

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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The Mid-Atlantic Power Supply Association (“MAPSA”) appreciates the opportunity to submit reply comments to the Pennsylvania Public Utility Commission (“PUC”) concerning the implementation of the Alternative Energy Portfolio Standards Act (“Act” or "Act 213").<sup>1</sup> MAPSA wishes to respond to the recommendations to turn what Act 213 clearly envisions as a regional alternative energy market to benefit Pennsylvania into a local market by requiring that the delivered alternative energy commodity be bundled with the associated attributes, which would effectively restrict the sources of eligible generation to Pennsylvania.

**Unbundling Attributes From Physical Delivery**

Specifically, MAPSA addresses comments made by the Pennsylvania Department of Environmental Protection (“DEP”) draft "Section 2 Technical Guidance" document developed pursuant to Section 7(b) of Act 213, which requires that DEP "shall ensure that all qualified alternative energy sources meet all applicable environmental standards and shall verify that an alternative energy source meets the standards set forth in section 2.”

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<sup>1</sup> The opinions expressed in these reply comments may not represent the views of all members of MAPSA.

On page 2 of the DEP Technical Guidance document, under the "Eligible Resource Delivery Requirements" section, DEP states:

“Section 3 requires that eligible generation must be from electricity from qualifying resources sold to retail customers in Pennsylvania. Acquisition of credits or energy attributes alone is not sufficient to qualify as eligible generation.”<sup>2</sup>

We applaud the Governor, the Pennsylvania General Assembly and the PUC for recognizing the value in adopting Alternative Energy Portfolio Standards for the Commonwealth of Pennsylvania. However, MAPSA believes that alternative or “renewable” energy attributes must be separated from the actual electricity delivery and sold independently or “unbundled” from the electric commodity itself, as clearly envisioned by Act 213.<sup>3</sup>

Sections 2 and 3(e) of Act 213 expressly provide for unbundling of the alternative energy commodity and associated attributes. Section 2 defines an "alternative energy credit" as a "tradable instrument that is used to establish, verify and monitor compliance with this act. A unit of credit shall equal one megawatt hour of electricity from an alternative source."<sup>4</sup> Section 3(e)(4)(i) states that suppliers' compliance with the Act shall be accomplished "by purchasing sufficient alternative energy credits," and Section 3(e)(4)(ii) expressly provides that: "For purposes of this subsection, one alternative energy credit shall represent one megawatt hour of qualified alternative electric

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<sup>2</sup> Other commentators expressed the same or a similar position. *See, e.g.*, comments of Penn Future (p. 4) and US Wind Force (p. 2).

<sup>3</sup> Other commentators agree that Act 213 requires the unbundling of the attributes and the energy. *See, e.g.*, comments of ARIPPA (p. 4), Exelon (pp. 6-8).

<sup>4</sup> Section 2 provides that an "alternative energy system" deliver the electricity generated from an alternative energy source to an EDC's distribution system or to the transmission system operated by an RTO.

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." (Emphasis added).<sup>5</sup> This language plainly contemplates that the alternative energy attributes may be separated from the "electric commodity."

In addition to being required by the express terms of Act 213, unbundling is sound public policy that advances the purpose of Act 213. Unbundling the delivery of the alternative energy from the associated attributes will provide proper price signals to turn on renewable generation when the system needs it most. It is acknowledged that under the Act, for a supplier to receive credit, the energy must be sold to retail customers in the Commonwealth.<sup>6</sup> However, this requirement does not mean that the energy and the attribute cannot be unbundled. So long as an energy supplier contracts for the necessary amount of alternative energy attributes, the Act's requirements have been met. This is because, by definition, the alternative energy attributes will represent megawatt hours of renewable energy generated within a qualifying RTO. This is all that the statute requires. If the energy and attributes cannot be unbundled, an energy supplier will have to arrange to deliver the specific alternative energy commodity it is using to meet its obligations to the EDC zone in which its load is located. This will likely result in suppliers being forced to buy alternative energy from sources close to their retail load.

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<sup>5</sup> While DEP has the responsibility to ensure that all qualified alternative energy sources meet applicable environmental standards and the standards of Section 2, the PUC is charged with the overall duty of carrying out the responsibilities set forth in the Act.

<sup>6</sup> Section 3(a) provides that the electric energy sold by an EDC or EGS to retail electric customers in this Commonwealth must be comprised of electricity generated from alternative energy sources in the amounts specified.

To interpret the statute in this way, however, would be contrary to the manner in which power pools operate, inconsistent with the development of a regional alternative energy market and provide Pennsylvania alternative energy owners with an unjustified and unwarranted advantage. Much of the generation that would fall under the classification of “alternative” under the Act is not merchant owned in Pennsylvania but in fact is owned or contracted by EDC affiliates. To the detriment of competitive suppliers in Pennsylvania, and contrary to the operation of efficient markets, it would be difficult to purchase the energy and associated attributes from a merchant generator located outside Pennsylvania, while requiring physical delivery of that specific energy to specific end-users in Pennsylvania. Competitive suppliers would not be on equal footing with EDC-affiliated alternative generation owners. An efficient and broad-based market for alternative energy resources will develop more quickly if developers have greater flexibility to choose their own sites. Allowing broader site development opportunities should also advance the economic viability of additional or new technologies. Pollution and emissions do not recognize State boundaries and do not follow strict transmission paths. As part of a regional pool, electricity does not flow from specific generators to specific end-users. The energy is delivered into PJM and available, from a physical perspective, to all electric customers in PJM (including retail electric customers in Pennsylvania). The actual path of the electrons is a function of many, many factors, and is indeterminable over time. As part of PJM, electric energy is made available to customers in Pennsylvania, and delivery into PJM (as opposed to delivery into Pennsylvania), from a practical perspective, is a more reasonable interpretation of the Act. In other words, a supplier should be able to purchase energy from Generator A and

attributes from Generator B and the supplier's purchase of the attributes should qualify for compliance with the Act if Generator B delivers the energy associated with the attributes into PJM and the supplier shows that the attributes were not used to satisfy another State's renewable energy portfolio requirements.

The exclusion of resources outside of Pennsylvania will not advance the standards and may undermine the development of a seamless regional market. A Pennsylvania energy delivery requirement treats Pennsylvania as an “island” and ignores the fact that it is physically interconnected and part of a regional energy market. A poorly crafted AEPS could create unintended or harmful economic and environmental outcomes, such as having one particular alternative resource mix dominate the market. To best serve the Commonwealth’s interests, the AEPS should be designed to create reciprocal and cross-region trading opportunities and markets. Allowing attributes to be traded without a Pennsylvania deliverability requirement will also encourage alternative resources sited in Pennsylvania to sell unbundled attributes to other states. The PUC could include a “reciprocity” provision that permits out-of-state attributes to be sold in-state without a deliverability requirement only if that other state allows Pennsylvania’s attributes to be sold unencumbered without deliverability. New Jersey and Maryland do not impose a in-state deliverability requirement. The Act should support the flow of attributes with other regions within PJM that have adopted similar requirements.

Additionally, MAPSA believes, because most renewable generation is not dispatchable, the owners of that generation do not have the ability to offer energy into the PJM Day-ahead market, thus, making “bundling” very difficult as many suppliers (EGSs and EDCs) want to schedule their transactions as firm to avoid imbalances. Forcing a

renewable generator to schedule its renewable resources as firm because it could not unbundle the attributes from the energy could potentially create both energy volatility and reliability problems within the PJM control area.

MAPSA fully supports the Act's "certificate" system, where tradable instruments, called Alternative Energy Certificates ("AECs") are developed. This will allow the retail suppliers (both EGSs and EDCs) to buy AECs and electricity from two different sources: the AECs from a renewable generator, and possibly the electricity from a different energy service provider. The AEC program, meanwhile, will allow retail suppliers to make environmental claims about the products they sell by purchasing unbundled AECs and re-bundling them with the commodity of generic electricity to create a bundled green power product. It also advances the main goal of the Act: to encourage the development and use of alternative energy. Not allowing an AEC program will preclude retail suppliers from buying energy from the most economical source possible. Although retail suppliers can't promise consumers that the renewable energy they buy will go directly to their home or business, the suppliers can guarantee that the clean energy that the consumers have purchased has been delivered to PJM control area where it is mixed with energy from different sources. A Pennsylvania delivery requirement should not be required, and MAPSA supports the implementation of a system that is compatible with the systems of Pennsylvania's neighbors, New Jersey or Maryland, where there is no delivery requirement. System compatibility across regions will better assure a successful AEPS implementation and will eliminate the need for the PUC to re-invent the wheel; most commentators agreed that the PUC should build upon the systems and processes already in place. Unbundling generation from the attributes will ensure that the Act is

implemented in a manner that can be feasibly tracked and enforced, and ensure that it operates as a complement to the current energy market in the PJM control area. The certificate program will allow Pennsylvania to meet the Act's renewable energy goals in a regional market-based manner by facilitating the trading of attributes as certificates. Also, the development of the AEC system will allow consumers who want to voluntarily purchase more renewable energy than is mandated by the Act to purchase AECs without having to switch electric service providers.

Comments from several interested parties expressed a clear preference for PJM's Generation Attribute Tracking System ("GATS") as the tracking/trading system of choice. MAPSA fully supports the GATS platform. However, one of the bedrock principles of GATS is the "unbundling" of physical energy from the associated attributes. The GATS system will cover PJM's service territory – a large geographic scope – and can also create certificates for resources that are imported into PJM.<sup>7</sup> GATS will foster competition, market liquidity, fungibility of certificates, minimization of seams issues and more cost effective development and operation. As MWhrs are generated, first, there is the energy commodity, which is the actual electricity produced at facilities that generate the renewable electricity. The electricity generated is sold as conventional/generic (market) electricity stripped of any environmental attributes. No environmental claims can be made on this power, because it is separate from the associated certificate that represents the environmental attributes. Second, there are tradable alternative credits (certificates) developed that verify the sources and environmental attributes of renewable energy production. A certificate represents the

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<sup>7</sup> Comments of PJM Interconnection, p. 6.

environmental attributes (benefits) associated with generation by renewable technologies, and represents a certain number of renewable energy megawatt-hours.<sup>8</sup> Because the renewable power must be generated to produce a certificate, suppliers who purchase certificates are purchasing renewable energy. The renewable energy generators should be able to sell the certificates unencumbered by using bilateral contracts, without respect to the underlying electricity. The generator must be able to schedule its generation within PJM according to energy-only contracts. With renewable energy or RECs, verification is absolutely necessary. GATS provides the tracking and verification that the certificates being purchased are legitimate, and that no one else is claiming those certificates. The GATS system does this by tracking the renewable generation at the source, and following it through every transaction thereafter, until the certificate is retired. GATS tracks only the certificate, and does not (and cannot) track physical delivery of electricity.

### **Restriction of Eligible Generation Sources to Member RTOs**

A related recommendation requires a response. DEP's Technical Guidance document, under the "Eligible Resource Delivery Requirements" section, also states:

Pennsylvania Electric Generation Companies and Electric Distribution Companies must acquire eligible electric power from within their Regional Transmission Organization. **Electric power from RTOs where Pennsylvania EGCs and Pennsylvania EDCs are not a member does not qualify as an eligible resource.** (Emphasis added).<sup>9</sup>

MAPSA believes that restricting eligible generation sources in this manner is contrary to Section 4 of the Act, which states clearly that energy derived from alternative energy

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<sup>8</sup> See, e.g., definition of "Renewable Energy Credits" in comments of Exelon (p. 8, n. 2).

<sup>9</sup> Other commentators expressed a similar position. See, e.g., comments of US Wind Force, p. 1; comments of PennFuture (p. 3) (suppliers serving retail customers in Penn Power's service territory may purchase renewable energy or credits from plants located in MISO or Pennsylvania (but not within PJM); suppliers serving retail customers in Orange and Rockland's service territory may purchase renewable energy or credits from plants located in NYISO or Pennsylvania (but not within PJM).

sources "within the service territory of any regional transmission organization that manages the transmission system in any part of this Commonwealth shall be eligible to meet the compliance requirements under this act." In view of the interconnected nature of the regional transmission grid, such limitations could impermissibly restrict interstate commerce.<sup>10</sup>

### **Banking and In-State Deliverability**

The Act also states that “suppliers whose sales are exempted under this subsection [§ 3(d)] and who voluntarily sell electricity generated from Tier I and Tier II sources during the cost-recovery period may bank credits consistent with subsection (e) (7).” MAPSA is concerned about the “banking” provision related to deliverability during the cost recovery period. Since GATS does not track physical delivery, nor is there any tracking platform available that tracks credits separate from deliverability, how will “banked” credits be tracked for compliance with the delivery provision during the cost recovery period?

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<sup>10</sup> See, *New York v. FERC*, 535 U.S. 1, 122 S. Ct. 1012 (2002) (bundled and unbundled retail transmissions of electricity are transmissions of "electric energy in interstate commerce.")

## Conclusion

In summary, MAPSA believes Pennsylvania should acknowledge the growing importance of a regional approach to environmental issues. A requirement that physical delivery of the alternative energy commodity in Pennsylvania must occur is not supported by the clear language of the statute, runs counter to the operation of efficient markets and does not support the unbundling of energy and attributes to form the Alternative Energy Credit trading program envisioned by the Act.

Respectfully submitted,



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Kevin J. Moody, Esquire  
Wolf, Block, Schorr and Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
(717) 237-7187

Attorney for the Mid-Atlantic Power Supply  
Association

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