

213 Market Street, 9th Floor, P.O. Box 865, Harrisburg, PA 17108-0865
Tel: (717) 237-7160 ■ Fax: (717) 237-7161 ■ www.WolfBlock.com

Kevin J. Moody
Direct Dial: (717) 237-7187
Direct Fax: (717) 237-2767
E-mail: kmoody@wolfblock.com

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VIA FEDERAL EXPRESS

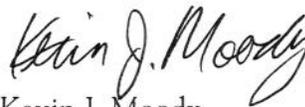
James McNulty
Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
2nd Fl., 400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: 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

Dear Secretary McNulty:

On behalf of Direct Energy Services, LLC and Strategic Energy, LLC, enclosed for filing are an original and 15 copies of their Joint Comments with regard to the above-referenced matter. A copy of the Joint Comments is also being e-mailed to Carrie Beale as required by the Commission's Order.

Sincerely,



Kevin J. Moody

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

KJM/lww
Enclosure

HAR:64771.1/STR163-210988

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**JOINT COMMENTS OF
DIRECT ENERGY SERVICES, LLC AND STRATEGIC ENERGY, LLC**

By Tentative Order entered January 31, 2006 and published in the Pennsylvania Bulletin on February 11, 2006, 36 Pa.B. 785, the Commission invited comments on the issues concerning the Alternative Energy Portfolio Standards ("AEPS") Act of 2004 ("Act 213" or "Act") addressed in the order. Direct Energy Services, LLC ("Direct Energy" or "Direct") and Strategic Energy, LLC ("Strategic Energy" or "Strategic") submit these comments supporting the Commission's tentative conclusions that (1) AEPS facilities located outside of Pennsylvania, but within the service territories of FERC-approved regional transmission organizations ("RTOs") that manage a portion of the Pennsylvania transmission system (PJM and MISO) meet the geographic eligibility criteria, and (2) that in order for an alternative energy credit to be created, the electricity must be delivered to or consumed within either a qualified RTO's control area (PJM or MISO), or to the distribution system of a Pennsylvania EDC that is not located within PJM or MISO (i.e., Pike County). Direct and Strategic submit that the Commission's tentative conclusions are plainly correct and should be adopted as final conclusions.

I. AEPS facilities located outside of Pennsylvania but within qualified RTO service territories meet the geographic eligibility criteria of the Act.

The Commission has tentatively concluded that AEPS facilities located outside of Pennsylvania, but within the service territories of FERC-approved RTOs that manage a portion of the Pennsylvania transmission system¹ meet the geographic eligibility criteria of the Act:

Energy derived only from alternative energy sources inside the geographical boundaries of this Commonwealth or 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 of this act.²

Direct and Strategic submit that the Commission's tentative conclusion³ is correct because the plain language standard⁴ requires that the phrase “in any part of this Commonwealth” must be read as identifying **which RTOs** meet the geographic standard of Section 1648.4, not **which portions** of Pennsylvania may be served by facilities located in those RTOs. This interpretation of the geographic criteria is consistent with the plain language of the definition of “alternative energy system”:

A facility or energy system that uses a form of alternative energy source to generate electricity and **delivers the electricity it generates to the distribution system of an electric distribution company or to the transmission system operated by a regional transmission organization.**⁵

The Commission should reject a narrow construction of the geographic criteria to limit qualified facilities to the RTO service territories only in which particular EDCs' service

¹ The Commission tentatively concluded that PJM and MISO, and not NYISO, meet this criteria.

² Tentative Order at 14 (quoting 73 P.S. § 1648.4.)

³ *Id.* at 17.

⁴ Statutes must be construed to give effect to all provisions, to avoid the pursuit of unstated legislative intent where the language is clear and free from ambiguity, and consistent with the plain language used. 1 Pa.C.S. §§ 1903, 1921(a), 1921(b).

⁵ 73 P.S. § 1648.2 (emphasis added).

territories are physically located in. In addition to being required by a straightforward application of the rules of statutory construction, the conclusion that AEPS facilities located outside of Pennsylvania but within the service territories of FERC-approved RTOs that manage a portion of the Pennsylvania transmission system meet the geographic eligibility criteria of the Act also avoids the problems identified by the Commission associated with the contrary, narrow parochial view.⁶

II. Electricity must be delivered to or consumed within either qualified RTO service territories to create alternative energy credits.

The Commission tentatively concluded that that in order for an alternative energy credit to be created, the electricity must be delivered to or consumed within either the MISO or PJM control area, or the distribution system of a Pennsylvania EDC which is not located within MISO or PJM (Pike County).⁷ Direct and Strategic submit that the Commission properly rejected a Pennsylvania delivery requirement although, as stated below, NYISO should also be regarded as a qualified RTO so that electricity delivered to or consumed within NYISO would also create alternative energy credits.

Direct and Strategic submit that the Commission's rejection of the Pennsylvania delivery requirement is required by the plain language standard because, as the Commission recognized, compliance with the Act's threshold requirements is measured in quantities of alternative energy credits, and the credits may be acquired with the energy commodity, or separately through a tradable instrument:

For purposes of this subsection, 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**

⁶ Tentative Order at 18-20.

⁷ *Id.* at 22-23.

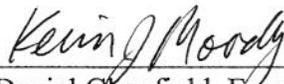
through a tradable instrument and otherwise meeting the requirements of a commission regulations and the program administrator.⁸

As the Commission stated, "the only apparent way to enforce a Pennsylvania delivery requirement would be to require a contract for energy and credits between an out-of-state alternative energy systems and Pennsylvania EDCs."⁹ The Commission correctly determined that this interpretation would not give effect to the Act's provision permitting compliance by the acquisition of credits purchased separately through tradable instruments.

III. Conclusion

Direct Energy and Strategic Energy submit that the Commission should adopt as final its conclusions that (1) AEPS facilities located outside of Pennsylvania, but within the service territories of FERC-approved RTOs that manage a portion of the Pennsylvania transmission system (PJM and MISO) meet the geographic eligibility criteria of Act 213, and (2) in order for an alternative energy credit to be created, the electricity must be delivered to or consumed within either a qualified RTO's control area or to a Pennsylvania EDC's distribution system not located within PJM or MISO (Pike County).

Respectfully submitted,



Daniel Clearfield, Esquire
Kevin J. Moody, Esquire
Wolf, Block, Schorr & Solis-Cohen LLP
213 Market Street, 9th Floor
Harrisburg, PA 17101
(717) 237-7160

Counsel for Direct Energy Services, LLC and
Strategic Energy, LLC

⁸ *Id.* at 21-22 (quoting 73 P.S. § 1648.3(e)(4)(ii)) (emphasis in original).

⁹ *Id.* at 23.