

October 22th, 2004

Joe Deklinski, Executive Director
Pennsylvania House Environmental Resources & Energy Committee

Dear Joe:

Thank you for your hard work on the RPS / AEPS amendment. I'm very excited to see that low-impact hydropower is defined, that fuel cells are cleanly defined, that numerous loopholes have been closed, that there is some public reporting of credit trading and that the solar share and net metering are included.

Energy Justice Network's comments and recommendations regarding the draft amendment language to House Bill 2250 are as follows:

- 1) **The local land use preemption language should be removed.** This is a very controversial issue, especially when applied to waste coal burners, coal-mine methane, landfill gas (and possibly the landfills that would be considered part of the same "facility"), "biomass" incinerators, animal waste digesters (already a very controversial issue relating to hog factories and the Governor's ACRE proposal). It's also inherently undemocratic. In the case of rooftop solar, it could make sense, but anything beyond that (even wind power) could prove damaging. Legitimate siting issues have been raised with the wind farms that have been built in Somerset and Wayne counties. Without the local authority to regulate land use appropriately, these local impacts couldn't be dealt with.
- 2) **Municipal solid waste incineration should be excluded.** The language in HB 2250 that specifically excludes the burning of municipal solid, industrial, residual or any hazardous waste should be retained.

The amendment is currently worded such that the Harrisburg incinerator is the only trash incinerator in the state that would qualify. The Harrisburg incinerator is a nationally-known environmental justice issue and has drawn the attention of several national civil rights leaders, since it's located in a low-income, minority community, very close to the largest public housing projects in the region. For years, the incinerator was the most polluting dioxin source in the nation. The incinerator is now closed, but is being replaced with a new (larger) incinerator that is permitted to release up to 600 tons of air pollution each year, without using state-of-the-art pollution controls to limit fine particulate matter and without using the modern air monitoring equipment that can provide continuous emissions data on dioxin, mercury or other toxic metals.

This Harrisburg incinerator loophole seems to have been set up so that five out-of-state incinerators may also qualify (1 in New Jersey, 2 in Maryland and 2 in Virginia). By including Maryland's incinerators, the Pennsylvania RPS would contradict efforts made in Maryland's RPS to place limitations on MSW incineration.

MSW Incinerator	State	MW	Opened
Harrisburg	PA	23	1972
Harrisonburg / James Madison University	VA	2.5	1982
Baltimore S.W.R.R.F.	MD	60	1985
Harford County	MD	1.2	1/1988
Alexandria/Arlington	VA	22	2/1988
Warren Energy	NJ	13	4-7/1988

If PJM continues to expand or if the commerce clause is used to challenge the PJM limitation, approximately 40-45 additional out-of-state incinerators (which were opened between 1975 and 1988) could meet the definition.

- 3) **Fossil fuels should be removed.** Waste coal and coal-mine methane are not clean or renewable technologies and do not belong in this legislation. Even the newest existing and proposed waste coal burners have dirtier air emissions profiles than the new generation of coal-fired power plants like the proposed Longview coal plant in Morgantown, WV. Waste coal burners produce a toxic ash that has far higher concentrations of toxins like mercury than normal coal ash does. This ash is dumped back on the former waste coal sites without any groundwater protections like the liners used to protect groundwater from household garbage. Evidence shows that toxic leaching *is* a problem with waste coal ash, warranting the minimal protections that household trash gets. The waste coal burners themselves don't really know how much toxic pollution they're releasing to the air, since there are no requirements for testing of dioxin, ammonia, mercury or other toxic metals. The technology exists to test these emissions continuously throughout the year. New coal plants like Longview will have continuous monitoring for mercury, but the existing and proposed waste coal burners don't and won't, despite evidence that their emissions will be dirtier.

The requirements in the waste coal definition for fluidized bed boilers, limestone injection and fabric filters serve only to describe the current industry, not to place any protective limitations on them.

- 4) **Coal-mine methane should not compete with wind.** While coal-mine methane (a fossil fuel) doesn't belong in the legislation, it's particularly problematic that it has been moved to the first tier, where it can compete with wind power. As currently defined, there doesn't seem to be any assurances that coal-bed methane operations won't be able to meet the coal-mine methane definition simply by digging a hole and claiming an intention to use the coal-bed for mining purposes. Coal-bed methane operations are far more damaging than coal-mine methane (see www.energyjustice.net/naturalgas/cbm/ for details) and if coal-mine methane is included (in a second tier, of course), it ought to be defined carefully to ensure that it only applies to pre-existing, real mining operations.
- 5) **Biomass definition corrections / clarifications:** the "pallets, crates, and drainage" term should read "pallets, crates, and dunnage." This is typical language from other biomass definitions. Dunnage is external packing material. However, no one really burns this stuff and it's rather pointless to be including these.

More importantly, the "agricultural sources including" language should be changed to "vegetative agricultural sources including" so that it's not construed to apply to direct incineration of animal wastes. This may seem like a small point, but there is a proposal for a large poultry litter incinerator in eastern Maryland, that would be a major source of arsenic pollution (arsenic is used in poultry feed and ends up in the waste). Poultry litter incineration was included in the Maryland RPS, but with serious restrictions so as not to harm the poultry litter pelletization market, which is a more environmentally-sound solution to poultry litter management. Since Pennsylvania doesn't have a comparably large supply of dry, burnable animal wastes, there are no proposals for electricity-generating animal waste incinerators in Pennsylvania. The Pennsylvania RPS should not contain unqualified support for technologies that a neighboring state has sought to limit.

There are a few other potential pitfalls with biomass energy crops and agricultural wastes. It would be wise to prevent the use of the following types of biomass energy crops from qualifying in the RPS:

- *genetically modified organisms;*
- *plants or trees used in phytoremediation projects;*
- *plants or trees which have been exposed to sewage sludge or other wastes used as fertilizer;*
- *plants or trees which have been exposed to pesticides or herbicides that are formulated with halogens or heavy metals*

- 6) **Biologically derived methane gas needs limitations:** Landfill gas is more than just methane. It contains hundreds of toxic chemical contaminants that rightfully ought to be filtered out and isolated, not burned. Burning of unfiltered landfill gas has been a very controversial issue in multiple landfill communities in Pennsylvania. To be protective of these communities, filtering of halogenated compounds and mercury should be required.

Animal waste digesters should be limited to use of small-scale digesters that do not use waste from CAFOs. Sewage sludge digesters should be limited so that the sludge residual from them should be landfilled (or better yet, monofilled), rather than being dumped on farm fields. Digesters don't remove the toxins from sewage sludge.

- 7) **“Shall include” should be changed to “shall mean.”** There are several places in the Alternative Energy Sources definition where the term “include” or “including” could be construed to allow for other non-specified technologies to be used, even if unintended. To close these potential loopholes, the beginning of the definition, as well as subpoints 6(b), 7 (two references), 9, and 10 should be modified to use “shall mean” language.

- 8) **Out-of-state generation can still swamp the RPS.** A limit on the use of existing generating capacity is necessary to prevent out-of-state generation from watering down the market for new generating capacity. A cap of 2-3% would be appropriate to allow the existing resources in Pennsylvania to qualify without damaging the market for new wind power. Without such a cap, a large portion of the RPS could be filled easily by importing landfill gas, hydroelectric and wood burner power from throughout PJM. It would be most appropriate to place this cap on Tier I, where it's most needed. If a cap on existing generation doesn't seem feasible, placing a size limit on low-impact hydropower of 30-40 MW would be appropriate and would help prevent the RPS from being flooded with existing generation. A landfill gas filtering requirement would also help address this problem.

- 9) **Energy efficiency cost issues should be addressed.** Conservation and efficiency are the best energy technologies – cleaner than the cleanest forms of generation. To ensure that they are cost-effective, legislation should define the cost issues as follows:

An electric distribution company or electric generation supplier that subsidizes the energy efficiency improvements made by a customer may count the electric energy saved by those improvements toward the energy efficiency and demand side management measures contained in this Act. The electric distribution company or electric generation supplier may count the entire energy savings regardless of the amount of its financial support, i.e., if the subsidy is 20% of the incremental cost of installing an energy efficient technology, the electric distribution company or electric generation supplier may count 100% of the electricity savings.

- 10) **Tier growth rates:** Tier I grows too slowly (8% by the 14th year), allowing half of the requirement to be put on hold until end of RPS term, then jolting the market with a near-doubling of the minimum requirement within the 15th year. Especially if there are no limits on existing generation, the market for new renewables will be held back until the RPS is filled with all available existing capacity. A more even growth rate would be more predictable for the market to handle and would bring new renewables online sooner.

The solar share needs a steady increase as well. We support the ramp-up language supplied in the comments from Ron Celentano:

As part of the Tier I share the minimum percentage to be generated from solar photovoltaic energy shall cumulate to 0.50% by the fifteenth year, leaving 14.50% to be supplied by other Tier I alternative energy sources. The minimum cumulative percentage to be generated by solar photovoltaic energy each year shall be: Year 1 - 0.0013%; Year 2 - 0.0030%; Year 3 - 0.0063%; Year 4 - 0.0120%; Year 5 - 0.0203%; Year 6 - 0.0325%; Year 7 - 0.0510%; Year 8 - 0.0840%; Year 9 - 0.1440%; Year 10 0.2500%; Year 11 - 0.2933%; Year 12 - 0.3400%; Year 13 - 0.3900%; Year 14 - 0.4433%; Year 15 - 0.5000%, and thereafter.

Tier II should be a ceiling, not a floor, like in all other tiered RPS laws and PA proposals. Senate Bill 1030 as well as the Rendell administration's proposal, set up the second tier as a ceiling, not a floor. This is in line with the existing RPS laws in New Jersey and Connecticut, where the percentages put forth for the second tier are able to be filled through technologies in either tier.

- 11) Credit units and compliance fees.** The credit units should be kept small (either in kwh or in blocks of 10 or 100 kwh), so that solar and efficiency can be measured more accurately than if MWh credit units were used. It appears that in the change to kwh credit units, the Alternative Compliance Payment (ACP) was left in the tens of dollars, which would be 1000 times too high if kwh credit units are used. The ACP for Tier I renewables should be in the order of 6 cents/kwh (\$60/MWh), with the exception that solar share credits would have a separately-tracked ACP of 30 cents/kwh (\$300/MWh). This is the level that New Jersey found necessary to make a solar share viable. For background on NJ's solar share compliance fee, see: http://www.njcep.com/srec/docs/Alt_Compliance_Pay_Order.pdf
- 12) Credit-trading system ought to be public and transparent.** As Maryland's RPS does, it is best to ensure that the credit-trading system stays in the public sector, while allowing private contractors (like PJM) to help administer it. If PJM is to privately manage the trading system, the legislation should specify that the following details be made publicly available through an Internet web site: current status of credits as they're generated, specifying the facility that generated the credit, the fuel type, location and owner of the facility; current holder of the credit and information on transfers of credits from any parties generating credits from Pennsylvania facilities or transferring credits with a company regulated by the Act.
- 13) Alternative Compliance Payment moneys should be administered by a publicly-managed fund dedicated to granting the money to Tier I technologies needing the most financial support.** These fees should not be distributed to entities like the Sustainable Development Funds that are not democratically accountable to the public. Since Sustainable Development Funds are based on utility territories, it would also be unnecessarily complicated to calculate distribution of funds, since energy marketers don't always fall cleanly within these territories. Alternative Compliance Payments from non-compliance with the solar share should be kept separate and dedicated strictly to solar photovoltaic grants. To maximize public support for the RPS, these grants should be limited to public bodies like our cash-strapped municipalities, counties and school districts.
- 14) Additional Double-counting measures are needed to avoid fraud and to protect green pricing programs.** Protection from double-counting with other state RPS programs is a great start. However, three very important types of double-counting should be added to protect ratepayers, green energy marketers, voluntary consumers of green energy products, and emissions attributes markets. Section 6 should be renamed "Consumer protections from double-counting" and the following language should be added:

An electric distribution supplier or electric generation company shall not satisfy Pennsylvania's alternative energy portfolio requirements using alternative energy that has been marketed at a premium as an environmentally preferable energy product; that has been or is in the process of being

recovered in the rate-base of a regulated utility in another state; or where the carbon or other environmental attributes have been separately sold into credit trading markets for such attributes.

- 15) Fuel cell clarifications:** We strongly support the careful effort to cleanly define fuel cells in the amendment. To clarify things further, it would be best to differentiate between energy inputs and hydrogen source, encouraging hydrogen to be sourced from electrolysis of water using energy from the sources contained in Tier I, sections 1 through 5.
- 16) Cost recovery needs to be justified and reasonable.** Alternative Compliance Payments should not be recoverable from ratepayers, if we're to expect the RPS to be complied with. The Public Utility Commission should have oversight, to ensure that cost recovery is justified and reasonable, not automatic.
- 17) Geographic scope:** It seems that the intention of the amendment is to limit the use of alternative energy resources to those within the old PJM region. However, the words used to define it aren't used in the rest of the amendment. Since the old PJM region doesn't cover the entire state of Pennsylvania, it may not be feasible to limit the geography in this way. If the PJM West expansion is included (or if the full current PJM territory is used), there will be a substantial amount of existing generation that could water down the effectiveness of the RPS unless a cap is placed on the use of existing generation. Since the Interstate Commerce Clause could be used to challenge any geographic limitation used in the legislation, the safest way to achieve the objective is to limit existing capacity and to steer the compliance payments towards in-state renewables development.
- 18) Interconnection standards:** We support the timely development of interconnection standards and the specific recommendations submitted by Ron Celentano for Section 7.
- 19) Grammar:** "homeland security assignments[,] emergency services facilities"; "The Commission or it[']s designee"
- 20) Reporting period numbering is confusing.** The reporting period in the amendment is defined as "the twelve-month period from July 1 through June 30. A reporting year shall be numbered according to the calendar year in which it begins and ends." Does this mean that a reporting year would be "2005-2006" or is it supposed to be the year it begins or ends?