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Creating Value from Waste Energy

March 17, 2006

Attn: Docket No. M-00051865
Office of the Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: **Docket No. M-00051865**
Implementation of the Alternative Energy Portfolio Standards Act of 2004:
Standards and Processes for Alternative Energy System Qualification and
Alternative Energy Credit Certification

Dear Sirs:

On behalf Primary Energy Ventures LLC (Primary Energy) and in the interest of using energy far less wastefully and far more cleanly in Pennsylvania and the nation, I am pleased to submit the comments below in support of the Pennsylvania Public Utility Commission's (PUC, Commission) direction in the Tentative Order entered January 31, 2006 in the above-referenced docket. Primary Energy appreciates the Commission's efforts to implement Pennsylvania's Alternative Energy Portfolio Standards (AEPS) in a manner that simultaneously (a) provides genuinely clean energy as required by the act, (b) creates the most flexible and effective market dynamics possible to ensure that this requirement is met at the lowest cost to citizens, and (c) leads by example in encouraging other states and market participants to similarly engage in transitioning to cleaner, more reliable, more secure energy supply options.

Headquartered in Oak Brook, Illinois, Primary Energy controls assets of more than \$500 million, operating 14 plants in five states that all recycle waste heat from industrial processes or from electrical generation, using it to produce more than 700 megawatts of electricity and five million pounds of steam per hour. Primary Energy specializes in recycling waste energy to produce clean and affordable heat and power, where recycled energy is: (1) electricity or steam produced from exhaust heat from any commercial industrial or electric generation process; (2) waste gas or industrial tail gas that would otherwise be flared, incinerated or vented; and (3) electricity or equivalent mechanical energy extracted from a pressure drop in any gas, excluding any pressure drop to a condenser that subsequently vents the resulting heat. Sited at host facilities, recycled energy is always distributed generation, so it reduces line losses and enhances system reliability and security. Moreover, recycled energy typically uses little or no additional

fuel, creates no additional emissions, and helps host manufacturers become and remain more competitive.

Agency Responsibilities Regarding Qualification and Certification

Primary Energy applauds the Commission’s recognition of its long-term responsibilities under Section 7 of Act 213. The responsiveness demonstrated by the Commission with respect to ongoing assessments of alternative energy resources and the potential for new, additional alternative energy generating capacity will help ensure that the Act remains an up-to-date, ongoing driver of energy innovation in the future.

Similarly, the annual report to the General Assembly required jointly of the PUC and the Department of Environmental Protection (DEP) will allow the Assembly to consider improvements that will enable Pennsylvania’s citizens to continue to benefit from energy efficiency and technology leadership. Primary Energy recommends that the PUC and the DEP conduct public hearings and solicit comment in the development of their annual report to the General Assembly, in order to ensure that: (1) no alternative energy or energy efficiency opportunity is overlooked; (2) problems in implementation are rapidly identified and addressed; and (3) public input can be registered regarding appropriate revisions to the level and emphases of the AEPS going forward.

Pennsylvania and its neighboring states already have a wealth of alternative energy sources and efficiency opportunities – such as the recycling of waste industrial energy – that are currently underutilized, and many more that have not been developed at all. If the alternative energy market that the AEPS contemplates is adopted, maintained, and managed properly by the PUC and DEP, manufacturing industries in the State will enjoy enhanced competitiveness, and Pennsylvania’s citizens will enjoy lower costs, better jobs, cleaner air, and fewer health impacts. Toward this end, we are encouraged by the Commission’s commitment to also look for ways to improve the market for alternative energy through a combination of education and further recognition of the benefits of all types of clean energy resources.

DEP’s Role in Qualification of Alternative Energy Systems

Primary Energy appreciates that the Commission avidly seeks to implement Act 213 in the manner intended by the General Assembly. Primary Energy would thus like to note that the DEP document entitled *Section 2 Technical Guidance*¹ includes a dissimilar definition for distributed generation compared to its definition in S.2(13) of Act 213. In the DEP guidance document, a qualifying facility must be fueled by a Tier II qualifying fuel. No similar fuel limitation is found in Act 213 itself. The addition of the Tier II fuel requirement in the DEP guidance document also appears to produce a circular situation because if a generator was fueled by a Tier II fuel, it would already be certifiable as a Tier II generator. By adding the Tier II fuel requirement, the value of a generator’s ability to provide “useful of thermal energy” may be voided. Additionally, the size

¹ www.dep.state.pa.us/dep/deputate/pollprev/PDF/Section%202%20Technical%20Guidance%20Final.pdf

characterization found in S.2(13) of Act 213 (i.e., “small-scale”) is not included in the definition found in the DEP guidance document. Such differences are likely to contribute to confusion about which sources qualify, and potentially delay availability of distributed generation energy supplies. The PUC and DEP should solicit public comment on this and other definitions, and jointly develop and employ common definitions. As expeditiously as possible, a formal public rulemaking process should be undertaken to provide clear definitions and other parameters.

Primary Energy supports the Commission’s tentative finding regarding the role of the DEP in the certification process. Although additional process steps may be required as a result of this approach, the quality and integrity of the AEPS will be better safeguarded by combining the disparate strengths of the PUC and the DEP rather than depending primarily on one agency or the other. The AEPS and the certification process will thus be best served if the DEP determines the qualification status of individual generators rather than acts as an expert witness to the PUC’s proceedings.

Process for Approval and Review of Qualification Decisions

As an entity that has already submitted six applications to DEP, four of which have been approved and two of which were deemed not certifiable, Primary Energy offers three comments on this subject. First, a written explanation of the reasons for a DEP decision to not qualify a facility should be a requisite standard of practice for the Department, as it would clarify the Department’s positions, subject them to appropriate challenge, and ultimately improve generators’ future project development decisions. Act 213 was enacted not only to diminish the environmental impact of electricity generation, but also to increase electrical generation competition, develop and disseminate new energy technologies, and lift the economy of the region by fostering a diverse pool of alternative electric generation sources. Generators, however, will be relatively reluctant to enter and compete in a market unless and until the ground rules are reasonably clear. That is not the case now, where definitions and practices are offered through guidance rather than regulation, and may or may not even be adhered to by DEP qualification staff. By clearly substantiating the basis of its decisions – particularly decisions to not qualify a facility – DEP will help generators understand the rules of the road, which will be essential to achieving the goals of Act 213.

Second, Primary Energy believes that the DEP must provide an appeal process concerning its initial decisions not to qualify generators. This is particularly important in the early stages of the AEPS, when confusion and misunderstanding naturally prevail, but it should also be a standard part of the DEP’s regulatory process. Parties that have been denied certification by the DEP under its guidance document should be eligible to appeal these decisions as soon as such an appeal process is in place. Inattention to this vital component of regulatory due process will only promote litigation by parties anxious to participate in AEPS market opportunities – the very participants that the DEP should be encouraging, rather than dissuading, in its processes.

Alternative Energy System Qualification Standards and Requirements

In terms of the fuel source requirement, Primary Energy believes that the General Assembly has put forth a progressive array of qualifying fuel sources. As the PUC has found, however, there remains much room for interpretation in definitions of fuels and how fuels are used. Primary Energy commends the PUC for expeditiously moving to diminish such confusion by initiating this regulatory process; we urge the DEP to do likewise with responsibilities allocated to it under Act 213 as rapidly as possible.

With respect to the geographic requirement, Primary Energy is impressed by the comprehensive and superbly reasoned reflections in Section F.2 but disappointed that the PUC did not identify a specific tentative finding of the Tentative Order entered January 31, 2006. There is little to add to the Commission's thorough treatment, and certainly no more effective or appropriate conclusions to be reached on the issue of geography, than those determined by the PUC in its Tentative Order.

Specifically, Primary Energy concurs with the Commission that:

- Alternative energy systems physically located within the PJM and MISO service territories meet the geographic eligibility criteria intended by Act 213;
- There is no guarantee that, under a narrow interpretation of Act 213, a large number of alternative energy systems will be built in Pennsylvania;
- The larger the market for a particular good or service, the more competitive the price for that good service; or alternatively, the larger the market, the less it will cost Pennsylvania citizens to accomplish the goals of the AEPS; and
- Act 213 should be interpreted to ensure the most competitive prices for alternative energy because these costs will be recovered from Pennsylvania ratepayers.

Aside from these sound legal interpretations, there are sound policy reasons by which the PUC should arrive at the same conclusion that sources throughout PJM and MISO should be eligible to qualify as alternative energy systems. Specifically, the more broadly the PUC interprets the geographic requirement, the more sources throughout the region will be encouraged to get in the business of generating alternative energy. The more sources generating alternative energy, the easier and more rational it will be for other states to echo Pennsylvania's energy policy leadership. The more states involved, the bigger the market will be, the more efficient energy consumption will be, and the more rapidly a profound transition to alternative energy will occur.

Alternative Energy Credit Certification Standard

Primary Energy strongly supports the PUC's tentative finding that electricity must be delivered to or consumed within the MISO or PJM control area (or Pike County) in order for it to be certified as an alternative energy credit. We note that electricity produced at the point of use by either an AEPS qualifying fuel such as the use of a by product from an industrial process (for example, the reuse of energy from exhaust gases for the direct production of electricity) or by a distributed generation system that produces electricity

and useful thermal energy to be consumed on-site displaces electricity that would have otherwise been produced by another, more distant electrical generation facility and wheeled to the customer. In almost all cases, the more distant generator would have less overall efficiency, greater emissions, greater line losses, and greater transmission and distribution infrastructure needs. If Pennsylvania thus benefits disproportionately when customers generate and consume electricity on-site, it follows from these benefits that on-site electricity should be certified for alternative energy credits. This approach can also help electrical distribution companies and load-serving entities secure required amounts of alternative energy credits without having to pay for the inefficiency of the grid.

Health and Safety Standards

Primary Energy does not wish to comment on existing health and safety standards or the compliance of alternative energy systems, but we do believe that the PUC recognizes an important point in raising this issue. Public health and that of workers on the job has a proven relationship to air pollution levels. Air pollutant concentrations are, of course, determined by several factors, but ultimately concentrations of many of the most dangerous pollutants (e.g., ozone smog, fine particulate matter, mercury, etc.) are a function of uncontrollable atmospheric and controllable emissions from fuel combustion. Combustion emissions can be reduced through many means, including many approaches eligible under the AEPS (e.g., renewable supply resources, recycling waste energy, higher energy efficiency, etc.) Primary Energy believes that it would be appropriate for the PUC and the DEP to engineer a mechanism to favor sources (when qualifying them) that burn less fuel and emit less pollution on grounds of health impacts.

Primary Energy commends the Commission for opening these challenging but crucial dockets, and looks forward to assisting in any way we can. Please contact me at 630-371-0505 if you have any questions or would like additional information.

Sincerely,

Mark Hall
Executive Vice President
Primary Energy Ventures LLC

cc: electronic copy to
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