

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**COMMENTS ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

The act of November 30, 2004 (P.L. ____, No. 213), known as the Alternative Energy Portfolio Standards Act (“Act”), requires that increasing percentages of the electricity sold in the Commonwealth be generated from designated alternative energy sources.

By Notice dated January 7, 2005, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) announced a January 19, 2005, technical conference to facilitate the implementation of the Act. The Notice invited interested parties to submit written comments.

The Office of Small Business Advocate (“OSBA”) hereby submits the following comments in response to the Commission’s invitation.

1. Force Majeure

Under the definition of “force majeure” in Section 2 of the Act, an Electric Distribution Company (“EDC”) or an Electric Generation Supplier (“EGS”) may have its obligation to provide power from alternative energy sources modified “[i]f the Commission determines that alternative energy resources are not reasonably available in sufficient quantities in the marketplace.” (emphasis added)

Although the Act does not define “reasonably available,” those words arguably include both the physical unavailability of a sufficient quantity of such energy and the availability of

such energy only at prices which are unreasonable. Therefore, the OSBA recommends that the Commission establish a procedure by which an EDC, an EGS, and consumers may petition for a modification of the EDC's or EGS's obligation under the Act if electricity from alternative energy sources is physically unavailable as well as if electricity from such sources is available only at exorbitant prices.

2. Deferral and Cost Recovery

a. Price of Electricity and Credits

Section 3(a)(3) of the Act provides that costs incurred by an EDC for the purchase of electricity from alternative energy sources and costs for the purchase of credits shall be recovered “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.”

Under Section 2807(e)(3), an EDC “shall acquire electric energy at prevailing market prices . . . and shall recover fully all reasonable costs.” (emphasis added) Under Section 1307(a), surcharges are intended to provide a public utility with a “just and reasonable return” on its rate base and may be revoked if rates are “unjust or unreasonable.” Therefore, by linking purchases under the Act to Sections 2807 and 1307, the General Assembly set parameters for the charges to ratepayers. To fit within those parameters, the OSBA recommends that EDCs be required to utilize a competitive procurement process for acquiring electricity from alternative energy sources to comply with the Act.

Significantly, the OSBA's recommendation is consistent with the Commission's proposed regulations for default service, in that proposed 52 Pa. Code §54.186(a) would mandate that the default service provider procure all electricity – including electricity from alternative

energy resources – through a competitive procurement process. See Annex A to the Order entered December 16, 2004, at Docket No. L-00040169 and Docket No. M-00041792.

b. Sale of Credits

The Act does not explicitly address the proceeds from the sale of credits. However, consistent with the Act’s reliance on a Section 1307 surcharge, the OSBA recommends that the proceeds from the sale of credits be offset against any charges to ratepayers for the purchase of credits. Such an approach would be consistent with the procedure under Section 1307(f) for reconciliation of gas commodity costs. Furthermore, such an approach would permit consumers to challenge the sale price if it appears that the EDC is engaged in a bargain sale of credits at the expense of the ratepayers who paid for the purchase of those credits.

c. Blended Prices

Electricity generated from alternative energy sources has the potential to offset volatility in the market price of electricity. Therefore, an EDC should seek bids for a specified quantity of electricity, with a bid requirement that the statutorily-designated percentage of that electricity be provided from alternative energy sources. Potential wholesale suppliers responding to such a solicitation might then be in a position to lower their bid prices to reflect the benefits of using alternative energy sources as a hedge.

However, because the Act requires the cost of electricity from alternative energy sources to be collected through a surcharge, it may be impossible to conduct a competitive procurement process which results in a blended price for the required combination of electricity from non-alternative sources and electricity from alternative sources. Nevertheless, the OSBA recommends that the Commission explore the possibility of allowing an EDC to acquire

electricity at a blended price, to charge that blended price for default service, and to waive the right to recover the alternative sources portion of the blended price through a surcharge.

d. Demand Side Management

With the exception of demand side management (which includes demand side response), “alternative energy sources” defined by Section 2 of the Act are used to generate electricity. In contrast, demand side response is used to avoid the generation of electricity.

In theory, it might be possible to meet the Tier II obligations under the Act simply by requiring default customers to accept interruptible service or hourly pricing. However, interruptible service has traditionally been an option for customers rather than a mandate. Furthermore, the lack of appropriate metering and the high administrative costs for the EDC make hourly pricing impractical for small business customers. Similarly, many small business customers of electric service can not readily “shift electric load from periods of higher demand to periods of lower demand”; rather, they must consume electricity when necessary to accommodate their own customers.

Accordingly, the OSBA recommends that EDCs be required to provide small business customers with incentives – but not mandates – to utilize demand side response.

3. Alternative Compliance Payments

Section 3(f) of the Act authorizes the Commission to impose an “alternative compliance payment” on an EDC or an EGS which fails to meet its obligations to sell a specified amount of electricity from alternative energy sources or to acquire adequate credits. Under Section 3(g) of the Act, those alternative compliance payments are to be made available to the regional sustainable energy funds created as part of the electric restructuring process.

Although alternative compliance payments could be collected from any EDC or from an EGS in any EDC's service territory, not every EDC has a sustainable energy fund. Specifically, there are funds for PPL, PECO, West Penn, MetEd, and Penelec. However, there are no sustainable energy funds for Duquesne, Penn Power, UGI, Citizens, Pike County, and Wellsboro. Therefore, the OSBA recommends that the Commission assure that any alternative compliance payments collected for the failure to meet obligations within the service territory of Duquesne, Penn Power, UGI, Citizens, Pike County, or Wellsboro be utilized for the benefit of that service territory.

The OSBA further recommends that the alternative compliance payments be allocated to the regional funds in a way which creates an incentive for those regional funds to draw down excessive surpluses, to establish sound criteria for the awarding of grants and loans, and to broaden membership on the fund boards well beyond the groups which originally appointed those members.

WHEREFORE, the OSBA respectfully requests that the Commission implement the Act in a manner consistent with the aforementioned comments.

Respectfully submitted,

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