

December 4, 2012

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, Pennsylvania 17105-3265

Attention: Docket ID No. I-2011-2237952

Dear Secretary Chiavetta:

The Electric Power Generation Association (“EPGA”) appreciates the opportunity to submit comments on the Commission’s Tentative Order dated November 8, 2012, addressing the end state of default service, a product of the Commission’s pending Investigation of Pennsylvania’s Retail Electricity Market Investigation.

EPGA believes that there are several positive components of the Tentative Order that will advance competition in the current retail electric market. However, EPGA raises serious concerns about the Commission’s invitation to further intrude upon the current alternative energy credit markets, established under the Alternative Energy Portfolio Standards Act.

It is within this context that EPGA submits the following comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Jacob G. Smeltz", written in a cursive style.

JACOB G. SMELTZ, *Vice President*
Electric Power Generation Association

cc: Various members of the General Assembly

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation of Pennsylvania’s :
Retail Electricity Market : Docket No. I-2011-2237952
End State of Default Service :

**COMMENTS OF THE
ELECTRIC POWER GENERATION ASSOCIATION**

The Electric Power Generation Association hereby submits the following comments on the Tentative Order (“Order”)¹ found at the above captioned docket that proposes an end state of default electric service, including all of the following: a definition of the default service provider (“DSP”); descriptions of the default service products to be offered to various retail electric rate classes; a timeline for the implementation of the new default service model; a discussion of applicable consumer protections; a discussion of the portability of customer assistance program (“CAP”) benefits for low-income customers; a plan for the implementation of supplier consolidated bills (“SCB”); a plan for the implementation of accelerated switching; a discussion of the provision of metering services; a discussion of the provision of Energy Efficiency and Conservation (“EE&C”) programs, a discussion of logistics for long-term contracts, including those for Alternative Energy Credits (“AECs”); a plan for the implementation of a statewide consumer education campaign; a discussion of regulatory costs and assessments, and the applicability of these changes to electric distribution companies (“EDCs”).

¹ See Tentative Order issued Nov. 8, 2012, Docket No. I-2011-2237952.

COMMUNICATIONS

The name and address of the persons to be served with communications concerning this submission and all future matters in this proceeding is:

Jacob G. Smeltz
Electric Power Generation Association
800 North Third Street
Suite 303
Harrisburg, PA 17102
Tel: (717) 909-3742
Fax: (717) 909-1941
jake@epga.org

INTRODUCTION

The Electric Power Generation Association (“EPGA”) is a regional trade association headquartered in Harrisburg, Pennsylvania, whose membership includes major electric generating companies that supply wholesale power in Pennsylvania and surrounding states. EPGA member companies² own and operate more than 150,000 megawatts of generating capacity, approximately half of which is located in the mid-Atlantic region. EPGA members engage in marketing the energy, capacity, and ancillary services from their generating facilities in wholesale markets in interstate commerce and make wholesale electric sales through PJM Interconnection, LLC (“PJM”).

One of the primary functions of EPGA is to promote the benefits of the competitive electric markets and to encourage the safe and reliable generation of electricity. As such, EPGA takes great interest in legislation, policies, rulemakings and

² EPGA member companies include Edison Mission Group, Exelon Generation, FirstEnergy Corp., PPL Generation, LLC, GenOn Energy, Inc., AES Beaver Valley, LLC, Dynegy, Inc., Sunbury Generation, LP, Tenaska, Inc., and UGI Development Company.

other actions taken by governmental agencies that impact the competitiveness of the wholesale electric markets.

EPGA would like to commend the Commission for its diligent work in developing a robust and competitive retail electric market within the Commonwealth. Indeed, the majority of the Commission's efforts clearly are to advance the Electricity Generation Customer Choice and Competition Act ("Electric Choice Act")³, providing direct opportunities for consumers to benefit from a competitive retail electric market. The Commission's Order has many components that address impediments to consumer choice and eliminates barriers to effective market development, which have been developed through an open, extended public process. All of these efforts will promote stronger retail markets, which are a critical component to the continued development of healthier wholesale electric power markets.

EPGA's comments on the Commission's Order focus on the Commission's invitation to comment on the provisioning of alternative energy resources by EDCs and electric generation suppliers ("EGSs"). The Commission requests comments on whether it should further regulate the procurement of AECs by mandating the use of various types of contracts by EDCs and EGSs. Further, the Commission posits other concepts concerning AEPS compliance, such as whether the procurement schedules for EDCs should, "...aim to procure AECs necessary to comply with up to 50 percent of the zonal load for any given service territory and allocate those AECs on a pro-rata share among the EGSs operating in its zone, entirely among the default service load, or

³ The act of December 3, 1996 (P.L.802, No.138).

some mix of both.”⁴ These components of the Commission’s Order are the subject of EPGA’s comments.

SUMMARY OF CONCERNS

While the Commission’s Order includes many positive proposals, EPGA notes that the specific provisions relating to the Commission’s intervention in how alternative energy credits are procured⁵ is antithetical for the continued *nondiscriminatory* development of the bulk power system and is not necessary given the current and projected amount of alternative energy capacity available to meet the requirements of the Alternative Energy Portfolio Standards Act (“AEPS”).⁶ Finally, EPGA does not believe that the Commission has the statutory authority to intervene in procurement of AECs to satisfy the requirements of AEPS.

DISTORTION OF THE COMPETITIVE WHOLESALE MARKETS

The competitive electric wholesale markets are designed to produce the best product at the most economic price and are intended to give “generation, demand response, and transmission a reasonable opportunity to compete in solving reliability concerns.”⁷ Through competitive markets such as the Energy Market, the Capacity Market and Ancillary Services Market, PJM Interconnection⁸ manages the continuous buying, selling and delivery of wholesale electricity, procures capacity to meet future

⁴ Order, *opt cit.*, p. 37.

⁵ Order, *op. cit.*, p. 36-37.

⁶ The act of November 30, 2004 (P.L.1672, No.213).

⁷ PJM Interconnection, L.L.C., 115 FERC ¶ 61,079 at p. 6 (2006).

⁸ PJM Interconnection is regional transmission organization which manages the bulk power system and wholesale electricity markets for all or parts of Pennsylvania, Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Tennessee, Virginia, West Virginia and the District of Columbia.

demand and provides for additional necessary ancillary services. These markets are regulated by the Federal Energy Regulatory Commission (“FERC”) and reviewed by PJM’s Independent Market Monitor (“IMM”). Fully functional competitive markets are an integral component to attract new resources, promote demand response, defer premature retirements, and add new capacity.

Market distortions are events in which a market reaches a market clearing price for an item that is substantially *different* from the price that a market would achieve while operating under conditions of perfect competition. An example of a market distortion is an out-of-market subsidy, which has the effect of providing non-market revenues to a market participant.

Subsidies are intended to promote a chosen outcome. If a fuel source or technology is subsidized, it will grow, whether intended or not. In the aggregate, subsidies to any particular form of energy will tend to depress prices and thereby encourage overconsumption of the subsidized resource. Such is the case in the present instance, where the Commission is requesting comment on whether it should mandate that AEC procurements should include a mix of short-term (one year or less), medium-term (one to five years), and long-term (six to ten years) contracts.

The Commission notes in its Order that it, “...believes that an AEC procurement methodology whereby either the EDC or DSP satisfies a portion of their service territory’s AEPS requirements will help facilitate a successful capacity build-out of

AEPS-qualified generation facilities by mitigating long-term cash flow risks for relevant generation owners or financiers.”⁹

The Commission’s statement concerning its desire to ensure a successful capacity build out of AEPS-qualified generation sources is disconcerting in several respects. First, it is indicative of the type of practice that skews the appropriate development of resources in the competitive wholesale markets as well as the AEC markets. Unnecessary intervention in the current supply and demand dynamic of these markets will result in development of resources without respect to whether they are the most economical or whether they are actually needed, imposing additional costs on captive consumers and contributing to an imbalance in proper market signals for future capacity.

This approach will also subsequently result in the crowding out of existing non-subsidized resources. Such preference is facially discriminatory towards non-AEPS qualified generation resources which must compete without the benefits of a Commission sponsored financial risk mitigation plan. In recent years, efforts such as this by other states to financially assist generation developers has created market distortions and threatened the competitiveness – and the benefits of competition – in the marketplace.

In fact, the Commission advocated against these types of market interventions and special protections in well argued comments it submitted in FERC Docket No. EL11-20, a case where New Jersey enacted a law authorizing out-of-market subsidies for natural gas plants and EPA Docket No. EPA-HQ-OAR-2008-0708, where demand

⁹ Order, *op. cit.*, p. 37.

response providers are currently seeking an environmental pollution subsidy. As the Commission stated in the FERC filing:

As a retail choice state, Pennsylvania's retail market is dependent on a well functioning and highly competitive wholesale electricity market. The PaPUC relies upon effective wholesale competition to properly administer the provisions of the 1996 Pennsylvania law which opened Pennsylvania's retail generation to competition in 1997. *Electricity Generation Customer Choice and Competition Act*, 66 Pa.C.S. §§ 2801 – 2812; P.L. 802, No. 138. Governmental subsidies which intentionally target wholesale markets under the jurisdiction of the Federal Energy Regulatory Commission (“Commission”) could materially injure those markets and impact Pennsylvania by impairing forward-looking generation investment signals.¹⁰

Additionally, the Commission's invitation to mitigate long-term cash flow risks for AEPS-qualified generation is contrary to the Electric Choice Act, which specifically removed regulated generation costs that were previously imposed upon captive ratepayers and instead allowed customers to choose their own generation supplier. The Electric Choice Act is specifically designed to *remove* the financial risks associated with building, owning and operating generation resources from customers and transfer those risks to the private sector. In this instance, the Commission is seeking to impose additional unavoidable generation costs on customers while simultaneously transferring

¹⁰ See Comments filed by the Pennsylvania Public Utility Commission, FERC Docket No. EL11-20, p. 2.

financial risks *back* to captive customers – all in favor of AEPS-qualified generators, which is contrary to the proposition of electric choice.

**INTRUSION INTO THE AEC MARKETS IS UNNECESSARY GIVEN
CURRENT AND PROJECTED AVAILABLE CAPACITY**

The Commission’s proposed intervention into the AEC markets is unnecessary given the current and projected available capacity of alternative energy resources. To date, there has been virtually no issue complying with AEPS because of a lack of supply of resources that are required to be procured.

According to the Commission’s 2011 Report on the Alternative Energy Portfolio Standards Act (“AEPS Report”):

Recent analysis of proposed and existing resources indicates sufficient Tier I resources¹¹ are available in Pennsylvania through 2014 and Tier II¹² through 2021. Sufficient solar capacity exists and is planned to meet AEPS obligations through 2015. Pennsylvania EDCs are permitted to obtain AECs from within the entire PJM Interconnection, LLC (regional transmission organization) area.

If we consider the entire renewable portfolio standard (RPS) demand and supply from all PJM states rather than just the PA-only market, adequate

¹¹ Tier I resources include solar photovoltaic and solar thermal energy, wind power, low-impact hydropower, geothermal energy, biologically derived methane gas, fuel cells, biomass energy and coal mine methane.

¹² Tier II sources include waste coal, distributed generation systems, demand-side management, large scale hydropower, municipal solid waste, generation of electricity outside of Pennsylvania utilizing by-products of the pulping process and wood manufacturing process including bark, wood chips, sawdust and lignin in spent pulping liquors and integrated combined coal gasification technology.

supply exists for Tier I and Tier II through 2015. Solar supply in the PJM market is also adequate through 2015, assuming that 25 percent of the projects in the PJM construction queues are actually built, which has historically been the case.¹³

Indeed, in the 2011 AEPS Report the Commission compared the number of credits created to the estimated number of credits needed in 2021, and it found that more Tier II credits were created in each of the years from 2005 through 2011 than will be needed in 2021. The Commission concluded that, “Based on past results, it is anticipated that Tier II credits will continue to be over-subscribed and there will likely be more of these credits created in any given year than are needed to meet the annual requirements to and including the 2021 reporting year.”¹⁴

The General Assembly recognized that long-term contracts *may* be necessary in order to incent sufficient alternative energy resources to enter the market. However, the use of such contracts was never mandated. Indeed, in enacting amendments to AEPS in 2007, the legislature introduced the concept of using long-term contracts for the purposes of acquiring sufficient alternative energy *if these resources were unavailable in the marketplace in sufficient quantities for the EDCs and EGSs to meet their obligations in a reporting period.*

The General Assembly understood that there may be instances where EDCs and EGSs could not, *for lack of supply*, comply with the AEPS requirements. As such, it allowed an EDC or EGS to petition the Commission to have it declare “force majeure,”

¹³ See 2011 Annual Report, Alternative Energy Portfolio Standards Act of 2004, Pennsylvania Public Utility Commission, http://www.puc.state.pa.us/electric/pdf/AEPS/AEPS_Ann_Rpt_2011.pdf, p. ii.

¹⁴ AEPS Report, *op. cit.*, p. 11.

a defined term that relieves an EDC or EGS from its AEPS requirements for a reporting period if alternative energy resources are not sufficiently available. The Assembly directed that:

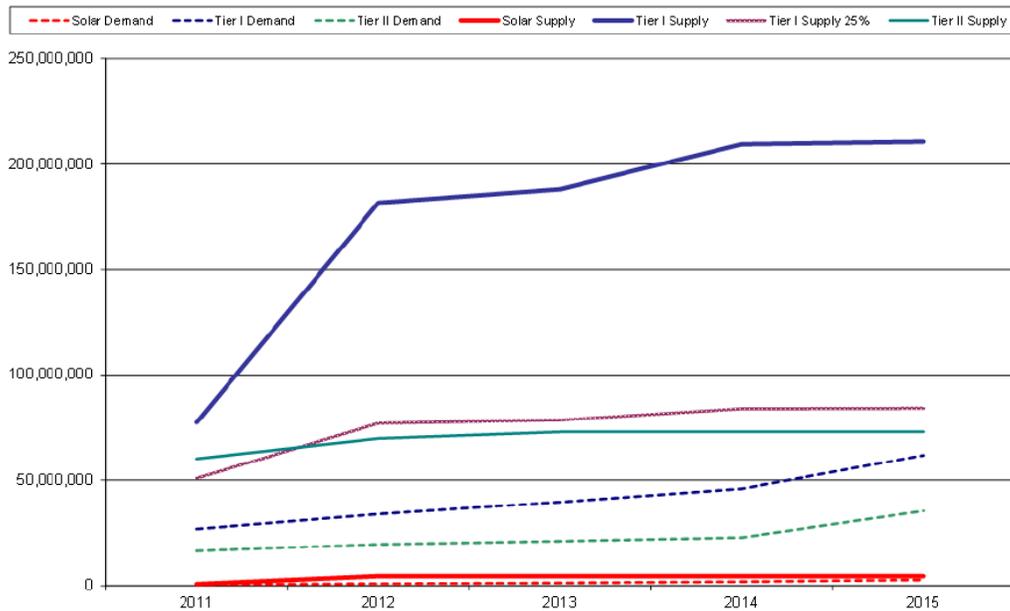
In making this determination, the commission shall consider whether electric distribution companies and electric generation suppliers have made a good faith effort to acquire sufficient alternative energy to comply with their obligations. Such good faith efforts shall include, but are not limited to, banking alternative energy credits during their transition periods, seeking alternative energy credits through competitive solicitations and *seeking to procure alternative energy credits or alternative energy through long-term contacts* [emphasis added].¹⁵

As outlined above, the General Assembly clearly limited the Commission's authority to mandate the use of long-term contracts under AEPS *unless* there is a scarcity of alternative energy resources so as to jeopardize an EDC or EGS from being able to reasonably comply with the requirements of the law. Currently, no such situation exists. Below is a graph included in the Commission's 2011 AEPS Report¹⁶, which shows the AEPS PJM marketplace as of January 31, 2012. For all sources, the supply curves exceed (in some cases far exceed) the current demand curve.

¹⁵ See Section 2 of the act of November 30, 2004 (P.L.1672, No.213), definition of "force majeure."

¹⁶ AEPS Report, *op. cit.*, p. 20.

AEPS Estimated PJM Footprint Marketplace (MWHs) as of 1/31/2012



The graph above demonstrates that there clearly is no shortfall of available resources to ensure compliance with AEPS. In fact, the Commission acknowledges that there is currently an oversubscription of Tier II resources and there are sufficient Tier I resources to ensure compliance through the year 2015.

Further, EPGA notes that information available through PJM’s Generation Attribute Tracking System (“GATS”), which tracks renewable energy generators’ output for the issuance of applicable AECs, shows that the Commission’s alternative energy oversupply figures are actually *understated*. According to GATS, there are currently a total of 20,269 MWs of available renewable energy capacity¹⁷ within the PJM territory and 4,033 MWs within Pennsylvania. Indeed, the Commonwealth is currently the second largest producer of alternative energy among the PJM states, and

¹⁷ Included in this figure is capacity for biomass and other biomass gasses, black liquor, blast furnace gas, captured methane, efficiency, renewable fuel cell, hydro, landfill gas, pumped storage hydro, solar PV, solar thermal, solid waste and municipal solid waste, wind, and wood waste solids generation sources.

would be the top producer if Virginia’s 5,166 MWs of pumped storage hydro is discounted.

	DC	DE	IA	IL	IN	KY	MD	MI	MN	MO	NC	NJ	NY	OH	PA	VA	WI	WV	Total
Biomass - Other Biomass Gases					3							8		11	1				23
Black Liquor						88								93	120	318	45		664
Blast Furnace Gas					585		129							67	56				836
Captured Methane															1	88			89
Efficiency												23			0				24
Fuel Cell - Renewable												0		1					1
Hydro				7	8	2	494	14			325	4	104	48	739	361	9	255	2,369
Landfill Gas		8		173	41	16	35	10				145		81	226	135		2	872
Other Gas															31				31
Pumped Storage												453			1,269	5,166			6,888
Solar PV	4	29		31	1	1	93	0	0		2	881	0	57	166	5	0	1	1,272
Solar Thermal	2	0				0	1				0		0	0	0	0		0	3
Solid Waste - Municipal Solid Waste							138					162			262	123			685
Wind		0	370	2,508	1,099		120			146		8		419	1,101			583	6,355
Wood Waste Solids														17	61	80			158
Total	5	38	370	2,720	1,737	107	1,010	24	0	146	327	1,683	104	793	4,033	6,277	54	842	20,269

Source: PJM GATS

The chart above validates that ample supply exists within PJM to meet the requirements of AEPS. These figures also confirm why, to EPGA’s knowledge, no EDC or EGS has requested that the Commission declare force majeure, which would subsequently trigger the Commission’s authority to determine if a good faith effort was made to procure such resources, including the use of a long-term contract. Clearly, there would be no need to seek or declare force majeure given the abundant available resources.

Rather, it appears that, “through recent informal discussions within the RMI,”¹⁸ the Commission’s focus has shifted from ensuring that sufficient supply exists – which it does – to ensuring that long-term cash flow risks for AEPS-qualified generators is

¹⁸Order, *op. cit.*, p. 36.

mitigated. Electric customers who already benefit from ample supplies of all types of electric generation should not now bear the financial burden of mitigating the continued build-out of AEPS-qualified generation which is unnecessary, further compounding the oversupply issue the Commission acknowledges currently exists. By mitigating risk, the Commission invariably is inviting more oversubscription of these resources, to the detriment of wholesale power participants, electric consumers, and ultimately, all entities which have come to rely on the AEC credit markets.

**THE COMMISSION LACKS STATUTORY AUTHORITY
FOR PROPOSED MARKET INTERVENTIONS**

The Commission seeks to determine whether an EDC or alternative DSP should file a procurement plan for Tier I, Tier II, and Solar AECs with the Commission. The Commission further invites comment on whether it should compel EDCs or the entity providing default service to include a mix of short-term, medium term, and long-term contracts. EPGA believes that such questions assume, *arguendo*, that the Commission has the statutory authority to make such determinations.

The General Assembly enacted the AEPS and provided very clear direction to the Commission regarding the establishment and maintenance of an AEC market for the purposes of developing alternative energy sources. Under Act 213 of 2004, the Commission is given all of the following enumerated responsibilities:

1. Determine if alternative energy resources are reasonably available in the marketplace in sufficient quantities for the EDCs and EGSs to meet their obligations for that reporting period. Additional authority is given to the

Commission should there be *insufficient* quantities of alternative energy resources.¹⁹

2. Determine if EDCs and EGSs have satisfactorily complied with the amount of alternative energy they are required to purchase for each reporting period under the act.²⁰
3. Conduct a review of the status of alternative energy technologies within the Commonwealth and the capacity to add additional alternative energy resources.²¹
4. Recommend additional compliance goals to the General Assembly beyond year 15, if appropriate.²²
5. Work cooperatively with the Department of Environmental Protection in evaluating the future alternative energy resource potential.²³
6. Establish an alternative energy credits program as needed to implement the act.²⁴
7. To provide for the appropriate cost-recovery for compliance with the law.²⁵
8. Approve an independent entity to serve as the alternative energy program administrator.²⁶
9. Through the regulation of the program administrator, to create and administer an alternative energy credits certification, tracking and reporting system, and provide for the reporting of the same.²⁷

¹⁹ See Section 2 of the act of November 30, 2004 (P.L.1672, No.213).

²⁰ Ibid., § 3(b)(3).

²¹ Ibid., § 3(b)(3).

²² Ibid., § 3(b)(3).

²³ Ibid., § 3(b)(3).

²⁴ Ibid., § 3(e)(1).

²⁵ Ibid., § 3(c).

²⁶ Ibid., § 3(e)(2).

²⁷ Ibid., § 3(e)(2).

10. Develop a registry of pertinent information regarding all available alternative energy credits, credit transactions among EDCs and EGSs, the number of alternative energy credits sold or transferred and the price paid for the sale or transfer of the credits.²⁸
11. Levy an administrative fee on an alternative energy credit transaction.²⁹
12. Establish regulations governing the verification and tracking of energy efficiency and demand-side management measures pursuant to the law.³⁰
13. Develop a depreciation schedule for alternative energy credits created through demand-side management, energy efficiency and load management technologies and develop standards for tracking and verifying savings from energy efficiency, load management and demand-side management measures.³¹
14. Impose an alternative compliance payment on an EDC or EGS if, after notice and hearing, it is determined that an EDC or EGS has failed to comply with the law.³²
15. Establish a process to provide for, at least annually, a review of the alternative energy market within the Commonwealth and the service territories of the regional transmission organizations that manage the transmission system in any part of the Commonwealth and identify any needed changes to the cost associated with the alternative compliance payment program, providing those findings to the General Assembly.³³

²⁸ Ibid., § 3(e)(8).

²⁹ Ibid., § 3(e)(8).

³⁰ Ibid., § 3(e)(10).

³¹ Ibid., § 3(e)(11).

³² Ibid., § 3(f)(2).

³³ Ibid., § 3(f)(5).

16. Develop technical and net metering interconnection rules for customer-generators intending to operate renewable onsite generators in parallel with the electric utility grid.³⁴
17. Convene a stakeholder process to develop Statewide technical and net metering rules for customer generators.³⁵
18. Conduct an ongoing alternative energy resources planning assessment for the Commonwealth to identify current and operating alternative energy facilities, the potential to add future alternative energy generating capacity and the conditions for the alternative energy marketplace, and methods to maintain or increase the relative competitiveness of the alternative energy market within the Commonwealth.³⁶
19. Work cooperatively with the Department of Environmental Protection to monitor the performance of all aspects of the act and provide an annual report to the chairman and minority chairman of the Environmental Resources and Energy Committee of the Senate and the chairman and minority chairman of the Environmental Resources and Energy Committee of the House of Representatives.³⁷

In its Order, the Commission invites commentators to explore whether the Commission should *expand* its authority under AEPS by requiring EDCs to include long-term AEC contracts in the EDCs' next default service filings, whether it should require EDCs or an alternative DSP to file a procurement plan for Tier I, Tier II, and

³⁴ Ibid., § 5.

³⁵ Ibid., § 5.

³⁶ Ibid., § 7(a).

³⁷ Ibid., § 7(c).

Solar AECs with the Commission, whether AEC procurements should include a mix of short-term (one year or less), medium-term (one to five years), and long-term (six to ten years) contracts, whether AEC procurements should be EDC territory fact-specific, and whether it should shift certain additional AEPS compliance obligations to EDCs or the entity providing default service.

EPGA believes that all of these questions presuppose that the Commission has the statutory authority to direct the specific methods in which EDCs and EGSs comply with AEPS. Nowhere in the enumerated responsibilities under AEPS does the General Assembly confer upon the Commission the authority to mandate the use of long-term contracts for AEPS compliance purposes. Nor does the statute provide the Commission with the authority to regulate the manner in which an EDC or EGS procures alternative energy (e.g. use of spot market, short-term, medium-term or long-term contracts).

Indeed, the General Assembly restricted the Commission's intervention into those policy areas by *not authorizing* it to dictate the way in which compliance occurs. Rather, the statute delineates that the Commission only ensure that the EDCs and EGSs procure the requisite number of MWhs of alternative energy, that the energy procured is eligible under the statute, and that alternative compliance penalties are imposed, if necessary. While the Commission is given the authority to study and evaluate the AEC markets, it is not provided with the authority to address the issues raised in section M of its Order. Rather, through its ongoing evaluation of the AEPS program, the Commission is required to recommend changes to the General Assembly, much like it

did when it recommended that the program be updated by eliminating the quarterly adjustment requirement imposed by Act 129 of 2008.³⁸

In contrast, the General Assembly *did provide* the Commission with the authority to regulate the procurement methods of EDCs for their default service load. Under Act 129 of 2008, the Assembly specifically required EDCs (as a default service provider) to file a competitive procurement plan with the Commission. That competitive procurement plan included requirements for auctions, requests for proposals, bilateral agreements, spot market purchases, short-term contracts and long-term contracts.³⁹

While the General Assembly extended these requirements to, “...any type of energy purchased by a default service provider to provide electric generation service, including energy or alternative energy portfolio standards credits” required to be purchased under AEPS, the Commission is expressly prohibited from mandating long-term purchase contracts for specific sources and fuel types. The law gives *the default service provider*, not the Commission, “...the sole discretion to determine the source and fuel type,” when entering into a long-term contract for purposes of fulfilling its default service obligations.⁴⁰ 66 Pa.C.S. § 2807(e)(3.2)(iii) says:

(3.2) The electric power procured pursuant to paragraph (3.1) shall include a prudent mix of the following:

* * *

³⁸ AEPS Report, *op. cit.*, p. ii.

³⁹ 66 Pa.C.S. § 2807 (3.2).

⁴⁰ *Ibid.*

(iii) Long-term purchase contracts, entered into as a result of an auction, request for proposal or bilateral contract that is *free of undue influence, duress or favoritism*, of more than four and not more than 20 years. *The default service provider shall have sole discretion to determine the source and fuel type.* Long-term purchase contracts under this subparagraph may not constitute more than 25% of the default service provider’s projected default service load unless the commission, after a hearing, determines for good cause that a greater portion of load is necessary to achieve least cost procurement. This subparagraph shall not apply to contracts executed under paragraph (5) [emphasis added].

In 2010, the Commission recognized the need to make changes to the AEPS program. It included those recommended changes in its 2010 AEPS report. House Bill 1962 was subsequently introduced in the General Assembly to amend the AEPS statute to provide for the elimination of the quarterly adjustment that is currently applied to non-Solar Tier I AEC obligations.⁴¹

This process should serve as a model for the Commission to utilize again should it believe, as the Order suggests, that, “...an AEC procurement methodology whereby either the EDC or DSP satisfies a portion of their service territory’s AEPS requirements will help facilitate a successful capacity build-out of AEPS qualified generation facilities by mitigating long-term cash flow risks for relevant generation owners or

⁴¹ House Bill 1962, Printer’s No. 2709 was introduced by the Honorable Robert W. Godshall, Chairman, Committee on Consumer Affairs, Pennsylvania House of Representatives.

financiers.”⁴² EPGA notes that no such recommendation was made in the 2011 AEPS Report.⁴³

CONCLUSION

EPGA is cognizant of the financial strain that markets can produce. Like AEPS-qualified generation sources, wholesale power producers are not immune to the market forces of supply and demand. Through government subsidies and mandates, AEPS-qualified generation has proliferated beyond the current requirements in the AEPS statute. The result of this overbuild is that the price of AECs has declined, making the *current* justification for the financing of such projects more difficult for those developers.

Wholesale power producers are subject to the same economic forces. With abundant supply and stagnated electricity demand, there are cash-flow risks for all generation owners and financiers. In the current proceeding, the Commission entertains the concept of mitigating cash flow risks for AEPS-qualified generators. Should the Commission adopt such a position, it would be tantamount to an *additional subsidy* for resources which are already enjoying a significant portion of Pennsylvania’s retail electric sales granted to them by statute.

All out of market interventions, including but not limited to subsidies, mandates and grants will skew market risks and rewards in favor of some market participants in the generation industry to the detriment of other market participants and, just as importantly, eventually to consumers. State-subsidized resources distort the market

⁴² Order, *op cit.*, p. 37.

⁴³ AEPS Report, *op. cit.*, p. 26.

price signal that generators, demand response providers and consumers rely on to evaluate future investments. This will discourage future unsubsidized investment. In addition, subsidizing generation today will invariably lead other resource developers to lobby for additional subsidies. Ultimately, regulatory decisions will replace transparent competition, dampening innovation and driving up costs for consumers. EPGA respectfully submits that this kind of meddling in the market by regulators to favor certain market participants helped create the conditions which made it necessary to restructure the electric industry to begin with.

EPGA believes that well-functioning, transparent competitive markets, not subsidies or long-term guarantees resulting from Commission mandated long-term contracts, are the more cost effective, sustainable approach to spur the development of additional resources when and where needed. The Commission need not entertain the false argument that absent guarantees through customer-financed long-term contracts AEPS-qualified generation will not be built. Rather, the Commission should rely on the natural economic forces of supply and demand, a position it espoused in the New Jersey proceeding, where it stated:

Pennsylvania is one of a number of states that have abandoned direct ‘command and control’ regulation of vertically integrated utility monopolies in favor of a market based approach which relies on economic signals to “tell” potential investors when, where, and how to add generation capacity.⁴⁴

⁴⁴PaPUC Comments, FERC Docket No. EL11-20, *op. cit.*, p. 2.

EPGA believes the Commission should not now abandon a true market based approach to AEPS compliance. Over time, the dynamics of supply and demand in the AEC market will provide the appropriate economic signals for when additional AEPS-qualified generation is necessary.