



Michael J. Dolan II
Vice President & CFO

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Secretary's Bureau Docket No. M-00051865
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

VIA OVERNIGHT MAIL

Re: Implementation of the Alternative Energy Portfolio Standards Act of 2004

Dear Secretary McNulty,

I would like to submit, reply comments to some of the issues brought up at the Technical Conference held on January 19, 2005, on behalf of US Wind Force, LLC ("USWF"), a wind farm developer based in Wexford, PA and active in the Mid-Atlantic, with wind farm projects under development in Pennsylvania, as well as West Virginia, Maryland and Virginia.

Who will be responsible for compliance?

The Alternative Energy Portfolio Standard's Act of 2004 ("Act") requires "the electric energy sold by Electric Distribution Companies ("EDC"s) or Electric Generation Suppliers ("EGS"s) to retail electric customers shall be comprised of electricity generated from Alternative Energy Sources ("AESs)....". It does not address how this is to be accomplished, that is left to the PUC's rule making process. In that process, concerns have already been expressed by EDC's and EGS's (who are now all doing business in a competitive generation market) about making long-term (20-year) commitments, for the AES supplies required to comply with the Act. They correctly observe that these long-term commitments are required by the owners/investors of AESs in order for them to access capital markets to finance the development and construction of qualified AESs. To the EDC or EGS the concern is, that if they enter into such a long-term contract and then, through competition, lose a material amount of customer load, they become exposed to losses because they could find themselves with a material excess of, possibly above market, AES supply.

A possible solution to this concern would be to establish rules that would require only the EDC's to enter into competitive supply contracts, for an amount of AES supply equal to the load served (calculated similar to the PJM capacity credit requirement) in their service territory, establish a rate to be charged for the cost (using the cost method defined in the Act) of that requirement, with a return, the Alternative Energy Credit ("AEC") cost ("AEC Cost") and then require that AEC Cost be added to the electricity sold to retail electric customers in the EDC's service territory. This could be done whether the electricity was sold by the EDC or any EGS through the EDC distribution service territory. The EDC's could enter into long-term contracts for the AES supply required by the Act without concern of load being lost in competition nor any concerns about cost "plus a return" recovery.

What AES's qualify?

The Act requires that the electric energy sold by an EDC or EGS to retail customers in this Commonwealth shall be comprised (with Emphasis) of electricity generated from an AES.....". Since EDC's and EGS's in the Commonwealth source their electricity sold to retail customers in the Commonwealth from the PJM pool, we believe the PUC's rules should clarify that any AES source generated within the physical boundaries of PJM (but limited to what some call PJM Classic which includes Pennsylvania, New Jersey, Maryland, Delaware, West Virginia and Washington DC) would automatically meet the physical deliverability requirements of the Act. There is adequate transmission in these areas and the physical operations of the grid in these locations are so interdependent that a more rigorous test should not be needed (a "PJM Source").

For load located in Pennsylvania, but outside of PJM (MISO or O&R), electricity generated from AESs in the RTO where the load resides should qualify, provided that the AES is located within a U.S. State that shares a border with Pennsylvania. For example, AESs qualified to meet the requirements of the Act for load in the Penn Power's service territory could come from a MISO source in Pennsylvania or Ohio, or from a PJM Source.

For an AES supply from outside of the qualifying areas defined above to be used to meet a requirement under the Act, proof of delivery of the energy must be demonstrated, via a firm transmission path from the AES into Pennsylvania.

If EDC's are required to enter into long-term contracts for AES's, should cost recovery be allowed beyond the rate caps and how should it work?

We believe cost recovery should be allowed beyond rate caps, however to be eligible for cost recovery, an EDC that enters into a long-term contract to purchase energy and attributes to meet the statutory requirements of the Act should be required to designate and register the contract with the Pennsylvania PUC as an Act "Compliance Contract" and meet the following requirements. It must be:

- for "bundled" energy & AECs
- from a qualified AES
- a long-term contract (i.e. 20 years or >15 years)
- designated, at its inception (within ___ days of execution) as a "Compliance Contract". Information certifying its compliance, such as counterparty, term, price, location of the AES source, the project bus, nameplate capacity and expected annual output must be provided to the Commission. Confidentiality of the data will be important to the suppliers and must be safeguarded.
- for a fixed price over the term (so that it can't be artificially weighted) and
- meet an initial reasonableness price test, perhaps
 - (Average LMP or +1 Forward Curve) + 50% of ACP¹ if PTC² Eligible
 - (Average LMP or +1 Forward Curve) + 100% of ACP if not PTC EligibleThis price test is designed to protect ratepayers from above market purchases. See item 1 below for additional detail.

Compliance Contracts are further constrained by the following:

1. EDCs are limited as to the total Compliance Contract commitments they can make. They cannot qualify Compliance Contracts for more than 100% of the EDC's estimated AEPS compliance requirement two years forward (or current retail load, based on an actual trailing twelve (12) month period times some factor

¹ Alternative Compliance Payment

² Federal Production Tax Credit

2. The purchase would have to be for bundled Energy and AECs from a qualified AES where the bundled purchase price per MWh was no greater than:

If the source is a PJM Source

- (i) The average PJM Real-Time LMP at the AES bus for the previous calendar year plus
- (ii) 50% of the ACP if the project is/was eligible to receive the PTC³ or 100% of the ACP if the project is/was not eligible to receive the PTC³.

If the source is to be a PJM Source but is not yet constructed

- (i) A comparable⁴ market price for the previous calendar year plus
- (ii) 50% of the ACP if the project is/was eligible to receive the PTC³ or 100% of the ACP if the project is/was not eligible to receive the PTC³.

If the source is not a PJM Source but would qualify as an AES source

- (i) A comparable⁵ market price for the previous calendar year plus
- (ii) 50% of the ACP if the project is/was eligible to receive the PTC³ or 100% of the ACP if the project is/was not eligible to receive the PTC³.

Cost Recovery

If a EDC's load⁶ is materially reduced (by more than ___%) and the reduction is for reasons other than the EDC selling a portion of it's service territory or a voluntary cessation or abandonment of a portion of it's service territory (and assuming the EDC remains a going concern), the EDC would become eligible to apply to the PUC for cost recovery of certain expenses incurred in the Compliance Contract(s). The goal of cost recovery here is to limit the EDC's net exposure to potential risks associated with the long-term nature of the qualified purchases. Specifically, it is to allow for recovery of the difference between the spot value of the energy and AECs and the contract price. Recovery only occurs if prices fall or the EDC's load is materially reduced.

This recovery is done using the following process:

1. At year-end, each EDC reports to the PUC the excess AECs held in Compliance Contracts (MWh's) that were purchased for the Reporting Year and the unit price paid for such excess.
2. The EDC shall supply the PUC with a report showing the actual average LMP or LMP Comparable (if supply is not from a PJM Source) for the period for which they are requesting cost recovery. It is assumed that the supplier was paid the weighted average project LMP or LMP Comparable for the energy portion of the Compliance Contract, therefore, partial recovery (for the energy portion) is already assumed.
3. The EDC will calculate the AEC value by subtracting the value determined in paragraph 2 above from the designated Compliance Contract price (the "Excess AEC Cost").
4. The EDC will then be required to offer and sell these excess AECs to the Market perhaps on an auction basis, to ensure an arm's length sale (the Market Auction"), in a timely manor.

³ at a rate equal to or greater than the rate in effect through 12/31/05

⁴ A PJM node near the proposed project site that is representative of the expected LMP at the project bus

⁵ A market price that would represent the annual average real-time value of power at the project bus

⁶ ...that is subject to PA AEPS compliance

5. The PUC will allow the EDC to obtain cost recovery through an “Alternative Energy Cost Rate” mechanism (similar to the old Energy Cost Rate Adjustment), in arrears, from their then current customer base for the difference between the Excess AEC Cost less the Market Auction proceeds. In the event the Market Auction proceeds are greater than the Excess AEC Cost the EDC will rebate the excess to its then current customer base through the Alternative Energy Cost Rate.

We thank the Commission for allowing USWF to make these reply comments. We are available to answer any questions on these comments and remain available to assist the Commission in any way we can through out this process.

Sincerely,

Michael J. Dolan II
VP & CFO
US Wind Force, LLC