<u>SUMMARY OF *KEEP POWERING PENNSYLVANIA ACT*:</u>
<u>LEGISLATION AMENDING THE ALTERNATIVE ENERGY PORTFOLIO STANDARDS ACT TO INCLUDE NUCLEAR ENERGY AS A QUALIFYING TIER III RESOURCE</u>

What does the legislation do?

- HB 11, the *Keep Powering Pennsylvania Act*, amends the Alternative Energy Portfolio Standards Act ("AEPS Act") of 2004, 73 P.S. §§ 1648.1 - 1648.8, to create a new "Tier III" alternative energy credit program that will recognize the value that all zero-emission electric generation resources provide to the Commonwealth, including zero-emissions nuclear energy.

Like other forms of generation that receive compensation via AEPS for their environmental benefits, the new Tier III AEPS program will allow nuclear energy to be compensated for its environmental benefits.

- The AEPS Act currently recognizes 16 forms of electricity production that are eligible to receive alternative energy credits under the existing Tier I and Tier II AEPS credit programs. The creation of the Tier III AEPS credit program addresses the fundamental unfairness that, even though Pennsylvania's nuclear energy plants provide 93 percent of the Commonwealth's zero-carbon electricity and emit no harmful EPA-regulated air pollutants, nuclear energy is not permitted to participate in Pennsylvania's AEPS program.

Applies to the output of zero-emission electric generation facilities, including nuclear, that meet statutorily defined criteria and are designated by the Pennsylvania Public Utilities Commission (PAPUC or Commission) to participate in the program.

- To qualify as a Tier III AEPS resource, the zero-emission generating station must be interconnected within the regional transmission organization with responsibility for Pennsylvania (PJM Interconnection), and demonstrate that Pennsylvania's environment will be negatively impacted if the Tier III resource were to cease operation or (in the case of a new resource) fail to come into service.

- A generating station seeking to qualify as a Tier III resource must file written notice of its qualifications as a Tier III alternative energy source with the PAPUC, and the notice will be published in the Pennsylvania Bulletin with an opportunity for comment.

- The commission shall review the notice of qualifications and all comments and rank each application from first to last, based on the qualifying criteria. No later than 90 days after filing of the notice of qualifications, the commission shall select the applicants that will participate in the Tier III program according to their ranking. Beginning with the top-ranked applicant and continuing in rank order, the commission shall continue to select applicants up to the point at which the combined sum of megawatt-hours of estimated generation by all selected applicants equals approximately 50 percent of the total number of megawatt-hours of electricity distributed by electric distribution companies in the Commonwealth.

- In order to initially qualify as a designated Tier III resource, the generating station must make a commitment to operate for at least six AEPS reporting periods (six years). A reporting period is the 12-month period that runs from June 1 through May 31. Once designated as a Tier III resource by the Commission, the generating station will stay in the program as long as it continues to meet the qualification criteria.

The legislation prohibits "double dipping."

- Units participating in another state's environmental program or receiving cost-based recovery through state-regulated rates cannot participate in the Pennsylvania Tier III AEPS program.

- Solar and wind generation resources are eligible to qualify for Tier III, but the same unit of output from a wind or solar resource may only be compensated once under either Tier I or Tier III, not both.

- The Tier III program shall cease if Pennsylvania enacts a statewide emissions fee program or participates in any federal or regional greenhouse gas program that creates an effective cost of carbon in Pennsylvania of at least $15 per ton.

The Tier III credit price is tied to the value of AEPS Tier I resources, with a price cap.

- The Tier III credits represent the environmental attributes of one megawatt hour (MWh) of energy produced from a zero-emission generation resource. The formula in the legislation to establish the per MWh credit price generally ties Tier III to the price of Tier I AEPS resources, but also includes a price floor and ceiling that caps the maximum Tier III credit price. The formula to establish the Tier III price uses forward looking market transaction prices for Tier I credits, which are accessible to the PUC through publicly available market data. The formula to establish the floor and ceiling utilizes the actual Tier I price as published in the PAPUC's AEPS annual report.

Pennsylvania electric distribution companies (EDCs) will purchase the credits on behalf of all customers to streamline the process.

- EDCs will purchase Tier III AEPS credits for all retail customers and not just those taking electric supply service from the EDC. Each EDC shall purchase Tier III AEPS credits equal to 50% of the electricity sold in it its service territory during the applicable reporting period. However, if the total quantity of available Tier III alternative energy credits is insufficient to meet the 50% of sales, the EDCs will not be required to meet the full obligation.

The EDCs will recover the costs to purchase Tier III AEPS credits in a competitively-neutral and non-discriminatory manner.

- All direct and indirect costs incurred by EDCs including but not limited to the purchase of Tier III alternative energy credits shall be recovered on a full and current basis pursuant to a non-bypassable automatic adjustment clause under 66 Pa.C.S. § 1307.

Tier III credit transfer and payment process

- Not later than 35 days following the close of each reporting period, each Tier III alternative energy source shall transfer its Tier III alternative energy credits for that reporting period to the alternative energy credit program administrator. Not later than 7 days after all Tier III alternative energy sources have transferred their credits, each electric distribution company shall purchase Tier III alternative energy credits from the alternative energy credit program administrator at the Tier III alternative energy credit reporting period price for the reporting period to satisfy its 50% of sales Tier III obligation. If the total number of Tier III credits generated exceeds 50% of EDC sales, then each Tier III supplier gets paid for a pro-rated portion of its credits so that total purchases equal 50% of EDC sales.

The legislation includes a FERC-suggested "safety-valve" mechanism to allow Pennsylvania's AEPS program to co-exist with competitive markets in response to potential federally-mandated changes to the regional electricity market.

- The Federal Energy Regulatory Commission ("FERC") is considering changes to the rules of the PJM Interconnection wholesale electricity market that could restrict the ability of AEPS resources to participate in the PJM auction for one of the products that electricity generators sell in into the PJM market (called "capacity").

- The legislation provides the ability for Pennsylvania to implement a mechanism also contemplated by FERC[1] that would allow AEPS Tier III resources to continue to receive both AEPS credits and revenue for capacity equal to the PJM capacity auction clearing price, which is consistent with status quo, and should cause no material changes to Pennsylvania consumers.

- The mechanism would be triggered only if the restriction on the participation of AEPS resources in the PJM capacity market is implemented, and FERC has approved the PJM framework to accommodate the new construct.

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[1] FERC has indicated that it wants PJM to accommodate state AEPS and other programs by allowing the state-supported resources (supply), along with a commensurate amount of load (demand), to be "carved-out" of the PJM capacity auction and instead be compensated directly via state capacity procurements. PJM has stated that it is willing to incorporate any such state capacity procurement mechanism into its billing processes to streamline implementation for retail suppliers.