

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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August 30, 2016

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Proceeding to Evaluate Transition to
Corrected Non-Solar Tier I
Calculated Methodology
Docket No. M-2009-2093383

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Comments in the above-referenced proceeding.

Respectfully Submitted,

/s/ Amy E. Hirakis
Amy E. Hirakis
Assistant Consumer Advocate
PA Attorney I.D. #310094

Enclosure

cc: Scott Gebhardt, Bureau of Technical Services (sgebhardt@pa.gov, Email Only)
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Proceeding to Evaluate Transition to :
Corrected Non-Solar Tier I Calculated : Docket No. M-2009-2093383
Methodology :

COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

I. INTRODUCTION

On November 30, 2004, the Alternative Energy Portfolio Standards Act of 2004 (AEPS Act) was signed into law. The AEPS Act requires that the electricity sold by electric distribution companies (EDCs) and electric generation suppliers (EGSs) to retail customers include a certain percentage of electricity generated from alternative energy sources. See 73 P.S. § 1648.1, et seq. The AEPS Act established a schedule that gradually increases the percentage of alternative energy that EDCs and EGSs must include in their sales to customers. 73 § 1648.3. The AEPS also established a minimum requirement for Tier I, Tier II, and solar photovoltaic resources. Act 129 of 2008 expanded the definition of Tier I alternative energy sources to include low impact hydropower and biomass energy (commonly referred to as non-solar Tier I). 66 Pa. C.S. § 2814(a) and (b). To accommodate the new non-solar Tier I alternative energy sources, Act 129 directed the Commission to increase the percentage share of Tier I resources on a quarterly basis to reflect these new Tier I resources. 66 Pa. C.S. § 2814(c).

On July 8, 2016, the Commission issued a Secretarial Letter informing EDCs and EGSs that an error was identified in the non-solar Tier I quarterly adjustment, resulting in a seven (7)

percent increase in the annual non-solar Tier I obligation for the 2016 compliance year. The Commission issued a second Secretarial Letter on August 9, 2016, which extended the true-up period¹ from September 1, 2016, to November 30, 2016. The Commission, through a Tentative Order entered on August 15, 2016, *inter alia*, seeks comments on two possible solutions to remedy the error. The OCA has reviewed the Commission's two proposed solutions and provides the following comments:

II. COMMENTS

The Commission has proposed two solutions to remedy the error in the non-solar Tier I calculation. The first solution proposed by the Commission to remedy the error is to have the EDCs procure the additional non-solar Tier I credits² through either the spot market or a competitive bid process, and then transfer the procured credits to the EGSs operating within their service territories. The EDCs would recover the costs of the procurements through a non-bypassable charge that would be applicable to all customers (shopping and non-shopping) and all rate classes.

Although this remedy appears to be a convenient solution, the OCA is concerned that this administrative solution neither fully complies with the law, nor respects the retail choice market. First, the OCA is concerned that this solution inappropriately shifts the responsibility of complying with the AEPS Act solely onto the EDCs despite EGSs having the affirmative duty to comply with the AEPS Act through the acquisition of alternative energy credits. 52 Pa. Code § 75.61(a). The solution proposed by the Commission alleviates EGSs of this duty entirely.

¹ EDCs and EGSs that are not in compliance with the required quantities of alternative energy at the conclusion of a 12-month reporting period have 90 days to acquire additional quantities to satisfy the requirement. 52 Pa. Code § 75.61(e).

² A unit of credit equals 1 megawatt hour of electricity from an alternative energy source. 52 Pa. Code § 75.1.

The OCA is also concerned that allowing EDCs to recover the costs of acquiring the additional non-solar Tier I credits through a non-bypassable charge to be paid by all ratepayers potentially interferes with existing contracts between EGSs and consumers. Presumably, consumers who have entered into contracts with EGSs for their energy supply have done so with the understanding that their contracts cover all costs related to the supply/generation portion of their electric bill. Many consumers who participate in the electric retail market enter into contracts with suppliers to limit exposure to unforeseen increases in energy prices. For these consumers, any additional charge for energy supply will be unfair and unexpected, and could result in consumers questioning the value of contracting for energy supply when the Commission can unilaterally add additional supply charges to their bills.

The second remedy proposed by the Commission is to provide any entity that needs to acquire additional non-solar Tier I alternative energy credits with additional time to do so. In the OCA's view, delaying the true-up period to provide entities additional time to comply with their non-solar Tier I obligations is a market-based solution that appropriately respects the AEPS and existing contracts between consumers and suppliers. As discussed above, both EDCs and EGSs have the affirmative duty to acquire the required amount of alternative energy credits. Under this solution, any EGS that needs to acquire additional credits will be provided the time necessary to fully comply with its alternative energy credit obligation. Further, this solution removes the need for a non-bypassable surcharge, which has the potential of interfering with consumers' contracted bargained for cost of energy supply. In order to promote the electric retail choice market, consumers need to be assured that the prices that they have bargained for in their contracts are the prices that they will pay, and that additional charges will not be added to their bills to recover further supply costs.

As a final note, the OCA recommends that whatever solution the Commission adopts, whether it's one of the solutions contained in the Tentative Order, or one that has not yet been identified, that it is consistent between the EDCs and EGSs.

III. CONCLUSION

The OCA appreciates the opportunity to provide Comments on the Tentative Order. The OCA acknowledges that the Commission must balance multiple interests, some competing, in its determination as to how to direct EDCs and EGSs to proceed in this matter. The OCA respectfully requests that the Commission consider the foregoing Comments in making its determination in this matter.

Respectfully Submitted,

/s/ Amy E. Hirakis
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