

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of the Alternative Energy Portfolio Standards Act of 2004.	:	Docket No. M-00051865
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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
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COMMENTS OF UNITED STATES STEEL CORPORATION.

United States Steel Corporation (“US Steel”) files these limited comments in response to the Public Utility Commission (“Commission”) Order entered at these dockets on November 18, 2005 and to the Secretarial Letter dated February 8, 2006 requesting comments on certain identified issues. These comments address the recovery by electric distribution companies (“EDCs”) or other Default Service Providers (“DSPs”) of the cost to comply with the Alternative Energy Portfolio Standards Act of 2004 (“Act 213”), 73 P.S. §§ 1648.1-1648.8. 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 an alternative energy system under Act 213 by the Commission and Pennsylvania Department of Environmental Protection

in January 2006. US Steel provides the following limited comments to several of the issues identified in the February 8, 2006 Secretarial Letter.

Issue

1. Should Act 213 cost recovery be addressed in the Default Service regulations as opposed to a separate rulemaking? Is it necessary to consider Act 213 cost recovery regulations on a different time frame in order to encourage development of alternative energy resources during the "cost recovery period"?

Comment

Act 213 cost recovery by an EGS or other DSP should be addressed in the default service regulations. Section 3(d) of Act 213, 73 P.S. § 1648.3(d), mandates compliance by EDCs and electric generation suppliers ("EGSs") at the end of the cost recovery period as defined in Section 2 of that Act. Section 3(a)(3) of Act 213, 73 P.S. § 1648.3(a)(3), provides that an EDC will recover the cost of alternative energy voluntarily acquired during its cost recovery period in the first year following expiration of the cost recovery period. Since the period for mandatory compliance with Act 213 and the initial opportunity for cost recovery are both tied by the Act to the initiation of default service, it is reasonable to address Act 213 cost recovery in the default service regulations. Addressing cost recovery in the default service regulations will have a positive effect on the development of alternative energy sources in Pennsylvania. Identifying the procedures and guidelines for recovery will encourage EDCs to purchase alternative energy or to bank credits during their cost recovery periods with confidence that these costs will be recovered in an established procedure.

Issue

2. Do the prevailing market conditions require long-term contracts to initiate development of alternative energy resources? May Default Service Providers employ long-term fixed price contracts to acquire alternative energy resources? What competitive procurement process may be employed if the Default Services Provider acquires alternative energy resources through a long-term fixed price contract?

Comment

The Commission's proposed default service regulations do not define prevailing market price or conditions in the Section 54.182 definitions. The Commission's proposed rulemaking order discusses prevailing market price and concludes that a prevailing market price will only be realized through an EDC competitive procurement process approved by the Commission. (35 Pa. Bulletin at 1423). The purpose of the

competitive procurement process is to ensure that all customers receive just, reasonable and non-discriminatory default rates.

The Commission should permit EDCs or DSPs to use competitive procurement processes specifying long-term purchases of alternative energy resources if the EDC or DSP can establish that the long-term fixed price is consistent with market conditions and that any contract resulted from arms length negotiations. The DSP should have the burden of proof to establish that prevailing market conditions at the time of agreement require long-term contracts to initiate development of alternative energy resources.

Issue

3. Should the force majeure provisions of Act 213 be integrated into the Default Service procurement process? Should Default Service Providers be required to make force majeure claims in their Default Service implementation filing? What criteria should the Commission consider in evaluating a force majeure claim? How may the Commission resolve a claim of force majeure by an electric generation supplier?

Comment

The force majeure provisions of Act 213 should be included in the default service procurement process. Specifically, the default service regulations should identify a procedure for an EDC or DSP to request a force majeure determination by the Commission consistent with the force majeure definition contained in Section 2 of Act 213, 73 P.S. § 1648.2. The procedure for declaring a force majeure by the Commission should permit interested parties to file comments on any EDC or EGS request for such a determination. The initial request should be published in the Pennsylvania Bulletin with an identified period for comments. The opportunity for a hearing should be provided if necessary. The Commission should enter a formal order declaring force majeure as an adjudication subject to appeal in the Commonwealth Court.

In evaluating a force majeure claim, the Commission should apply the standards contained in the force majeure definition in Section 2 of the Act. Specifically, whether alternative energy resources are reasonably available in the marketplace in sufficient quantities for EDCs and EGSs to meet their obligations for that reporting period under the Act. The Commission should apply the same standards and procedures to determine a claim of force majeure by an EGS.

Issue

5. Should the Commission integrate the costs determined through a §1307 process for alternative energy resources with the energy costs identified through the Default Service Provider regulations? How could these costs be blended into the Default Service Providers Tariff rate schedules?

Comment

The use of a Section 1307 automatic adjustment clause is only identified for the recovery of alternative energy resources under Section 3(a)(3) of Act 213, 73 P.S. § 1648.3(a)(3). The integration of the alternative energy resource costs with the default service energy costs in a single Section 1307 automatic adjustment clause could be complex and should be carefully evaluated by the Commission. The Commonwealth Court has previously recognized that the failure to fairly allocate costs in an automatic adjustment clause results in unlawful rate discrimination under the Public Utility Code. See Allegheny Ludlum Corporation v. Pennsylvania Public Utility Commission, 612 A.2d 604, 613 (Pa. Commonwealth Ct. 1992). The Commission should not integrate these costs in a single automatic adjustment clause if it increases the possibility that unreasonable cost shifting will result or that discriminatory rates could be placed on different classes of default service customers.

Issue

7. Should the Commission delay the promulgation of default service regulations until a time nearer the end of the transition period, as suggested by the Independent Regulatory Review Commission in its comments on the proposed regulations?

Comment

The Commission should not unreasonably delay the promulgation of the default service regulations until a time closer to the end of the transition period. As identified in the Commission's initial Act 213 Implementation Order, EDCs are completing their transition or cost recovery periods at different times in the period from 2007-2010. Issuing regulations now will allow uniform default service programs to be implemented throughout state as EDCs complete their transition periods. The issuance of default service regulations now which clearly identify procedures for the recovery of alternative energy costs will encourage the development of those resources during the cost recovery period.

WHEREFORE, United States Steel Corporation respectfully requests the Commission to consider these comments in designing the Act 213 cost recovery provisions of its final default service regulations.

Respectfully submitted,

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