 12-month period immediately preceding the effective date of [Act 213].” 73 Pa.C.S.A. § 1648.3(e)(7). This provision imposes a limitation based on the sales of electric energy from Tier I and Tier II sources prior to the Act by the EDC or EGS seeking to bank the credits, not a restriction on the sales from alternative energy sources. *See* PECO Main Brief at 10. Because PECO had no sales from Tier I sources prior to the effective date of Act 213, PECO is entitled to bank all AECs it may now acquire under its proposed procurement.

In its Main Brief, the OSBA asserts that, in order to be bankable, an AEC must be “associated with electricity which exceeds the total amount of electricity that the **seller** of the AEC delivered to its Pennsylvania customers from Tier I or Tier II [resources] during the base year.” *See* OSBA Main Brief at 4-5. OSBA’s interpretation appears to require the **seller** of the AEC to have incremental sales to Pennsylvania retail customers, thereby limiting potential bidders in PECO’s procurement to other EDCs or EGSs and excluding alternative energy sources. Alternatively, OSBA would effectively require PECO to purchase the bundled output (energy and AECs) from an alternative energy source and deliver the energy to its retail customers. As discussed *supra*, neither of these proposed requirements is consistent with Act 213 generally or specific AEPS provisions that permit EDCs and EGSs to satisfy AEPS obligations by procuring credits without purchasing the underlying electricity.

PECO submits that there is no justification for using the baseline sales of any EDC or EGS other than the EDC or EGS that is seeking to actually bank the AEC. Section 3(e)(7) is intended to encourage EDCs and EGSs to procure and bank AECs during their cost-recovery period, and its “incremental” requirement should be applied to those same EDCs and EGSs, not the sellers of AECs. Moreover, even assuming that some of the AECs PECO may bank will be AECs currently being sold to other EDCs or EGSs, there is also no basis to conclude that the proposed procurement will “frustrate the intent” of AEPS given the increasing portfolio requirements applicable to all EDCs and EGSs. Indeed, OSBA’s interpretation would effectively read out the word “existing” from the definition of alternative energy sources. *See* 73 Pa.C.S.A. § 1648.2 (defining an alternative energy source to be “existing and new” sources for the production of electricity).⁶ The Commission should therefore permit PECO to bank all AECs obtained through this procurement since it has been stipulated that PECO had no sales from Tier I alternative energy sources in the year prior to the effective date of Act 213.

C. The Commission Should Not Defer Approval Of PECO’s Proposed Section 1307 Cost-Recovery Mechanism Pending Implementation Of PECO’s Default Service Plan

Consistent with Section 3(a)(3) of Act 213, PECO has proposed a Section 1307 cost-recovery mechanism to recover its AEPS costs, including the costs relating to procurement of AECs during PECO’s cost-recovery period. *See* PECO Main Brief at 16-

⁶ In fact, as the Commission explained in the AEPS *Proposed Rulemaking Order*, precluding EDCs from banking AECs associated with electricity from existing alternative energy sources would “largely nullif[y]the cost-recovery period banking provision of the Act.” *See* Proposed Rulemaking Order, *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Pa. P.U.C. Docket No. L-00060180 (July 25, 2006) at 20; PECO Main Brief at 8.

17. No party has opposed PECO's right to fully recover its costs, and the OCA has specifically agreed that PECO is entitled to full recovery. *See* OCA Main Brief at 5. Nonetheless, the OCA recommends that consideration of PECO's Section 1307 cost recovery mechanism be deferred until the Commission reviews PECO's default service plan so that cost recovery "occurs in a coordinated manner." *Id.* at 7.

In support of its proposal, the OCA contends that the Commission's *Final Default Service Rulemaking Order* recognizes the need for "one coordinated price-to-compare," or PTC. *See id.* at 7-8. The OCA, however, fails to mention that the Commission's Order and accompanying regulations expressly distinguish between the recovery of AEPS costs and non-AEPS costs. In fact, the *Final Default Service Rulemaking Order* clearly contemplates the possibility of *separate* cost-recovery mechanisms for AEPS and non-AEPS costs. *Final Default Service Rulemaking Order* at 28. These regulations specifically provide that a default-service provider *shall* use a Section 1307 adjustment clause to recover AEPS costs, but *may* use an adjustment clause to recover non-AEPS costs. *See Final Default Service Rulemaking Order* at § 54.187(e)-(f). Moreover, in the Rulemaking Order itself, the Commission emphasized that, with respect to a default-service provider's AEPS requirements, "[e]nergy prices or rate options are irrelevant, because the [default service provider] does not have to buy energy to satisfy the requirements of the AEPS Act." *Id.* at 28.

The OCA also requests that, in the event the Commission approves PECO's Section 1307 cost-recovery mechanism, it also should provide that its approval will be subject to later challenge by all parties in proceedings relating to PECO's default service plan, and that PECO will have the burden of again demonstrating that its AEPS Section

1307 cost-recovery mechanism is proper. *See* OCA Main Brief at 8. Such conditions will effectively undermine the Commission's approval in this proceeding, could jeopardize PECO's ability to record its deferred costs as a regulatory asset, and should, therefore, be rejected.

Moreover, OCA's vagueness and hesitation with regards to PECO's AEPS cost-recovery mechanism, if accepted by the Commission, could ultimately raise questions for all EDCs and EGSs considering early procurement of AECs and their potential suppliers. Uncertainty about recovery could entirely undermine the banking provisions of Section 3(e)(7) by discouraging EDCs and EGSs from undertaking early procurement, thereby reducing opportunities for alternative energy sources and potentially resulting in increased costs to Pennsylvania retail customers. *See* PECO Statement No. 1 (McCawley) at 7-8. In short, there is no basis to defer approval of PECO's Section 1307 cost-recovery mechanism under either AEPS or the *Final Default Service Rulemaking Order*.

III. CONCLUSION

For the reasons set forth herein, and in PECO's Main Brief, PECO respectfully requests that the Commission grant the relief requested in PECO's Main Brief and thereby permit PECO to proceed with its voluntary procurement of alternative energy credits for compliance with Pennsylvania's Alternative Energy Portfolio Standards Act of 2004.

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Date: July 27, 2007

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1203 Session of
2007

INTRODUCED BY HORNAMAN, GEORGE, DePASQUALE, GERBER, McCALL,
CALTAGIRONE, CONKLIN, DeWEESE, EACHUS, GIBBONS, HARHAI,
HARKINS, JAMES, JOSEPHS, KORTZ, MAHONEY, MANDERINO, McGEEHAN,
MUNDY, M. O'BRIEN, PRESTON, SAINATO, SHIMKUS, STABACK, SURRA,
TANGRETTI, THOMAS, VITALI, YUDICHAK, CURRY, FREEMAN,
K. SMITH, GOODMAN, BENNINGTON, M. SMITH, PETRONE, LENTZ,
GRUCELA, FABRIZIO, WALKO AND GEIST, MAY 24, 2007

SENATOR M. WHITE, ENVIRONMENTAL RESOURCES AND ENERGY, IN SENATE,
RE-REPORTED AS AMENDED, JULY 14, 2007

AN ACT

1 Amending the act of November 30, 2004 (P.L.1672, No.213),
2 entitled, "An act providing for the sale of electric energy
3 generated from renewable and environmentally beneficial
4 sources, for the acquisition of electric energy generated
5 from renewable and environmentally beneficial sources by
6 electric distribution and supply companies and for the powers
7 and duties of the Pennsylvania Public Utility Commission,"
8 ~~further providing for definitions, for alternative energy~~ <—
9 ~~portfolio standards, for portfolio requirements in other~~
10 ~~states and for interconnection standards for customer-~~
11 ~~generator facilities.~~ FURTHER PROVIDING FOR THE DEFINITIONS <—
12 OF "ALTERNATIVE ENERGY SOURCES," CREDIT," "CUSTOMER- <—
13 GENERATOR," "FORCE MAJEURE," AND "NET METERING," AND "TIER I <—
14 ALTERNATIVE ENERGY SOURCE," FOR ALTERNATIVE ENERGY PORTFOLIO
15 STANDARDS, FOR PORTFOLIO REQUIREMENTS IN OTHER STATES AND FOR
16 INTERCONNECTION STANDARDS FOR CUSTOMER-GENERATOR FACILITIES.

17 The General Assembly of the Commonwealth of Pennsylvania
18 hereby enacts as follows:

19 ~~Section 1. The definitions of "alternative energy credit,"~~ <—
20 ~~"customer-generator," "force majeure" and "Tier I alternative~~

1 energy source" in section 2 of the act of November 30, 2004
2 (P.L.1672, No.213), known as the Alternative Energy Portfolio
3 Standards Act, are amended to read:

4 Section 2. Definitions.

5 The following words and phrases when used in this act shall
6 have the meanings given to them in this section unless the
7 context clearly indicates otherwise:

8 "Alternative energy credit." A tradable instrument that is
9 used to establish, verify and monitor compliance with this act.
10 A unit of credit shall equal one megawatt hour of electricity
11 from an alternative energy source. The alternative energy credit
12 shall remain the property of the alternative energy system until
13 the alternative energy credit is voluntarily transferred by the
14 alternative energy system.

15 * * *

16 "Customer generator." A nonutility owner or operator of a
17 net metered distributed generation system with a nameplate
18 capacity of not greater than 50 kilowatts if installed at a
19 residential service or not larger than [1,000] 3,000 kilowatts
20 at other customer service locations, except for customers whose
21 systems are above [one megawatt] three megawatts and up to [two]
22 five megawatts who make their systems available to operate in
23 parallel with the electric utility during grid emergencies as
24 defined by the regional transmission organization or where a
25 microgrid is in place for the primary or secondary purpose of
26 maintaining critical infrastructure, such as homeland security
27 assignments, emergency services facilities, hospitals, traffic
28 signals, wastewater treatment plants or telecommunications
29 facilities, provided that technical rules for operating
30 generators interconnected with facilities of an electric

1 ~~distribution company, electric cooperative or municipal electric~~
2 ~~system have been promulgated by the Institute of Electrical and~~
3 ~~Electronic Engineers and the Pennsylvania Public Utility~~
4 ~~Commission.~~

5 * * *

6 ~~"Force majeure." Upon its own initiative or upon a request~~
7 ~~of an electric distribution company or an electric generator~~
8 ~~supplier, the Pennsylvania Public Utility Commission, within 60~~
9 ~~days, shall determine if alternative energy resources are~~
10 ~~reasonably available in the marketplace in sufficient quantities~~
11 ~~for the electric distribution companies and electric generation~~
12 ~~suppliers to meet their obligations for that reporting period~~
13 ~~under this act. In making this determination the commission~~
14 ~~shall consider whether electric distribution companies or~~
15 ~~electric generation suppliers have made a good faith effort to~~
16 ~~acquire sufficient alternative energy to comply with their~~
17 ~~obligations. Such good faith efforts shall include, but are not~~
18 ~~limited to, banking alternative energy credits during their~~
19 ~~transition periods, seeking alternative energy credits through~~
20 ~~competitive solicitations and seeking to procure alternative~~
21 ~~energy credits or alternative energy through long term~~
22 ~~contracts. In further making its determination the commission~~
23 ~~shall assess the availability of alternative energy credits in~~
24 ~~the Generation Attributes Tracking System (GATS) or its~~
25 ~~successor, and the availability of alternative energy credits~~
26 ~~generally in Pennsylvania and other jurisdictions in the PJM~~
27 ~~Interconnection, L.L.C. regional transmission organization (PJM)~~
28 ~~or its successor. The commission may also require solicitations~~
29 ~~for alternative energy credits as part of default service before~~
30 ~~requests of force majeure can be made. If the commission further~~

1 ~~determines that alternative energy resources are not reasonably~~
2 ~~available in sufficient quantities in the marketplace for the~~
3 ~~electric distribution companies and electric generation~~
4 ~~suppliers to meet their obligations under this act, then the~~
5 ~~commission shall modify the underlying obligation of the~~
6 ~~electric distribution company or electric generation supplier or~~
7 ~~recommend to the General Assembly that the underlying obligation~~
8 ~~be eliminated. Commission modification of the electric~~
9 ~~distribution company or electric generation supplier obligations~~
10 ~~under this act shall be for that compliance period only.~~
11 ~~Commission modification shall not automatically reduce the~~
12 ~~obligation for subsequent compliance years. If the commission~~
13 ~~modifies the electric distribution company or electric~~
14 ~~generation supplier obligations under this act, the commission~~
15 ~~may require the electric distribution company or electric~~
16 ~~generation supplier to acquire additional alternative energy~~
17 ~~credits in subsequent years equivalent to the obligation reduced~~
18 ~~due to a force majeure declaration if the commission determines~~
19 ~~that sufficient alternative energy credits exist in the~~
20 ~~marketplace.~~

21 * * *

22 "~~Tier I alternative energy source.~~" ~~Energy derived from:~~

23 (1) ~~Solar photovoltaic and solar thermal energy.~~

24 (2) ~~Wind power.~~

25 (3) ~~Low impact hydropower.~~

26 (4) ~~Geothermal energy.~~

27 (5) ~~Biologically derived methane gas.~~

28 (6) ~~Fuel cells.~~

29 (7) ~~Biomass energy.~~

30 (8) ~~Coal mine methane.~~

1 * * *

2 ~~Section 2. Sections 3(b), (e) and (f), 4 and 5 of the act~~
3 ~~are amended to read:~~

4 ~~Section 3. Alternative energy portfolio standards.~~

5 * * *

6 ~~(b) Tier I and solar photovoltaic shares.~~

7 ~~(1) Two years after the effective date of this act, at~~
8 ~~least 1.5% of the electric energy sold by an electric~~
9 ~~distribution company or electric generation supplier to~~
10 ~~retail electric customers in this Commonwealth shall be~~
11 ~~generated from Tier I alternative energy sources. Except as~~
12 ~~provided in this section, the minimum percentage of electric~~
13 ~~energy required to be sold to retail electric customers from~~
14 ~~alternative energy sources shall increase to 2% three years~~
15 ~~after the effective date of this act. The minimum percentage~~
16 ~~of electric energy required to be sold to retail electric~~
17 ~~customers from alternative energy sources shall increase by~~
18 ~~at least 0.5% each year so that at least 8% of the electric~~
19 ~~energy sold by an electric distribution company or electric~~
20 ~~generation supplier to retail electric customers in that~~
21 ~~certificated territory in the 15th year after the effective~~
22 ~~date of this subsection is sold from Tier I alternative~~
23 ~~energy resources.~~

24 ~~(2) [Of the electric energy required to be sold from~~
25 ~~Tier I sources, the total percentage that must be sold from~~
26 ~~solar photovoltaic technologies is for:] The total percentage~~
27 ~~of the electric energy sold by an electric distribution~~
28 ~~company or an electric generation supplier to retail electric~~
29 ~~customers in this Commonwealth that must be sold from solar~~
30 ~~photovoltaic technologies is:~~

1 ~~{(i) Years 1 through 4 — 0.0013%.~~

2 ~~{(ii) Years 5 through 9 — 0.0203%.~~

3 ~~{(iii) Years 10 through 14 — 0.2500%.~~

4 ~~{(iv) Years 15 and thereafter — 0.5000%.}~~

5 ~~{(i) 0.0013% for June 1, 2006, through May 31, 2007.~~

6 ~~{(ii) 0.0030% for June 1, 2007, through May 31, 2008.~~

7 ~~{(iii) 0.0063% for June 1, 2008, through May 31,~~

8 ~~2009.~~

9 ~~{(iv) 0.0120% for June 1, 2009, through May 31, 2010.~~

10 ~~{(v) 0.0203% for June 1, 2010, through May 31, 2011.~~

11 ~~{(vi) 0.0325% for June 1, 2011, through May 31, 2012.~~

12 ~~{(vii) 0.0510% for June 1, 2012, through May 31,~~

13 ~~2013.~~

14 ~~{(viii) 0.0840% for June 1, 2013, through May 31,~~

15 ~~2014.~~

16 ~~{(ix) 0.1440% for June 1, 2014, through May 31, 2015.~~

17 ~~{(x) 0.2500% for June 1, 2015, through May 31, 2016.~~

18 ~~{(xi) 0.2933% for June 1, 2016, through May 31, 2017.~~

19 ~~{(xii) 0.3400% for June 1, 2017, through May 31,~~

20 ~~2018.~~

21 ~~{(xiii) 0.3900% for June 1, 2018, through May 31,~~

22 ~~2019.~~

23 ~~{(xiv) 0.4433% for June 1, 2019, and thereafter.~~

24 ~~{(xiv) 0.4433% for June 1, 2019, through May 31,~~

25 ~~2020.~~

26 ~~{(xv) 0.5000% for June 1, 2020, and thereafter.~~

27 ~~The percentages in this paragraph shall apply to all~~

28 ~~retail electricity sales in this Commonwealth.~~

29 ~~(3) Upon commencement of the beginning of the 6th~~

30 ~~reporting year, the commission shall undertake a review of~~

1 ~~the compliance by electric distribution companies and~~
2 ~~electric generation suppliers with the requirements of this~~
3 ~~act. The review shall also include the status of alternative~~
4 ~~energy technologies within this Commonwealth and the capacity~~
5 ~~to add additional alternative energy resources. The~~
6 ~~commission shall use the results of this review to recommend~~
7 ~~to the General Assembly additional compliance goals beyond~~
8 ~~year 15. The commission shall work with the department in~~
9 ~~evaluating the future alternative energy resource potential.~~

10 * * *

11 ~~(e) Alternative energy credits.~~

12 ~~(1) The commission shall establish an alternative energy~~
13 ~~credits program as needed to implement this act. The~~
14 ~~provision of services pursuant to this section shall be~~
15 ~~exempt from the competitive procurement procedures of 62~~
16 ~~Pa.C.S. (relating to procurement).~~

17 ~~(2) The commission shall approve an independent entity~~
18 ~~to serve as the alternative energy credits program~~
19 ~~administrator. The administrator shall have those powers and~~
20 ~~duties assigned by commission regulations. Such powers and~~
21 ~~duties shall include, but not be limited to, the following:~~

22 ~~(i) To create and administer an alternative energy~~
23 ~~credits certification, tracking and reporting program.~~
24 ~~This program should include, at a minimum, a process for~~
25 ~~qualifying alternative energy systems and determining the~~
26 ~~manner credits can be created, accounted for, transferred~~
27 ~~and retired.~~

28 ~~(ii) To submit reports to the commission at such~~
29 ~~times and in such manner as the commission shall direct.~~

30 ~~(3) All qualifying alternative energy systems must~~

1 ~~include a qualifying meter to record the cumulative electric~~
2 ~~production to verify the advanced energy credit value.~~
3 ~~Qualifying meters will be approved by the commission as~~
4 ~~defined in paragraph (4).~~

5 ~~(4) (i) An electric distribution company or electric~~
6 ~~generation supplier shall comply with the applicable~~
7 ~~requirements of this section by purchasing sufficient~~
8 ~~alternative energy credits and submitting documentation~~
9 ~~of compliance to the program administrator.~~

10 ~~(ii) For purposes of this subsection, one~~
11 ~~alternative energy credit shall represent one megawatt~~
12 ~~hour of qualified alternative electric generation,~~
13 ~~whether self-generated, purchased along with the electric~~
14 ~~commodity or separately through a tradable instrument and~~
15 ~~otherwise meeting the requirements of commission~~
16 ~~regulations and the program administrator.~~

17 ~~(5) The alternative energy credits program shall include~~
18 ~~provisions requiring a reporting period as defined in section~~
19 ~~2 for all covered entities under this act. The alternative~~
20 ~~energy credits program shall also include a true up period as~~
21 ~~defined in section 2. The true up period shall provide~~
22 ~~entities covered under this act the ability to obtain the~~
23 ~~required number of alternative energy credits or to make up~~
24 ~~any shortfall of the alternative energy credits they may be~~
25 ~~required to obtain to comply with this act. A force majeure~~
26 ~~provision shall also be provided for under the true up period~~
27 ~~provisions.~~

28 ~~(6) An electric distribution company and electric~~
29 ~~generation supplier may bank or place in reserve alternative~~
30 ~~energy credits produced in one reporting year for compliance~~

1 ~~in either or both of the two subsequent reporting years,~~
2 ~~subject to the limitations set forth in this subsection and~~
3 ~~provided that the electric distribution company and electric~~
4 ~~generation supplier are in compliance for all previous~~
5 ~~reporting years. In addition, the electric distribution~~
6 ~~company and electric generation supplier shall demonstrate to~~
7 ~~the satisfaction of the commission that such credits:~~

8 ~~(i) were in excess of the alternative energy credits~~
9 ~~needed for compliance in the year in which they were~~
10 ~~generated and that such excess credits have not~~
11 ~~previously been used for compliance under this act,~~

12 ~~(ii) were produced by the generation of electrical~~
13 ~~energy by alternative energy sources and sold to retail~~
14 ~~customers during the year in which they were generated,~~
15 ~~and~~

16 ~~(iii) have not otherwise been nor will be sold,~~
17 ~~retired, claimed or represented as part of satisfying~~
18 ~~compliance with alternative or renewable energy portfolio~~
19 ~~standards in other states.~~

20 ~~(7) An electric distribution company or an electric~~
21 ~~generation supplier with sales that are exempted under~~
22 ~~subsection (d) may bank credits for retail sales of~~
23 ~~electricity generated from Tier I and Tier II sources made~~
24 ~~prior to the end of the cost recovery period and after the~~
25 ~~effective date of this act. Bankable credits shall be limited~~
26 ~~to credits associated with electricity sold from Tier I and~~
27 ~~Tier II sources during a reporting year which exceeds the~~
28 ~~volume of sales from such sources by an electric distribution~~
29 ~~company or electric generation supplier during the 12-month~~
30 ~~period immediately preceding the effective date of this act.~~

1 All credits banked under this subsection shall be available
2 for compliance with subsections (b) and (c) for no more than
3 two reporting years following the conclusion of the cost-
4 recovery period.

5 ~~(8) The commission or its designee shall develop a~~
6 ~~registry of pertinent information regarding all available~~
7 ~~alternative energy credits, credit transactions among~~
8 ~~electric distribution companies and electric generation~~
9 ~~suppliers, the number of alternative energy credits sold or~~
10 ~~transferred and the price paid for the sale or transfer of~~
11 ~~the credits. The registry shall provide current information~~
12 ~~to electric distribution companies, electric generation~~
13 ~~suppliers and the general public on the status of alternative~~
14 ~~energy credits created, sold or transferred within this~~
15 ~~Commonwealth.~~

16 ~~(9) The commission may impose an administrative fee on~~
17 ~~an alternative energy credit transaction. The amount of this~~
18 ~~fee may not exceed the actual direct cost of processing the~~
19 ~~transaction by the alternative energy credits administrator.~~
20 ~~The commission is authorized to utilize up to 5% of the~~
21 ~~alternative compliance fees generated under subsection (f)~~
22 ~~for administrative expenses directly associated with this~~
23 ~~act.~~

24 ~~(10) The commission shall establish regulations~~
25 ~~governing the verification and tracking of energy efficiency~~
26 ~~and demand side management measures pursuant to this act,~~
27 ~~which shall include benefits to all utility customer classes.~~
28 ~~When developing regulations, the commission must give~~
29 ~~reasonable consideration to existing and proposed regulations~~
30 ~~and rules in existence in the regional transmission~~

1 organizations that manage the transmission system in any part
2 of this Commonwealth. All verified reductions shall accrue
3 credits starting with the passage of this act.

4 ~~(11) The commission shall within 120 days of the~~
5 ~~effective date of this act develop a depreciation schedule~~
6 ~~for alternative energy credits created through demand side~~
7 ~~management, energy efficiency and load management~~
8 ~~technologies and shall develop standards for tracking and~~
9 ~~verifying savings from energy efficiency, load management and~~
10 ~~demand side management measures. The commission shall allow~~
11 ~~for a 60 day public comment period and shall issue final~~
12 ~~standards within 30 days of the close of the public comment~~
13 ~~period.~~

14 ~~(12) (i) Unless a contractual provision explicitly~~
15 ~~assigns alternative energy credits in a different manner,~~
16 ~~the owner of the alternative energy system or a customer-~~
17 ~~generator owns any and all alternative energy credits~~
18 ~~associated with or created by the production of electric~~
19 ~~energy by such facility or customer, and the owner or~~
20 ~~customer shall be entitled to sell, transfer or take any~~
21 ~~other action to which a legal owner of property is~~
22 ~~entitled to take with respect to the credits.~~

23 ~~(ii) This paragraph shall apply to all alternative~~
24 ~~energy credits which were created pursuant to this act~~
25 ~~prior to the effective date of this paragraph and which~~
26 ~~will be created after the effective date of this~~
27 ~~paragraph, regardless of when any underlying contract for~~
28 ~~the purchase of electric energy or other products from~~
29 ~~the generator that qualifies as an alternative energy~~
30 ~~system was executed.~~

1 ~~(f) Alternative compliance payment.~~

2 ~~(1) At the end of each program year, the program~~
3 ~~administrator shall provide a report to the commission and to~~
4 ~~each covered electric distribution company showing their~~
5 ~~status level of alternative energy acquisition.~~

6 ~~(2) The commission shall conduct a review of each~~
7 ~~determination made under subsections (b) and (c). If, after~~
8 ~~notice and hearing, the commission determines that an~~
9 ~~electric distribution company or electric generation supplier~~
10 ~~has failed to comply with subsections (b) and (c), the~~
11 ~~commission shall impose an alternative compliance payment on~~
12 ~~that company or supplier.~~

13 ~~(3) The alternative compliance payment, with the~~
14 ~~exception of the solar photovoltaic share compliance~~
15 ~~requirement set forth in subsection (b) (2), shall be \$45~~
16 ~~times the number of additional alternative energy credits~~
17 ~~needed in order to comply with subsection (b) or (c).~~

18 ~~(4) The alternative compliance payment for the solar~~
19 ~~photovoltaic share shall be 200% of the average market value~~
20 ~~of solar renewable energy credits sold during the reporting~~
21 ~~period within the service region of the regional transmission~~
22 ~~organization, including, where applicable, the levelized up-~~
23 ~~front rebates received by sellers of solar renewable energy~~
24 ~~credits in other jurisdictions in the PJM Interconnection,~~
25 ~~L.L.C. transmission organization (PJM) or its successor.~~

26 ~~(5) The commission shall establish a process to provide~~
27 ~~for, at least annually, a review of the alternative energy~~
28 ~~market within this Commonwealth and the service territories~~
29 ~~of the regional transmission organizations that manage the~~
30 ~~transmission system in any part of this Commonwealth. The~~

1 ~~commission will use the results of this study to identify any~~
2 ~~needed changes to the cost associated with the alternative~~
3 ~~compliance payment program. If the commission finds that the~~
4 ~~costs associated with the alternative compliance payment~~
5 ~~program must be changed, the commission shall present these~~
6 ~~findings to the General Assembly for legislative enactment.~~

7 * * *

8 ~~Section 4. Portfolio requirements in other states.~~

9 ~~If an electric distribution supplier or electric generation~~
10 ~~company provider sells electricity in any other state and is~~
11 ~~subject to renewable energy portfolio requirements in that~~
12 ~~state, they shall list any such requirement and shall indicate~~
13 ~~how it satisfied those renewable energy portfolio requirements.~~
14 ~~To prevent double counting, the electric distribution supplier~~
15 ~~or electric generation company shall not satisfy Pennsylvania's~~
16 ~~alternative energy portfolio requirements using alternative~~
17 ~~energy used to satisfy another state's portfolio requirements[.~~
18 ~~Energy derived only from alternative energy sources inside the~~
19 ~~geographical boundaries of this Commonwealth or within the~~
20 ~~service territory of any regional transmission organization that~~
21 ~~manages the transmission system in any part of this Commonwealth~~
22 ~~shall be eligible to meet the compliance requirements under this~~
23 ~~act.] or alternative energy credits already purchased by~~
24 ~~individuals, businesses, or government bodies that do not have a~~
25 ~~compliance obligation under this act unless the individual,~~
26 ~~business or government body sells those credits to the electric~~
27 ~~distribution company or electric generation supplier. Energy~~
28 ~~derived from alternative energy sources inside the geographical~~
29 ~~boundaries of this Commonwealth shall be eligible to meet the~~
30 ~~compliance requirements under this act. Energy derived from~~

1 ~~alternative energy sources located outside the geographical~~
2 ~~boundaries of this Commonwealth but within the service territory~~
3 ~~of a regional transmission organization that manages the~~
4 ~~transmission system in any part of this Commonwealth shall only~~
5 ~~be eligible to meet the compliance requirements of electric~~
6 ~~distribution companies or electric generation suppliers located~~
7 ~~within the service territory of the same regional transmission~~
8 ~~organization. For purposes of compliance with this act,~~
9 ~~alternative energy sources located in the PJM Interconnection,~~
10 ~~E.L.C. regional transmission organization (PJM) or its successor~~
11 ~~service territory shall be eligible to fulfill compliance~~
12 ~~obligations of all Pennsylvania electric distribution companies~~
13 ~~and electric generation suppliers. Energy derived from~~
14 ~~alternative energy sources located outside the service territory~~
15 ~~of a regional transmission organization that manages the~~
16 ~~transmission system in any part of this Commonwealth shall not~~
17 ~~be eligible to meet the compliance requirements of this act.~~
18 ~~Electric distribution companies and electric generation~~
19 ~~suppliers shall document that this energy was not used to~~
20 ~~satisfy another state's renewable energy portfolio standards.~~
21 ~~Section 5. Interconnection standards for customer generator~~
22 ~~facilities.~~

23 ~~Excess generation from net metered customer generators shall~~
24 ~~receive full retail value for all energy produced on an annual~~
25 ~~basis. The commission shall develop technical and net metering~~
26 ~~interconnection rules for customer generators intending to~~
27 ~~operate renewable onsite generators in parallel with the~~
28 ~~electric utility grid, consistent with rules defined in other~~
29 ~~states within the service region of the regional transmission~~
30 ~~organization that manages the transmission system in any part of~~

1 ~~this Commonwealth. The commission shall convene a stakeholder~~
2 ~~process to develop Statewide technical and net metering rules~~
3 ~~for customer generators. The commission shall develop these~~
4 ~~rules within nine months of the effective date of this act.~~

5 ~~Section 3. The addition of section 3(c)(12) of the act shall~~
6 ~~apply to all alternative energy credits created under the act~~
7 ~~before, on or after the effective date of this section,~~
8 ~~regardless of when any underlying contract for the purchase of~~
9 ~~electric energy or other products from the generator that~~
10 ~~qualifies as an alternative energy system was executed.~~

11 ~~Section 4. This act shall take effect immediately.~~

12 ~~SECTION 1. THE DEFINITIONS OF "ALTERNATIVE ENERGY SOURCES,"~~ <—
13 ~~"CUSTOMER GENERATOR," "FORCE MAJEURE" AND "NET METERING" IN~~
14 ~~SECTION 2 OF THE ACT OF NOVEMBER 30, 2004 (P.L.1672, NO.213),~~
15 ~~KNOWN AS THE ALTERNATIVE ENERGY PORTFOLIO STANDARDS ACT, ARE~~
16 ~~AMENDED TO READ:~~

17 SECTION 1. THE DEFINITIONS OF "ALTERNATIVE ENERGY CREDIT," <—
18 "CUSTOMER-GENERATOR," "FORCE MAJEURE," "NET METERING" AND "TIER
19 I ALTERNATIVE ENERGY SOURCE" IN SECTION 2 OF THE ACT OF NOVEMBER
20 30, 2004 (P.L.1672, NO.213), KNOWN AS THE ALTERNATIVE ENERGY
21 PORTFOLIO STANDARDS ACT, ARE AMENDED TO READ:

22 SECTION 2. DEFINITIONS.

23 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL
24 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
25 CONTEXT CLEARLY INDICATES OTHERWISE:

26 "ALTERNATIVE ENERGY CREDIT." A TRADABLE INSTRUMENT THAT IS <—
27 USED TO ESTABLISH, VERIFY AND MONITOR COMPLIANCE WITH THIS ACT.
28 A UNIT OF CREDIT SHALL EQUAL ONE MEGAWATT HOUR OF ELECTRICITY
29 FROM AN ALTERNATIVE ENERGY SOURCE. THE ALTERNATIVE ENERGY CREDIT
30 SHALL REMAIN THE PROPERTY OF THE ALTERNATIVE ENERGY SYSTEM UNTIL

1 THE ALTERNATIVE ENERGY CREDIT IS VOLUNTARILY TRANSFERRED BY THE
2 ALTERNATIVE ENERGY SYSTEM.

3 * * *

4 ~~"ALTERNATIVE ENERGY SOURCES." THE TERM SHALL INCLUDE THE~~ <—
5 ~~FOLLOWING EXISTING AND NEW SOURCES FOR THE PRODUCTION OF~~
6 ~~ELECTRICITY:~~

7 ~~(1) SOLAR PHOTOVOLTAIC OR OTHER SOLAR ELECTRIC ENERGY.~~

8 ~~(2) SOLAR THERMAL ENERGY.~~

9 ~~(3) WIND POWER.~~

10 ~~(4) LARGE SCALE HYDROPOWER, WHICH SHALL MEAN THE~~
11 ~~PRODUCTION OF ELECTRIC POWER BY HARNESSING THE HYDROELECTRIC~~
12 ~~POTENTIAL OF MOVING WATER IMPOUNDMENTS, INCLUDING PUMPED~~
13 ~~STORAGE THAT DOES NOT MEET THE REQUIREMENTS OF LOW IMPACT~~
14 ~~HYDROPOWER UNDER PARAGRAPH (5).~~

15 ~~(5) LOW IMPACT HYDROPOWER CONSISTING OF ANY TECHNOLOGY~~
16 ~~THAT PRODUCES ELECTRIC POWER AND THAT HARNESSSES THE~~
17 ~~HYDROELECTRIC POTENTIAL OF MOVING WATER IMPOUNDMENTS,~~
18 ~~PROVIDED THE HYDROPOWER SOURCE HAS A NAMEPLATE CAPACITY OF 21~~
19 ~~MEGAWATTS OR LESS AND A LICENSE ISSUED BY THE FEDERAL ENERGY~~
20 ~~REGULATORY COMMISSION FOR THE HYDROPOWER SOURCE WAS HELD IN~~
21 ~~WHOLE OR IN PART BY A MUNICIPALITY OR ELECTRIC COOPERATIVE ON~~
22 ~~JULY 1, 2007, OR SUCH INCREMENTAL HYDROELECTRIC DEVELOPMENT:~~

23 ~~(I) DOES NOT ADVERSELY CHANGE EXISTING IMPACTS TO~~
24 ~~AQUATIC SYSTEMS;~~

25 ~~(II) MEETS THE CERTIFICATION STANDARDS ESTABLISHED~~
26 ~~BY THE LOW IMPACT HYDROPOWER INSTITUTE AND AMERICAN~~
27 ~~RIVERS, INC., OR THEIR SUCCESSORS;~~

28 ~~(III) PROVIDES AN ADEQUATE WATER FLOW FOR PROTECTION~~
29 ~~OF AQUATIC LIFE AND FOR SAFE AND EFFECTIVE FISH PASSAGE;~~

30 ~~(IV) PROTECTS AGAINST EROSION; AND~~

1 ~~(V) PROTECTS CULTURAL AND HISTORIC RESOURCES.~~

2 ~~(6) GEOTHERMAL ENERGY, WHICH SHALL MEAN ELECTRICITY~~
3 ~~PRODUCED BY EXTRACTING HOT WATER OR STEAM FROM GEOTHERMAL~~
4 ~~RESERVES IN THE EARTH'S CRUST AND SUPPLIED TO STEAM TURBINES~~
5 ~~THAT DRIVE GENERATORS TO PRODUCE ELECTRICITY.~~

6 ~~(7) BIOMASS ENERGY, WHICH SHALL MEAN THE GENERATION OF~~
7 ~~ELECTRICITY UTILIZING THE FOLLOWING:~~

8 ~~(I) ORGANIC MATERIAL FROM A PLANT THAT IS GROWN FOR~~
9 ~~THE PURPOSE OF BEING USED TO PRODUCE ELECTRICITY OR IS~~
10 ~~PROTECTED BY THE FEDERAL CONSERVATION RESERVE PROGRAM~~
11 ~~(CRP) AND PROVIDED FURTHER THAT CROP PRODUCTION ON CRP~~
12 ~~LANDS DOES NOT PREVENT ACHIEVEMENT OF THE WATER QUALITY~~
13 ~~PROTECTION, SOIL EROSION PREVENTION OR WILDLIFE~~
14 ~~ENHANCEMENT PURPOSES FOR WHICH THE LAND WAS PRIMARILY SET~~
15 ~~ASIDE; OR~~

16 ~~(II) ANY SOLID NONHAZARDOUS, CELLULOSIC WASTE~~
17 ~~MATERIAL THAT IS SEGREGATED FROM OTHER WASTE MATERIALS,~~
18 ~~SUCH AS WASTE PALLETS, CRATES AND LANDSCAPE OR RIGHT OF-~~
19 ~~WAY TREE TRIMMINGS OR AGRICULTURAL SOURCES, INCLUDING~~
20 ~~ORCHARD TREE CROPS, VINEYARDS, GRAIN, LEGUMES, SUGAR AND~~
21 ~~OTHER CROP BY PRODUCTS OR RESIDUES.~~

22 ~~(8) BIOLOGICALLY DERIVED METHANE GAS, WHICH SHALL~~
23 ~~INCLUDE METHANE FROM THE ANAEROBIC DIGESTION OF ORGANIC~~
24 ~~MATERIALS FROM YARD WASTE, SUCH AS GRASS CLIPPINGS AND~~
25 ~~LEAVES, FOOD WASTE, ANIMAL WASTE AND SEWAGE SLUDGE. THE TERM~~
26 ~~ALSO INCLUDES LANDFILL METHANE GAS.~~

27 ~~(9) FUEL CELLS, WHICH SHALL MEAN ANY ELECTROCHEMICAL~~
28 ~~DEVICE THAT CONVERTS CHEMICAL ENERGY IN A HYDROGEN-RICH FUEL~~
29 ~~DIRECTLY INTO ELECTRICITY, HEAT AND WATER WITHOUT COMBUSTION.~~

30 ~~(10) WASTE COAL, WHICH SHALL INCLUDE THE COMBUSTION OF~~

1 ~~WASTE COAL IN FACILITIES IN WHICH THE WASTE COAL WAS DISPOSED~~
2 ~~OR ABANDONED PRIOR TO JULY 31, 1982, OR DISPOSED OF~~
3 ~~THEREAFTER IN A PERMITTED COAL REFUSE DISPOSAL SITE~~
4 ~~REGARDLESS OF WHEN DISPOSED OF, AND USED TO GENERATE~~
5 ~~ELECTRICITY, OR SUCH OTHER WASTE COAL COMBUSTION MEETING~~
6 ~~ALTERNATE ELIGIBILITY REQUIREMENTS ESTABLISHED BY REGULATION.~~
7 ~~FACILITIES COMBUSTING WASTE COAL SHALL USE AT A MINIMUM A~~
8 ~~COMBINED FLUIDIZED BED BOILER AND BE OUTFITTED WITH A~~
9 ~~LIMESTONE INJECTION SYSTEM AND A FABRIC FILTER PARTICULATE~~
10 ~~REMOVAL SYSTEM. ALTERNATIVE ENERGY CREDITS SHALL BE~~
11 ~~CALCULATED BASED UPON THE PROPORTION OF WASTE COAL UTILIZED~~
12 ~~TO PRODUCE ELECTRICITY AT THE FACILITY.~~

13 ~~(11) COAL MINE METHANE, WHICH SHALL MEAN METHANE GAS~~
14 ~~EMITTING FROM ABANDONED OR WORKING COAL MINES.~~

15 ~~(12) DEMAND SIDE MANAGEMENT CONSISTING OF THE MANAGEMENT~~
16 ~~OF CUSTOMER CONSUMPTION OF ELECTRICITY OR THE DEMAND FOR~~
17 ~~ELECTRICITY THROUGH THE IMPLEMENTATION OF:~~

18 ~~(I) ENERGY EFFICIENCY TECHNOLOGIES, MANAGEMENT~~
19 ~~PRACTICES OR OTHER STRATEGIES IN RESIDENTIAL, COMMERCIAL,~~
20 ~~INSTITUTIONAL OR GOVERNMENT CUSTOMERS THAT REDUCE~~
21 ~~ELECTRICITY CONSUMPTION BY THOSE CUSTOMERS;~~

22 ~~(II) LOAD MANAGEMENT OR DEMAND RESPONSE~~
23 ~~TECHNOLOGIES, MANAGEMENT PRACTICES OR OTHER STRATEGIES IN~~
24 ~~RESIDENTIAL, COMMERCIAL, INDUSTRIAL, INSTITUTIONAL AND~~
25 ~~GOVERNMENT CUSTOMERS THAT SHIFT ELECTRIC LOAD FROM~~
26 ~~PERIODS OF HIGHER DEMAND TO PERIODS OF LOWER DEMAND; OR~~

27 ~~(III) INDUSTRIAL BY PRODUCT TECHNOLOGIES CONSISTING~~
28 ~~OF THE USE OF A BY PRODUCT FROM AN INDUSTRIAL PROCESS,~~
29 ~~INCLUDING THE REUSE OF ENERGY FROM EXHAUST GASES OR OTHER~~
30 ~~MANUFACTURING BY PRODUCTS THAT ARE USED IN THE DIRECT~~

1 ~~PRODUCTION OF ELECTRICITY AT THE FACILITY OF A CUSTOMER.~~

2 ~~(13) DISTRIBUTED GENERATION SYSTEM, WHICH SHALL MEAN THE~~
3 ~~SMALL SCALE POWER GENERATION OF ELECTRICITY AND USEFUL~~
4 ~~THERMAL ENERGY.~~

5 * * *

6 "CUSTOMER-GENERATOR." A NONUTILITY OWNER OR OPERATOR OF A
7 NET METERED DISTRIBUTED GENERATION SYSTEM WITH A NAMEPLATE
8 CAPACITY OF NOT GREATER THAN 50 KILOWATTS IF INSTALLED AT A
9 RESIDENTIAL SERVICE OR NOT LARGER THAN [1,000] 3,000 KILOWATTS
10 AT OTHER CUSTOMER SERVICE LOCATIONS, EXCEPT FOR CUSTOMERS WHOSE
11 SYSTEMS ARE ABOVE [ONE MEGAWATT] THREE MEGAWATTS AND UP TO [TWO]
12 FIVE MEGAWATTS WHO MAKE THEIR SYSTEMS AVAILABLE TO OPERATE IN
13 PARALLEL WITH THE ELECTRIC UTILITY DURING GRID EMERGENCIES AS
14 DEFINED BY THE REGIONAL TRANSMISSION ORGANIZATION OR ~~WHERE A~~ <—
15 ~~MICROGRID IS IN PLACE~~ ~~WHO MAKE THEIR SYSTEMS AVAILABLE~~ FOR THE <—
16 PRIMARY OR SECONDARY PURPOSE OF MAINTAINING CRITICAL
17 INFRASTRUCTURE, SUCH AS HOMELAND SECURITY ASSIGNMENTS, EMERGENCY
18 SERVICES FACILITIES, HOSPITALS, TRAFFIC SIGNALS, WASTEWATER
19 TREATMENT PLANTS OR TELECOMMUNICATIONS FACILITIES, PROVIDED THAT
20 TECHNICAL RULES FOR OPERATING GENERATORS INTERCONNECTED WITH
21 FACILITIES OF AN ELECTRIC DISTRIBUTION COMPANY, ELECTRIC
22 COOPERATIVE OR MUNICIPAL ELECTRIC SYSTEM HAVE BEEN PROMULGATED
23 BY THE INSTITUTE OF ELECTRICAL AND ELECTRONIC ENGINEERS AND THE
24 PENNSYLVANIA PUBLIC UTILITY COMMISSION. A NET METERED <—
25 ~~DISTRIBUTED GENERATION SYSTEM CAPABLE OF PROVIDING MORE THAN ONE~~
26 ~~MEGAWATT THROUGH ITS INTERCONNECTION SHALL COMPLY WITH ALL~~
27 ~~TECHNICAL RULES NECESSARY TO ENSURE THAT SIGNIFICANT~~
28 ~~FLUCTUATIONS IN THE ELECTRICAL SUPPLY TO THE ELECTRIC~~
29 ~~DISTRIBUTION COMPANY, ELECTRIC COOPERATIVE OR MUNICIPAL ELECTRIC~~
30 ~~SYSTEM WILL NOT INTERFERE WITH ITS OPERATIONS.~~

1 * * *

2 "FORCE MAJEURE." UPON ITS OWN INITIATIVE OR UPON A REQUEST
3 OF AN ELECTRIC DISTRIBUTION COMPANY OR AN ELECTRIC GENERATOR
4 SUPPLIER, THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, WITHIN 60
5 DAYS, SHALL DETERMINE IF ALTERNATIVE ENERGY RESOURCES ARE
6 REASONABLY AVAILABLE IN THE MARKETPLACE IN SUFFICIENT QUANTITIES
7 FOR THE ELECTRIC DISTRIBUTION COMPANIES AND ELECTRIC GENERATION
8 SUPPLIERS TO MEET THEIR OBLIGATIONS FOR THAT REPORTING PERIOD
9 UNDER THIS ACT. IN MAKING THIS DETERMINATION THE COMMISSION
10 SHALL CONSIDER WHETHER ELECTRIC DISTRIBUTION COMPANIES OR
11 ELECTRIC GENERATION SUPPLIERS HAVE MADE A GOOD FAITH EFFORT TO
12 ACQUIRE SUFFICIENT ALTERNATIVE ENERGY TO COMPLY WITH THEIR
13 OBLIGATIONS. SUCH GOOD FAITH EFFORTS SHALL INCLUDE, BUT ARE NOT
14 LIMITED TO, BANKING ALTERNATIVE ENERGY CREDITS DURING THEIR
15 TRANSITION PERIODS, SEEKING ALTERNATIVE ENERGY CREDITS THROUGH
16 COMPETITIVE SOLICITATIONS AND SEEKING TO PROCURE ALTERNATIVE
17 ENERGY CREDITS OR ALTERNATIVE ENERGY THROUGH LONG-TERM
18 CONTRACTS. IN FURTHER MAKING ITS DETERMINATION THE COMMISSION
19 SHALL ASSESS THE AVAILABILITY OF ALTERNATIVE ENERGY CREDITS IN
20 THE GENERATION ATTRIBUTES TRACKING SYSTEM (GATS) OR ITS
21 SUCCESSOR, AND THE AVAILABILITY OF ALTERNATIVE ENERGY CREDITS
22 GENERALLY IN PENNSYLVANIA AND OTHER JURISDICTIONS IN THE PJM
23 INTERCONNECTION, L.L.C. REGIONAL TRANSMISSION ORGANIZATION (PJM)
24 OR ITS SUCCESSOR. THE COMMISSION MAY ALSO REQUIRE SOLICITATIONS
25 FOR ALTERNATIVE ENERGY CREDITS AS PART OF DEFAULT SERVICE BEFORE
26 REQUESTS OF FORCE MAJEURE CAN BE MADE. IF THE COMMISSION FURTHER
27 DETERMINES THAT ALTERNATIVE ENERGY RESOURCES ARE NOT REASONABLY
28 AVAILABLE IN SUFFICIENT QUANTITIES IN THE MARKETPLACE FOR THE
29 ELECTRIC DISTRIBUTION COMPANIES AND ELECTRIC GENERATION
30 SUPPLIERS TO MEET THEIR OBLIGATIONS UNDER THIS ACT, THEN THE

1 COMMISSION SHALL MODIFY THE UNDERLYING OBLIGATION OF THE
2 ELECTRIC DISTRIBUTION COMPANY OR ELECTRIC GENERATION SUPPLIER OR
3 RECOMMEND TO THE GENERAL ASSEMBLY THAT THE UNDERLYING OBLIGATION
4 BE ELIMINATED. COMMISSION MODIFICATION OF THE ELECTRIC ←
5 DISTRIBUTION COMPANY OR ELECTRIC GENERATION SUPPLIER OBLIGATIONS
6 UNDER THIS ACT SHALL BE FOR THAT COMPLIANCE PERIOD ONLY.
7 COMMISSION MODIFICATION SHALL NOT AUTOMATICALLY REDUCE THE
8 OBLIGATION FOR SUBSEQUENT COMPLIANCE YEARS. IF THE COMMISSION
9 MODIFIES THE ELECTRIC DISTRIBUTION COMPANY OR ELECTRIC
10 GENERATION SUPPLIER OBLIGATIONS UNDER THIS ACT, THE COMMISSION
11 MAY REQUIRE THE ELECTRIC DISTRIBUTION COMPANY OR ELECTRIC
12 GENERATION SUPPLIER TO ACQUIRE ADDITIONAL ALTERNATIVE ENERGY
13 CREDITS IN SUBSEQUENT YEARS EQUIVALENT TO THE OBLIGATION REDUCED
14 DUE TO A FORCE MAJEURE DECLARATION IF THE COMMISSION DETERMINES
15 THAT SUFFICIENT ALTERNATIVE ENERGY CREDITS EXIST IN THE
16 MARKETPLACE.

17 * * *

18 "NET METERING." THE MEANS OF MEASURING THE DIFFERENCE
19 BETWEEN THE ELECTRICITY SUPPLIED BY AN ELECTRIC UTILITY AND THE
20 ELECTRICITY GENERATED BY A CUSTOMER-GENERATOR [WHEN THE
21 RENEWABLE ENERGY GENERATING SYSTEM IS INTENDED PRIMARILY], WHEN
22 ANY PORTION OF THE ELECTRICITY GENERATED BY THE ALTERNATIVE
23 ENERGY GENERATING SYSTEM IS USED TO OFFSET PART OR ALL OF THE
24 CUSTOMER-GENERATOR'S REQUIREMENTS FOR ELECTRICITY. VIRTUAL METER
25 AGGREGATION ON PROPERTIES OWNED OR LEASED AND OPERATED BY A
26 CUSTOMER-GENERATOR AND LOCATED WITHIN TWO MILES OF THE
27 BOUNDARIES OF THE CUSTOMER-GENERATOR'S PROPERTY AND WITHIN A
28 SINGLE ELECTRIC DISTRIBUTION COMPANY'S SERVICE TERRITORY SHALL
29 BE ELIGIBLE FOR NET METERING. ~~AT THE END OF EACH MONTHLY BILLING~~ ←
30 ~~PERIOD, THE ELECTRIC DISTRIBUTION COMPANY SHALL COMPENSATE THE~~

1 ~~CUSTOMER GENERATOR FOR KILOWATT HOURS GENERATED BY THE CUSTOMER~~
2 ~~GENERATOR OVER THE AMOUNT OF KILOWATT HOURS DELIVERED BY THE~~
3 ~~ELECTRIC DISTRIBUTION COMPANY DURING THE BILLING PERIOD AT THE~~
4 ~~ELECTRIC DISTRIBUTION COMPANY'S AVOIDED COST OF WHOLESALE POWER.~~
5 ~~NO CONTRACT SHALL ABROGATE THE CUSTOMER GENERATOR'S RIGHT TO~~
6 ~~RECEIVE THESE PAYMENTS. NO CUSTOMER GENERATOR SHALL OPERATE MORE~~
7 ~~THAN ONE ALTERNATIVE ENERGY PROJECT THAT IS ENGAGED IN VIRTUAL~~
8 ~~METER AGGREGATION WITHIN EACH OF THE ELECTRIC DISTRIBUTION~~
9 ~~COMPANY'S SERVICE TERRITORIES.~~

10 * * *

11 "TIER I ALTERNATIVE ENERGY SOURCE." ENERGY DERIVED FROM: <—

- 12 (1) SOLAR PHOTOVOLTAIC AND SOLAR THERMAL ENERGY.
- 13 (2) WIND POWER.
- 14 (3) LOW-IMPACT HYDROPOWER.
- 15 (4) GEOTHERMAL ENERGY.
- 16 (5) BIOLOGICALLY DERIVED METHANE GAS.
- 17 (6) FUEL CELLS.
- 18 (7) BIOMASS ENERGY.
- 19 (8) COAL MINE METHANE.

20 * * *

21 SECTION 2. SECTION 3(B) AND (F) OF THE ACT ARE AMENDED AND
22 SUBSECTION (E) IS AMENDED BY ADDING A PARAGRAPH TO READ:

23 SECTION 3. ALTERNATIVE ENERGY PORTFOLIO STANDARDS.

24 * * *

25 (B) TIER I AND SOLAR PHOTOVOLTAIC SHARES.--

- 26 (1) TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ACT, AT
- 27 LEAST 1.5% OF THE ELECTRIC ENERGY SOLD BY AN ELECTRIC
- 28 DISTRIBUTION COMPANY OR ELECTRIC GENERATION SUPPLIER TO
- 29 RETAIL ELECTRIC CUSTOMERS IN THIS COMMONWEALTH SHALL BE
- 30 GENERATED FROM TIER I ALTERNATIVE ENERGY SOURCES. EXCEPT AS

1 PROVIDED IN THIS SECTION, THE MINIMUM PERCENTAGE OF ELECTRIC
2 ENERGY REQUIRED TO BE SOLD TO RETAIL ELECTRIC CUSTOMERS FROM
3 ALTERNATIVE ENERGY SOURCES SHALL INCREASE TO 2% THREE YEARS
4 AFTER THE EFFECTIVE DATE OF THIS ACT. THE MINIMUM PERCENTAGE
5 OF ELECTRIC ENERGY REQUIRED TO BE SOLD TO RETAIL ELECTRIC
6 CUSTOMERS FROM ALTERNATIVE ENERGY SOURCES SHALL INCREASE BY
7 AT LEAST 0.5% EACH YEAR SO THAT AT LEAST 8% OF THE ELECTRIC
8 ENERGY SOLD BY AN ELECTRIC DISTRIBUTION COMPANY OR ELECTRIC
9 GENERATION SUPPLIER TO RETAIL ELECTRIC CUSTOMERS IN THAT
10 CERTIFICATED TERRITORY IN THE 15TH YEAR AFTER THE EFFECTIVE
11 DATE OF THIS SUBSECTION IS SOLD FROM TIER I ALTERNATIVE
12 ENERGY RESOURCES.

13 (2) [OF THE ELECTRIC ENERGY REQUIRED TO BE SOLD FROM
14 TIER I SOURCES, THE TOTAL PERCENTAGE THAT MUST BE SOLD FROM
15 SOLAR PHOTOVOLTAIC TECHNOLOGIES IS FOR:] THE TOTAL PERCENTAGE
16 OF THE ELECTRIC ENERGY SOLD BY AN ELECTRIC DISTRIBUTION
17 COMPANY OR ELECTRIC GENERATION SUPPLIER TO RETAIL ELECTRIC
18 CUSTOMERS IN THIS COMMONWEALTH THAT MUST BE SOLD FROM SOLAR
19 PHOTOVOLTAIC TECHNOLOGIES IS:

20 [(I) YEARS 1 THROUGH 4 - 0.0013%.

21 (II) YEARS 5 THROUGH 9 - 0.0203%.

22 (III) YEARS 10 THROUGH 14 - 0.2500%.

23 (IV) YEARS 15 AND THEREAFTER - 0.5000%.]

24 (I) 0.0013% FOR JUNE 1, 2006, THROUGH MAY 31, 2007.

25 (II) 0.0030% FOR JUNE 1, 2007, THROUGH MAY 31, 2008.

26 (III) 0.0063% FOR JUNE 1, 2008, THROUGH MAY 31,

27 2009.

28 (IV) 0.0120% FOR JUNE 1, 2009, THROUGH MAY 31, 2010.

29 (V) 0.0203% FOR JUNE 1, 2010, THROUGH MAY 31, 2011.

30 (VI) 0.0325% FOR JUNE 1, 2011, THROUGH MAY 31, 2012.

- 1 (VII) 0.0510% FOR JUNE 1, 2012, THROUGH MAY 31,
2 2013.
- 3 (VIII) 0.0840% FOR JUNE 1, 2013, THROUGH MAY 31,
4 2014.
- 5 (IX) 0.1440% FOR JUNE 1, 2014, THROUGH MAY 31, 2015.
6 (X) 0.2500% FOR JUNE 1, 2015, THROUGH MAY 31, 2016.
7 (XI) 0.2933% FOR JUNE 1, 2016, THROUGH MAY 31, 2017.
8 (XII) 0.3400% FOR JUNE 1, 2017, THROUGH MAY 31,
9 2018.
- 10 (XIII) 0.3900% FOR JUNE 1, 2018, THROUGH MAY 31,
11 2019.
- 12 (XIV) 0.4433% FOR JUNE 1, 2019, THROUGH MAY 31,
13 2020.
- 14 (XV) 0.5000% FOR JUNE 1, 2020, AND THEREAFTER.

15 (3) UPON COMMENCEMENT OF THE BEGINNING OF THE 6TH
16 REPORTING YEAR, THE COMMISSION SHALL UNDERTAKE A REVIEW OF
17 THE COMPLIANCE BY ELECTRIC DISTRIBUTION COMPANIES AND
18 ELECTRIC GENERATION SUPPLIERS WITH THE REQUIREMENTS OF THIS
19 ACT. THE REVIEW SHALL ALSO INCLUDE THE STATUS OF ALTERNATIVE
20 ENERGY TECHNOLOGIES WITHIN THIS COMMONWEALTH AND THE CAPACITY
21 TO ADD ADDITIONAL ALTERNATIVE ENERGY RESOURCES. THE
22 COMMISSION SHALL USE THE RESULTS OF THIS REVIEW TO RECOMMEND
23 TO THE GENERAL ASSEMBLY ADDITIONAL COMPLIANCE GOALS BEYOND
24 YEAR 15. THE COMMISSION SHALL WORK WITH THE DEPARTMENT IN
25 EVALUATING THE FUTURE ALTERNATIVE ENERGY RESOURCE POTENTIAL.

26 * * *

27 (E) ALTERNATIVE ENERGY CREDITS.--

28 * * *

29 (12) ~~(I)~~ UNLESS A CONTRACTUAL PROVISION EXPLICITLY
30 ASSIGNS ALTERNATIVE ENERGY CREDITS IN A DIFFERENT MANNER, THE

1 OWNER OF THE ALTERNATIVE ENERGY SYSTEM OR A CUSTOMER-
2 GENERATOR OWNS ANY AND ALL ALTERNATIVE ENERGY CREDITS
3 ASSOCIATED WITH OR CREATED BY THE PRODUCTION OF ELECTRIC
4 ENERGY BY SUCH FACILITY OR CUSTOMER, AND THE OWNER OR
5 CUSTOMER SHALL BE ENTITLED TO SELL, TRANSFER OR TAKE ANY
6 OTHER ACTION TO WHICH A LEGAL OWNER OF PROPERTY IS ENTITLED
7 TO TAKE WITH RESPECT TO THE CREDITS.

8 ~~(II) THIS PARAGRAPH SHALL APPLY TO ALL ALTERNATIVE~~ <—
9 ~~ENERGY CREDITS CREATED PURSUANT TO THIS ACT EXCEPT THOSE~~
10 ~~CREATED UNDER CONTRACTS WHICH WERE EXECUTED PRIOR TO THE~~
11 ~~EFFECTIVE DATE OF THIS PARAGRAPH BETWEEN AN ELECTRIC~~
12 ~~DISTRIBUTION COMPANY AND A COGENERATION FACILITY OR A~~
13 ~~SMALL POWER PRODUCTION FACILITY AS THOSE TERMS ARE~~
14 ~~DEFINED UNDER THE FEDERAL PUBLIC UTILITY REGULATORY~~
15 ~~POLICIES ACT OF 1978 (16 U.S.C. § 824A-3).~~

16 (F) ALTERNATIVE COMPLIANCE PAYMENT.--

17 (1) AT THE END OF EACH PROGRAM YEAR, THE PROGRAM
18 ADMINISTRATOR SHALL PROVIDE A REPORT TO THE COMMISSION AND TO
19 EACH COVERED ELECTRIC DISTRIBUTION COMPANY SHOWING THEIR
20 STATUS LEVEL OF ALTERNATIVE ENERGY ACQUISITION.

21 (2) THE COMMISSION SHALL CONDUCT A REVIEW OF EACH
22 DETERMINATION MADE UNDER SUBSECTIONS (B) AND (C). IF, AFTER
23 NOTICE AND HEARING, THE COMMISSION DETERMINES THAT AN
24 ELECTRIC DISTRIBUTION COMPANY OR ELECTRIC GENERATION SUPPLIER
25 HAS FAILED TO COMPLY WITH SUBSECTIONS (B) AND (C), THE
26 COMMISSION SHALL IMPOSE AN ALTERNATIVE COMPLIANCE PAYMENT ON
27 THAT COMPANY OR SUPPLIER.

28 (3) THE ALTERNATIVE COMPLIANCE PAYMENT, WITH THE
29 EXCEPTION OF THE SOLAR PHOTOVOLTAIC SHARE COMPLIANCE
30 REQUIREMENT SET FORTH IN SUBSECTION (B) (2), SHALL BE \$45

1 TIMES THE NUMBER OF ADDITIONAL ALTERNATIVE ENERGY CREDITS
2 NEEDED IN ORDER TO COMPLY WITH SUBSECTION (B) OR (C).

3 (4) THE ALTERNATIVE COMPLIANCE PAYMENT FOR THE SOLAR
4 PHOTOVOLTAIC SHARE SHALL BE 200% OF THE AVERAGE MARKET VALUE
5 OF SOLAR RENEWABLE ENERGY CREDITS SOLD DURING THE REPORTING
6 PERIOD WITHIN THE SERVICE REGION OF THE REGIONAL TRANSMISSION
7 ORGANIZATION, INCLUDING, WHERE APPLICABLE, THE LEVELIZED UP-
8 FRONT REBATES RECEIVED BY SELLERS OF SOLAR RENEWABLE ENERGY
9 CREDITS IN OTHER JURISDICTIONS IN THE PJM INTERCONNECTION,
10 L.L.C. TRANSMISSION ORGANIZATION (PJM) OR ITS SUCCESSOR.

11 (5) THE COMMISSION SHALL ESTABLISH A PROCESS TO PROVIDE
12 FOR, AT LEAST ANNUALLY, A REVIEW OF THE ALTERNATIVE ENERGY
13 MARKET WITHIN THIS COMMONWEALTH AND THE SERVICE TERRITORIES
14 OF THE REGIONAL TRANSMISSION ORGANIZATIONS THAT MANAGE THE
15 TRANSMISSION SYSTEM IN ANY PART OF THIS COMMONWEALTH. THE
16 COMMISSION WILL USE THE RESULTS OF THIS STUDY TO IDENTIFY ANY
17 NEEDED CHANGES TO THE COST ASSOCIATED WITH THE ALTERNATIVE
18 COMPLIANCE PAYMENT PROGRAM. IF THE COMMISSION FINDS THAT THE
19 COSTS ASSOCIATED WITH THE ALTERNATIVE COMPLIANCE PAYMENT
20 PROGRAM MUST BE CHANGED, THE COMMISSION SHALL PRESENT THESE
21 FINDINGS TO THE GENERAL ASSEMBLY FOR LEGISLATIVE ENACTMENT.

22 * * *

23 SECTION 3. SECTIONS 4 AND 5 OF THE ACT ARE AMENDED TO READ:

24 SECTION 4. PORTFOLIO REQUIREMENTS IN OTHER STATES.

25 IF AN ELECTRIC DISTRIBUTION SUPPLIER OR ELECTRIC GENERATION
26 COMPANY PROVIDER SELLS ELECTRICITY IN ANY OTHER STATE AND IS
27 SUBJECT TO RENEWABLE ENERGY PORTFOLIO REQUIREMENTS IN THAT
28 STATE, THEY SHALL LIST ANY SUCH REQUIREMENT AND SHALL INDICATE
29 HOW IT SATISFIED THOSE RENEWABLE ENERGY PORTFOLIO REQUIREMENTS.
30 TO PREVENT DOUBLE-COUNTING, THE ELECTRIC DISTRIBUTION SUPPLIER

1 OR ELECTRIC GENERATION COMPANY SHALL NOT SATISFY PENNSYLVANIA'S
2 ALTERNATIVE ENERGY PORTFOLIO REQUIREMENTS USING ALTERNATIVE
3 ENERGY USED TO SATISFY ANOTHER STATE'S PORTFOLIO REQUIREMENTS[.
4 ENERGY DERIVED ONLY FROM ALTERNATIVE ENERGY SOURCES INSIDE THE
5 GEOGRAPHICAL BOUNDARIES OF THIS COMMONWEALTH OR WITHIN THE
6 SERVICE TERRITORY OF ANY REGIONAL TRANSMISSION ORGANIZATION THAT
7 MANAGES THE TRANSMISSION SYSTEM IN ANY PART OF THIS COMMONWEALTH
8 SHALL BE ELIGIBLE TO MEET THE COMPLIANCE REQUIREMENTS UNDER THIS
9 ACT.] OR ALTERNATIVE ENERGY CREDITS ALREADY PURCHASED BY
10 INDIVIDUALS, BUSINESSES, OR GOVERNMENT BODIES THAT DO NOT HAVE A
11 COMPLIANCE OBLIGATION UNDER THIS ACT UNLESS THE INDIVIDUAL,
12 BUSINESS OR GOVERNMENT BODY SELLS THOSE CREDITS TO THE ELECTRIC
13 DISTRIBUTION COMPANY OR ELECTRIC GENERATION SUPPLIER. ENERGY
14 DERIVED FROM ALTERNATIVE ENERGY SOURCES INSIDE THE GEOGRAPHICAL
15 BOUNDARIES OF THIS COMMONWEALTH SHALL BE ELIGIBLE TO MEET THE
16 COMPLIANCE REQUIREMENTS UNDER THIS ACT. ENERGY DERIVED FROM
17 ALTERNATIVE ENERGY SOURCES LOCATED OUTSIDE THE GEOGRAPHICAL
18 BOUNDARIES OF THIS COMMONWEALTH BUT WITHIN THE SERVICE TERRITORY
19 OF A REGIONAL TRANSMISSION ORGANIZATION THAT MANAGES THE
20 TRANSMISSION SYSTEM IN ANY PART OF THIS COMMONWEALTH SHALL ONLY
21 BE ELIGIBLE TO MEET THE COMPLIANCE REQUIREMENTS OF ELECTRIC
22 DISTRIBUTION COMPANIES OR ELECTRIC GENERATION SUPPLIERS LOCATED
23 WITHIN THE SERVICE TERRITORY OF THE SAME REGIONAL TRANSMISSION
24 ORGANIZATION. FOR PURPOSES OF COMPLIANCE WITH THIS ACT,
25 ALTERNATIVE ENERGY SOURCES LOCATED IN THE PJM INTERCONNECTION,
26 L.L.C. REGIONAL TRANSMISSION ORGANIZATION (PJM) OR ITS SUCCESSOR
27 SERVICE TERRITORY SHALL BE ELIGIBLE TO FULFILL COMPLIANCE
28 OBLIGATIONS OF PIKE COUNTY LIGHT AND POWER COMPANY AND <—
29 PENNSYLVANIA POWER COMPANY ALL PENNSYLVANIA ELECTRIC <—
30 DISTRIBUTION COMPANIES AND ELECTRIC GENERATION SUPPLIERS. ENERGY

1 DERIVED FROM ALTERNATIVE ENERGY SOURCES LOCATED OUTSIDE THE
2 SERVICE TERRITORY OF A REGIONAL TRANSMISSION ORGANIZATION THAT
3 MANAGES THE TRANSMISSION SYSTEM IN ANY PART OF THIS COMMONWEALTH
4 SHALL NOT BE ELIGIBLE TO MEET THE COMPLIANCE REQUIREMENTS OF
5 THIS ACT. ELECTRIC DISTRIBUTION COMPANIES AND ELECTRIC
6 GENERATION SUPPLIERS SHALL DOCUMENT THAT THIS ENERGY WAS NOT
7 USED TO SATISFY ANOTHER STATE'S RENEWABLE ENERGY PORTFOLIO
8 STANDARDS.

9 SECTION 5. INTERCONNECTION STANDARDS FOR CUSTOMER-GENERATOR
10 FACILITIES.

11 EXCESS GENERATION FROM NET-METERED CUSTOMER-GENERATORS SHALL
12 BE "~~TRUED UP~~" RECEIVE FULL RETAIL VALUE FOR ALL ENERGY PRODUCED <—
13 ON AN ANNUAL BASIS. THE COMMISSION SHALL DEVELOP TECHNICAL AND
14 NET METERING INTERCONNECTION RULES FOR CUSTOMER-GENERATORS
15 INTENDING TO OPERATE RENEWABLE ONSITE GENERATORS IN PARALLEL
16 WITH THE ELECTRIC UTILITY GRID, CONSISTENT WITH RULES DEFINED IN
17 OTHER STATES WITHIN THE SERVICE REGION OF THE REGIONAL
18 TRANSMISSION ORGANIZATION THAT MANAGES THE TRANSMISSION SYSTEM
19 IN ANY PART OF THIS COMMONWEALTH. THE COMMISSION SHALL CONVENE A
20 STAKEHOLDER PROCESS TO DEVELOP STATEWIDE TECHNICAL AND NET
21 METERING RULES FOR CUSTOMER-GENERATORS. THE COMMISSION SHALL
22 DEVELOP THESE RULES WITHIN NINE MONTHS OF THE EFFECTIVE DATE OF
23 THIS ACT.

24 SECTION 3.1. NOTWITHSTANDING THE ADDITION OF SECTION <—
25 3(E)(12) OF THE ACT, NOTHING IN THIS ACT IS INTENDED TO REVERSE
26 OR MODIFY THE PENNSYLVANIA PUBLIC UTILITY COMMISSION'S ORDER
27 DOCKET NUMBER P-00052149.

28 SECTION 4. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for :
Approval of (1) A Process to Procure :
Alternative Energy Credits During the :
AEPS Banking Period and (2) A Section : **Docket No. P-00072260**
1307 Surcharge and Tariff to Recover :
AEPS Costs :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the Reply Brief of PECO Energy Company in the manner indicated below in accordance with the requirements of 52 Pa. Code §1.54.

VIA ELECTRONIC AND FEDERAL EXPRESS MAIL

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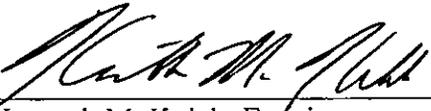
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Kenneth M. Kulak, Esquire
Co-Counsel for PECO Energy Company

Date: July 27, 2007



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September 11, 2007

By Hand Delivery

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, Pennsylvania 17105-3265

ORIGINAL

Re: Petition of PECO Energy Company for Approval of (1) A Process to Procure Alternative Energy Credits during the AEPS Banking Period and (2) A Section 1307 Surcharge and Tariff to Recover AEPS Costs
Docket No. P-00072260

Dear Mr. McNulty:

Enclosed please find an original and three copies of the Withdrawal of Appearance and Entry of Appearance on behalf of Citizens for Pennsylvania's Future (PennFuture) in the above-captioned proceeding.

If you have any questions, please contact me at (215) 545-9693 or mcphedran@pennfuture.org.

Sincerely,


Charles McPhedran
Senior Attorney

**DOCUMENT
FOLDER**

cc: Hon. Marlane R. Chestnut
Certificate of Service

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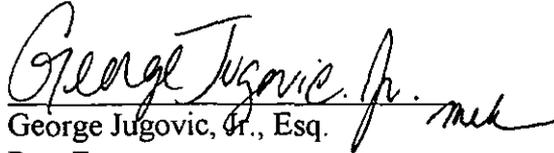
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF (1) A :
PROCESS TO PROCURE :
ALTERNATIVE ENERGY CREDITS : DOCKET NO. P-00072260
DURING THE AEPS BANKING PERIOD :
AND (2) A SECTION 1307 SURCHARGE :
AND TARIFF TO RECOVER AEPS :
COSTS :

DOCUMENT
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Withdrawal of Appearance

Please withdraw my appearance in the above-designated matter on behalf of
Citizens for Pennsylvania's Future (PennFuture).

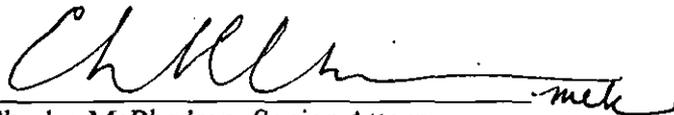


George Jugovic, Jr., Esq.
PennFuture
425 Sixth Avenue, Suite 2770
Pittsburgh, PA 15219
Phone: 412-258-6684

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Entry of Appearance

Please enter my appearance in the above-designated matter on behalf of Citizens
for Pennsylvania's Future (PennFuture). I am authorized to accept service on behalf of
said party in this matter. On the basis of this notice, I request a copy of each document
hereafter issued by the Commission in this matter.



Charles McPhedran, Senior Attorney
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Pa. Bar Id. No. 60123
mcphebran@pennfuture.org

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

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Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Charis Mincavage, Esq.
McNees, Wallace & Nurick
100 Pine Street
Harrisburg, PA 17108

Dated this 11th day of September 2007.


Charles McPhedran
Counsel for PennFuture



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OFFICE OF CONSUMER ADVOCATE

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IRWINA. POPOWSKY
Consumer Advocate

October 2, 2007

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

DOCUMENT
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Re: Petition of PECO Energy Company for
Approval of (1) A Process to Procure
Alternative Energy Credits During the
AEPS Banking Period and (2) A Section
1307 Surcharge and Tariff to recover AEPS
Costs
Docket No. P-00072260

Dear Secretary McNulty:

Please be advised that the Office of Consumer Advocate will not be filing
Exceptions to the Recommended Decision, in the above-referenced proceeding.

Copies have been served on the parties of record as indicated on the enclosed
Certificate of Service.

Sincerely,

Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044

Enclosures

cc: Parties of Record
Hon. Marlane R. Chestnut/ALJ
00095820

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CERTIFICATE OF SERVICE

Petition of PECO Energy Company :
for Approval of (1) A Process to :
Procure Alternative Energy Credits : Docket No. P-00072260
During the AEPS Banking Period and :
(2) A Section 1307 Surcharge and :
Tariff to recover AEPS Costs :

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I hereby certify that I have this day served a true copy of the foregoing letter of the Office of Consumer Advocate upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 2nd day of October 2007.

SERVICE BY E-MAIL and INTEROFFICE MAIL

Robert V. Eckenrod, Esquire
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

SERVICE BY E-MAIL and FIRST CLASS MAIL

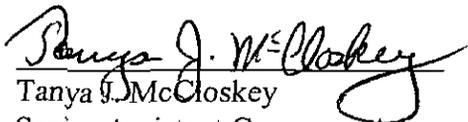
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Counsel for: *Co-counsel for PECO Energy
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Citizens for Pennsylvania's Future
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00093353



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October 2, 2007

By Hand Delivery

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120

Re: Petition of PECO Energy Company for Approval of (1) A Process to Procure Alternative Energy Credits during the AEPS Banking Period and (2) A Section 1307 Surcharge and Tariff to Recover AEPS Costs
Docket No. P-00072260

Dear Secretary McNulty:

Please be advised that Citizens for Pennsylvania's Future (PennFuture) will not be filing Exceptions to the Recommended Decision in the above-captioned proceeding.

If you have any questions, please contact me at (215) 545-9693 or mcphe dran@pennfuture.org.

Sincerely,

Charles McPhedran *mek*
Senior Attorney

cc: Hon. Marlane R. Chestnut
Certificate of Service

**DOCUMENT
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SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing letter upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

Adrian D. Newall, Esq.
PECO Energy Company
2301 Market Street
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Charis Mincavage, Esq.
McNees, Wallace & Nurick
100 Pine Street
Harrisburg, PA 17108

Dated this 2nd day of October, 2007.



Charles McPhedran
Counsel for PennFuture

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McNees Wallace & Nurick LLC
attorneys at law

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BARRY A. NAUM
DIRECT DIAL: (717) 237-5378
E-MAIL ADDRESS: BNAUM@MWN.COM

October 2, 2007

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
The Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA HAND DELIVERY

**Re: Pennsylvania Public Utility Commission v. PECO Energy Company;
Docket No. P-00072260**

Dear Secretary McNulty:

Please be advised that the Philadelphia Area Industrial Energy Users Group ("PAIEUG") will not be filing Exceptions to the Recommended Decision issued in the above-referenced proceeding. PAIEUG reserves the right, however, to file Reply Exceptions to respond to any issues raised in the Exceptions of other parties.

As indicated on the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this transmittal letter, and kindly return to us for our filing purposes. Thank you.

**DOCUMENT
FOLDER**

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Charis Mincavage
Barry A. Naum

Counsel to the Philadelphia Area
Industrial Energy Users Group

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BAN/km
Enclosures

c: Administrative Law Judge Marlane R. Chestnut (via First Class Mail)
Certificate of Service

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33

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST-CLASS MAIL

Tanya McCloskey, Esq.
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Assistant Small Business Advocate
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300 North Second Street
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Barry A. Naum

Dated this 2nd day of October, 2007 in Harrisburg, Pennsylvania.

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OFFICE OF SMALL BUSINESS ADVOCATE
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101

William R. Lloyd, Jr.
Small Business Advocate

(717) 783-2525
(717) 783-2831 (FAX)

October 2, 2007

HAND DELIVERED

ORIGINAL

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

**Re: Petition of PECO Energy Company for Approval of (1) A Process to Procure Alternative Energy Credits During the AEPS Banking Period and (2) A Section 1307 Surcharge and Tariff to Recover AEPS Costs
Docket No. P-00072260**

Dear Secretary McNulty:

Enclosed for filing are the original and nine (9) copies of the Exceptions on behalf of the Office of Small Business Advocate in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please do not hesitate to contact me.

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Sincerely,

Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995

Enclosures

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company for Approval :
of (1) A Process to Procure Alternative Energy :
Credits during the AEPS Banking Period and :DOCKET NO. P-00072260
(2) A Section 1307 Surcharge and Tariff :
to Recover AEPS Costs :

ORIGINAL

EXCEPTIONS
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

DOCUMENT
FOLDER

DOCKETED
OCT 03 2007

Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995

For: William R. Lloyd, Jr.
Small Business Advocate
Attorney ID No. 16452

Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Dated: October 2, 2007

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I. INTRODUCTION

A. Procedural History

On March 19, 2007, PECO Energy Company (“PECO” or the “Company”) filed a Petition seeking expedited review and approval by the Pennsylvania Public Utility Commission (“Commission” or “PUC”) of a process to procure alternative energy credits pursuant to the Alternative Energy Portfolio Standards Act (“AEPS Act”), 73 P.S. §1648.1 *et seq.*, while PECO’s generation rates are capped. Additionally, PECO’s Petition seeks approval of a surcharge mechanism and tariff, pursuant to Section 1307 of the Public Utility Code, 66 Pa. C.S. §1307, through which the Company will recover its costs of complying with the AEPS Act.

The Office of Small Business Advocate (“OSBA”) filed an Answer and New Matter to PECO’s Petition on April 9, 2007. The Office of Consumer Advocate (“OCA”) and the Commission’s Office of Trial Staff (“OTS”) filed an Answer and an Intervention, respectively. In addition, Citizens for Pennsylvania’s Future (“PennFuture”) intervened.

On April 16, 2007, the Commission issued a Secretarial Letter which denied the Company’s request for expedited review but assigned the Petition to the Office of Administrative Law Judge for hearings and a recommended decision. Thereafter, the matter was assigned to Administrative Law Judge (“ALJ”) Marlane R. Chestnut.

On May 4, 2007, a prehearing conference was held before ALJ Chestnut and a procedural schedule was established. Pursuant to the established schedule, the OSBA submitted the direct testimony of its witness, Brian Kalcic, on June 4, 2007.

The parties engaged in settlement discussions and were able to resolve all factual issues. On or about June 22, 2007, the parties executed two stipulations, which permitted the cancellation of the hearings and allowed the parties to brief three remaining issues.

The OSBA, the OCA and the Company submitted main briefs on July 13, 2007, pursuant to the procedural schedule set forth in the Joint Stipulation. On July 27, 2007, the OSBA, the OCA, the Company, and PennFuture filed reply briefs.

By Secretarial Letter of September 12, 2007, the Commission issued ALJ Chestnut's recommended decision ("RD"). The OSBA files these Exceptions to the RD.

B. Background

Section 3 of the AEPS Act, 73 P.S. §1648.3, requires that increasing percentages of the electricity sold to Pennsylvania retail customers by an electric distribution company ("EDC") or an electric generation supplier ("EGS") be generated from alternative energy sources. In lieu of selling electricity generated from alternative energy sources, Section 3(e)(4) of the AEPS Act allows an EDC or an EGS to purchase alternative energy credits ("AECs") without purchasing the electricity associated with those AECs.

Section 3(d) exempts an EDC from meeting the alternative energy requirements during its "cost-recovery period." Section 2 of the AEPS Act, 73 P.S. §1648.2, defines "cost-recovery period" as the period during which the EDC's generation rates are capped. Therefore, an EDC is under no obligation to purchase electricity generated from

alternative energy sources, or to purchase AECs associated with such electricity, while its generation rates are capped.¹

PECO's generation rates will be capped through December 31, 2010. (RD, p. 6, Findings of Fact No. 2) However, PECO is seeking to get a head start on meeting its AEPS Act requirements by purchasing AECs during the Company's rate cap period for use after the rate cap has expired. (RD, pp. 7-8, Findings of Fact Nos. 9, 10, 11, and 12) Section 3(e)(7) of the AEPS Act allows such an advance purchase of AECs during a rate cap period and the "banking" of those AECs for use once the rate cap has expired. (RD, p. 7, Findings of Fact No. 7)

The OSBA does not dispute PECO's right to purchase and bank AECs during the rate cap period for use in meeting the Company's AEPS Act requirements after the rate cap has expired. However, PECO and the OSBA do not agree about which AECs will qualify for banking.

PECO assumes that any otherwise eligible AEC will qualify for banking because PECO did not sell electricity generated from alternative energy sources during the base year, *i.e.*, February 28, 2004, through February 27, 2005, which is the twelve-month period immediately preceding the effective date of the AEPS Act. (RD, p. 8, Findings of Fact No. 16; and RD, pp. 11-12) PECO also assumes that an AEC will qualify for banking regardless of whether or not the associated electricity is sold to Pennsylvania retail customers. The OSBA disagrees with both of those assumptions. (RD, pp. 12 and 14) However, the ALJ agreed with PECO. (RD, pp. 11-13 and 14-16)

¹ During the pendency of this proceeding, the General Assembly amended the definition of "force majeure" under the AEPS Act. That amendment specifies that a good faith effort by an EDC or EGS to acquire AECs is a factor in determining if the Commission should declare a *force majeure*. The amendment recognizes banking of AECs during the rate cap period as evidence of a good faith effort. See the act of July 17, 2007 (P. L. ___, No. 35), §1.

The AEPS Act contains separate provisions for the procurement and banking of alternative energy credits *during* the rate cap period and *after* the rate cap period has expired. In that regard, Section 3(e)(6) governs which AECs will qualify for banking after the generation rate cap has expired. However, PECO's Petition must be adjudicated on the basis of Section 3(e)(7), which is the legal authority for banking AECs during the generation rate cap period. Based on the plain language of Section 3(e)(7), the OSBA submits that some (or all) of the AECs that PECO proposes to purchase may not qualify for banking. Therefore, because the ALJ agreed with PECO, the OSBA respectfully excepts to the RD, as follows.

II. EXCEPTIONS

EXCEPTION NO. 1: The ALJ erred in concluding that, to qualify for banking during the rate cap period, an AEC must be associated with electricity from alternative energy sources which is incremental to the buyer of the AEC rather than to the seller of the AEC. (RD, pp. 11-13, and p. 20, Conclusions of Law No. 7)

A. Background

Section 3(e)(7) of the AEPS Act provides that “[a]n electric distribution company...may bank credits for retail sales of electricity generated from Tier I and Tier II sources made prior to the end of the cost recovery [*i.e.*, the rate cap] period....Bankable credits shall be limited to credits associated with electricity sold from Tier I and Tier II sources...*which exceeds the volume of sales from such sources by an electric distribution company or electric generation supplier* during the 12-month period immediately preceding the effective date of this act....” (emphasis added)

As succinctly stated by the ALJ, “the difference between [PECO and the OSBA] is whether the electricity from alternative energy sources is incremental to the *buyer* of the credit or the *seller*.” (RD, p. 12) (emphasis added)

Section 3(e)(7) requires that, to be bankable *during the rate cap period*, an AEC must be associated with electricity sold by *an* EDC or *an* EGS. PECO takes the position that an AEC is bankable if the underlying electricity is incremental to PECO. (RD, pp. 11-12) In contrast, the OSBA’s position is that in order for PECO to bank an AEC during the rate cap period, the AEC must be associated with electricity which exceeds the total amount of electricity from alternative energy sources delivered to Pennsylvania retail consumers during the base year by the EDC or EGS which is offering to sell the AEC to PECO. (RD, p. 12)

The ALJ agreed with PECO. (RD, p. 13 and p. 20, Conclusions of Law No. 7)

Admittedly, PECO did not sell any electricity from Tier I or Tier II sources during the base year. (RD, p. 8, Findings of Fact No. 16) However, that is not dispositive of the question of which AECs PECO may bank. The specific language of Section 3(e)(7) does not make the question of whether an AEC is bankable during the rate cap period turn on whether the AEC is incremental to the electricity from alternative energy sources sold during the base year by *the* EDC or *the* EGS seeking to bank the AEC. Rather, the specific language of Section 3(e)(7) requires that, to be bankable during the rate cap period, an AEC must be associated with electricity sold by *an* EDC or *an* EGS, *i.e.*, an EDC other than PECO.² Therefore, in order for PECO to bank an AEC during the rate cap period, that AEC must be associated with electricity which exceeds the total amount of electricity that the seller of the AEC delivered to its Pennsylvania customers from Tier I and Tier II sources during the base year.

The ALJ acknowledged that the OSBA's interpretation is consistent with the plain language of Section 3(e)(7). (RD, p. 12) However, the ALJ concluded that PECO's interpretation also is consistent with the language of Section 3(e)(7). (RD, p. 12) When a statute can be construed in two different ways, that statute is, by definition, ambiguous. Under the rules of statutory construction, resolving an ambiguity turns on determining the intent of the legislature. *See* 1 Pa. C.S. §1921(c).

² Section 2 of the AEPS Act, 73 P.S. §1648.2, defines "electric distribution company" and "electric generation supplier" as they are defined in Chapter 28 of the Public Utility Code. Section 2803 of the Public Utility Code, 66 Pa. C.S. §2803, defines "electric distribution company" as "[t]he public utility providing facilities for the jurisdictional transmission and distribution of electricity to retail customers...." Section 2803 defines an "electric generation supplier" as "[a] person or corporation...that sells to end-use customers electricity or related services utilizing the jurisdictional transmission or distribution facilities of an electric distribution company or that purchases, brokers, arranges or markets electricity or related services for sale to end-use customers utilizing the jurisdictional transmission and distribution facilities of an electric distribution company."

B. Legislative Intent

The OSBA's interpretation is consistent with the Commission's finding that the purpose of the AEPS Act is to *increase* the utilization of alternative energy as a source of electricity sold to Pennsylvania consumers. See *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Docket No. L-00060180 (Order entered July 25, 2006), p. 7. In contrast, PECO's interpretation would frustrate that intent because the Company would be able to comply with the AEPS Act even though there had been no increase in the amount of alternative energy sold in Pennsylvania since the base year.³

PECO's interpretation also is inconsistent with the Commission's own tentative conclusions on this question. See *Implementation of Alternative Energy Portfolio Standards Act of 2004* (Order entered July 25, 2006), pp. 20-21, which provides as follows:

This section [of the proposed alternative energy regulations] codifies prior interpretations of the banking provisions of the Act from the First and Second Implementation Orders. The most problematic part of the banking provisions involves the apparent restriction placed on banking credits from alternative energy systems existing at the time of the Act's effective date during the cost-recovery period. 73 P.S. §1648.3(e)(7). The Act appears to prohibit the banking of credits from these alternative energy systems in quantities equal to their sales to Pennsylvania retail customers during the twelve month period preceding the effective date of the Act, February 28, 2005....

The Commission has considered as an example an alternative energy system that sold 10,000 MWh of alternative energy to an EDC, which was in turn sold to Pennsylvania retail customers, during the period of February 28, 2004 through February 28, 2005. The language of the Act would appear to suggest that an EDC or EGS could only bank alternative energy credits for sales made by that same alternative energy system in excess of 10,000 MWh per reporting period during their cost recovery

³ For example, there would be no increase in the utilization of alternative energy in Pennsylvania during the rate cap period if the Company were to purchase and bank only AECs which previously were being purchased by some other entity. Furthermore, because the Company would not need to purchase as many AECs in the first several years after the rate cap period, the demand for generation from any alternative energy source, *i.e.*, existing, new, or expanded facilities, in such post-rate cap years would be lower than would otherwise be the case.

period. Such an interpretation effectively discourages the acquisition of alternative energy and credits from resources already existing at the time of the Act's effective date. While this incremental requirement may encourage the development of new resources, it largely nullifies the cost-recovery period banking provision of the Act....

The Commission appears to have tentatively concluded that, to be bankable, an AEC must be associated with electricity incremental to the output of the specific alternative energy facility in the base year. The OSBA respectfully disagrees with that interpretation.⁴ Based on the plain language of the AEPS Act, the OSBA contends that, in order for an AEC to be bankable, the underlying electricity must be incremental to the amount of electricity from alternative energy sources delivered to Pennsylvania retail consumers during the base year by the EDC or EGS which is offering to sell the AEC. However, under either the Commission's tentative interpretation or the OSBA's interpretation, the fact that the underlying alternative energy or the associated AEC would be incremental to PECO is not sufficient to qualify the AEC as bankable.

Significantly, under both the Commission's tentative conclusion and the OSBA's interpretation, the presumed legislative intent of Section 3(e)(7) is the same, *i.e.*, to "encourage the development of *new* [alternative energy] resources." (*emphasis added*)

C. ALJ's Rationale

In resolving the ambiguity in Section 3(e)(7) in favor of PECO, the ALJ mistakenly relied on two arguments by the Company, an argument by PennFuture, and a recent amendment to the AEPS Act.

⁴ The ALJ acknowledged that none of the parties endorsed the Commission's tentative conclusion. (RD, p. 12, fn. 3) However, the ALJ did not state that the Commission's tentative conclusion is erroneous or set forth any reasons why that tentative conclusion is erroneous.

First, the ALJ pointed to an argument by PECO that its interpretation would not frustrate the legislative intent because PECO and every other EDC will face an increasing need for AECs as the rate caps expire. (RD, p. 13) The OSBA does not dispute PECO's observation about the inevitable increase in the demand for AECs and PECO's implicit assumption that meeting that increased demand will require construction of new Tier I alternative energy facilities. However, the inevitable growth in demand for AECs after the rate caps expire does not answer the question of what the legislature intended when it enacted the "incremental" requirement in Section 3(e)(7).

Second, the ALJ pointed to an argument by PECO that the "OSBA's interpretation would effectively read out the word 'existing' from the definition of alternative energy sources." (RD, p. 13) In accepting PECO's argument, the ALJ overlooked a very important distinction. Admittedly, Section 2 of the AEPS Act defines "alternative energy sources" to include both "*existing* and new sources for the production of electricity." (emphasis added) However, Section 2 is simply a definition. In contrast, Section 3(e)(7) specifies the circumstances under which output from any of the defined "alternative energy sources" qualifies for banking during the rate cap period. In effect, the ALJ's conclusion allows the definition to trump the parameters enacted by the legislature in Section 3(e)(7).

Third, the ALJ pointed to an argument by PennFuture that the OSBA's position is inconsistent "with the concept of freely tradable AECs" because only EDCs and EGSS which sold electricity from alternative energy sources during the base year would be eligible to sell AECs for banking during the rate cap period. (RD, p. 13) PennFuture's argument is with the General Assembly and not with the OSBA. Under both the OSBA's

interpretation of Section 3(e)(7) and PECO's interpretation, there are restrictions on which AECs are "freely tradable" for purposes of complying with the AEPS Act. Therefore, the fact the OSBA's interpretation would limit the trading of AECs during the rate cap period is not, of itself, a basis for rejecting that interpretation.

Fourth, the ALJ pointed to a recent amendment to the definition of "force majeure" in the AEPS Act. *See* the act of July 17, 2007 (P. L. ____, No. 35), §1. That amendment set forth criteria the Commission must consider in determining whether to excuse an EDC's failure to acquire a sufficient quantity of AECs. One of those criteria is whether the EDC made a good faith effort to bank AECs during the rate cap period. According to the ALJ, "[t]he clear legislative intent is that banking of alternative energy credits is to be encouraged as a means of supporting the alternative energy industry *now*, rather than having [EDCs] wait until the end of their cost recovery [*i.e.*, rate cap] periods to undertake the steps necessary to comply with their AEPS requirements." (RD, p. 13) (emphasis added) However, the ALJ overlooked the fact that the legislation which amended the definition of "force majeure" did not also amend Section 3(e)(7). Therefore, although the legislature has provided an additional incentive for an EDC to bank AECs during the rate cap period, the legislature has not changed which AECs are eligible to be banked.

Contrary to the ALJ's reasoning, the best way to help the alternative energy industry "now" is to provide a guaranteed revenue stream as a financial incentive to bring new alternative energy sources on line before the rate caps expire. Specifically, a new source could sell its electricity on the grid at the prevailing market price of electricity and could then reap incremental revenue by selling the associated AECs to PECO.

EXCEPTION NO. 2: The ALJ erred in concluding that, to qualify for banking during the rate cap period, an AEC is not required to be associated with electricity delivered and sold to Pennsylvania retail customers. (RD, pp. 14-16, and p. 20, Conclusions of Law No. 8)

A. Background

Section 3(e)(7) of the AEPS Act provides that “[a]n electric distribution company...may bank credits for retail *sales* of electricity generated from Tier I...sources *made* prior to the end of the cost-recovery [*i.e.*, the rate cap] period....Bankable credits shall be limited to credits associated with electricity *sold* from Tier I...sources...which exceeds the volume of *sales* from such sources by an *electric distribution company or electric generation supplier* during the 12-month period immediately preceding the effective date of this act....” (emphasis added)

The OSBA’s position is that, to be bankable during the rate cap period, an AEC must be associated with electricity delivered and sold in Pennsylvania. (RD, p. 14) That position is consistent with the plain language of Section 3(e)(7). Specifically, the first sentence of Section 3(e)(7) provides that, to be bankable, an AEC must be associated with “retail *sales*.” The second sentence of Section 3(e)(7) provides that, to be bankable, an AEC must be “associated with electricity *sold*” by an EDC or EGS.

While the AEPS Act does not include a definition of “retail sales,” Section 2 does define “retail electric customer” as having the meaning provided under Chapter 28 of the Public Utility Code. Section 2803 of the Public Utility Code, 66 Pa. C.S. §2803, defines “retail electric customer” as “[a] direct purchaser of electric power.” Nothing in Chapter 28 states or implies that Chapter 28 is intended to govern the direct purchase of electric

power by a customer located in some other state. Furthermore, as discussed above, an EDC is a Pennsylvania public utility; an EGS is an entity which sells electricity using the EDC's facilities. Therefore, "retail sales," as used in Section 3(e)(7), refers to sales to Pennsylvania customers.

PECO's interpretation is that the AEPS Act contains no requirement regarding to whom the associated energy is sold—whether to Pennsylvania retail customers or to customers outside of Pennsylvania. Therefore, it is PECO's position that an EDC may bank an AEC during the rate cap period even if the underlying electricity was not delivered to Pennsylvania consumers. (PECO Main Brief, pp. 14-16)

The ALJ agreed with PECO. (RD, pp. 14-16)

B. Legislative Intent

The OSBA's position that, to be bankable during the rate cap period, an AEC must be associated with electricity delivered and sold in Pennsylvania is consistent with the Commission's finding that the purpose of the AEPS Act is to *increase* the utilization of alternative energy as a source of electricity sold to Pennsylvania consumers. See *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Docket No. L-00060180 (Order entered July 25, 2006), p. 7.

In contrast, PECO's interpretation would frustrate the legislative intent to increase retail sales of alternative energy within the Commonwealth because PECO would be able to comply with the AEPS Act even though there had been no increase in the amount of alternative energy sold in Pennsylvania.

C. ALJ's Rationale

The ALJ based her rejection of the OSBA's position on an argument by PennFuture, a Commission decision in a previous case, and the Commission's position in a proposed rulemaking on alternative energy. (RD, pp. 14-16)

First, the ALJ accepted PennFuture's argument that if the General Assembly had wanted to restrict bankable AECs during the rate cap period to those associated with electricity sold to Pennsylvania retail customers, the legislature would have said so. (RD, p. 14) The basic problem with PennFuture's argument is that it assumes the conclusion, *i.e.*, that the OSBA is incorrect, and does not parse the language in an effort to justify that conclusion. It is the OSBA's position that Section 3(e)(7) does exactly what PennFuture conceded that the legislature had the ability to do, *i.e.*, impose a Pennsylvania delivery requirement on electricity for which AECs can be banked during the rate cap period.

Second, the ALJ relied on the Commission's decision in *Petition of Pennsylvania Power Company for Approval of Interim POLR Supply Plan*, Docket No. P-00052188 (Order entered April 20, 2006), p. 148, to the effect that the AEPS Act does not impose a Pennsylvania delivery requirement. (RD, pp. 14-15)

The ALJ acknowledged, but rejected, the OSBA's argument that because *Penn Power* dealt with the post-rate cap period, the Commission's decision in that case is not dispositive of the question of whether, to be bankable during the rate cap period, an AEC must be associated with electricity sold in Pennsylvania. According to the ALJ, "There is no reason why the electricity underlying an AEC that will be banked must be sold to a Pennsylvania retail customer when there is no such requirement for credits that will be sold after expiration of the cost recovery period. In both cases, the AEC is being used to

meet the same AEPS compliance obligation.” (RD, p. 15) The ALJ’s conclusion is based on would-be policy considerations rather than on a word-for-word comparison of the language governing AECs during and after the rate cap period. An agency is not permitted to disregard the words of a statute because the agency disagrees with the policy decision reflected by those words. *See* 1 Pa. C.S. §1921(b). Therefore, the Commission may not reject the OSBA’s statutory construction argument without analyzing the words upon which the OSBA’s argument is based.

Section 3(a) of the AEPS Act requires a steady increase in the quantity of electricity sold to Pennsylvania retail customers from alternative energy sources. Section 3(e)(4)(i) allows for an EDC to comply with that requirement, both during and after the expiration of its rate cap period, by purchasing AECs in lieu of actually purchasing, and delivering to its customers, electricity generated from alternative energy sources. Section 3(e)(6) provides for the banking of AECs after the rate cap period. In contrast, Section 3(e)(7) provides for the purchase and banking of AECs during the rate cap period for use after the rate cap has expired.

In *Penn Power*, the Commission held that the word “sold” in Section 3(a) does not require that an AEC be bundled with electricity delivered to Pennsylvania consumers. *Penn Power*, p. 148. However, *Penn Power* did not address the language in Section 3(e)(7) which imposes restrictions on banking during the rate cap period that are not present in Section 3(a).

Section 3(e)(7) provides that “[b]ankable credits shall be limited to credits associated with electricity sold from Tier I and Tier II sources...which exceeds the volume of sales from such sources by *an electric distribution company or electric*

generation supplier during the [base year].” (emphasis added) That means that, to be bankable during the rate cap period, an AEC must be associated with electricity sold by an EDC or an EGS. The terms “electric distribution company” and “electric generation supplier” are defined, respectively, as a *Pennsylvania* public utility and an entity which uses the facilities of a jurisdictional public utility, *i.e.*, a *Pennsylvania* public utility.⁵ Therefore, to be bankable during the rate cap period, an AEC must be associated with electricity sold to *Pennsylvania* retail customers.

Third, the ALJ relied on proposed 52 Pa. Code §75.35(d), in which the Commission proposed that an AEC qualify for certification if the underlying electricity is delivered to the distribution system of a *Pennsylvania* EDC *or* to the control area of a regional transmission organization which manages part of the Commonwealth’s transmission system.⁶ See *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Docket No. L-00060180 (Proposed Rulemaking Order entered July 25, 2006), Annex A, p. 12. (RD, p. 15) The ALJ’s reliance on the absence of a *Pennsylvania* delivery requirement in proposed Section 75.35(d) is misplaced.⁷ Proposed Section 75.35(d) states the general rule for determining the eligibility of an AEC to meet the requirements of the AEPS Act. However, proposed Section 75.35(d) does not address the specific language enacted by the General Assembly in Section 3(e)(7) to govern the purchase and banking of AECs during the rate cap period. Therefore, contrary to the

⁵ See Section 2 of the AEPS Act, which adopts the definition of those terms as they are set forth in Section 2803 of the Public Utility Code.

⁶ Proposed 52 Pa. Code §75.35(d) rests on Section 4 of the AEPS Act. Section 3 of the act of July 17, 2007 (P.L. ___, No. 35), amended Section 4 of the AEPS Act, but the amendments are not relevant to the disposition of this proceeding.

⁷ The RD, p. 15, sets forth what is purported to be a verbatim quote from proposed Section 75.35(d). Although the language is an accurate summary of proposed Section 75.35(d), it is not a direct quote.

ALJ's recommendation, the Commission must base its disposition of this proceeding on an analysis of the precise language in Section 3(e)(7).

D. Additional PECO Argument

Although the ALJ did not discuss the matter, PECO made an additional argument against the OSBA's interpretation of Section 3(e)(7), *i.e.*, that the OSBA's interpretation would be "technically problematic."⁸ (PECO Main Brief, p. 15) PECO is incorrect.

Under the OSBA's interpretation of Section 3(e)(7), it would be necessary for PECO to prove that the seller of the AEC acquired the underlying electricity in order to meet the load of that entity's Pennsylvania retail customers. It would also be necessary for PECO to prove that the electrons purchased were placed onto the grid. However, contrary to PECO's implication, it would *not* be necessary for the Company to prove that those same electrons were actually delivered to consumers in Pennsylvania.

⁸ In support of that argument, PECO cited to comments by the Commission in *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 (Tentative Order adopted January 27, 2006).

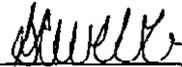
III. CONCLUSION

In view of the foregoing, the OSBA respectfully requests that the Commission grant OSBA Exception Nos. 1 and 2 and hold as follows:

1. In order to qualify for banking during the rate cap period, the AEC must be associated with electricity which exceeds the total amount of electricity that the seller of the AEC delivered to its Pennsylvania customers from Tier I and Tier II sources during the base year; and

2. In order to qualify for banking during the rate cap period, the AEC must be associated with electricity sold by an EDC or an EGS to Pennsylvania customers.

Respectfully submitted,



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Attorney ID No. 73995

For: William R. Lloyd, Jr.
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Office of Small Business Advocate
Suite 1102, Commerce Building
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Dated: October 2, 2007

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company for Approval :
of (1) A Process to Procure Alternative Energy :
Credits during the AEPS Banking Period and : DOCKET NO. P-00072260
(2) A Section 1307 Surcharge and Tariff :
to Recover AEPS Costs :

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Exceptions, on behalf of the Office of Small Business Advocate, in the above-captioned proceeding, by e-mail and first class mail (unless otherwise indicated) upon the persons addressed below:

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October 4, 2007

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ORIGINAL

Re: Petition Of PECO Energy Company For Approval Of (1) A Process To Procure
 Alternative Energy Credits During The AEPS Banking Period And (2) A Section
 1307 Surcharge And Tariff To Recover AEPS Costs
 Docket No. P-00072260
 SEPTA Corporate Department File No. 3158

**DOCUMENT
 FOLDER**

Dear Secretary McNulty:

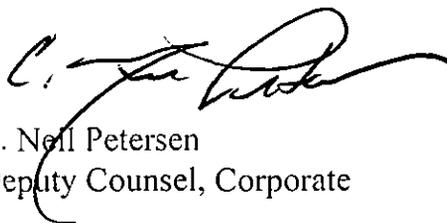
Enclosed for filing with the Commission are an original and three copies of the Withdrawal
 of Appearance of Vincent J. Walsh, Jr., Esquire and Notice of Appearance of C. Neil
 Petersen, Esquire. Each copy includes a copy of this transmittal letter.

Also enclosed is an extra copy of this letter and the filing submitted herewith, which I request
 that you date stamp and return to me in the envelope provided as proof of filing.

A Certificate of Service is enclosed showing that copies of the document contained herein
 have been served upon parties of record.

I ask that each party take note and correct all mailing lists accordingly.

Respectfully submitted,



C. Neil Petersen
 Deputy Counsel, Corporate

CNP:lh
 Enclosures

c: Nicholas J. Staffieri, Esquire
 Parties of Record

SECRETARY'S BUREAU
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CERTIFICATE OF SERVICE

I hereby certify that this day I have mailed true and correct copies of the foregoing Withdrawal / Entry of Appearance to the persons and parties whose names appear below, by first class United States mail, postage prepaid.

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Date: October 4, 2007



C. Neil Petersen
Attorney for SEPTA



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October 12, 2007

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
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Harrisburg, PA 17120

VIA HAND DELIVERY

**DOCUMENT
FOLDER**

**Re: Pennsylvania Public Utility Commission v. PECO Energy Company;
Docket No. P-00072260**

Dear Secretary McNulty:

Please be advised that the Philadelphia Area Industrial Energy Users Group ("PAIEUG") will not be filing Reply Exceptions to the Recommended Decision issued in the above-referenced proceeding.

As indicated on the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this transmittal letter, and kindly return to us for our filing purposes. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 

Charis Mincavage
Barry A. Naum

Counsel to the Philadelphia Area
Industrial Energy Users Group

DOCKETED
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Enclosures

c: Administrative Law Judge Marlane R. Chestnut (via First Class Mail)
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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

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Barry A. Naum

Dated this 12th day of October, 2007 in Harrisburg, Pennsylvania.

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Every environmental victory
grows the economy.

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www.pennfuture.org

October 12, 2007

By Hand Delivery

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120

**DOCUMENT
FOLDER**

Re: Petition of PECO Energy Company for Approval of (1) A Process to
Procure Alternative Energy Credits during the AEPS Banking Period and
(2) A Section 1307 Surcharge and Tariff to Recover AEPS Costs
Docket No. P-00072260

Dear Secretary McNulty:

Enclosed please find an original and nine copies of the Reply Exceptions of the
PennFuture Parties in the above-captioned matter. Copies have been served upon all
parties of record as indicated on the attached Certificate of Service.

If you have any questions, please contact me at (215) 545-9693 or
mcphedran@pennfuture.org.

Sincerely,

Charles McPhedran
Senior Attorney

cc: Hon. Marlane R. Chestnut
Certificate of Service

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59

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF :
(1) A PROCESS TO PROCURE :
ALTERNATIVE ENERGY CREDITS : DOCKET NO. P-00072260
DURING THE AEPS BANKING :
PERIOD AND (2) A SECTION 1307 :
SURCHARGE AND TARIFF TO :
RECOVER AEPS COSTS :

REPLY EXCEPTIONS OF PENNFUTURE

DOCUMENT
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DOCKETED
OCT 15 2007

Charles McPhedran, Senior Attorney
Pennsylvania ID No. 60123
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Philadelphia, PA 19102
(215) 545-9693
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October 12, 2007

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I. Introduction

In this proceeding, PECO seeks approval to procure 450,000 non-solar Tier I alternative energy credits (AECs) under the Alternative Energy Portfolio Standards Act 73 Pa.S.C.A. § 1648.1 *et. seq.* (AEPS Act). The Pennsylvania Public Utility Commission (Commission) issued the Recommended Decision in this matter on September 12, 2007. On October 2, 2007, the Office of Small Business Advocate (OSBA) filed Exceptions to the Recommended Decision. In response, PennFuture submits these Reply Exceptions.

II. Reply Exceptions

Reply Exception No. 1: The Recommended Decision correctly found that bankable alternative energy credits are determined with reference to sales by the electric distribution company seeking to bank the credits. RD at 11-13, 20 (Conclusion of Law No. 7); OSBA Exceptions at 5-10.

The Recommended Decision finds that Section 3(e)(7) of the AEPS Act:

...should be read to define eligible AECs as being based on the sales of electric energy from Tier I and II sources prior to the effective date of the AEPS Act by the EDS or EGS seeking to bank the credits, not the sales of such energy by the seller of the credits.

RD at 13. In support of this finding, the Recommended Decision cites the language of Section 3(e)(7) and clear legislative intent to encourage banking of alternative energy credits and support the alternative energy industry now. *Id.*

The Office of Small Business Advocate filed an Exception to this portion of the Recommended Decision. OSBA Exceptions at 5-10. PennFuture hereby responds to several arguments offered by OSBA.

The Recommended Decision quotes an argument by PECO that "...OSBA's interpretation would effectively read out the word 'existing' from the definition of alternative energy sources...". RD at 13, citing PECO Reply Brief at

9. In its Exceptions, OSBA acknowledges an AEPS Act definition of "alternative energy sources" that includes both "existing and new sources for the production of electricity." OSBA Exceptions at 9, citing Section 2 of the AEPS Act. OSBA then dismisses this statutory language as "simply a definition." OSBA Exceptions at 9. OSBA offers no authority for its conclusion that statutory definitions are somehow less important than other portions of statutes. PennFuture submits that this method of statutory interpretation must be rejected.

In the same discussion, the Recommended Decision quoted PennFuture:

Or, as PennFuture put it in its Reply Brief at 4, "OSBA's argument conflicts with the concept of freely tradable AECs, because OSBA's interpretation assumes that only pre-Act EDCs or EGSs – those that sold measurable amounts of electricity – are able to sell AECs to be banked during the Cost Recovery Period."

RD at 13. OSBA argues that since there are restrictions on which AECs are "freely tradable" for purposes of complying with the AEPS Act, more restrictions should not be ruled out. OSBA Exceptions at 10. However, the fact that the AEPS Act is designed to foster a freely tradable market in AECs (see, e.g., definition of AECs as "a tradable instrument" at 73 Pa.C.S.A. § 1648.2), strongly suggests that additional restrictions are inconsistent with the intent of the Legislature.

Finally, the Recommended Decision finds that "[t]he clear legislative intent is that banking of alternative energy credits is to be encouraged as a means of supporting the alternative energy industry now...", citing a recent amendment to the AEPS Act that revised the definition of "force majeure" to include banking of AEPS credits during the transition period as evidence of good faith efforts by

an electric distribution company to comply with the AEPS Act. RD at 13. OSBA argued that "...the [Administrative Law Judge] overlooked the fact that the legislation which amended the definition of 'force majeure' did not also amend Section 3(e)(7)." OSBA Exceptions at 10. However, there is no reason to assume that the ALJ overlooked Section 3(e)(7) or any other portion of the AEPS. Instead, the Recommended Decision offered this as evidence that the Legislature supports banking of credits now. PennFuture supports the ALJ's finding in this regard.

Reply Exception No. 2: The Recommended Decision correctly found that the electricity associated with AECs eligible for banking need not be delivered and sold to retail customers in Pennsylvania during the rate cap period. RD at 14-16, 20 (Conclusion of Law No. 8)

The Recommended Decision included the following Conclusion of Law:

8. Section 3(e)(7) of the Alternative Energy Portfolio Standards of 2004, 73 P.S. § 1648.3(e)(7) does not require electric distribution companies seeking to bank alternative energy credits to establish that the associated electricity will be (or was) delivered and sold to retail customers within the Commonwealth of Pennsylvania.

RD at 20. In support of this Conclusion of Law, the Recommended Decision reasoned that (a) the General Assembly did not establish any Pennsylvania delivery requirement; (b) the Commission had recently rejected an argument supporting a Pennsylvania delivery requirement similar to that advanced by OSBA,¹ (c) the Commission had likewise not imposed a Pennsylvania requirement in a proposed rulemaking, and (d) since OSBA agrees that there is no Pennsylvania delivery requirement for electricity used to generate AECs after expiration of the rate cap, there is no reason to impose such a requirement prior to such a time. RD at 14-15.

¹ Citing *Petition of Pennsylvania Power Company for Approval of Interim POLR Supply Plan*, Docket No. P-00052188, Commission Opinion and Order entered April 28, 2006 at 148.

In its Exceptions, OSBA claims that Section 3(e)(7) of the AEPS Act does create a Pennsylvania delivery requirement. OSBA Exceptions at 13-16.

The PennFuture Parties submit that OSBA's argument fails for the initial reason offered by the Recommended Decision, that Section 3(e)(7) by its terms imposes no requirement that electricity associated with AECs eligible for banking be sold or delivered to retail customers in Pennsylvania. In their Reply Exceptions, OSBA attempts to show that because Section 3(e)(7) uses the terms "electric distribution company" and "electric generation supplier", it follows that AECs are required to be associated with electricity sold to Pennsylvania retail customers. OSBA Exceptions at 15. However, OSBA's argument makes an unsupported leap between the two terms cited and any connection to a Pennsylvania sales requirement. No such a requirement regarding AECs does not appear in Section 3(e)(7), the definitions in Section 2 of the AEPS Act, or other authority.

As discussed in greater detail in our Reply Brief at 5-7, the General Assembly did not mandate that a qualifying credit must be associated with electricity delivered to Pennsylvania customers. Had the General Assembly intended to impose a Pennsylvania delivery requirement on AECs, it would have done so explicitly, and not relied on the Commission to interpret the statute in order to impose such a significant limitation.² We support the conclusion of the Recommended Decision that an electric distribution company need not demonstrate that credits it seeks to bank are associated with electricity delivered to Pennsylvania retail customers.

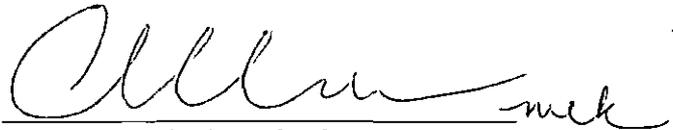
² See, e.g., *Proposed Rulemaking Order, Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Pa.P.U.C. Docket No. L-00060180 (July 25, 2006), § 75.35(d) (no requirement that energy be delivered to Pennsylvania retail customers).

Conclusion

For the reasons set forth herein and in our Reply Brief, PennFuture supports the findings of the Recommended Decision and opposes the Exceptions by OSBA.

Respectfully submitted,

FOR THE PENNFUTURE PARTIES

A handwritten signature in cursive script, appearing to read "Charles McPhedran", with a horizontal line underneath and the initials "mek" written to the right.

Charles McPhedran, Senior Attorney

Pennsylvania ID No. 60123

PennFuture

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Philadelphia, PA 19102

(215) 545-9693

mcphebran@pennfuture.org

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Reply
Exceptions upon the parties, listed below, in accordance with the requirements of § 1.54
(relating to service by a party):

Adrian D. Newall, Esq.
PECO Energy Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101-8699

Thomas P. Gadsden
Kenneth M. Kulak
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Kenneth L. Mickens, Esq.
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Sharon Webb, Esq.
Lauren M. Lepkoski, Esq.
Office Of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Charis Mincavage, Esq.
McNees, Wallace & Nurick
100 Pine Street
Harrisburg, PA 17108

Dated this 12th day of October, 2007.


Charles McPhedran
Counsel for PennFuture

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DATE: October 24, 2007

SUBJECT: P-00072260

TO: Cheryl W. Davis, Director
Office of Special Assistants

FROM: James McNulty
Secretary
nvl

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OCT 24 2007

PETITION OF PECO ENERGY COMPANY

Copies of the Recommended Decision have been served upon all parties of interest.

Exceptions have been filed by:

OFFICE OF SMALL BUSINESS ADVOCATE

Reply Exceptions have been received from:

**PECO ENERGY COMPANY
PENNFUTURE**

cc: Susan Hoffner

Best, Kay

From: Miller, Sara
Sent: Tuesday, February 10, 2009 11:55 AM
To: Strawser, Melissa; Best, Kay
Cc: McNulty, James; Shurskis, James; Diskin, Paul; Cross, Eric D; Hinds, Margaret; Bogovic, Robert; Farner, Joyce
Subject: RE: P-00072260 - PECO - Sec Letter - FUS - RUSH - Task needed
Importance: High

Melissa or Kay,

Can a task be created for FUS so they can submit this case through InfoMap for the Secretarial letter that must be served today.

Thanks.

*Sara Miller-Williams
Secretary's Bureau
PA PUC
sarmiller@state.pa.us
787-8147*

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1204481

From: Shurskis, James
Sent: Tuesday, February 10, 2009 11:43 AM
To: Cross, Eric D
Cc: McNulty, James; Diskin, Paul; Miller, Sara; Hinds, Margaret; Bogovic, Robert; Farner, Joyce
Subject: RE: P-00072260 - PECO - Sec Letter - FUS - Tuesday 2/10

The Secretarial letter approving the February 2009 PECO AEPS Auction can be entered and served on the parties. See comments below.

From: Miller, Sara
Sent: Friday, February 06, 2009 2:16 PM
To: Hinds, Margaret; Farner, Joyce; Bogovic, Robert
Cc: McNulty, James; Shurskis, James; Diskin, Paul
Subject: P-00072260 - PECO - Sec Letter - FUS - Tuesday 2/10

+I just wanted to let you know that I received a memo from FUS regarding the above captioned matter. Per the memo, a Secretarial Letter MUST BE received by PECO no later than 11:59 p.m. Tuesday, February 10, 2009. The memo is asking for comments from the Commissioners no later than 11:30 a.m. on Tuesday.

I assume that FUS will put this through InfoMap when it is ready to be served by taking the Serve Document Action and in the comments noting "RUSH".

Thanks.

*Sara Miller-Williams
Secretary's Bureau
PA PUC
sarmiller@state.pa.us
787-8147*

SECRETARY'S BUREAU
PA PUC

2009 FEB 10 PM 12:06

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OALJ Hearing Report

Please Check Those Blocks Which Apply

Docket No.:	P-00072260		YES	NO
		Prehearing Held:	<input type="checkbox"/>	<input type="checkbox"/>
Case Name:	Petition of PECO Energy Company to Apply Banked Alternative Energy Credits	Hearing Held:	<input type="checkbox"/>	<input type="checkbox"/>
		Testimony Taken:	<input type="checkbox"/>	<input type="checkbox"/>
		Transcript Due:	<input type="checkbox"/>	<input type="checkbox"/>
		Hearing Concluded:	<input type="checkbox"/>	<input type="checkbox"/>
Location:	Harrisburg Hearing Room 4	Further Hearing	<input type="checkbox"/>	<input type="checkbox"/>
		Estimated Add'l Days:		
Date:	December 16, 2010			
		RECORD CLOSED:	<input type="checkbox"/>	<input type="checkbox"/>
ALJ:	Cynthia W Fordham	DATE:		
ALJ:	Christopher P Pell	Briefs to be Filed:	<input type="checkbox"/>	<input type="checkbox"/>
Reporting Firm:	Commonwealth Reporting	DATE:		
		Bench Decision:	<input type="checkbox"/>	<input type="checkbox"/>
		REMARKS:		

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PLEASE PRINT CLEARLY - Incomplete Information may result in delay of processing.

Name and Telephone Number	Address	Who are you representing?						
Jennedy Johnson Telephone: 717 783 5048	555 Walnut St. 5 th Flr, Forum Pl	OCA						
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">City</td> <td style="width: 33%;">State</td> <td style="width: 33%;">Zip</td> </tr> <tr> <td>Harrisburg</td> <td>PA</td> <td>17101</td> </tr> </table>		City	State	Zip	Harrisburg	PA	17101
	City		State	Zip				
Harrisburg	PA	17101						
E-mail Address: jjohnsm@paoca.org	Fax Number: 717.783.7152							
Sharon E. Webb Telephone: 717 783-2525	300 N. 2nd St., Ste 1102	OSBA						
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">City</td> <td style="width: 33%;">State</td> <td style="width: 33%;">Zip</td> </tr> <tr> <td>Harrisburg</td> <td>PA</td> <td>17101</td> </tr> </table>		City	State	Zip	Harrisburg	PA	17101
	City		State	Zip				
Harrisburg	PA	17101						
E-mail Address: swebb@state.pa.us	Fax Number: (717) 783-2831							
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">City</td> <td style="width: 33%;">State</td> <td style="width: 33%;">Zip</td> </tr> <tr> <td></td> <td></td> <td></td> </tr> </table>	City	State	Zip				
City	State	Zip						
Telephone:	E-mail Address:	Fax Number:						

Check this box if additional parties or attendees appear on back of form.

Reporter's Signature

Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.

OALJ Hearing Report

Please Check Those Blocks Which Apply

Docket No.:	P-00072260		YES	NO
Case Name:	Petition of PECO Energy Company to Apply Banked Alternative Energy Credits	Prehearing Held:	<input type="checkbox"/>	<input type="checkbox"/>
		Hearing Held:	<input type="checkbox"/>	<input type="checkbox"/>
		Testimony Taken:	<input type="checkbox"/>	<input type="checkbox"/>
		Transcript Due:	<input type="checkbox"/>	<input type="checkbox"/>
		Hearing Concluded:	<input type="checkbox"/>	<input type="checkbox"/>
Location:	Harrisburg Hearing Room 4	Further Hearing	<input type="checkbox"/>	<input type="checkbox"/>
Date:	December 16, 2010	Estimated Add'l Days:		
ALJ:	Cynthia W Fordham	RECORD CLOSED:	<input type="checkbox"/>	<input type="checkbox"/>
ALJ:	Christopher P Pell	DATE:		
Reporting Firm:	Commonwealth Reporting	Briefs to be Filed:	<input type="checkbox"/>	<input type="checkbox"/>
		DATE:		
		Bench Decision:	<input type="checkbox"/>	<input type="checkbox"/>
		REMARKS:		

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SECRETARY'S BUREAU

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Name and Telephone Number	Address	Who are you representing?
Jennedy Johnson	555 Walnut St. 5 th Flr, Forum Pl	OCA
Telephone: 717 783 5048	City: Harrisburg State: PA Zip: 17101	
	E-mail Address: jjohnsm@paoca.org	Fax Number: 717.783.7152
Sharon E. Webb	300 N. 2nd St., Ste 1102	OSBA
Telephone: 717 783-2525	City: Harrisburg State: PA Zip: 17101	
	E-mail Address: SWebb@state.pa.us	Fax Number: (717) 783-2831
Telephone:	City: State: Zip:	Fax Number:
E-mail Address:		

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OALJ Hearing Report

Please Check Those Blocks Which Apply

Docket No.:	P-2010-2210975		YES	NO
		Prehearing Held:	<input type="checkbox"/>	<input type="checkbox"/>
Case Name:	Petition of PECO Energy Company for Approval to	Hearing Held:	<input type="checkbox"/>	<input type="checkbox"/>
	Procure Tier II Alternative Energy Credits and Additional Tier I and Solar	Testimony Taken:	<input type="checkbox"/>	<input type="checkbox"/>
	Alternative Energy Credits	Transcript Due:	<input type="checkbox"/>	<input type="checkbox"/>
		Hearing Concluded:	<input type="checkbox"/>	<input type="checkbox"/>
Location:	Harrisburg Hearing Room 4	Further Hearing	<input type="checkbox"/>	<input type="checkbox"/>
		Estimated Add'l Days:		
Date:	December 16, 2010			
		RECORD CLOSED:	<input type="checkbox"/>	<input type="checkbox"/>
ALJ:	Cynthia W Fordham	DATE:		
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Reporting Firm:	Commonwealth Reporting	DATE:		
		Bench Decision:	<input type="checkbox"/>	<input type="checkbox"/>
		REMARKS:		

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Telephone: 717 783 5048	E-mail Address: jjohnson@paoca.org			Fax Number: 717.783.7152
Sharon E. Webb	300 N. 2nd, St. Ste 1102			OSBA
	City	State	Zip	
	Harrisburg	PA	17101	
Telephone: (717) 783-2525	E-mail Address: swebb@stateja.us			Fax Number: (717) 783-2831
	City	State	Zip	
Telephone:	E-mail Address:			Fax Number:

Check this box if additional parties or attendees appear on back of form.

Reporter's Signature

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