

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of the Alternative Energy : Docket No. M-0001865
Portfolio Standards Act of 2004 :

Rulemaking Re :
Standards and Processes for Alternative :
Energy System Qualification and :
Alternative Energy Credit Certification :

**COMMENTS OF FPL ENERGY, LLC
REGARDING THE IMPLEMENTATION OF THE
ALTERNATIVE ENERGY PORFOLIO STANDARDS ACT OF 2004:
STANDARDS AND PROCESSES FOR ALTERNATIVE ENERGY SYSTEM
QUALIFICATION AND ALTERNATIVE ENERGY CREDIT CERTIFICATION**

FPL Energy, LLC is pleased to submit these comments to the Pennsylvania Public Utility Commission (“PAPUC”) in response to its Tentative Order (Entered January 31, 2006) regarding implementation of the Alternative Energy Portfolio Standards Act of 2004 (73 P.S. §§ 1648.1 – 1648.8) (the “Act” or “Act 213”), which requires that a gradually increasing percentage of electricity sold by electric distribution companies (“EDCs”) and electric generation suppliers (“EGSs”) to retail customers in Pennsylvania be derived from alternative energy sources. FPL Energy, LLC (“FPLE”) is limiting its comments at this time to certain aspects of the Alternative Energy Porfolio Standards Act (“AEPS”) discussed in “Standards And Processes for Alternative Energy System Qualification and Alternative Energy Credit Certification.”

FPLE is the nation’s leader in wind energy generation, with over 3,200 net megawatts throughout the country, representing over 25% of the company’s generating capacity. FPLE, through its subsidiaries, owns five Pennsylvania wind farms, with a capacity of 129 megawatts, capable of generating electricity for nearly 37,000 homes. In

2005, the wind farms offset generation emissions totaling about 174,000 tons of carbon dioxide, more than 1,200 tons of sulfur dioxide and approximately 300 tons of nitrogen oxide. We commend the Commonwealth for its leadership in the area of alternative energy, as exemplified by AEPS, and we look forward to continuing to work with the Administration and, specifically, the PAPUC in meeting its goals of environmental stewardship and economic development. Our comments in this matter are designed to assist you in the effort to attain these goals.

In Section F. of the Tentative Order, the PAPUC delineates its proposal for “The Alternative Energy System Qualification Standard,” including a specified Fuel Source Requirement and a Geographic Requirement. Our comments herein specifically address the Geographic Requirement.

Section F. 2. Geographic Requirement

As the Tentative Order states, applicants for alternative energy system status must satisfy certain geographic criteria. Section 1648.4 of the Act states:

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.

The Order further suggests that while all facilities located within Pennsylvania satisfy this test, during the course of the implementation proceeding different interpretations have been advanced regarding the eligibility of facilities that lie outside of the Commonwealth, but within the service territory of regional transmission organizations (“RTO”) managing transmission systems in Pennsylvania. Both PJM Interconnection, LLC (“PJM”) and the Midwest Independent System Operator, Inc.

(“MISO”) currently manage transmission systems in Pennsylvania and both have been granted RTO status by the Federal Energy Regulatory Commission (“FERC”). In summary, FPPE’s comments regarding geographic eligibility are as follows:

1. Renewable resources sourcing anywhere within MISO or PJM should qualify as eligible for alternative status under AEPS.
2. Renewable resources sourcing within the New York Independent System Operator (“NYISO”) territory should also qualify as eligible for alternative status under AEPS.
3. FPPE strongly encourages the PAPUC to consider allowing renewable resources sourcing within other jurisdictions that have implemented substantially similar AEPS/RPS programs as eligible for alternative status under AEPS.

Discussion

- 1. Renewable resources sourcing anywhere within either MISO or PJM should qualify as eligible for alternative status under AEPS.** As the PAPUC notes in its Tentative Order, clearly all alternative energy facilities located within Pennsylvania satisfy the eligibility test under AEPS. For some, the issue becomes less clear when considering eligibility of resources located outside the boundaries of the Commonwealth. We agree with the Tentative Order that the plain language of Section 1648.4 can be interpreted as not including a restriction on the geographic eligibility of alternative energy systems located in the service territories of qualifying RTOs; and, rather, strongly encourage the PAPUC to grant eligibility to resources sourcing in either territory (PJM or MISO) across the entire Commonwealth, and not just those parts of the Commonwealth located

within one specific service territory. Stated another way, we believe that alternative resources located in MISO should qualify for AEPS geographic eligibility across the entire Commonwealth, and not be restricted to qualification solely in that geographic area of Pennsylvania that resides within MISO.

Likewise, the same should be true for resources located within PJM. FPLE argues this position not only because of its consistency with a “plain language” interpretation, but because of its consistency with the goal of creating regional and national markets for renewable energy. If the goal of Act 213 and other renewable portfolio standards statutes throughout the country is to enable the residents of those jurisdictions to experience the environmental and health benefits from alternative energy technologies, then, at a minimum, the development of broad, regional markets for environmental attributes and clean energy is critical toward meeting this goal. But the PAPUC has also, in its Tentative Order, recognized the importance of economic development, as well as ensuring that the consumers of Pennsylvania receive benefits of alternative energy technologies at a reasonable price. As the Commission observed:

[A] more restrictive interpretation is advanced based on the belief that Pennsylvania would accrue significant economic benefits resulting from the construction of more alternative energy systems in Pennsylvania than might otherwise occur. The Commission makes the following observations on this issue. [E]ven if MISO facilities are largely excluded from the Pennsylvania market under a more narrow interpretation, this does not guarantee that a large number of alternative energy systems will be built in *Pennsylvania*.

FPLE believes that by creating broader, more regional markets for alternative energy technologies, those technologies and related supporting businesses will produce significant economic benefits for the Commonwealth in the form of

construction jobs, as well as direct and indirect employment from new facilities and supporting businesses. A business-friendly climate, such as that in Pennsylvania, combined with these broader, regional opportunities, will produce the kind of economic development that the proponents of AEPS envision and the residents of Pennsylvania deserve. The PAPUC further noted in the Tentative Order, in referring to legislative intent, the presumption that the General Assembly intended the public interest to be favored over the private. Given that the costs associated with Act 213 are to be recovered from Pennsylvania's ratepayers, only through the creation of broader regional markets for alternative energy can ratepayers experience the most competitive price for that energy. Conversely, restricting the opportunity for alternative energy by restricting geographic eligibility could result in artificially elevated pricing for alternative energy attributes.

2. Renewable resources sourcing within the New York Independent System

Operator ("NYISO") territory should also qualify as eligible for alternative status under AEPS. In its Tentative Order, the PAPUC states:

Whether the New York Independent System Operator is an entity that qualifies under Section 1648.4 requires more detailed analysis....Section 1648.4 specifically used the phrase "regional transmission organization" in determining geographic eligibility....While the NYISO was granted ISO status by the Federal Energy Regulatory Commission ("FERC") consistent with Order 888, its request for RTO status pursuant to FERC Order 2000 was rejected. *New York Independent System Operator, Inc., et al.*, 96 FERC ¶ 61,059 (2001).

The Commission goes on to note that while a "plain language" reading appears to mandate a finding that NYISO-located resources do not satisfy the Act's geographic criteria; in terms of operation and management of transmission assets,

which the Act appears to focus on, they are very similar. Indeed, Pennsylvania and New York are adjoining states, PJM and the NYISO are adjoining transmission system operators operating interconnected systems, and they routinely work together to ensure mutual system reliability. Further, it should be noted that among its initial Renewable Portfolio Standard (RPS) awards, the New York State Energy Research and Development Authority selected as eligible for New York's program a wind project located in PJM, the Jersey-Atlantic Wind Farm near Atlantic City. Regional reciprocity is a critical factor in successfully achieving competitive alternative energy markets. Finally, the arguments in support of broader regional alternative energy markets that were made in the earlier discussion regarding PJM and MISO are equally applicable when considering New York. Whether in the instant matter or in a subsequent review of AEPS, FPLE would strongly encourage the PAPUC to consider as eligible under AEPS alternative energy resources sourced in the NYISO/New York Control Area.

- 3. FPLE strongly encourages the PAPUC to consider allowing renewable resources sourcing within other jurisdictions that have implemented substantially similar AEPS/RPS programs as eligible for alternative status under AEPS.** Air emissions do not respect geographic boundaries. As we know, Eastern states, such as Pennsylvania, may enact the most progressive environmental programs, but those programs can fall short of their intended benefits to the residents of those jurisdictions unless the commitment to environmental protection and public health is shared by those states in adjoining

regions, particularly those to the west. By extension, this same environmental argument applies to the economic benefits associated by encouraging broader enactment and applicability of alternative energy policies in other states and regions. Regardless of state or region, consumers should enjoy the full array of benefits offered by alternative energy technologies and policies. And only by qualifying as eligible resources located in other regions of the country, assuming reciprocity of policy and deliverability of energy, can we appropriately and broadly achieve the benefits of these technologies. FPLE recognizes that this particular aspect of our comments may be beyond the scope of the instant matter. However, we would encourage the PAPUC, as it periodically reviews the performance and progress of AEPS, to consider as eligible for AEPS alternative energy resources from regions other than those directly discussed in these comments, regions which are characterized by the implementation of a substantially similar AEPS/RPS program. Given FPLE's experience with developing and operating alternative energy resources across the country, as well as working with various jurisdictions in which alternative energy policies have been enacted, we would gladly offer our assistance during such an analysis.

Conclusion

Once again, FPLE is pleased to offer these comments regarding implementation of AEPS. We commend the Commonwealth of Pennsylvania and the PAPUC for its continued leadership in environmental stewardship, as well as for continuing to seek public input into this critical policy.

Respectfully submitted,

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