PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 97]

Boating; Personal Floatation Devices

The Fish and Boat Commission (Commission) proposes to amend Chapter 97 (relating to operator provided equipment). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed rulemaking relates to the wearing of personal floatation devices (PFD) when on board boats less than 16 feet in length or a canoe or kayak.

A. *Effective Date*

The proposed rulemaking, if approved on final-form, will go into effect immediately upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on the proposed rulemaking, contact Jason E. Oyler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7827. This proposed rulemaking is available on the Commission's website at www.fish.state.pa.us.

C. *Statutory Authority*

The proposed amendment to § 97.1 (relating to personal floatation devices) is published under the statutory authority of section 5123 of the code (relating to general boating regulations).

D. *Purpose and Background*

The proposed rulemaking is designed to improve, enhance and update the Commission's boating regulations. The specific purpose of the proposed amendment is to improve boating safety and is described in more detail under the summary of proposal. The Commission's Boating Advisory Board considered this matter and recommended that the Commission approve the publication of a proposed rulemaking requiring the wearing of PFDs on small boats, canoes and kayaks during cold weather months (October 1 to May 31).

E. *Summary of Proposal*

From 1996 through 2005, 114 people lost their lives in recreational boating accidents in this Commonwealth. Forty two percent of these boaters died during the cold water/weather months from October 1 through May 31. This is especially disturbing because during those months, participation in recreational boating is greatly reduced. Forty five of the fatalities that occurred during this time period over the last 10 years were boating in unpowered boats and motorboats less than 16 feet in length. This represents 94% of all fatalities occurring during those cold water/weather months and 40% of the fatalities overall.

Unpowered boats and small motorboats are very unstable and most accidents that occur in these boats are the result of capsizing or falling overboard. During the colder months, a mishap such as this often results in a tragedy. Sudden immersion into cold water, hypothermia or the stronger currents common in colder months can create a situation from which the boater cannot escape. This is especially true if the boater is not wearing a PFD.

The Commission accordingly proposes to amend § 97.1 to require the wearing of Coast Guard approved PFDs by all persons when on board boats less than 16 feet in length or a canoe or kayak during the period from October 1 through May 31. The Commission proposes that this section will read as set forth in Annex A. The Commission also seeks public comments on an alternative proposal that would require all persons to wear Coast Guard approved PFDs on boats less than 16 feet in length or a canoe or kayak on a year-round basis.

Statistics have shown that wearing a PFD will save lives. For the current calendar year, there have been 22 recreational boating accident fatalities thus far (7 of which occurred between January 1, 2006, and May 31, 2006). Of those 22 fatalities, 19 victims were not wearing PFDs. According to the 2005 Pennsylvania Boating Accident Analysis prepared by the Commission, there were 12 recreational boating accident fatalities in this Commonwealth that year. In accidents when PFD use was an important factor, seven of the victims were not wearing a life jacket. According to the 2004 Pennsylvania Boating Accident Analysis, there were 11 recreational boating accident fatalities in this Commonwealth that year. Nine of those victims were not wearing PFDs.

F. *Paperwork*

The proposed rulemaking will not create any new paperwork requirements.

G. *Fiscal Impact*

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.state.pa.us/Fish/reg comments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: 48A-188. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 97. OPERATOR PROVIDED EQUIPMENT

§ 97.1. Personal flotation devices.

* * * * *

(i) Between October 1 and May 31, all persons shall wear a Coast Guard approved Type I, II, III or V PFD when on board boats less than 16 feet in length or any canoe or kayak.

[Pa.B. Doc. No. 06-2017. Filed for public inspection October 13, 2006, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 75]

[L-00060180]

Implementation of the Alternative Energy Portfolio Standards Act of 2004

The Pennsylvania Public Utility Commission (Commission), on July 20, 2006, adopted a proposed rulemaking order which will codify prior Commission interpretations of the Alternative Energy Portfolio Standards Act and resolve issues relevant to its implementation.

Executive Summary

Governor Edward Rendell signed the Alternative Energy Portfolio Standards Act (act) (73 P. S. §§ 1648.1—1648.8) into law on November 30, 2004. The act, which became effective February 28, 2005, establishes an alternative energy portfolio standard for this Commonwealth. The act includes two key mandates: 1) greater reliance on alternative energy sources in serving this Commonwealth's retail electric customers; and 2) the opportunity for customer-generators to interconnect and net meter small alternative energy systems. The General Assembly charged the Commission with implementing and enforcing these mandates, with the assistance of the Department of Environmental Protection. 73 P. S. § 1648.7(a) and (b). The Commission has determined that the act is in pari materia with the Public Utility Code, and that it will develop the necessary regulations to be codified in 52 Pa. Code.

The Commission has already proposed Subchapters A—C (relating to general provisions; net metering; and interconnection).[1] *Proposed Rulemaking Re Net Metering for Customer-generators pursuant to Section 5 of the Alternative Energy Portfolio Standards Act, 73 P. S. § 1648.5*, L-00050174 (Final Rulemaking Order entered June 23, 2006). *Proposed Rulemaking Re Interconnection Standards for Customer-generators pursuant to Section 5 of the Alternative Energy Portfolio Standards Act, 73 P. S. § 1648.5*, L-00050175 (Proposed Rulemaking Order entered November 16, 2005).

These proposed regulations represent Subchapter D. These provisions provide for the compliance of electric distribution companies and electric generation suppliers with the mandate to increase their reliance on alternative energy sources. The regulations identify how compliance will be measured, the penalties for noncompliance, the powers and duties of a third party administrator, the mechanism for cost recovery by electric distribution companies and other necessary provisions. The adoption of Subchapter D will essentially complete the Commission's development of the needed regulations to implement the act.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 645.5(a)), on September 27, 2006, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commission, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Meeting held
July 20, 2006

Commissioners Present: Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson; Bill Shane; Kim Pizzingrilli, dissenting statement follows; Terrance J. Fitzpatrick, dissenting statement follows

Implementation of the Alternative Energy Portfolio Standards Act of 2004; Doc. No. L-00060180

Proposed Rulemaking Order

The Commission commences this rulemaking process as part of the implementation of the Alternative Energy Portfolio Standards Act of 2004, 73 P. S. §§ 1648.1—1648.8 (the Act). This proposed rulemaking will codify prior Commission interpretations of the Act and resolve other issues relevant to its implementation. The Commission seeks comments from all interested parties on these proposed regulations, at Annex A. Comments shall be due sixty days from the publication of this Order in the *Pennsylvania Bulletin*.

Background

Governor Edward Rendell signed the Act into law on November 30, 2004. The Act, which became effective February 28, 2005, establishes an alternative energy portfolio standard for Pennsylvania. The Act includes two key mandates: one, greater reliance on alternative energy sources in serving Pennsylvania's retail electric customers; two, the opportunity for customer-generators to interconnect and net meter small alternative energy systems. The Pennsylvania General Assembly charged the Commission with implementing and enforcing these mandates, with the assistance of the Pennsylvania Department of Environmental Protection (DEP). 73 P. S. § 1648.7(a) and (b). The Commission has determined that the Act is in pari materia with the Public Utility Code, and that it will develop the necessary regulations to be codified at Title 52 of the *Pennsylvania Code*. 1 Pa.C.S. § 1932.

Accordingly, the Commission initiated an implementation proceeding for the Act via a Secretarial Letter issued on January 7, 2005, at Docket No. M-00051865. The Commission presided over a public technical conference on January 19, 2005, at which stakeholders had the opportunity to provide comments on the implementation process. Subsequently, the Commission established an Alternative Energy Portfolio Standards Working Group (AEPS WG) to provide a forum for input by consumers and their advocates, electric distribution companies (EDC), electric generation suppliers (EGS), state agencies, and other interested parties. The AEPS WG held its first meeting on March 2, 2005. The Commission focused the AEPS WG on the development of the rules necessary for

the participation of customer-generators in this market, as required by the Act. 73 P. S. § 1648.5. The activities of the AEPS WG during 2005 led to the development of the following rules:

- The Commission has proposed final, uniform net metering regulations for customer-generators. *Proposed Rulemaking Re Net Metering for Customer-generators pursuant to Section 5 of the Alternative Energy Portfolio Standards Act, 73 P. S. § 1648.5,* L-00050174 (Final Rulemaking Order entered June 23, 2006). These regulations must be approved by the Independent Regulatory Review Commission (IRRC) and the Pennsylvania Attorney General before taking effect.

- The Commission has proposed uniform interconnection regulations for customer-generators. *Proposed Rulemaking Re Interconnection Standards for Customer-generators pursuant to Section 5 of the Alternative Energy Portfolio Standards Act, 73 P. S. § 1648.5,* L-00050175 (Proposed Rulemaking Order entered November 16, 2005). The interconnection regulations appeared in the *Pennsylvania Bulletin* on February 25, 2006, and the public comment period has concluded. Barring unforeseen developments, final form regulations should be issued for review by IRRC and the Attorney General during the third quarter of 2006.

As the Commission was proceeding with the development of the previously-mentioned regulations, it provided guidance on how other provisions of the Act would be interpreted. The Commission also implemented certain elements of the necessary regulatory framework. These actions include:

- Identification of the fifteen year reporting period schedule. *Implementation of the Alternative Energy Portfolio Standards Act*, Docket No. M-00051865 (Order entered March 23, 2005) (First Implementation Order).

- Identification of the compliance exemption period for each EDC service territory. *Implementation of the Alternative Energy Portfolio Standards Act*, Docket No. M-00051865 (entered March 23, 2005); as modified in *Implementation of the Alternative Energy Portfolio Standards Act*, Docket No. M-00051865 (Order entered July 18, 2005) (Second Implementation Order).

- Establishment of general standards and processes for tracking and verifying demand side management and energy efficiency measures. *Implementation of the Alternative Energy Portfolio Standards Act: Standards for the Participation of Demand Side Management Resources,* Docket No. M-00051865 (Final Order entered September 29, 2005).

- Designation of the alternative energy credit registry. *Implementation of the Alternative Energy Portfolio Standards Act: Designation of the Alternative Energy Credit Registry*, Docket No. M-00051865 (Final Order entered January 31, 2006) (Credit Registry Order). The Commission designated PJM Environmental Information Systems, Inc.'s (PJM-EIS) Generation Attribute Tracking System (GATS) as the credit registry.

- Completion, with the DEP, of an interim alternative energy system qualification process. (Secretarial Letters of December 20, 2005, and January 30, 2006). An application form developed as part of this process is available through the Commission's website. More than 170 alternative energy systems have been qualified and registered with GATS.

- Proposal of standards and processes for qualifying alternative energy systems and certifying alternative energy credits. *Implementation of the Alternative Energy Portfolio Standards Act: Standards and Processes for Alternative Energy System Qualification and Alternative Energy Credit Certification*, Docket No. M-00051865 (entered January 31, 2006) (January 31 Order). This Tentative Order was published in the *Pennsylvania Bulletin*, and the public comment period has concluded.

This rulemaking will codify many of the statutory interpretations made by the Commission in these Orders. These proposed regulations will also include rules for matters not previously addressed, such as force majeure. These provisions will be codified in 52 Pa. Code Chapter 75, Subchapter D. Subchapters A (general provisions), B (net metering), C (interconnection) of Chapter 75 have already been proposed in the net metering and interconnection rulemakings.

These regulations also include standards and processes for alternative energy resource qualification and alternative energy credit certification. As previously identified, the Commission did issue a Tentative Order on these matters on January 31, 2006. Due to the timing of the Act's compliance schedule, however, it was necessary to rule on several aspects of these issues in the context of the Pennsylvania Power Company's recent default service implementation filing. *Petition of Pennsylvania Power Company for Approval of Interim POLR Supply Plan*, Docket No. P-00052188 (Orders entered April 28, 2006 and May 4, 2006) (Penn Power Order).[1] This rulemaking therefore reflects the holdings from that proceeding on the geographic eligibility of alternative energy resources and whether an alternative energy credit may represent attributes separable from the energy commodity. Given that these important, substantive issues have already been resolved, and to avoid a duplication of action, we find that there would be little value in issuing a final order on the matters addressed in the January 31 Order. Rather, the remaining issues will be resolved through a formal rulemaking process. The Commission has reviewed the comments to the January 31 Order, and found them to be informative and useful in developing these proposed regulations.

Certain other matters related to the Act's implementation remain open before the Commission:

- Pending before the Commission is the litigation on the ownership of alternative energy attributes for contracts entered pursuant to the federal Public Regulatory Policies Act of 1978 (PURPA), which required electric utilities to enter into long-term contracts with independently owned electric generation facilities, some of which relied on alternative energy sources to generate electricity. This matter was referred to the Office of Administrative Law Judge for further proceedings. *Petition for Declaratory Order Regarding Ownership of Alternative Energy Credits and any Environmental Attributes Associated with Non-Utility Generation Facilities Under Contract to Pennsylvania Electric Company and Metropolitan Edison Company*, Docket No. P-00052149 (Order entered March 23, 2005). A Recommended Decision on this matter was issued on July 13, 2006, that concluded that the EDCs owned the alternative energy credits associated with these PURPA contracts.

[1] The Pennsylvania Power Company and DEP each filed a Petition for Review of the Penn Power Order with Commonwealth Court (since consolidated sua sponte by Commonwealth Court). *Pennsylvania Power Company v. Pennsylvania Public Utility Commission*, 1004 CD 2006; *Department of Environmental Protection v. Pennsylvania Public Utility Commission*, 1085 CD 2006. The determinations on geographic scope and energy attributes have been challenged by the Pennsylvania Power Company and DEP, respectively. The Commission will revise this proposed regulation, or a final adopted regulation, if the current interpretations are modified as a result of this litigation.

• The Commission proposed a policy statement on the nonpublic utility status of some alternative energy systems in late 2005. *Implementation of the Alternative Energy Portfolio Standards Act*, Docket No. M-00051865 (Order entered November 16, 2005). The public comment period has concluded. Final adoption of this policy statement is expected in the third quarter of 2006.

• The Commission reopened the default service rulemaking comment period to address the Act's cost-recovery requirements. *Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa.C.S. § 2807(e)(2)*, Docket No. L-00040169 (Order entered November 18, 2005). Comments and reply comments on alternative energy cost recovery standards in the context of default service were solicited (Secretarial Letter of February 8, 2006). This second public comment period has concluded. The IRRC stated in a letter dated May 8, 2006, that it had no additional comments, and that the due date for a final default service rulemaking has been extended to April 7, 2008.

• Standards for the receipt, custody and disbursement of alternative compliance payments are in the process of being developed by the Pennsylvania Sustainable Energy Board (PASEB), which is the entity that the Act delegated primary responsibility to for managing these monies.

• On April 12, 2006, the Commission released a Request for Qualifications for parties interested in serving as the alternative energy credits program administrator. Responses were due June 13, 2006.

The previously referenced matters referenced will not be resolved through this rulemaking. Litigation pertaining to the ownership of alternative energy attributes for electricity sold pursuant to PURPA contracts may continue for several years, and to the extent that a regulation is necessary on this point, it can be added later. A final, adopted policy statement on the non-utility status of some alternative energy generators would be codified at 52 Pa. Code Chapter 69, and is thus not within the scope of this rulemaking. Rules for recovery of the Act's costs are proposed in this regulation, but some details will be addressed in the final default service regulations. The PASEB is currently developing standards on the receipt, custody and disbursement of alternative compliance payments, and will make a filing with the Commission later in 2006. The public will have the opportunity to review and comment on the proposed standards before their adoption by the Commission. Finally, the Commission is in the process of selecting a program administrator, and expects to enter into a contract by the end of 2006.

Discussion

As evidenced by its requirements, the intent of the Act is to encourage greater reliance on alternative energy sources in meeting the needs of Pennsylvania's retail electric customers. The Commission has largely completed rulemakings to provide the necessary rules for the growth and participation of customer-generators in the alternative energy market.[2] The regulations proposed today address the standards and processes that will govern EDC and EGS compliance with the alternative energy portfolio standard portion of the Act.

[2] *Proposed Rulemaking Re Net Metering for Customer-generators pursuant to Section 5 of the Alternative Energy Portfolio Standards Act, 73 P. S. § 1648.5*, L-00050174 (Final Rulemaking Order entered June 23, 2006). *Proposed Rulemaking Re Interconnection Standards for Customer-generators pursuant to Section 5 of the Alternative Energy Portfolio Standards Act, 73 P. S. § 1648.5*, L-00050175 (Proposed Rulemaking Order entered November 16, 2005).

Based on the Commission's reading of the Act, this legislation is intended to promote the efficient utilization of the region's alternative energy resources in a manner that will yield significant economic and environmental benefits for Pennsylvania. As such, these regulations must be conducive to private sector investment in alternative energy resources, compatible with applicable standards for environmental protection, administratively efficient, and favorable to reasonable, market-based electricity rates for retail customers.

The following sections briefly review the provisions of the proposed rulemaking. Interested parties may offer comments on some or all of the provisions, and recommend alternative regulatory language.

A. *§ 75.51. EDC and EGS obligations.*

This section codifies the compliance schedule for EDCs and EGSs that was specified in the First Implementation Order. Consistent with the Penn Power Order, this section acknowledges that compliance will be measured in quantities of alternative energy credits, each of which shall represent one MWh of qualified alternative electric generation or conservation, whether self-generated, purchased along with the electric commodity or separately through a tradable instrument. Compliance will be measured against total sales of electricity to retail customers for the reporting period. This section also codifies the compliance exemption periods from the First and Second Implementation Orders, and identifies the compliance standard for EGSs.

Verification of compliance with the Act will likely require EDCs and EGSs to provide retail sales data more quickly than they have in the past. The Act includes a 90 day true-up period for EDCs and EGSs who failed to secure sufficient alternative energy credits during a reporting period. For the true-up period to be effective, EDCs and EGSs will need to know the status of their compliance soon after the expiration of a reporting period. This will require the program administrator to compare the quantity of alternative energy credits to the level of retail electricity sales during the just concluded reporting period. Ideally, this verification would occur within several weeks of the conclusion of a reporting period.

This will be very difficult under current practices, as EDC retail sales data for a particular month is often several months old when provided to the Commission. Additionally, in some instances, a meter that records sales for the month of May will not be read until near the end of June, well into the true-up period. For the true-up period to be effective, EDCs and EGSs are going to need to provide their monthly sales data more quickly than they have in the past. Otherwise, the true-up period may be largely concluded before an EDC or EGS knows whether they met their compliance obligation for a reporting period. Section 75.51(f) proposes a new standard for the reporting of monthly retail sales data to the Commission and the program administrator. Parties should identify in their comments any technical limitations to providing more timely sales data.

It may be that EDCs and EGSs will err on the side of caution, and procure quantities of alternative energy credits that exceed their forecasted sales for a particular reporting period. It may also be appropriate to consider the degree of exactness the Act requires in measuring compliance, or if a certain margin of error is acceptable. For example, parties may wish to comment on whether it is permissible to utilize some estimated data for the latter months of a reporting period to allow the program

administrator to produce a timely compliance report at the beginning of the true-up period.

B. *§ 75.52. Fuel and technology standards for alternative energy sources.*

This section includes fuel and technology standards for the alternative energy sources identified in the Act. While the Act includes a definition of "alternative energy sources" at 73 P. S. § 1648.2, it does not specifically define what constitutes each particular source.[3] Some sources, such as wind and solar photovoltaic, do not include any descriptive language, reflecting the intent that state regulators more fully define the scope of eligibility. Other sources, like low-impact hydropower and municipal sold waste, include time based eligibility restrictions that require clarification. This section provides more specific guidance on which facilities will qualify for alternative energy system status. These fuel source and technology standards are based on the plain language of the Act, DEP's draft technical guidance document distributed in 2005, and comments received through the implementation proceeding. Applicants for alternative energy system status will need to demonstrate reliance on one of these sources or technologies before their facility is qualified for alternative energy system status.

As we noted in the Second Implementation Order, we are assigning the "solar thermal" to the Tier I category. This resource was not assigned to either Tier I or Tier II by definitions included in the Act. 73 P. S. § 1648.2. We conclude that as this resource relies on solar energy, and its use has negligible environmental impact, solar thermal more appropriately belongs in Tier I than Tier II.

For low impact hydropower, we observe that the statutory definition restricts qualification to "incremental" development. We interpret this language to find that the Act limits eligibility to those facilities permitted on or after February 28, 2005 (i.e., the Act's effective date) or capacity additions or efficiency improvements to preexisting plants that were implemented on or after February 28, 2005.[4]

For waste coal, we decline to expressly adopt the recommendation that waste coal from non-permitted disposal sites receive a blanket qualification as an alternative energy source. The Act does expressly permit the Commission, by regulation, to expand the scope of waste coal definition. 73 P. S. § 1648.2. Rather than grant a blanket qualification, the Commission will review requests to utilize non-permitted sites on a case by case basis. Parties who wish to qualify waste coal from a non-permitted site shall be required to file a petition for waiver from this regulation in which they demonstrate the public interest benefits of such relief. The Commission may, at its discretion, grant such a waiver.

Another issue that requires clarification is the scope of the "distributed generation" alternative energy source. The Act identifies this as the "small-scale power generation of electricity and useful thermal energy." This definition does not specify a particular fuel or technology that qualifies. Nor does it define what constitutes "small-scale." At a minimum, we find that this definition would include net-metered and interconnected customer-generators, particularly in commercial and industrial settings, that utilize Tier II sources. However, it would seem that the General Assembly intended other resources to qualify under this definition. We note that a previous draft of the Act, Printer No. 1945, included the qualification that the distributed generation systems utilize an "alternative energy source." This language was struck in the version of the bill that was passed. It is possible that this action reflects the intent of the General Assembly to include other sources, such as combined heat and power systems that run on natural gas or diesel, in the final, approved version of the Act.

C. *§ 75.53. Alternative energy system qualification.*

This section identifies processes and standards, first proposed in the January 31 Order, for alternative energy system qualification. Applications shall be filed with the alternative energy credit program administrator on a form developed and made available by the Commission. The administrator will verify that the applicant is geographically eligible, consistent with the standard identified in the Act and the Penn Power Order. Facilities must also be in compliance with applicable environmental standards, and rely on an alternative energy source to generate or conserve electricity. Alternative energy system status will be suspended for major environmental violations. Alternative energy credits will not be certified for the duration of the suspension.

D. *§ 75.54. Alternative energy credit certification.*

This section reflects the different start dates for the certification of credits for generation and conservation measures. 73 P. S. § 1648.3(e)(7) and (10). Credits may be certified for qualified generation from the Act's effective date, February 28, 2005. Credits may be certified for qualified conservation measures from the date of the Act's passage, November 30, 2004. Credits may only be certified for that portion of an alternative energy system's output that relies on an alternative energy fuel source or technology. This section also reflects the prohibition against using the same resources to satisfy portfolio standards in more than one jurisdiction, and codifies the Act's delivery requirement.

Finally, this section codifies the finding from the Credits Registry Order that a Pennsylvania alternative energy credit only represents the attributes of energy that can be used to satisfy compliance with § 75.51. Credit or attribute definitions in other states with renewable portfolio standards sometimes include emissions or environmental characteristics.[5] However, the Act makes no mention of environmental or emissions attributes in the definition of alterative energy credit, or any other section of the Act. Accordingly, the Commission concludes that it has no authority to find that an alternative energy credit includes such values. Generators are of course free to include those attributes in their sales of alternative energy credits. They may also sell, assign or trade them separately. Our expectation is that the disposition of these emissions and environmental attributes will be governed by specific, contractual language, and that parties will not look to the Commission to resolve ownership disputes.[6]

[3] The definition of "alternative energy source" from the Act is included in the general provisions of § 75.1, and is more specifically defined in the proposed § 75.52 for purposes of alternative energy system qualification.

[4] We note that similar "incremental" requirements for renewable energy production tax credits exist at the federal level for hydroelectric facilities. 26 U.S.C.A § 45(c)(8). FERC reviews and approves certification of incremental development based on review of a historic average annual hydropower baseline and comparison to the requested increase. A similar standard may be appropriate for Pennsylvania, and comments are solicited on whether this level of detail should be included in this section of the proposed regulation.

[5] See "generation attribute", 26 Del. C. § 352 (10); "attribute" and "renewable energy certificate," N.J.A.C. § 14:14-8.2.

[6] This finding is without prejudice to the Commission's ultimate decision in the pending proceeding regarding the ownership of energy attributes in energy contracts entered into prior to the effective date of the Act. *Petition for Declaratory Order Regarding Ownership of Alternative Energy Credits and any Environmental Attributes Associated with Non-Utility Generation Facilities Under Contract to Pennsylvania Electric Company and Metropolitan Edison Company*, Docket No. P-00052149 (Order entered March 23, 2005; Recommend Decision issued July 13, 2006).

E. *§ 75.55. Alternative energy credit program administrator.*

This section identifies the powers and duties of the program administrator. Consistent with the January 31 Order, the administrator will certify questions of compliance with the applicable environmental regulations and reliance on appropriate alternative energy sources to DEP. DEP's findings will become part of the administrator's determination. To respond to those parties who commented that the January 31 Order would delegate too much authority to DEP, the Commission notes that it retains the ultimate authority to review and modify the decision of the program administrator. The Commission intends to utilize DEP's expertise in environmental matters to facilitate the efficient and correct implementation of the Act. A decision of the administrator may be appealed pursuant to 52 Pa. Code § 5.44. If the administrator's decision was incorrect on the law or facts, it will be modified by the Commission.

The administrator will also be responsible for verifying compliance with the obligations identified in § 75.51. The administrator will prepare reports documenting compliance at the end of each reporting and true-up period. The administrator will recommend levels of alternative compliance payments for those EDCs and EGSs who do not satisfy the requirements of § 75.51. EDCs and EGSs shall be required to make available all necessary information to the administrator as part of the verification of compliance.

As noted in the discussion of § 75.51, the administrator's ability to verify compliance in a timely manner after a reporting period may be constrained by delays in providing retail sales data. Accordingly, the regulation allows the administrator 45 days to provide a report on EDC and EGS compliance with § 75.51.

F. *§ 75.56. Alternative compliance payments.*

This section identifies standards for determining alternative compliance payments, consistent with the provisions of the Act. 73 P. S. § 1648.3(f) and (g). If an EDC or EGS disagrees with the recommended level of payment, they may request a hearing before the Office of Administrative Law Judge. As mentioned earlier in this Order, the PASEB is drafting language on the receipt, custody, and disbursement of alternative compliance payments which will be included in proposed governing bylaws and filed with the Commission.

Section 1648.3(e)(9) of the Act authorizes the Commission to utilize up to 5% of the alternative compliance payments for administrative expenses. This section also authorizes the Commission to impose administrative fees on "an alternative energy credit transaction." This section touches on the manner that the program administrator will be compensated for its services. Parties may wish to comment on whether it would be more appropriate for costs to be recovered through the traditional utility assessment mechanism or by charging fees to EDCs and EGSs for alternative energy credit transactions. For example, the Commission could charge fees for the certification alternative energy credits used for compliance with § 75.51.

G. *§ 75.57. General force majeure.*

This section proposes standards and processes for force majeure determinations, and their relationship to alternative compliance payments. These provisions also reflect a change in thinking on this issue by the Commission.

Initially, the Commissions' view, as stated in the Second Implementation Order, was that the costs of alternative compliance payments should not be recoverable by EDCs. The Commission and other parties were concerned that allowing alternative compliance payments to be recoverable would discourage the development of new, alternative energy resources. EDCs would find it more efficient to simply make a payment rather than procure credits from alternative energy sources. However, the Commission has concluded that the practical effect of disallowing recovery in all circumstances would be EDCs and EGSs acquiring alternative energy credits at any price, regardless of the costs to ratepayers. We do not believe that the public interest is served by EDCs and EGSs purchasing excessively priced alternative energy credits, the costs of which will be passed on to Pennsylvania's retail customers. The Commission is concerned about the magnitude of the electricity rate increases that retail customers will experience once the generation rate caps expire, and does not wish the Act's implementation to materially contribute to any potential price shock.

Instead, the Commission will use the force majeure and alternative compliance payment provisions of the Act in concert to establish a de facto price cap for alternative energy credits. Under these proposed regulations, the Commission will review the state of the alternative energy market prior to each reporting period. Separate force majeure determinations will be made for the Tier I obligation, solar photovoltaic obligation, and Tier II obligation. If it appears that there are insufficient quantities of credits to meet one or more of these obligations, the Commission will find that force majeure exists for that obligation for that reporting period. The Commission will also find that force majeure exists if the average market price for non-solar photovoltaic credits exceeds $45 for a significant period of time. EDCs and EGSs who have not already acquired or contracted for the purchase of credits for that reporting period will be permitted to pay an alternative compliance payment of $45 for each credit they need to satisfy their obligations. EDCs may recover such payments from ratepayers as a cost of compliance with the Act. These payments will be subject to Commission review as part of the cost-recovery process. If the record shows that the EDC could have met their obligations through credits acquired for less than $45, then cost recovery for some portion of these payments will be disallowed. We note that a similar approach has been adopted in other states with renewable portfolio standards, including New Jersey, Maryland and Massachusetts. N.J.A.C. § 14:4-8.10; Maryland Public Utilities Code, § 7-706; 225 CMR § 14.08(4).

The solar photovoltaic requirement presents unique challenges. The Act's market price standard for solar photovoltaic alternative compliance payments would appear to preclude a price cap for related force majeure determinations. Rather, the Commission will limit itself to reviewing the availability of solar photovoltaic resources when making force majeure determinations for this resource. If solar photovoltaic resources are not available in sufficient quantities, alternative compliance payments may be made at the applicable market price and the associated costs recovered from ratepayers by EDCs. Alternatively, the Commission may reduce the level of required solar photovoltaic compliance for the reporting period. These payments will be used by the sustainable energy funds and dedicated to projects that will increase the amount of solar photovoltaic resources available for compliance. 73 P. S. § 1648.3(g)(2).

We find that this approach provides the needed regulatory certainty to allow EDCs, EGSs, and alternative energy project developers to engage in the necessary

strategic planning and long-term investments that the Act requires. This standard also serves the public interest by protecting ratepayers from any excessive alternative energy prices that may result during the development of this new market.

H. *§ 75.58. Special force majeure.*

The Act requires the Commission to provide for a force majeure mechanism as part of the true-up period. 73 P. S. § 1648.3(e)(5). This section would only need to be used during those reporting periods where the Commission had declined to make a general force majeure determination for one or more of the compliance obligations. The Commission recognizes that circumstances may change during the interval between the beginning and conclusion of a reporting period that requires such a determination. For example, an EDC or EGS may unexpectedly acquire significantly more customer load over the course of a reporting period and fall short of meeting their obligations under § 75.51. In such a situation, there is no guarantee that the EDC or EGS could procure sufficient alternative energy credits during the true-up period to bring itself into compliance. The Commission will therefore review requests for special force majeure determinations on a case by case basis during the true-up period.

I. *§ 75.59. Alternative energy cost-recovery.*

EDCs[7] may fully recover the reasonable and prudently incurred costs of complying with Act 213 from ratepayers. This includes the costs for purchases of alternative energy or alternative energy credits, payments to credit program administrators, and costs levied by regional transmission organizations to ensure that alternative resources are reliable. 73 P. S. § 1648.3(a)(3). These costs are to be recovered "pursuant to an automatic energy adjustment clause under 66 Pa.C.S. § 1307" and are considered "a cost of generation supply under 66 Pa.C.S. § 2807." 73 P. S. § 1648.3(a)(3). Section 2807 of the Public Utility Code includes the legal standard governing the acquisition of and recovery for costs for electricity provided to an EDC's retail electric customers at the conclusion of the transition period:

> (3) If a customer contracts for electric energy and it is not delivered or if a customer does not choose an alternative electric generation supplier, the electric distribution company or commission-approved alternative supplier shall acquire electric energy at prevailing market prices to serve that customer and shall recover fully all reasonable costs.

66 Pa.C.S. § 2807(e)(3). Given this requirement of the Act, we find that the alternative energy delivered to retail customers after the conclusion of the stranded cost recovery period is a component of the default service provided by EDCs.

Section 1307 of the Public Utility Code includes standards and processes for automatic adjustment clauses. Costs collected pursuant to these clauses are subject to annual audits. 66 Pa.C.S. § 1307(d). Each EDC utilizing these types of mechanisms must file a report every twelve months identifying revenues collected pursuant to the clause, the costs actually incurred, and the reasons for the difference. 66 Pa.C.S. § 1307(e)(1). The Commission is required to hold public hearings on the substance of these reports. 66 Pa.C.S. § 1307(e)(2). Finally, customers are entitled to refunds for over collection, and public utilities may recover from customers additional costs in the event of under collection. 66 Pa.C.S. § 1307(e)(3).

Initially, the Commission considered including the substance of the Act's cost-recovery regulations in the final form version of its default service regulations. *Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa.C.S. § 2807(e)(2),* Docket No. L-00040169 (Order entered December 16, 2004). However, in order to ensure sufficient opportunity for meaningful public comment on these matters, we are including the necessary cost-recovery provisions in this proposed rulemaking. Given the overlap with default service, this rulemaking and the final default service regulations will include necessary cross-references. For example, these proposed regulations cross-reference the standards for competitive procurement processes in the default service rulemaking.

Because section 2807(e)(3) requires energy procured for default service to be acquired at "prevailing market prices," the Commission interprets 73 P. S. § 1648.3(a)(3) to mean that EDCs should use competitive processes to meet the requirements of § 75.51. However, this interpretation does not preclude the use of long-term, bilateral contracts between an EDC and an alternative energy generator as part of a reasonably balanced portfolio of alternative energy generation supply resources.[8] The Commission recognizes that EDCs may pursue different strategies to acquire alternative and traditional forms of energy to serve retail customers. For example, an EDC might choose to enter into contracts of varying durations to acquire electricity from traditional energy sources, and at the same time enter into several long term contracts to satisfy its obligations under § 75.51. However, the EDC must still use some type of competitive process to acquire alternative energy in order to demonstrate that retail customers are being provided alternative energy at the most reasonable rates.

EDCs costs and revenues for alternative energy compliance will be reconciled on an annual basis consistent with 66 Pa.C.S. § 1307(e)(3). The Commission will also conduct annual audits of these costs. 66 Pa.C.S. § 1307(d).

J. *§ 75.60. Alternative energy market integrity.*

This section is intended to preserve the viability of the voluntary market for alternative or renewable energy in Pennsylvania. Some parties to this implementation proceeding have expressed concerns that the adoption of an alternative energy portfolio standard will lead to the end of voluntary purchases of electricity by retail customers from renewable energy sources. The Commission finds that the public interest is served by ensuring a level playing field between mandatory and voluntary alternative energy offerings to retail customers. This section proposes certain requirements for the marketing of alternative energy sources by EDCs and EGS. These restrictions are similar to the requirements for green energy marketing found at 52 Pa. Code § 54.6(c).

The proposed standard does present a number of issues in its implementation. For example, an EDC or EGS may have multiple generation offerings it markets to retail customers. Some of these plans may rely on traditional fuels, while others rely on "alternative energy." EGS

[7] In Section 75.59 of the proposed regulations, the Commission substitutes the term "default service provider" for EDC. The proposed default service regulations use this term for any party, EDC or otherwise, that provides default service after the conclusion of the transition period. This is because the default service regulations recognize that parties other than an incumbent EDC may be the provider of last resort after the conclusion of the transition period. "Default service provider" is a defined term in the proposed default service regulations issued at Docket No. L-00040169.

[8] See *Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa.C.S. § 2807(e)(2),* Docket No. L-00040169 (Order entered November 18, 2005).

offerings may even vary by EDC service territory. Comments are welcome on how EDCs and EGSs should distinguish between their traditional and alternative energy generation offerings, and the level of specificity required when marketing this information.

K. *§ 75.61. Banking of alternative energy credits.*

This section codifies prior interpretations of the banking provisions of the Act from the First and Second Implementation Orders. The most problematic part of the banking provisions involves the apparent restriction placed on banking credits from alternative energy systems existing at the time of the Act's effective date during the cost-recovery period. 73 P. S. § 1648.3(e)(7). The Act appears to prohibit the banking of credits from these alternative energy systems in quantities equal to their sales to Pennsylvania retail customers during the twelve month period preceding the effective date of the Act, February 28, 2005. The Commission offered one interpretation of this provision in its Implementation Order, and received a number of comments in response.

The Commission has considered as an example an alternative energy system that sold 10,000 MWh of alternative energy to an EDC, which was in turn sold to Pennsylvania retail customers, during the period of February 28, 2004 through February 28, 2005. The language of the Act would appear to suggest that an EDC or EGS could only bank alternative energy credits for sales made by that same alternative energy system in excess of 10,000 MWh per reporting period during their cost-recovery period. Such an interpretation effectively discourages the acquisition of alternative energy and credits from resources already existing at the time of the Act's effective date. While this incremental requirement may encourage the development of new resources, it largely nullifies the cost-recovery period banking provision of the Act. It may also negatively impact Pennsylvania located resources the most, as they are more likely to have been used in retail sales to Pennsylvania customers. The effect of this provision may be to cause EDCs and EGSs to meet their initial requirements from resources located mostly outside of Pennsylvania. The Commission welcomes comments on how this provision of the Act may be interpreted in a way consistent with the intent of the General Assembly. In applying the rules of statutory construction, the Commission is to avoid results that are absurd, unreasonable, or that render a statute ineffective. 1 Pa.C.S. § 1922.

L. *§ 75.62. Alternative energy credit registry.*

This section codifies the Commission's authority to designate a credit registry. 73 P. S. § 1648.3(e)(8). At this time, the Commission has designated PJM-EIS's GATS as the credit registry required by the Act. EDCs and EGSs are required to make all information within the registry available to the Commission and the program administrator so that they can carry out their responsibilities under the Act, including verification of compliance and the tracking of credit prices. As the needs of the Commission in regards to implementing the Act may change over time, as will available technologies, the Commission will not permanently designate any particular party or technology as the credit registry in this rulemaking.

Conclusion

Accordingly, under sections 501 and 2807(e) of the Public Utility Code (66 Pa.C.S. §§ 501 and 2807(e)); sections 1648.7(a) and 1648.3(e)(2) of the Alternative Energy Portfolio Standards Act of 2004 (73 P. S. §§ 1648.7(a) and 1648.3(e)(2)); sections 201 and 202 of the act of July 31, 1968 (P. L. 769 No. 240) (45 P. S. §§ 1201 and 1202), known as the Commonwealth Documents Law, and the regulations promulgated at 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732.204(b)); section 745.5 of the Regulatory Review Act (71 P. S. § 745.5); and section 612 of The Administrative Code of 1929 (71 P. S. § 232) and the regulations promulgated at 4 Pa. Code §§ 7.231—7.234, the Commission proposes adoption of the regulations set forth in Annex A; *Therefore,*

It Is Ordered That:

1. The proposed rulemaking at L-00060180 will consider the regulations set forth in Annex A.

2. The Secretary shall submit this order and Annex A to the Office of Attorney General for review as to form and legality.

3. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

4. The Secretary shall submit this order and Annex A for review by the designated standing committees of both houses of the General Assembly and for review by IRRC.

5. The Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

6. An original and 15 comments of written comments referencing the docket number of the proposed rulemaking must be submitted within 60 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn.: Secretary, P. O. Box 3265, Harrisburg, PA. 17105-3265.

7. The contact person for this rulemaking is Shane M. Rooney, (717) 787-2871.

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-252. (1) General Fund; (2) Implementing Year 2006-07 is $200,000; (3) 1st Succeeding Year 2007-08 is $200,000; 2nd Succeeding Year 2008-09 is $200,000; 3rd Succeeding Year 2009-10 is $200,000; 4th Succeeding Year 2010-11 is $200,000; 5th Succeeding Year 2011-12 is $200,000; (4) 2005-06 Program—$0; 2004-05 Program—$0; 2003-04 Program—$0; (7) General Government Operations; (8) recommends adoption. These costs will be recovered through the annual utility assessment mechanism.

Dissenting Statement of Commissioner Terrance J. Fitzpatrick

Public Meeting
July 20, 2006

Implementation of the Alternative Energy Portfolio Standards Act of 2004; JUL-2006-L-0042; L-00060180*

This matter involves a proposed rulemaking order designed to implement the Alternative Energy Portfolio Standards Act, (Act) 73 P. S. §§ 1648.1—1648.8. For the reasons set forth below, I respectfully dissent.

First, I disagree with Section 75.53(d) of the proposed regulations, which provides:

(d) The alternative energy credits associated with a qualified alternative system located outside of Pennsylvania shall be eligible for compliance purposes only in the portions of Pennsylvania within the boundaries of the same RTO control areas as that alternative energy system.

This determination of the eligibility of out-of-state alternative energy sources to meet the requirements of the Act follows the recent decision by a majority of the Commission in *Petition of Pennsylvania Power Company for Approval of Interim POLR Supply Plan*, Dkt. No. P-00052188, Opinion and Order entered April 28, 2006, pp. 134-141. I disagreed with this aspect of the *Penn Power* decision, and Commissioner Pizzingrilli and I issued a Joint Statement[9] explaining why we believe that this interpretation conflicts with the plain language of Section 1648.4 of the Act, 73 P. S. § 1648.4, which provides that energy from alternative sources within "any" regional transmission organization that serves "any" part of the Commonwealth "shall be eligible to meet the compliance requirements of the Act." For this same reason, I believe that § 75.53(d) of the proposed regulations is inconsistent with the Act.

Second, I disagree with § 75.52(b)(2) of the proposed regulations to the extent it provides that the Commission may, in its discretion, grant petitions to allow waste coal from "non-permitted sites" to qualify for alternative energy resource status. This case-by-case approach is inconsistent with the Act, which provides eligibility for "other waste coal combustion meeting alternate eligibility requirements *established by regulation*." 73 P. S. § 1648.2 (definition of "Alternative energy source," no. 10) (emphasis added). In my view, the language in the Act providing for eligibility requirements to be established "by regulation" precludes a case-by-case approach to determining eligibility.

Third, I disagree with the requirement that the administrator must refer applications to the Department of Environmental Protection (DEP) for the purposes of determining environmental compliance and whether the applicant meets the requirements for alternative energy sources. See, proposed § 75.55 (4), (5). The administrator is required to follow DEP's advice on these issues. See, proposed § 75.55(6). These provisions give DEP a decision-making role within the formal adjudicatory process under the Act. However, the proposed regulations do not preclude DEP from later becoming involved in these same proceedings in another role—as a party-litigant. It is clear to me from DEP's intervention in the *Penn Power* proceeding, supra, and its subsequent appeal to Commonwealth Court, that it intends to litigate to pursue its interpretation of the Act. DEP's approach causes me to question the propriety of allowing it to also serve in a dual role as part of the decision-making process. To avoid this situation, I would allow DEP to make its views known as a party on the issues of environmental compliance and eligibility; however, I would not require the administrator to follow the advice of DEP on these issues.

Finally, I disagree with language in the proposed rulemaking order (p. 19) suggesting that electric utilities may enter into long-term contracts with alternative energy sources, at least to the extent that such contracts establish a fixed price that does not move with current wholesale prices. In my view, such contracts are anticompetitive and are inconsistent with the requirement that utilities procure electricity at "prevailing market prices" to serve customers who do not shop. 66 Pa.C.S. § 2807(e)(3).[10]

While I look forward to the comments of interested parties on these issues and others included in this proposed rulemaking order, for the above reasons, I respectfully dissent.

Dissenting Statement of Commissioner Kim Pizzingrilli

Today the Commission commences a rulemaking process as part of the implementation of the Alternative Energy Portfolio Standards Act of 2004. While I support the initiation of the proposed regulations, as they codify prior decisions made by this Commission, I respectfully dissent in part.

Specifically, the proposed regulation includes the Commission's finding in *Petition of Pennsylvania Power Company for Approval of Interim POLR Supply Plan*, Docket No. P-00052188 (Orders entered April 28, 2006 and May 4, 2006)[11] (Penn Power Order) wherein the majority adopted a restrictive interpretation of Section 1648.4 of the Act by limiting the geographic eligibility of alternative energy resources. Section 75.53 (relating to Alternative energy system qualification) of the proposed regulation requires that in order to qualify for alternative energy system status, it must be physically located in either the Commonwealth of Pennsylvania or the control area of a RTO that manages a portion of the electric transmission system in Pennsylvania. Subsection 75.53(d), further restricts eligibility as follows:

(d) The alternative energy credits associated with a qualified alternative system located outside of Pennsylvania shall be eligible for compliance purposes only in the portions of Pennsylvania within the boundaries of the same RTO control area as that alternative energy system.

Consistent with my position in the Penn Power Order, I must dissent from the proposed language found in Section 75.53(d). In a Joint Statement with Commissioner Terry Fitzpatrick, I dissented from the restrictive interpretation in the Order, as I believe that all out of state energy systems that are located within the PJM and MISO control areas qualify for alternative energy status for use anywhere in Pennsylvania. Section 1648.4 of the Act contains no language that substantiates restricting the qualification of facilities to the control areas to which they are physically located. Expressly, the Act provides that facilities located within the MISO or PJM control areas "... shall be eligible to meet the compliance requirements of this act." 73 P. S. § 1648.4.

Therefore, I dissent from the proposed regulations respective to the geographic eligibility restriction set forth in Section 75.53(d).

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 75. ALTERNATIVE ENERGY PORTFOLIO STANDARDS

[9] Joint Dissenting Statement of Commissioners Kim Prizzingrilli and Terrance J. Fitzpatrick, *Petition of Pennsylvania Power Company for Approval of an Interim Provider of Last Resort Supply Plan*, Docket No. P-00052188, Order entered April 28, 2006.

[10] See, also, Dissenting Statement of Commissioner Terrance J. Fitzpatrick, *Rulemaking Re: Electric Distribution Companies Obligations to Serve Retail Customers*, Docket Nos. L-00040169, M-00051865, Order entered November 18, 2005.

[11] I noted that the Pennsylvania Power Company filed a Petition for Review of the Penn Power Order with Commonwealth Court relative to the geographic scope determination. *Pennsylvania Power Company v. Pennsylvania Public Utility Commission*, 1004 CD 2006; *Department of Environmental Protection v. Pennsylvania Public Utility Commission*, 1085 CD 2006.

Subchapter D. ALTERNATIVE ENERGY PORTFOLIO REQUIREMENT

(*Editor's Note*: The following subchapter is new and is printed in regular type to enhance readability.)

Sec.

§ 75.51. EDC and EGS obligations.

(a) EDCs and EGSs shall comply with the act through the acquisition of certified alternative energy credits, each of which shall represent one MWh of qualified alternative electric generation or conservation, whether self-generated, purchased along with the electric commodity or separately through a tradable instrument.

(b) For each reporting period, EDCs and EGSs shall acquire alternative energy credits in quantities equal to a percentage of their total retail sales of electricity to all retail electric customers for that reporting period, as measured in MWh. The required quantities of alternative energy credits for each reporting period is identified in the following schedule:

(1) For June 1, 2006, through May 31, 2007: The Tier I requirement is 1.5% of all retail sales, the solar photovoltaic requirement is .0013% of Tier I sales, and the Tier II requirement is 4.2% of all retail sales.

(2) For June 1, 2007, through May 31, 2008: The Tier I requirement is 1.5% of all retail sales, the solar photovoltaic requirement is .0013% of Tier I sales, and the Tier II requirement is 4.2% of all retail sales.

(3) For June 1, 2008, through May 31, 2009: The Tier I requirement is 2% of all retail sales, the solar photovoltaic requirement is .0013% of Tier I sales, and the Tier II requirement is 4.2% of all retail sales.

(4) For June 1, 2009, through May 31, 2010: The Tier I requirement is 2.5% of all retail sales, the solar photovoltaic requirement is .0013% of Tier I sales, and the Tier II requirement is 4.2% of all retail sales.

(5) For June 1, 2010, through May 31, 2011: The Tier I requirement is 3% of all retail sales, the solar photovoltaic requirement is .0203% of Tier I sales, and the Tier II requirement is 6.2% of all retail sales.

(6) For June 1, 2011, through May 31, 2012: The Tier I requirement is 3.5% of all retail sales, the solar photovoltaic requirement is .0203% of Tier I sales, and the Tier II requirement is 6.2% of all retail sales.

(7) For June 1, 2012, through May 31, 2013: The Tier I requirement is 4% of all retail sales, the solar photovoltaic requirement is .0203% of Tier I sales, and the Tier II requirement is 6.2% of all retail sales.

(8) For June 1, 2013, through May 31, 2014: The Tier I requirement is 4.5% of all retail sales, the solar photovoltaic requirement is .0203% of Tier I sales, and the Tier II requirement is 6.2% of all retail sales.

(9) For June 1, 2014, through May 31, 2015: The Tier I requirement is 5% of all retail sales, the solar photovoltaic requirement is .0203% of Tier I sales, and the Tier II requirement is 6.2% of all retail sales.

(10) For June 1, 2015, through May 31, 2016: The Tier I requirement is 5.5% of all retail sales, the solar photovoltaic requirement is .25% of Tier I sales, and the Tier II requirement is 8.2% of all retail sales.

(11) For June 1, 2016, through May 31, 2017: The Tier I requirement is 6% of all retail sales, the solar photovoltaic requirement is .25% of Tier I sales, and the Tier II requirement is 8.2% of all retail sales.

(12) For June 1, 2017, through May 31, 2018: The Tier I requirement is 6.5% of all retail sales, the solar photovoltaic requirement is .25% of Tier I sales, and the Tier II requirement is 8.2% of all retail sales.

(13) For June 1, 2018, through May 31, 2019: The Tier I requirement is 7% of all retail sales, the solar photovoltaic requirement is .25% of Tier I sales, and the Tier II requirement is 8.2% of all retail sales.

(14) For June 1, 2019, through May 31, 2020: The Tier I requirement is 7.5% of all retail sales, the solar photovoltaic requirement is .25% of Tier I sales, and the Tier II requirement is 8.2% of all retail sales.

(15) For June 1, 2020, through May 31, 2021, and each successive twelve month period thereafter: The Tier I requirement is 8% of all retail sales, the solar photovoltaic requirement is .5% of Tier I sales, and the Tier II requirement is 10% of all retail sales.

(c) EDCs are exempt from these requirements for the duration of their cost-recovery period. An EDC shall be required to comply with the requirements in effect during the reporting period, as identified in subsection (b), in which its exemption expires.

(d) EGSs are exempt from these requirements in the service territories of EDCs in their cost-recovery period. EGS compliance shall be measured against their total MWh sales to all retail electric customers in all EDC service territories that have exited their cost-recovery periods.

(e) A 90 day true-up period shall commence at the end of each reporting period. EDCs and EGSs not in compliance with this chapter at the end of a reporting period, as determined by the program administrator under § 75.55(c)(2) (relating to alternative energy credit program administrator), may acquire additional alternative energy credits during the true-up period to satisfy the requirements of this chapter.

(f) EDCs shall provide monthly reports to the program administrator documenting total deliveries of electricity to all retail electric customers within their service territory. Separate totals shall be reported for each load serving entity active in the EDC's service territory. Reports shall be submitted to the program administrator within 45 days from the end of each month.

§ 75.52. Fuel and technology standards for alternative energy sources.

(a) Alternative energy system status may be granted to existing or new facilities, except where provided otherwise, including those interconnected and net-metered by customer generators, that generate electricity through the following Tier I alternative energy fuel sources and technologies:

(1) *Solar photovoltaic*. Electricity generated from solar photovoltaic technologies that utilize solar energy

(2) *Solar thermal*. Electricity generated from solar thermal technologies that utilize solar energy.

(3) *Wind*. Electricity generated through use of windmills, wind turbines, or other technologies that utilize wind energy.

(4) *Low-impact hydropower*. Electricity generated from any technology that produces electric power by harnessing the hydroelectric potential of moving water impoundments, provided that the facility:

(i) Was permitted on or after February 28, 2005, or represents capacity additions or efficiency improvements to a preexisting facility implemented on or after February 28, 2005.

(ii) Does not adversely change existing impacts to aquatic systems.

(iii) Meets the certification standards established by the Low Impact Hydropower Institute and American Rivers, Inc., or their successors.

(iv) Provides an adequate water flow for protection of aquatic life and for safe and effective fish passage.

(v) Protects against erosion.

(vi) Protects cultural and historic resources.

(5) *Geothermal energy*. Electricity produced by extracting hot water or steam from geothermal reserves in the earth's crust and supplied to steam turbines that drive generators to produce electricity.

(6) *Biomass energy*. Electricity generated utilizing the following:

(i) Organic material from a plant that is grown for the purpose of being used to produce electricity or is protected by the Federal Conservation Reserve Program (CRP) and provided further that production on CRP lands does not prevent achievement of the water quality protection, soil erosion prevention or wildlife enhancement purposes for which the land was primarily set aside. This may include switchgrass and other warm seasonal grasses, hybrid willow and hybrid poplar.

(ii) Solid, nonhazardous, cellulosic waste material segregated from other waste materials, such as waste pallets, crates, landscape or right-of-way tree trimmings or agricultural sources, including orchard tree crops, vineyards, grain, legumes, sugar and other crop by-products or residues. This includes bark, sawdust and clean, untreated wood chips from lumber mills, manufacturers or other producers that otherwise meet the definition of solid, nonhazardous, cellulosic waste material segregated from other waste materials.

(7) *Biologically derived methane gas*. Electricity produced from methane from the anaerobic digestion of organic materials from yard waste, such as grass clippings and leaves, food waste, animal waste and sewage sludge. This source also includes landfill methane gas.

(8) *Coal mine methane*. Electricity produced from methane gas emitting from abandoned or working coal mines, specifically fugitive methane released from its natural geologic sequestration as a result of coal-mining activity and vented to the atmosphere, or destroyed without useful energy recovery. This source does not include commercially developed coal bed methane.

(9) *Fuel cells*. Electricity produced from an electrochemical device that converts chemical energy in a hydrogen-rich fuel directly into electricity, heat and water without combustion.

(b) Alternative energy system status may be granted to existing or new facilities, except where provided otherwise, that generate or conserve electricity through the following Tier II alternative energy fuel sources and technologies:

(1) *Large scale hydropower*. Electricity produced by harnessing the hydroelectric potential of moving water impoundments, including pumped storage that does not meet the requirements of low-impact hydropower.

(2) *Waste coal*. Electricity generated from the combustion of waste coal in facilities when the waste coal was disposed of or abandoned prior to July 31, 1982, or disposed of thereafter in a permitted coal refuse disposal site regardless of when disposed of. Facilities combusting waste coal shall use, at a minimum, a combined fluidized bed boiler and be outfitted with a limestone injection system and a fabric filter particulate removal system. Alternative energy credits shall be calculated based upon the proportion of waste coal utilized to produce electricity at the facility. Applicants may petition for waste coal from nonpermitted sites to be qualified for alternative energy resource status. The Commission may grant the petitions at its discretion.

(3) *Demand-side management*. The conservation of electricity through:

(i) Energy efficiency technologies, management practices or other strategies in residential, commercial, industrial, institutional or government customers that reduce electricity consumption by those customers.

(ii) Load management or demand response technologies, management practices or other strategies in residential, commercial, industrial, institutional and government customers that shift electric load from periods of higher demand to periods of lower demand.

(iii) Industrial by-product technologies consisting of the use of a by-product from an industrial process, including the reuse of energy from exhaust gases or other manufacturing by-products, used in the direct production of electricity at the facility of a customer.

(4) *Distributed generation system*. Small-scale power generation of electricity and useful thermal energy.

(5) *Integrated combined coal gasification technology (ICCG)*. Electricity generated from combined cycle format with a gas turbine driven by the combusted syngas, while exhaust gases are heat exchanged with water/steam to generate superheated steam to drive a steam turbine. Alternative energy credits shall only be certified for electricity produced by ICCG technology. The use of ICCG to create feedstocks for manufacturing or liquid fuels not used to generate electricity may not be eligible for the certification of alternative energy credits.

(6) *Municipal solid waste*. Electricity generated from waste to energy facilities permitted by the Department on or before February 28, 2005, which the Department has determined to be in compliance with current environmental standards, including applicable requirements of the Clean Air Act (42 U.S.C.A. §§ 7401—7618) and associated permit restrictions and applicable requirements of Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

(7) *Wood pulping and manufacturing*. Electricity generated by utilizing by-products of the pulping process and wood manufacturing process, including bark, wood chips, sawdust and lignin in spent pulping liquors.

§ 75.53. Alternative energy system qualification.

(a) An application for alternative energy system status shall be submitted on a form developed and made avail-

able by the Commission. A copy of the application form will be made available on the Commission's public internet domain. An application shall be verified by oath or affirmation as required in § 1.36 (relating to verification).

(b) A completed application and supporting attachments shall be filed with the alternative energy credit program administrator, and any other parties that may be designated by the Commission.

(c) A facility shall be qualified for alternative energy system status if it is physically located in either:

(1) This Commonwealth.

(2) The control area of an RTO that manages a portion of the electric transmission system in this Commonwealth.

(d) The alternative energy credits associated with a qualified alternative system located outside of this Commonwealth shall be eligible for compliance purposes only in the portions of this Commonwealth within the boundaries of the same RTO control area as that alternative energy system.

(e) A facility shall be qualified for alternative energy system status if it generates electricity from or conserves electricity through a Tier I or Tier II alternative energy source identified in § 75.52 (relating to fuel and technology standards for alternative energy sources).

(f) A facility shall be qualified if the Department has verified compliance with applicable environmental regulations, and if it has obtained necessary State and Federal environmental permits for operations.

(g) Alternative energy system applicants shall provide the Department with all information necessary to verify compliance with applicable environmental regulations and § 75.52.

(h) The Commission may suspend or revoke the alternative energy system status of a facility, after notice and opportunity to be heard, for major violations of environmental regulations, or failure to satisfy the requirements of an alternative energy source in § 75.52. Major environmental violations shall be defined as those that cause significant harm to the environment or public health and result in a compliance order or penalty assessed by the Department. Alternative energy credits may not be certified for that facility for a period beginning with the suspension or revocation of alternative energy system status, as evidenced by formal Commission action, through the time that alternative energy system status is restored.

§ 75.54. Alternative energy credit certification.

(a) An alternative energy credit may be certified by the Commission for each MWh of electricity generated by qualified alternative energy systems on or after February 28, 2005.

(b) An alternative energy credit may be certified by the Commission for each MWh of electricity conserved by qualified alternative energy systems on or after November 30, 2004.

(c) An alternative energy credit may not be certified for a MWh of electricity generation or electricity conservation that has already been used to satisfy another state's renewable energy portfolio standard, alternative energy portfolio standard, or other comparable standard.

(d) An alternative energy credit shall be certified for that portion of a qualified alternative energy system's electric generation that is consumed within or delivered to the distribution system of an EDC in this Commonwealth or the control area of an RTO that manages a portion of this Commonwealth's transmission system.

(e) When an alternative energy system relies on more than one fuel source or technology, alternative energy credits shall be certified for that portion of the electric generation that is derived from an alternative energy fuel source or technology as identified in § 75.52.

(f) Alternative energy credit certification shall be verified by metered data under standards approved by the Commission.

(g) An alternative energy credit represents the attributes of 1 MWh of electric generation that may be used to satisfy the requirements of § 75.51 (relating to EDC and EGS obligations). A certified alternative energy credit does not automatically include environmental, emissions or other attributes associated with 1 MWh of electric generation. Parties may bundle the attributes unrelated to compliance with § 75.51 with an alternative energy credit, or, alternatively, sell, assign, or trade them separately.

§ 75.55. Alternative energy credit program administrator.

(a) The Commission may select an independent entity to act as a program administrator and perform administrative functions necessary to the implementation of this chapter. If an independent entity is not selected to act as a program administrator, the Commission will perform the functions identified in this section.

(b) The program administrator will have the following powers and duties in regard to alternative energy system qualification:

(1) Distribute, receive, and review applications for alternative energy system qualification.

(2) Reject applications that are incomplete or do not adhere to the application instructions.

(3) Determine whether an application satisfies the geographic eligibility standard in § 75.53(c) (relating to alternative energy system qualification) and reject applications that fail this standard.

(4) Refer verification of the application's compliance with applicable environmental regulations to the Department.

(5) Refer verification of the application's compliance with § 75.52 (relating to fuel and technology standards for alternative energy sources) to the Department.

(6) Reject applications that the Department advises to be noncompliant with environmental regulations or § 75.52.

(7) Qualify applicants for alternative energy system status who have filed a complete application, adhered to application instructions, satisfied the geographic eligibility standard, complied with environmental regulations, and utilized an alternative energy fuel source or technology consistent with § 75.52.

(8) The program administrator will provide written notice to applicants of its qualification decision within 30 days of receipt of a complete application form.

(c) The program administrator shall have the following powers and duties regarding the verification of compliance with this chapter:

(1) At the end of each reporting period, the program administrator shall verify EDC and EGS compliance with § 75.51 (relating to EDC and EGS obligations), and provide written notice to each EDC and EGS of their compliance status within 45 days of the end of the reporting period.

(2) At the end of each true-up period, the administrator shall verify compliance with § 75.51 for EDCs and EGSs who were in violation of § 75.51 at the end of the reporting period. The administrator will provide written notice to each EDC and EGS of their compliance status within 15 days of the end of the true-up period.

(3) EDCs and EGSs shall provide all information to the program administrator necessary to verify compliance with § 75.51.

(4) The program administrator shall provide a report to the Commission within 45 days of the end of each reporting period and true-up period that identifies the compliance status of all EDCs and EGSs. The report provided after the end of the true-up period shall propose alternative compliance payment amounts for each EDC and EGS that is noncompliant with § 75.51 for that reporting period. As part of this report the administrator shall identify the average market value of alternative energy credits derived from solar photovoltaic energy sold in the reporting period for each RTO that manages a portion of this Commonwealth's transmission system.

(d) The program administrator shall have the following powers and duties relating to alternative energy credit certification:

(1) The program administrator shall certify alternative energy credits for the portion of a qualified alternative energy system's electric generation that is consumed within or delivered to the distribution system of an EDC in this Commonwealth or the control area of an RTO that manages a portion of this Commonwealth's transmission system.

(2) The program administrator may not certify alternative energy credit for a MWh of electricity generation or electricity conservation that has already been used to satisfy another state's renewable energy portfolio standard, alternative energy portfolio standard, or other comparable standard.

(e) A decision of the program administrator may be appealed consistent with § 5.44 (relating to petitions for appeal from actions of staff).

(f) The Commission may delegate other responsibilities to the program administrator as may be necessary for the implementation of the act.

§ 75.56. Alternative compliance payments.

(a) Within 15 days of receipt of the report identified in § 75.55(c)(4) (relating to alternative energy credit program administrator), the Commission will provide written notice to each EDC and EGS that was noncompliant with § 75.51 (relating to EDC and EGS obligations) of their alternative compliance payment for that reporting period.

(b) Each EDC and EGS shall be assessed an alternative compliance payment according to the following formula:

(1) For noncompliance with the solar photovoltaic requirements identified in § 75.51, an EDC and EGS shall make an alternative compliance payment equal to the number of additional alternative credits necessary for compliance times 200% the average market value for solar photovoltaic alternative energy credits sold during the reporting period in the RTO control area where the noncompliance occurred.

(2) For noncompliance with other requirements identified in § 75.51, an EDC and EGS shall make an alternative compliance payment equal to $45 times the number of additional alternative energy credits necessary for compliance in that reporting period.

(3) The costs of alternative compliance payments made under this section may not be recoverable from ratepayers.

(c) EDCs and EGSs shall advise the Commission in writing within 15 days of the issuance of this notice of their acceptance of the alternative compliance payment determination or, if they wish to contest the determination, file a petition to modify the level of the alternative compliance payment. The petition shall include documentation supporting the proposed modification. The Commission will refer the petition to the Office of Administrative Law Judge for further proceedings as may be necessary. Failure of an EDC or EGS to respond to the Commission within 15 days of the issuance of this notice shall be deemed an acceptance of the alternative compliance payment determination.

(d) EDCs and EGSs shall send their alternative compliance payments to a special fund designated by the Commission within 30 days of acceptance of their payment determination, or the conclusion of proceedings before the Commission regarding the modification of the level of payment.

(e) Alternative compliance payments shall be made available to the sustainable energy funds established through the Commission's orders entered under 66 Pa.C.S. § 2806(f) (relating to Commission review of restructuring filings), under procedures and standards proposed by the Pennsylvania Sustainable Energy Board and approved by the Commission.

(f) Alternative compliance payments made available to the sustainable energy funds shall be utilized solely for projects that increase the amount of electric energy generated from alternative energy resources for purposes of compliance with § 75.51.

(g) The Commission may utilize up to 5% of alternative compliance payments made by EDCs and EGSs for administrative expenses directly associated with the implementation of this chapter, including the costs of the program administrator.

§ 75.57. General force majeure.

(a) At least 30 days prior to the beginning of a reporting period, the Commission will issue an order declaring whether force majeure exists for that reporting period. The order will include separate force majeure determinations for the Tier I alternative energy source, Tier II alternative energy source, and solar photovoltaic requirements of § 75.51 (relating to EDC and EGS obligations).

(b) The Commission may find that force majeure exists if there are insufficient alternative energy credits to satisfy the aggregate Tier I alternative energy source, Tier II alternative energy source, and solar photovoltaic obligation for all EDCs and EGSs under § 75.51 for that reporting period.

(c) The Commission may find that force majeure exists for the nonsolar photovoltaic requirement of § 75.51 if the average price for a nonsolar photovoltaic alternative

energy credit purchased by an EDC and EGS in this Commonwealth exceeds $45 in the 6 month period ending 30 days prior to the issuance of the order referenced in subsection (a).

(d) If the Commission determines that force majeure exists for a reporting period for, EDCs and EGSs shall have the option of making alternative compliance payments in lieu of compliance with § 75.51 for that reporting period.

(1) This payment shall equal $ 45 for each alternative energy credit needed to satisfy the Tier I and Tier II requirements of § 75.51.

(2) For the solar photovoltaic requirement, EDCs and EGSs shall have the option of making an alternative compliance payment equal to the market value of solar photovoltaic credits in the applicable RTO service territory, or the Commission may choose to reduce the required level of solar photovoltaic compliance for that reporting period.

(3) A payment shall be accompanied by a statement filed with the Commission and verified by oath of affirmation, consistent with § 1.36 (relating to verification), that the EDC or EGS has made a good faith effort to comply with the requirements of this chapter, that they are unable to acquire a sufficient quantity of alternative energy credits to meet their obligations under § 75.51, and that an alternative compliance payment is the least cost method of compliance.

(4) The option to make an alternative compliance payment in lieu of compliance with § 75.51 may not be available to EDCs and EGSs that have already acquired sufficient alternative energy credits for compliance with the requirements of that reporting period.

(e) Alternative compliance payments made by EDCs under subsection (d) shall be deemed a cost of compliance with this chapter and may be recovered under § 75.59 (relating to alternative energy cost-recovery).

(f) EDCs and EGSs shall provide the Commission information necessary for it to render a force majeure determination.

§ 75.58. Special force majeure.

(a) Within 45 days of the conclusion of a reporting period for which the Commission did not find force majeure to exist for the Tier I alternative energy source, Tier II alternative energy source, and solar photovoltaic requirements of § 75.51 (relating to EDC and EGS obligations), an EDC or EGS not in compliance with § 75.51 may petition the Commission for a force majeure determination.

(b) The Commission will provide public notice of all requests for a force majeure determination during the true-up period.

(c) The Commission may find that force majeure exists when there are insufficient alternative energy credits to satisfy the Tier I alternative energy source, Tier II alternative energy source, and solar photovoltaic obligations for all EDCs and EGSs requesting force majeure determinations under this section.

(d) The Commission may find that force majeure exists for the nonsolar photovoltaic requirement of § 75.51 when the average price for a nonsolar photovoltaic alternative energy credit purchased by an EDC and EGS in this Commonwealth exceeds $45 for the just concluded reporting period in § 75.57(a) (relating to general force majeure).

(e) If the Commission determines that force majeure exists for the true-up period, an EDC or EGS requesting a force majeure determination shall have the option of making alternative compliance payments in lieu of compliance with § 75.51 for the just concluded reporting period, consistent with the standard identified in § 75.57. Payments shall be accompanied by a statement filed with the Commission and verified by oath of affirmation, consistent with § 1.36 (relating to verification), that the following apply:

(i) The EDC or EGS has made a good faith effort to comply with this chapter.

(ii) The EDC or EGS is unable to acquire a sufficient quantity of alternative energy credits to meet their obligations under § 75.51.

(iii) An alternative compliance payment is the least cost method of compliance.

(f) Alternative compliance payments made by EDCs under subsection (e) shall be deemed a cost of compliance with this chapter and may be recovered under § 75.59 (relating to alternative energy cost-recovery).

(g) EDCs and EGSs shall provide the Commission all information necessary for it to render a special force majeure determination.

§ 75.59. Alternative energy cost-recovery.

(a) A default service provider may recover from default service customers the following reasonable and prudently incurred costs for compliance with the act:

(1) The costs of electricity generated by an alternative energy system, purchased by a default service provider, and delivered to default service customers for purposes of compliance with § 75.51 (relating to EDC and EGS obligations).

(2) The costs of alternative energy credits purchased and used within the same reporting period for purposes of compliance with § 75.51.

(3) The costs of alternative energy credits purchased in one reporting period and banked for use in later reporting periods, consistent with § 75.61 (relating to banking of alternative energy credits).

(4) The costs of alternative energy credits purchased in the true-up period to satisfy compliance obligations for the most recently concluded reporting period, consistent with § 75.51(e).

(5) Payments to the alternative energy credits program administrator for its costs of administering an alternative energy credits program, consistent with § 75.55 (relating to alternative energy credit program administrator).

(6) Payments to a third party for its costs in operating an alternative energy credits registry, consistent with § 75.62 (relating to alternative energy credit registry).

(7) The costs levied by a regional transmission organization to ensure that alternative energy sources are reliable.

(8) The costs of alternative compliance payments made under §§ 75.57 and 75.58 (relating to general force majeure; and special force majeure).

(b) A default service provider shall demonstrate compliance with the requirements of § 75.51 and the default service provisions of Chapter 54 (relating to electricity generation customer choice) by identifying a competitive

procurement process for acquiring alternative energy credits in default service implementation plans filed with the Commission.

(c) A competitive procurement process for alternative energy and alternative energy credits must comply with the standards for competitive procurement processes identified in the default service provisions in Chapter 54.

(d) The costs of compliance with the alternative energy portfolio standards act shall be recovered through an automatic adjustment clause within the meaning of 66 Pa.C.S. § 1307 (relating to sliding scale of rates; adjustments) according to the following standards:

(1) Costs incurred by a default service provider during the cost-recovery period shall be deferred as a regulatory asset and fully recovered with a return on the unamortized balance during the first full 12-month reporting period after the expiration of the cost-recovery period in the EDC service territory where it is acting as the default service provider.

(2) Costs incurred by a default service provider after the expiration of a cost-recovery period shall be recovered during the reporting period in which they are incurred, except as provided for in paragraph (7).

(3) The default service implementation plan shall include a schedule of rates for the recovery of these costs as required under 66 Pa.C.S. § 1307(a).

(4) A default service provider shall file a report with the Commission within 30 days of the conclusion of each reporting period that includes the information identified in 66 Pa.C.S. § 1307(e)(1).

(5) The Commission will hold public hearings on the substance of these reports, and other matters pertaining to this subject, as required by 66 Pa.C.S. § 1307(e)(2).

(6) The Commission will order the default service provider to provide refunds to or recover additional costs from default service customers consistent with 66 Pa.C.S. § 1307(e)(3).

(7) The costs of alternative energy credits purchased by the default service provider during the true-up period under section 3(e)(5) of the act (73 P. S. § 1648.3(e)(5)) shall be recovered during the reporting period in which these costs are incurred.

(e) The Commission will perform fuel costs audits, on at least an annual basis, of each default service provider that recovers costs using the automatic adjustment clause provided for under this section.

§ 75.60. Alternative energy market integrity.

(a) Sales of electricity by EDCs and EGSs to retail electric customers marketed as deriving from alternative energy sources that exceed the requirements of § 75.51 (relating to EDC and EGS obligations) at the time of the sale shall be supported by alternative energy credits separate from and in addition to alternative energy credits counted for compliance with § 75.51.

(b) When EDCs and EGSs market their generation as deriving from alternative energy sources, they shall include information to substantiate their claims. Disclosure of alternative energy sources shall be traceable to specific alternative energy sources by an auditable contract trail or equivalent, such as a tradable commodity system, that provides verification that the alternative energy source claimed has been sold only once to a retail customer.

§ 75.61. Banking of alternative energy credits.

(a) An EDC and EGS may bank alternative energy credits certified in one reporting period for use in either or both of the two immediately following reporting periods.

(b) An EDC and EGS may bank alternative energy credits certified during a cost-recovery period for use in either:

(1) The reporting period in which the cost-recovery period expires, and the reporting period that immediately follows.

(2) The first two full, 12-month reporting periods for which compliance with § 75.51 (relating to EDC and EGS obligations) is required after the expiration of the cost-recovery period.

(c) Alternative energy credits acquired by EDCs and EGSs not used within the time limits identified in subsections (a) and (b) shall be retired within the alternative energy credits registry and not available for the compliance requirements of this chapter.

(d) EDCs and EGSs shall satisfy the requirements of this chapter for the present reporting period before banking alternative energy credits produced in that same reporting period for use in either or both of the two subsequent reporting periods.

(e) The Commission will determine the volume of sales, measured in MWh, by EDCs and EGSs to retail customers in the 12-month period that immediately preceded the effective date of the act derived from specific alternative energy systems. EDCs and EGSs may bank credits during the cost-recovery period for the generation output of qualified alternative energy systems that exceed their volume of alternative energy sales to retail customers during this 12-month period.

§ 75.62. Alternative energy credit registry.

(a) The Commission will designate an alternative energy credit registry to track the creation and transfer of certified alternative energy credits among qualified alternative energy systems, EDCs and EGSs. EDCs and EGSs shall record the price paid for each alternative energy credit in the alternative energy credit registry.

(b) The Commission may direct EDCs and EGSs to enter into agreements with an alternative energy credit registry to verify compliance with this chapter and for compliance with section 3(e)(8) of the act (73 P. S. § 1648.3(e)(8)). EDCs and EGSs shall comply with the rules, policies, and procedures of the designated alternative energy credit registry.

(c) EDCs and EGSs shall provide the Commission and the program administrator with access to information in this registry necessary to verify compliance with this chapter and for compliance with section 3(e)(8) of the act.

(d) The prices paid for individual credits will be treated as confidential information by the Commission. Aggregate pricing data on alternative energy credits will be made available to the public by the Commission or the program administrator on a regular basis.

[Pa.B. Doc. No. 06-2018. Filed for public inspection October 13, 2006, 9:00 a.m.]

[52 PA. CODE CH. 67]

[L-00060177]

Service Interruption

The Pennsylvania Public Utility Commission (Commission), on May 4, 2006, adopted a proposed rulemaking order which amends Chapter 67 (relating to service outages) to include a definition of "service interruption" as it pertains to water utilities.

Executive Summary

Title 66 of the *Pennsylvania Consolidated Statutes* contains provisions that address a utility's character of services and its facilities. In addition, the statute also has provisions regarding the Commission's administrative authority and regulations. See 66 Pa.C.S. §§ 501 and 1501 (relating to general powers; and character of service and facilities). Specifically, 66 Pa.C.S. § 1501 provides:

> Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. . . .

In addition, 66 Pa.C.S. § 501 provides:

> (a) . . . In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof; and shall have the power to rescind or modify any such regulations or orders . . .
>
> (b) . . . The commission may make such regulations, not inconsistent with law, as may be necessary or proper in the exercise of its powers or for the performance of its duties. . . .

In early December 2005 there was a fluoride release incident at the Pennsylvania American Water Company's (PAWC) Yellow Breeches Water Treatment Plant in Fairview Township, Cumberland County. The incident affected approximately 34,000 customers of PAWC located in eastern Cumberland County and northern York County. As a result of the incident PAWC issued a "Do Not Consume" advisory.

By a December 23, 2005 order, Commission staff conducted an investigation into the cause of the high fluoride incident, the level of compliance by PAWC with the Public Utility Code and the Commission's regulations regarding safe and reliable water service, the applicable notification procedures, whether the problems were addressed and whether any improvements in the notification procedures were warranted. The Final Investigation Order and Release of Staff Report addressed the several areas of concern noted in the Commission's December 23, 2005 order specifically, the operational response of PAWC, the timeliness and adequacy of the public notice, the adequacy of alternative drinking water supplies, compliance with 52 Pa. Code § 67.1 (relating to notice to Commission), additional steps to inform and assist consumers, and the obligation to update emergency response plans.

The Commission's regulations provide that a utility shall notify the Commission by telephone within 1 hour after a preliminary assessment of conditions reasonably indicates that there is an unscheduled service interruption affecting 2,500 or 5%, whichever is less, of a utility's total customers in a single incident of 6 or more projected consecutive hours. 52 Pa. Code § 67.1(b).

In the context of the Commission's fluoride spill investigation, PAWC asserted that the term "service interruption" is not defined in the regulation and stated that the common understanding of this term requires an outage, supply cut off or cessation of service. PAWC contended that the incident did not result in the loss of service (i.e., customers had water that could be used for all purposes other than consumption). The Commission disagreed with PAWC's interpretation that the requirement in the Commission's regulations to notify the Commission of an incident by telephone is only triggered when there is a total outage of service.

The Commission formally commences this rulemaking to amend its regulations to clarify what the Commission deems a "service interruption" under § 67.1. The Commission proposes to provide clarity by noting that the term "service interruption" pertains to quantity and quality. The exact proposed language is set forth in Annex A.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 27, 2006, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commission, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Meeting held
May 4, 2006

Commissioners Present: Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson; Bill Shane; Kim Pizzingrilli; Terrance J. Fitzpatrick

Proposed Rulemaking for Revision to Chapter 67 of Title 52 of the PA Code Pertaining to Service Outages; Docket No. L-00060177

Proposed Rulemaking Order

By the Commission:

On March 10, 2006, the Commission adopted the Final Investigation Order and Release of Staff Report at Docket No. I-00050109 regarding the December 2005 fluoride release incident at the Pennsylvania American Water Company's (PAWC) Yellow Breeches Water Treatment

Plant in Fairview Township, Cumberland County. Pursuant to the March 10, 2006 Order, the Commission formally commences this rulemaking to amend our regulations to clarify what the Commission deems a "service interruption" under 52 Pa. Code § 67.1.

Background

By a December 23, 2005 order, Commission staff conducted an investigation into the cause of the high fluoride incident, the level of compliance by PAWC with the Public Utility Code and our Commission's regulations regarding safe and reliable water service and the applicable notification procedures. The investigation also addressed whether these procedures were complied with and whether any improvements in the notification procedures were warranted. As part of its inquiry, Commission staff met with representatives from the Department of Environmental Protection (DEP), the Cumberland County Emergency Management Services, PAWC and the Office of Consumer Advocate.

The Final Investigation Order and Release of Staff Report addressed several areas of concern noted in the Commission's December 23, 2005 order specifically, the operational response of PAWC, the timeliness and adequacy of the public notice, the adequacy of alternative drinking water supplies, compliance with 52 Pa. Code § 67.1 (Notice to Commission), additional steps to inform and assist consumers, and the obligation to update emergency response plans.

Discussion

This proposed rulemaking addresses the issue of notice to the Commission regarding service outages, 52 Pa. Code § 67.1. The Commission's regulations provide that a utility shall notify the Commission by telephone within one hour after a preliminary assessment of conditions reasonably indicates that there is an unscheduled service interruption affecting 2,500 or 5%, whichever is less, of a utility's total customers in a single incident of six or more projected consecutive hours. 52 Pa. Code § 67.1(b).

In the context of the fluoride spill investigation, PAWC asserted that the term "service interruption" is not defined in regulation and stated that the common understanding of this term requires an outage, supply cut off or cessation of service. PAWC contended that the incident did not result in the loss of service, (i.e., customers had water that could be used for all purposes other than consumption).

The Commission disagreed with PAWC's interpretation that the requirement in our regulations to notify the Commission of an incident by telephone is only triggered when there is a total outage of service. Water for consumption is the most vital and important aspect of service provided by a water utility and if consumers cannot drink it, then from their perspective and ours, service has been interrupted.

Chapter 67 (Service Outages) consists only of § 67.1 (General provisions). Section 67.1 uses the phrase "service interruption" but the phrase is not defined. In the March 10, 2006 Order, the Commission determined that is necessary to take the additional step of amending Commission regulations to ensure that regulated water utilities have a clear understanding of what the Commission deems a "service interruption."

In its March 10, 2006 Order, the Commission placed the water industry on notice that "service interruption" covers any interruption of service that affects the quantity or quality of water delivered to the customer. In arriving at that conclusion, the Commission took administrative notice that a similar DEP regulation defines a "service interruption" as "affecting quantity *or quality* of the water delivered to the customer." 25 Pa. Code § 109.708 (emphasis added). As noted earlier, water for consumption is the most vital and important aspect of service provided by a water utility, and if consumers cannot drink it, then from their perspective, and the Commission's, service has been interrupted. In addition, since the Commission and DEP work closely on water related matters issues, the Commission finds it reasonable to have the same regulatory definition of "service interruption."

Therefore, the Commission proposes to amend § 67.1 as set forth in "Annex A," to include a definition of "service interruption" as it pertains to water utilities.

Conclusion

The Commission seeks comment from the water industry and the statutory advocates, as well as from any other interested member of the public regarding the proposed change in our regulation. Interested parties will have 30 days from publication of this Order to file comments. Since the proposed amendment is concise and uncomplicated and we are committed to completing the amendment to our procedural regulations in a timely fashion, we will not provide for reply comments. Accordingly, pursuant to section 501 of the Public Utility Code, 66 Pa.C.S. § 501, the act of July 31, 1968 (P. L. 769, No. 240), known as the Commonwealth Documents Law, and regulations promulgated there under at 1 Pa. Code §§ 7.1—7.4, we amend the regulation as noted above and as set forth in Annex A; *Therefore*,

It Is Ordered That:

1. A rulemaking proceeding is hereby initiated at this docket to consider the revisions to Commission regulation in § 67.1 as set forth in Annex A.

2. The Secretary shall submit a copy of this order and Annex A to the Office of Attorney General for preliminary review as to form and legality.

3. The Secretary shall submit a copy of this order and Annex A to the Governor's Budget Office for review of fiscal impact.

4. The Secretary shall submit this order and Annex A for review and comments by the Independent Regulatory Review Commission and the designated Legislative Standing Committees.

5. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

6. A copy of this order and Annex A shall be served upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff, the central and regional offices of the Department of Environmental Protection, the Pennsylvania Chapter of the National Association of Water Companies and upon jurisdictional water and wastewater utilities.

7. Interested persons may submit an original and 15 copies of comments referencing the docket number of the proposed rulemaking within 30 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265. One copy of a diskette containing the comments in electronic format should also be submitted. A courtesy copy of written comments will be served upon the Commission's Law Bureau, Attn: Assistant Counsel Kimberly Hafner.

8. Comments should include any proposed language for revision and a clear explanation for the recommendation.

9. The contact person for this rulemaking is Kimberly Hafner, Assistant Counsel, Law Bureau, (717) 787-5000. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, (717) 772-4579.

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-249. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 67. SERVICE OUTAGES

§ 67.1 General provisions.

(a) Electric, gas, water and telephone utilities holding certificates of public convenience under 66 Pa.C.S. §§ 1101 and 1102 (relating to organization of public utilities and beginning of service**;** and enumeration of acts requiring certificate) shall adopt the following steps to notify the Commission with regard to unscheduled service interruptions. **The term "service interruption," when pertaining to water service provided by a water utility under the Commission's jurisdiction, covers an interruption of service affecting the quantity or quality of water delivered to the customers**.

* * * * *

[Pa.B. Doc. No. 06-2019. Filed for public inspection October 13, 2006, 9:00 a.m.]