

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Act 129 of 2008 : Docket No. M-2009-2093383
Phase 4 – Relating to the Alternative :
Energy Portfolio Standards Act

**COMMENTS OF
CONSTELLATION NEWENERGY, INC. AND
CONSTELLATION ENERGY COMMODITIES GROUP, INC.**

In response to the Pennsylvania Public Utility Commission (“Commission”)’s April 17, 2009 Tentative Order (“April 2009 Order”), Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (“Constellation”) hereby submit Comments regarding the April 2009 Order’s discussion and findings related to implementation of Phase 4 of Act 129 of 2008.

In the event that the Commission or its Staff prepares a service list for this proceeding or otherwise requires additional information regarding the positions presented herein, Constellation identifies the following individuals:

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Constellation appreciates the Commission’s efforts to implement effectively the requirements of Act 129 relating to increasing, on at least a quarterly basis, the percentage share of Tier I resources to be sold by electric distribution companies (“EDCs”) and electric generation

suppliers (“EGSs”) to reflect new Tier I resources. Constellation offers the following Comments to provide constructive suggestions to assist in those efforts:

- On page 7, the April 2009 Order incorrectly calculates the example for compliance year 2009-2010 for an EDC’s solar PV requirements. Whereas the April 2009 Order incorrectly states that for that time period, “the Tier I requirement is 2.5% of all retail sales, *of which* at least 0.0120% must come from solar PV.”¹ It is Constellation’s understanding, however, that the statutory language for the current alternative energy portfolio standard states that, for compliance year 2009-2010, “[T]he *total percentage* of the electric energy sold by an [EDC] or [EGS] . . . that must be sold from solar [PV] technologies is . . . 0.0120% . . .”² This would change the resulting calculation in the April 2009 Order’s example to a total annual Tier I solar PV requirement of 576 (4,800,000 x 0.00012 = 576), rather than 14, representing a significant difference.
- On page 7, in Step No. 1 under the method through which the “Commission will determine each EDC’s and EGS’ new quarterly Tier I requirements” (“Tier I Quarterly Calculation”), Constellation suggests that the ratio to determine “Tier I quarterly percentage increase” should utilize available new Tier I megawatt-hour (“MWh”) quarterly generation, rather than “available new Tier I [MWh] sales”³ as currently proposed. The amount of new Tier I generation available may not necessarily be reflected in the amount of new Tier I generation that has been sold in a particular quarter, as a Tier I generator may not have sold all of its *available generation*, which is the appropriate measure for determining the Tier I Quarterly

¹ April 2009 Order at p.7 and FN 6 (*emph. added*).

² PA House Bill No. 1203 (as amended), Session of 2007 (adopted July 17, 2007) at p.23 (lines 15-28) (*emph. added*).

Calculation. The April 2009 Order's text should, in turn, be corrected in the first full paragraph on page 8, such that it is the total new Tier I MWh generation rather than "the total new Tier I MWh sales"⁴ that are used in the provided example.

- Also on page 7, in Step No. 2 for the Tier I Quarterly Calculation, Constellation suggests that the Commission make clear in the parenthetical that it is the annual non-solar Tier I percentage, rather than simply the "annual Tier I" that will be added to the "Tier I % increase" that will result in the new quarterly Tier I percentage requirement, rather than simply resulting in the "quarterly Tier I requirement" as the parenthetical currently states. This will be consistent with the Commission's intentions stated in the first portion of text in Step No. 2.
- In Step No. 3 for the Tier I Quarterly Calculation, on page 8, Constellation suggests that the Commission make clear in both the text and the parenthetical that quarterly MWh sales will be multiplied by the new quarterly Tier I percentage requirement.
- Next, Constellation recommends that EDC's and EGS's sales figures should be reported on a quarterly basis, rather than monthly as currently proposed,⁵ with each quarter's data being due by the fifteenth day of the following quarter. The Commission should strive to achieve the right balance between the need for timely and accurate data and the burden that requirements will place on EGSs that choose to do business in the Commonwealth. As the Commission will be calculating the Tier I Quarterly Calculation on a quarterly basis, there is no need to seek data from EDCs and EGSs more frequently than quarterly.

³ April 2009 Order at p.7 (*emph. added*).

⁴ April 2009 Order at p.8 (*emph. added*).

⁵ See April 2009 Order at p.8.

- Finally, with respect to the April 2009 Order’s statement that “[a]ny alternative energy facility that fails to report . . . for any given month will be disqualified from generating Tier I credits for [that] quarter,”⁶ Constellation comments that the Commission also should make clear that such non-compliant alternative energy facility’s otherwise qualifying generation for that quarter also must be excluded from such quarter’s Tier I Quarterly Calculation.

Constellation appreciates this opportunity to submit its Comments to the Commission and looks forward to continued discussions on these and any new issues raised in the context of this proceeding. Constellation is confident that its recommendations will promote effective implementation of Act 129’s provisions relating to increasing, on at least a quarterly basis, the percentage share of Tier I resources to be sold by EDCs and EGSs in order to reflect new Tier I resources.

Respectfully submitted,



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*On Behalf of Constellation NewEnergy, Inc. and
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⁶ April 2009 Order at p.10.