

**BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

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

Implementation of the Alternative Energy
Portfolio Standards Act of 2004: Standards
and Processes for Alternative Energy System
Qualification and Alternative Energy Credit
Certification

Comments of PV Now in cooperation
with national Solar Energy Industries
Association (SEIA) and Mid-Atlantic
Solar Energy Industries Association
(MSEIA) and the Energy Coordinating
Agency of Philadelphia.

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PV Now, the Solar Energy Industries Association (SEIA) and the Energy Coordinating Agency respectfully submits these comments in response to the Tentative Order approved at the January 27, 2006 Pennsylvania Public Utility Commission Public Meeting regarding Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards and Processes for Alternative Energy System Qualifications and Alternative Energy Credit Certification Tentative Order.

PV NOW is a national solar industry advocacy group comprised of manufacturers and installers in the solar PV industry, including Sharp Solar, Shell Solar, PowerLight Corporation, Schott Solar, SunPower Corporation, and Evergreen Solar. PV NOW is affiliated with the National Solar Energy Industry Association (SEIA). Mid Atlantic Solar Energy Industry Association (MSEIA) began in 1997 and includes members from Pennsylvania, New Jersey, Delaware and Maryland. MSEIA is part of the national Solar Energy Industries Association (SEIA) which is the national trade association of solar energy manufacturers, dealers, distributors, contractors and installers. SEIA's primary mission is to expand the use of solar technologies in the global marketplace.

The companies represented by PV NOW employ thousands of workers in their manufacturing, sales and support operations. To date, the members of PV NOW have been active in the Advanced Energy Portfolio Standards Act (AEPS) rulemaking and Working Group meetings. PV NOW is interested in assisting Pennsylvania develop a viable market for solar electricity.

Energy Coordinating Agency is a private, non-profit corporation dedicated to ensuring low and moderate income people have access to safe, affordable and reliable sources of energy and water. ECA works to develop a sustainable energy future for the region through energy conservation and renewable energy including the installation of solar systems.

Allocation of Agency Responsibilities Regarding Alternative Energy System Qualification and Credit Certification Processes

B. Department responsibilities

C. DEP's Role in Qualification of Alternative Energy Systems

PV NOW and its affiliates suggest the Department of Environmental Protection (DEP) should be tasked with an upfront role in determining whether projects qualify under the AEPS. Even though the solar industry does not expect any issues qualifying solar facilities based on environmental laws and standards as set forth in Section 2 of the AEPS, we think a resource determination based on applicable environmental laws is important to the integrity of the Act.

PV NOW agrees with the Commission that failure to comply with environmental regulations should be a condition for granting alternative energy system status and that failure to comply with environmental standards would result in denial or loss of alternative energy status. Compliance determination by DEP is a logical and important step towards qualifying a facility/resource. DEP should also maintain an ongoing role in monitoring environmental compliance after a facility is qualified.

The renewable resource qualification process is analogous to New Jersey's approach where the resource is subject to DEP's review. In fact, in one instance; NJDEP drafted the criteria and reviews individual projects for biomass due to the complexity of the task.

The PUC states under Section A titled "Legislative Intent Regarding the Act" that "If the language is ambiguous, an agency may consider a number of other factors, including prior interpretations, the purpose of the statute, legislative history, etc. 1 Pa.C.S. § 1921(c). An agency may make a number of presumptions regarding legislative intent, including that the Pennsylvania General Assembly ("General Assembly") intends the entire statute to be effective and constitutional, and that public interest is to be favored over the private interest. 1 Pa.C.S. § 1922." It is certainly in the public interest to have DEP undertake a pre-emptive role in assuring a complete application that complies with environmental laws is in hand before it is sent to the program administrator to be qualified.

Maintaining Alternative Energy System Status

PV NOW further agrees with the Commission that "material changes in the operations of a facility (e.g. fuel source, environmental compliance issues) may also result in the loss of alternative energy system status and that it is appropriate before revoking the alternative energy system status of a facility, an opportunity to be heard should be made available."

Reasons other than pollution control such as OSHA violations, non-payment of taxes and other issues could also be grounds for decertifying a facility, although these issues clearly fall to other state department's jurisdiction.

2. Geographic Requirement

One question the Commission is wrestling with is the treatment of the eligibility of facilities that lie outside Pennsylvania but within the service territory of a regional transmission organization (RTO). The RTOs in question are the Midwest Independent Transmission System Operator, Inc. (MISO) and the New York Independent System Operator (NYISO).

In the Tentative Order under the section “Legislative Intent Regarding the Act”, the Commission discusses how it is a complicated task to ascertain the General Assembly’s legislative intent because the Act does not have a declaration of policy section. In direct response to clarifying legislative intent, other who filed comments to these draft rules have provided a copy from the authors of the Legislation sent a letter to Chairman Wendell F. Holland on February 28, 2006 with the goal of clarifying legislative intent. The letter states: “The General Assembly passed Act 213 to diversify the electricity generation technologies and fuels that serve electricity customers located in Pennsylvania; to increase economic development within Pennsylvania by attracting investment to Pennsylvania to build alternative energy projects; to speed the commercialization within Pennsylvania of the technologies listed in Tier 1 and Tier 2 of the AEPS; and to reduce the pollution of Pennsylvania’s air, water, and land resources caused by electricity generation.”

PV NOW and its Parties support the narrower resource interpretation as intended by the drafters of the legislation. During the development of Act 213, solar representatives experienced first-hand conversations with the drafters of this Act that support the points in the February 28, 2006 letter. Therefore, PV NOW supports the interpretation that facilities are qualified by being physically located in the “MISO to MISO/PJM to PJM” model because it supports the legislative intent of the legislation. Again, legislative history is to be considered when the language is ambiguous according to the Commission.

This issue does not directly affect the solar industry but the solar industry understood that during the negotiations on Act 213, of which PV very actively participated, the General Assembly intended development of Pennsylvania resources in order to meet the requirements of the legislation. It is the solar industries belief that one of the strongest arguments for the distinctive inclusion of solar was that it could be developed in all Pennsylvania’s sixty-seven counties and those benefits could not be exported to other areas. PV NOW heard from the authors and many other legislators the desire to build Pennsylvania’s AEPS resources as a strong reason to support the legislation.

H. Health and Safety Standards

The solar industry believes in imposing strict verification rules upon itself. PV NOW suggests that in addition to verifying the installation of solar PV equipment as part of the AEPS, it is important to inspect all solar PV systems for safe operation based on compliance with the National Electric Code. In addition, PV system performance should be documented. The Commission held an AEPS Standards Working Group Meeting on March 16, 2006 where this issue was discussed and a process to work established. PV NOW will be active in that process.

Electrical code officials generally know very little about solar photovoltaic systems (PV) and consequently, are not thoroughly inspecting PV systems. Standards for safety are critical for all energy sources under the Act, including solar PV. We are also referencing a document called “Inspector Guidelines for PV Systems” authored by Renewable Energy Technology Project of PACE University Law School Energy Project, March 2006 to serve as an example. The report is available at: www.irecusa.org/index.html. It may also be a good idea to look at standards for solar thermal systems. A good reference for solar thermal standards is a report from the Florida Solar Energy Center, a research institution of the University of Central Florida, called Florida Standards for Design and Installation of Solar Thermal Systems” May 2005. (http://www.fsec.ucf.edu/stds/st/pdf/FSECstd_104-05.pdf) The Commission and DEP may want to review and consider similar standards for Pennsylvania.

Issue Not Directly Addressed in this Order

While customer-generator ownership is addressed in a limited way in the Net Metering Proposed Rulemaking Order (L-00050174 & M-00051865) at §75.13 under the general provisions section, this Tentative Order appears to be an appropriate place to address the larger issue of ownership of alternative energy credits whether or not they are net-metered.

Starting with the net metering definition, under §75.13 (i) it states: “A customer-generator that is eligible for net metering owns the alternative energy credits of the electricity it generates, unless there is a contract with an express provision that assigns ownership of the alternative energy credits to another entity or the customer-generator expressly rejects any ownership interest in alternative energy credits under Section 75.14 (d) of this subchapter.

By default, the owner of the AEPS technology that generates the alternative energy credits shall be the title holder of the alternative energy credits, which may *not* necessarily be the *user* or *operator* of the AEPS technology. The exception to this would be based on an agreement made between the AEPS technology owner and a third party, such as a financier, funding entity or utility. The above statement in the Net Metering order implies that the user or operator of the behind-the-meter AEPS technology who is eligible for net metering is the same as the owner of the technology,

but this may not be the case. For example, a house with a solar PV system on the roof is a rental property; most likely the renter will have their own electric utility account and can benefit from lower electric bills through net metering. However, it should be the owner of the solar PV system - the one who most likely invested in the technology - who would be the default owner of the solar renewable energy credits (SRECs) that the system produces. Otherwise, the title holder of the SRECs would need to change every time a new renter moves into the house. Obviously, this would stifle the continuous sale of the SRECs.

PV NOW believes the ownership of the alternative energy credits as expressed in above would also apply to those systems that are not net metered.

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