

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of the Alternative :
Energy Portfolio Standards Act of 2004: :
Standards and Processes for Alternative : **Docket No. M-00051865**
Energy System Qualification and :
Alternative Energy Credit Certification :

**COMMENTS OF THE INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA,
THE MET-ED INDUSTRIAL USERS GROUP, THE PENELEC INDUSTRIAL
CUSTOMER ALLIANCE, THE PHILADELPHIA AREA INDUSTRIAL ENERGY
USERS GROUP, THE PP&L INDUSTRIAL CUSTOMER ALLIANCE, AND THE WEST
PENN POWER INDUSTRIAL INTERVENORS**

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. COMMENTS	2
A. Alternative Energy Systems Physically Located within the PJM and MISO Service Territories Meet the Compliance Requirements for AECs in Any Portion of the Commonwealth	2
B. In Order for an AEC to be Created, Electricity Must Be Delivered or Consumed within the PJM or MISO Control Area, or the Pike County Distribution System	6
III. CONCLUSION.....	9

I. INTRODUCTION

On November 30, 2004, Governor Edward Rendell signed the Alternative Energy Portfolio Standards Act of 2004 ("AEPS" or "Act 213" or "Act"). Act 213 requires Electric Distribution Companies ("EDCs") and Electric Generation Suppliers ("EGSs") to include a specific percentage of electricity from alternative resources in the generation that they sell to Pennsylvania customers, the percentage of which is increased via a fifteen-year schedule. Since that time, the Pennsylvania Public Utility Commission ("PUC" or "Commission") has held numerous Working Groups ("WG") and issued various orders regarding this implementation. Most recently, the Commission entered a Tentative Order on January 31, 2006 (hereinafter "January 31 Order"), to propose standards and processes for qualifying alternative energy systems and certifying alternative energy credits ("AECs").

The Industrial Energy Consumers of Pennsylvania ("IECPA"), the Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), the Philadelphia Area Industrial Energy Users Group ("PAIEUG"), the PP&L Industrial Customer Alliance ("PPLICA"), and the West Penn Power Industrial Intervenors ("WPPII") (hereinafter, "IECPA, et al.") participated in the PUC's AEPS WG, provided formal and informal comments during the course of this proceeding on various issues related to implementation, and reviewed the PUC's Tentative Order.¹

IECPA, et al., submits these Comments to respond to specific issues in the PUC's Tentative Order. As discussed more fully herein, IECPA, et al., recommends that: (1) alternative energy systems physically located within the PJM Interconnection LLC ("PJM") and Midwest

¹ Appendix A, attached hereto, provides the membership for each of these groups.

Independent System Operator ("MISO") service territories should meet the geographic eligibility requirements to qualify for AECs in any portion of the Commonwealth; and (2) in order to meet the "delivery" requirement for AECs, as set forth in the Act, electricity produced by alternative energy systems need only be delivered to or consumed within the MISO control area, the PJM control area, or the Pike County distribution system.

II. COMMENTS

- A. *Alternative Energy Systems Physically Located within the PJM and MISO Service Territories Meet the Compliance Requirements for AECs in Any Portion of the Commonwealth.*

In order to qualify for AECs under Act 213, applicants must satisfy the following geographic criteria:

Energy derived only from alternative energy sources inside the geographic 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.

73 P.S. § 1648.4. Clearly all facilities located within Pennsylvania satisfy this requirement; however, the PUC submits that it views two different ways in which to interpret the eligibility of facilities that lie outside of the Commonwealth but within the PJM and MISO service territories. One of these interpretations is reasonable and logical, while the other is constrained, illogical, and inconsistent with both Legislative intent and statutory construction rules.

The first interpretation set forth by the PUC narrowly interprets this requirement to provide that all facilities may only be qualified for compliance purposes in the Regional Transmission Organization's ("RTO") service territories in which they are physically located. See January 31 Order, p. 16. In other words, AECs created by an alternative energy system located in Wisconsin, which is in the MISO service territory, would only qualify for AEPS

compliance purposes in Pennsylvania Power Company's ("Penn Power") service territory, because Penn Power is the only EDC located within MISO. Similarly, a facility located in Maryland, which is in PJM's control area, would qualify for compliance in the service territories of all Pennsylvania EDCs that belong to PJM (i.e., every EDC but Penn Power and Pike County Light & Power Company).

The second, more legally sound interpretation provides that any alternative energy system physically located within the PJM and MISO service territories meets the necessary geographic eligibility criteria for compliance in any portion of the Commonwealth. Under this view, the alternative energy system located in Wisconsin, in the MISO service territory, would qualify for AECs to be used in any and all of the EDCs' service territories in the Commonwealth. Similarly, the alternative energy system located in Maryland, in PJM's control area, would also properly qualify for AECs to be used in any and all of the EDCs' service territories, including Penn Power and Pike County Light & Power Company ("Pike").

In order to determine the most appropriate means by which to apply the geographic eligibility requirement, the PUC must examine these issues in light of statutory construction rules, the overarching goals of AEPS, and the Legislative intent of the Electricity Generation Customer Choice and Competition Act ("Competition Act"). The result of this analysis compels the PUC to adopt the latter, more logical interpretation of this requirement in order to allow AECs created within the PJM and MISO service territories to meet the geographic eligibility criteria for compliance within the entirety of the Commonwealth.

Under statutory construction rules, words in a statute should be construed according to the rules of grammar and their common usage. 1 Pa. C.S. § 1903; Perrin v. United States, 444 U.S. 37, 42 (1979). "When language of a statute is clear and unambiguous, it must be given

effect in accordance with its plain and common meaning." 1 Pa. C.S. § 1921(b); Commonwealth v. Corporan, 531 Pa. 348, 351, 613 A.2d 530, 531 (1992); Perrin, 444 U.S. at 42. In addition, the words in statutory provisions must be construed in the context of the entire provision. See Shell Oil Co. v. Iowa Dept. of Revenue, 488 U.S. 19, 25 (1988) ("[t]he meaning of words depends on their context.").

In reviewing Section 1648.4 of the Act, the plain meaning of the statute does not allow for a narrow interpretation with respect to the geographic eligibility of alternative energy systems located in the service territories of qualifying RTOs. Rather, the statute clearly provides that the service territory of any RTO that manages a transmission system in any part of the Commonwealth is eligible to meet the compliance requirements under the Act. Through this Legislative language, AEPS intends a scenario where of two different RTOs (i.e., PJM and MISO) are managing transmission systems within the Commonwealth, and any alternative energy source within either the PJM or MISO footprint would meet Act 213 compliance requirements for any EDC in the Commonwealth.

Similarly, examining the language of this section within the context of Act 213 requires rejection of the more narrow interpretation of this geographic requirement. Under the first, more restrictive interpretation, any alternative energy system located within the PJM service territory (which includes Maryland, Delaware, New Jersey, Virginia, West Virginia, D.C., and portions of Ohio, North Carolina, Illinois, and Indiana) would meet the geographic requirements for all EDCs in Pennsylvania, with the exception of Penn Power and Pike. Conversely, any alternative energy system located within the MISO service territory (which serves, in part or in whole, fifteen different states and a portion of Canada) would only meet the geographic requirements

for Penn Power. Such a skewed application of Act 213 is inconsistent with the plain language of the Act and should not be the basis for any interpretation of this requirement by the Commission.

An examination of the intent of the Competition Act also supports the second, more logical interpretation of this requirement. Under the Competition Act, costs incurred by the EDCs through compliance with AEPS are to be recovered as a cost of generation supply under the Competition Act. See 73 P.S. § 1648.3(a)(3). The Competition Act was prompted by the Legislative conclusion that "[r]ates for electricity in this Commonwealth are on average higher than the national average...." 66 Pa. C.S. § 2802(4). In implementing the Act, the Legislature recognized that the "cost of electricity is an important factor in decisions made by businesses concerning locating, expanding, and retaining facilities in this Commonwealth," and "[c]ompetitive market forces are more effective than economic regulation in controlling the cost of generating electricity." Id. at §§ 2802(6) & 2802(5). Because the purpose of the Competition Act is to promote the competitive procurement of generation, and costs related to AEPS are included in generation, in order to adhere to the Legislature's intent, the PUC must interpret the Act to enhance the competitive procurement of AECs. This is both good policy and consistent with the statute's clear mandate regarding the geographic requirement of AEPS.

Implementing the geographic requirement of Act 213 requires a provision that will ensure that EDCs and EGSs are able to obtain a competitive price for alternative energy. Any implementation that would restrict this ability, by effectively eliminating the entire MISO service territory, would detrimentally impact ratepayers through higher generation costs. Accordingly, the PUC must recognize the plain language of the Act and allow any alternative energy systems within the MISO or PJM service territories to qualify for AECs for any EDC or EGS in the Commonwealth.

B. In Order for an AEC to be Created, Electricity Must Be Delivered or Consumed within the PJM or MISO Control Area, or the Pike County Distribution System.

As noted in the PUC's Tentative Order, after a facility has qualified for alternative energy system status, the energy it generates is eligible for AECs, with certain restrictions. One of these restrictions requires that the energy must be delivered to a particular boundary; however, again, the PUC believes that this requirement can be interpreted in one of two ways. See January 31 Order, p. 21; see also 73 Pa. P.S. § 1648.4.

The PUC views one interpretation, which does not comport with the rules of statutory construction, as measuring compliance in terms of the quantity of energy delivered to retail customers in Pennsylvania. See January 31 Order, p. 21. The PUC's second, more logical interpretation provides that compliance is measured by the electricity delivered or consumed within the PJM or MISO control areas, or the Pike distribution system. Id. Examining the underlying intent of Act 213, along with the rules of statutory construction, yet again proves that the Commission must adopt the more logical, and statutorily based, interpretation of the "delivery requirement."

Act 213 addresses the delivery requirement by defining an "alternative energy system" as follows:

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.

73 P.S. § 1648.2. Accordingly, the Act is clear that in order to meet the "delivery" requirement, a facility need only deliver the electricity to the distribution system of an EDC or the transmission system of an RTO that operates, even partially, within Pennsylvania. Utilizing

statutory construction rules, the plain language of this Act provides that the delivery requirement does not require a sale to retail customers. See 1 Pa. C.S. § 1921(b).

Conversely, the Act fails to provide any requirements that electricity must be sold to retail customers in Pennsylvania in order to qualify for AECs. The only provision in the Act that even addresses such an issue states the following:

From the effective date of this act through and including the 15th year after enactment of this act, and each year thereafter, the electric energy sold by an electric distribution company or electric generation supplier to retail electric customers in this Commonwealth shall be comprised of electricity generated from alternative energy sources...

73 Pa. P.S. § 1648.3(a). While this provision vaguely references a "retail sale," examining these words in the context of the other statutory provisions (i.e., Section 1648.2, supra) confirms that the sale of energy to retail customers within the Commonwealth is not necessary to meet the Act's delivery requirements.

Further, Section 1648.3(e)(4)(ii) of the Act provides that "one alternative energy credit shall represent one megawatt hour of qualified alternative energy generation, whether self-generated, purchased along with the electric commodity or separately through a tradable instrument...." 73 Pa. P.S. § 1648.3(e)(4)(ii). In other words, the Act clearly recognizes that AECs need not be predicated on a retail sale, thus a retail sale is not necessary to meet AEPS's delivery requirement. In light of the fact that the Act intended compliance to be satisfied through separately tradable instruments, requiring a sale to retail customers for compliance purposes is illogical and inconsistent with the Act's intent.

In addition to statutory construction, the PUC appropriately notes that certain technical problems would occur with mandating a delivery standard, as specific electrons produced by a

generation facility are not tracked from a generation station across political boundaries. See January 31 Order, p. 23. Moreover, Act 213 provides Tier II AECs for Demand Side Management ("DSM") and Energy Efficiency ("EE") projects. Obviously, these projects reduce electricity rather than creating it for sale to retail customers, but, if the delivery requirement of "sale to retail customers in Pennsylvania" is followed, none of the AECs from DSM/EE projects outside of the Commonwealth would be eligible for AECs under this very narrow interpretation. Because such a scenario runs contrary to the intent of the Act, the PUC must reject such a narrow viewpoint.

The PUC should find that compliance with the Act may be satisfied by energy delivered or consumed in the PJM or MISO control areas, or the distribution system of a Pennsylvania EDC, in order for a credit to be generated. This interpretation confirms the plain meaning of the Act, adheres to the Legislative intent, and ensures application of a meaningful and appropriate delivery requirement.

III. CONCLUSION

WHEREFORE, the Industrial Energy Consumers of Pennsylvania, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Philadelphia Area Industrial Energy Users Group, the PP&L Industrial Customer Alliance, and the West Penn Power Industrial Intervenors respectfully request that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the foregoing Comments.

Respectfully submitted,

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