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December 13, 2006

COPY

Via Hand Delivery

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Bldg., 2nd Floor
400 North Street
Harrisburg, PA 17120

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Re: Implementation of the Alternative Energy Portfolio Standards Act of 2004
Docket No. L-00060180

Dear Secretary McNulty:

Enclosed please find an original and 15 copies of US Steel Corporation's comments to the Commission's Proposed Rulemaking Order entered July 25, 2006 in the above captioned matter. An electronic copy of these comments has also been provided to the Bureau of Conservation, Economics and Energy Planning and the Law Bureau.

Very truly yours,

Daniel P. Delaney
PA Attorney I.D. 23955
Counsel for US Steel Corporation

DPD/cem
Enclosures

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of the Alternative Energy Portfolio Standards Act of 2004.	:	Docket No. L-00060180

COMMENTS OF UNITED STATES STEEL CORPORATION TO PROPOSED RULEMAKING ORDER.

United States Steel Corporation ("US Steel") files these comments in response to the Public Utility Commission's ("Commission's") above captioned Proposed Rulemaking Order entered at this docket on July 25, 2006. The regulations proposed in that Order address implementation of the Alternative Energy Portfolio Standards Act of 2004 ("AEPS" or "Act 213"), 73 P.S. §§ 1648.1-1648.8 and were published in the Pennsylvania Bulletin on October 14, 2006 (36 Pa. B. 6289). US Steel's Mon Valley Works is one of the largest consumers of energy in Pennsylvania and model energy conservation and recycling initiatives are currently employed at that site. US Steel has previously filed comments in Docket M-00051865 and participated as a member of the Commission's demand side management/energy efficiency working group. US Steel's Mon Valley Works has been issued an interim qualification as a Tier II alternative energy system under Act 213 by the Commission and Pennsylvania Department of Environmental Protection ("DEP") in January 2006. US Steel provides the following comments concerning the proposed regulations appended to the July 25, 2006 Order.

Summary of Comments

Sections 1648.7 and 1648.3 of Act 213 provides the Commission with primary responsibility for implementing the Act by regulation and enforcing its regulations. DEP's responsibility is secondary and limited. Proposed Section 75.33(f) should be amended in the final regulations to permit an applicant to respond to DEP's verification of environmental compliance and for the Administrator to make an independent determination of the application. Due process requires that the applicant should have an opportunity to respond to DEP verifications before they are applied by the Program Administrator. DEP should be required to serve its verification on the applicant who then should be provided an opportunity to respond by comment and evidence if necessary.

Proposed Section 75.33(h) authorizes the Commission to suspend or revoke a facility's alternative energy system status for major violations of environmental regulations. This section should be amended in the final rulemaking to provide that loss of qualified status for environmental compliance issues must be tied to violations directly related to the operation of the alterative energy system. This revision is supported by Section 1648.7(b) of Act 213. Any revocations of qualifying status for environmental compliance issues should be tied directly to violations by the applicant's facility which has been qualified as an alternative energy source. Any threatened loss of alternative energy system certification for an environmental compliance reason requires the Commission to provide the facility with a due process opportunity to contest the revocation beforehand.

Proposed Section 75.35 addresses the power of the Administrator to perform administrative functions necessary to the implementation of Act 213. Subsection (b)(6) should be amended in the final rulemaking to permit the Administrator to have the power to make an independent decision on the alternative energy qualification applications and materials. DEP verifications on environmental compliance and fuel source issues should be received as evidence but not be considered binding on the Administrator's determinations on these issues. Due process requires that the applicant have an opportunity to provide responsive comments and possibly evidence in response to the DEP verification before it is relied upon by the Administrator in making a decision on an application. The applicant's ability to appeal an Administrator's determination to the Commission pursuant to 52 Pa. Code § 5.44 is not a complete remedy since such an appeal may unnecessarily add time and expense to the application procedures.

Proposed Sections 75.37 and 75.38 should be amended in the final regulations to provide a clear procedure for the declaration of a force majeure which protects the due process rights of interested parties. Any request for a force majeure determination, whether upon the Commission's own initiative or upon the request of an EDC or EGS should be published for comment in the Pennsylvania Bulletin. Interested parties should be permitted a reasonable opportunity to file a response to the force majeure request. Adoption of this procedure should not be unduly burdensome on the EDCs or EGSs or the Commission in determining whether a force majeure is appropriate under the circumstances.

Proposed Section 75.39 establishes the procedures for a default service provider to recover from its customers the reasonable and prudently incurred costs for its Act 213 compliance. The Commission should amend this section in the final rulemaking to clarify that a default service provider can comply with the section and the relevant sections of the default service regulations by entering into long-term, multi-year contracts for alternative energy or for alternative energy credits. Allowing long-term contracts may have a beneficial effect on compliance costs incurred by default service providers and encourage the development of a market for alternative energy and credits in Pennsylvania.

Proposed Section 75.42 establishes the requirements for the credit registry to be designated by the Commission. Subsection 75.42(d) should be amended in the final rulemaking to require the Administrator to issue aggregate pricing data on alternative energy credits by Tier on a six month basis. Regular reporting of pricing data will provide market participants with the general idea of the value of their credits and assist in the development of a transparent credit market in Pennsylvania.

Comments

§ 75.33 Alternative Energy System Qualification.

This section establishes a procedure for a facility producing alternative energy credits under the AEPS to be qualified as an alternative energy system by the alternative energy credit Program Administrator. US Steel's comments to this proposed section concern the primary authority of the Commission to implement Act 213. The Commission's Tentative Order entered at Docket No. M-00051865 on January 31, 2006

(the "Tentative Order") identified the Commission as the agency with principal responsibility to implement Act 213.

The Tentative Order identifies the Commission as the agency with principal responsibility to implement Act 213. The order determines that Section 1648.3(e) authorizes the Commission to promulgate regulations establishing standards and processes for resource qualification and alternative energy credit creation. (Order at page 6). US Steel submits that the Tentative Order correctly interpreted Act 213 in determining that the Commission has principal responsibility to implement and enforce Act. Sections 1648.7(a) and (b) of Act 213 provide the Commission with the authority to certify alternative energy sources with some assistance of the DEP. The specific identifications of the duties and responsibilities of the alternative energy credits Program Administrator in Section 1648.3(e) indicates that the Commission is to have primary responsibility for implementing the Act by regulation and enforcing its provisions. DEP responsibility is secondary and limited. The Commission should adopt these determinations from the Tentative Order in its final AEPS implementation regulations.

1. Section 75.33(f).

US Steel has comments concerning subsection (f) of this section which provides:

> (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.

DEP verifications on environmental compliance and energy processes should be subject to responsive comment by Applicants requesting alternative energy source qualification and should be considered advisory to the Commission or the Administrator. Section 1648.7(b) requires DEP to ensure that all qualified energy sources meet

applicable environmental standards and verify that the source meets the energy source standards contained in the Act 213 definitions. Proposed Section 75.33(f) states that DEP will make findings on these issues and verify them before a facility will be qualified as an alternative energy source. The subsection appears to require the DEP's verification before an application for alternative energy system status can be granted. US Steel believes that this proposal could result in a violation of an applicant's due process rights to respond to evidence concerning its application for certification. The Commission should amend this proposal in the final regulations to permit an applicant to respond to DEP's verification and for the Administrator to make an independent determination on the application.

Due process requires that the applicant for certification should have an opportunity to respond to the DEP verifications before they are applied by the Program Administrator. The DEP should be required to serve its verified findings on the applicant who then should be provided an opportunity to respond by comment and evidence if necessary. The Administrator should be free to make his own evaluation of the DEP verifications and to reach an independent conclusion on the application. Section 1648.3(e)(2)(i) specifically provides the Administrator with authority to qualify alternative energy systems. Since the DEP verifications are presented as evidence concerning the requested alternative energy source qualification, the applicant should be permitted all due process opportunities to address the evidence on its application and the Administrator should be free to act as an independent fact finder on all of the issues.

2. Section 75.33(h).

US Steel also has the following comment concerning subsection (h) of this section which provides:

> (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 at § 75.32. 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.

As recognized by this section, the power to revoke alternative energy system status for environmental compliance reasons is subject to due process requirements and should be reasonably applied. Review of environmental compliance issues should be closely related to the purposes of Act 213. Unrelated environmental violations should not provide a basis for revocation of a facility's alternative energy resource qualification. Revocations for environmental compliance issues should be subject to the following limitations.

Loss of qualified status for environmental compliance issues must be tied to violations directly related to the operation of the alternative energy system. US Steel submits that the Commission should clarify this proposed regulation in the final rulemaking to state that for a facility to lose its qualified status as a result of an environmental violation, the violation must be directly related to the operation of the alternative energy facility. AEPS Section 1648.7(b) provides that "[t]he department shall ensure that all qualified energy sources meet all applicable environmental standards and shall verify that an alternative energy source meets the standards set forth in Section 2." This section clearly applies to the qualified alternative energy sources

meeting the applicable environmental standards. Any revocations of qualifying status for environmental compliance violations should be tied directly to violations by the applicant's facility which has been qualified as an alternative energy source. This distinction is important for industrial customers whose qualified alternative energy system may be located at a site with other facilities subject to environmental standards or requirements whose operation or status is not directly related to the production of alternative energy as that term is defined in the Act. An interpretation which would revoke a facility's alternative energy status because of an unrelated environmental violation at the site is unfair to industrial alternative energy producers and inconsistent with the purpose of the Act. US Steel submits that Act 213's purpose is to encourage the development and production of alternative energy in Pennsylvania. There is no language in the Act which would support a conclusion that it is also intended to provide another tool for general environmental compliance unrelated to alternative energy production. US Steel therefore submits that the Commission should clarify this proposed regulation on the scope of environmental compliance in its Final Order.

Any threatened loss of alternative energy system certification for an environmental compliance reason requires the Commission to provide the facility with a due process opportunity to contest the proposed revocation beforehand. Revocation of an alternative energy system certification constitutes an adjudication under Act 213 which requires the due process protections of an opportunity to be heard before the revocation is effective. US Steel submits that any proposed revocation should be the subject of a complaint by the Commission naming the alternative energy provider as the respondent with a complete description of the alleged environmental violation. US Steel

submits that the provider should have a full opportunity to respond to the complaint with evidence prior to a final action of the Commission.

Alternative energy system certification should be restored to the facility upon resolving the environmental issue without requiring the facility to go through the complete recertification process. US Steel submits that the alternative energy system certification which has been suspended or revoked because of an environmental compliance issue should be restored upon resolving that issue without requiring the facility to go through a complete recertification process. If the environmental compliance issue can be resolved in a short period, it would be contrary to the public interest to delay the restoration of the certification for an extended period while the facility is recertified. If the alternative energy credits are not available because of a lack of certification, the operator may not operate the facility while the certification is not in place. Since Act 213 is designed to encourage the production of alternative energy in Pennsylvania, it is consistent with that purpose that certifications should be restored to a facility directly upon resolving the environmental issue without a lengthy complete recertification process.

§ 75.35 Alternative Energy Credit Program Administrator.

This section addresses the powers of the Program Administrator to perform administrative functions necessary to the implementation of Act 213. US Steel has a comment concerning Section 75.35(b)(6).

1. Section 75.35(b)(6).

This section provides that the Program Administrator has the duty to:

> (6) Reject applications that the Department advises to be non-compliant with environmental regulations or Section 75.32.

US Steel believes that this proposed regulation overstates the Department's authority under Act 213 and unnecessarily limits the Administrator's ability to consider all the evidence before making a decision in regard to alternative energy system qualification.

The Program Administrator should have the power to make an independent decision on the alternative energy system qualification application and materials before her. AEPS Section 1648.3(e)(2)(i) provides that the alternative energy credits Program Administrator has authority to administer the process for qualifying alternative energy systems. US Steel submits that this section provides the Administrator with the power to make independent decisions on alternative energy system qualifications based on the application and the materials before her. The authority to make this determination is clearly placed by Act 213 in the Administrator. DEP verifications on environmental compliance and fuel source issues should be received as evidence but not be considered binding on the Administrator's determinations on these issues. Due process requires that the applicant have an opportunity to provide responsive comments and possibly evidence in response to the DEP verifications or other evidence submitted by third parties before it is relied upon by the Administrator in making a decision on an application.

Applicants should have a right to respond to any evidence submitted by the DEP or an intervening party prior to the Administrator's decision. Since qualification as an alternative energy system is an adjudication under Act 213, applicants should have a right to respond to any evidence submitted by the DEP or any intervening party prior to the Administrator's decision. Since the applicant has the burden of proof to establish

that it qualifies as an alternative energy system, it must have the ability to respond to any evidence submitted by a third party concerning the application.

The Commission's Proposed Rulemaking Order at this docket states that the Commission will retain ultimate authority to review and modify the decisions of the Program Administrator which will be appealable pursuant to 52 Pa. Code § 5.44. (Order at p. 13). US Steel submits, however, that the ability to appeal an adverse determination is not a complete remedy. Such an appeal adds time and expense to the applicant's efforts to obtain an alternative energy system certification. US Steel submits that it would be more efficient to authorize the Program Administrator to consider the evidence presented by DEP and make an independent determination on whether the alternative energy certification is appropriate. Providing this authority to the Administrator may avoid unnecessary appeals to the Commission and result in more efficient procedures for the certifications.

§ 75.37 General Force Majeure.

This section addresses the Commission's authority to issue an order declaring whether a force majeure exists. US Steel submits that specific procedures should be contained in the regulations concerning the declaration of force majeure either under this section or Section 75.38. US Steel has the following comments concerning Section 75.37(a).

1. Section 75.37(a).

This section provides:

> (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 shall include separate force majeure determinations for the Tier I

alternative energy source, Tier II alternative energy source, and solar photovoltaic requirements of § 75.31.

US Steel submits that the Commission should identify procedures for a Force Majeure determination to be requested and implemented which will provide adequate notice and opportunity for interested parties to respond to such requests prior to Commission action. The Commission should adopt procedures for its determination of a Force Majeure request which protects the due process rights of interested parties. Any request for a Force Majeure determination, whether upon the Commission's own initiative or upon the request of an EDC or EGS, should be published for comment in the Pennsylvania Bulletin. If the force majeure request is made by an EDC or EGS, that party should be required to serve a copy of the request upon all parties with whom the EDC or EGS has agreements for the purchase of alternative energy credits. Interested parties should be permitted a reasonable opportunity to file a response to the Force Majeure request. In determining whether Force Majeure is appropriate, the Commission should review these comments and address them in its order on the request. The filing of comments by all parties will permit the Commission to act with the benefit of the information and positions contained in those comments. Adoption of this procedure should not be unduly burdensome on the EDCs or EGS or the Commission in determining whether a Force Majeure is appropriate under the circumstances.

§ 75.38 Special Force Majeure.

This section authorizes an EDC or EGS not in compliance with Section 75.31 to petition the Commission for a force majeure determination within 45 days of the conclusion of a reporting period for which the Commission did not previously find a force majeure to exist. As explained in its comment to Section 75.37, US Steel submits that

the Commission should have an adequate procedure to allow interested parties to respond to a possible force majeure before it is declared. Subsection (b) contains the only procedure identified in this section, which provides as follows:

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

Although this section does provide for public notice, it does not specifically provide an opportunity for interested parties to file a comment in response to the EDC or EGS petition for a force majeure determination. The filing of comments by interested parties will permit the Commission to make an informed decision concerning whether a force majeure declaration is appropriate under all of the circumstances. This comment opportunity is particularly important to facilities qualified as alternative energy systems since these parties are likely well informed of market conditions and will be in a position to respond to a petition as appropriate. Permitting comments to be filed by these parties is also appropriate since the declaration of a force majeure could have an economic effect on the market for alternative energy credits. The Commission should permit comments prior to declaring a force majeure so that it will have the benefit of the position of all commenting market participants before taking such an action.

§ 75.39 Alternative Energy Cost Recovery.

This section establishes the procedures for a default service provider to recover from its customers the reasonable and prudently incurred costs for its compliance with Act 213. Subsections (b) and (c) of this section provides that the default service provider should use a competitive procurement process for alternative energy and alternative energy credits as identified in the default service provisions at 52 Pa. Code § 54. US Steel submits that the Commission as part of this section should clarify that a

default service provider can comply with this section and the relevant sections of the default service regulations by entering into long-term, multi-year contracts for alternative energy or for alternative energy credits. This clarification will provide guidance to default service providers and will assist in the development of an alternative energy market in Pennsylvania. Allowing long-term contracts for alternative energy and for alternative energy credits may also have a beneficial effect on the compliance costs incurred by default service providers. Long-term contracts may result in the establishment of a larger market in Pennsylvania for alternative energy and for alternative energy credits. US Steel submits that the Commission should amend this proposed section to add that clarification in its final rulemaking.

§ 75.42 Alternative Energy Credit Registry.

This proposed section establishes the requirements for the credit registry to be designated by the Commission. Subsection (d) concerns the release of information to the public involving alternative energy credit transactions. This subsection provides:

> (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.

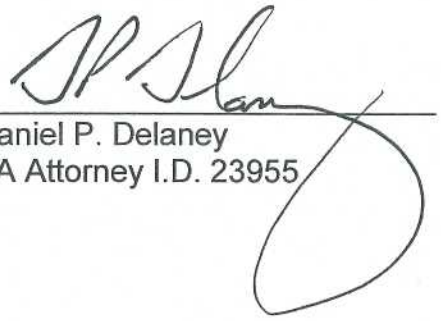
This subsection should be amended in the final rulemaking to require the Administrator to issue aggregate pricing data on alternative energy credits by Tier on a six month basis. Regular release of this information on an aggregate basis would assist the development of a transparent credit market by informing the participants of the possible value of their credits on a regular basis. The use of aggregate data would respect the privacy rights of participants in particular transactions. Public disclosure of this

information on a regular basis will aid in the development of an energy credit market in Pennsylvania.

US Steel appreciates the opportunity to have provided these comments in response to the Commission's Proposed Rulemaking Order.

WHEREFORE, United States Steel Corporation respectfully requests the Commission to incorporate these comments in adopting final regulations for the implementation of the Alternative Energy Portfolio Standards Act.

Respectfully submitted,



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