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March 1, 2021

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

Re: Proposed Implementation of Act 114 of 2020; Docket No. M-2020-3023323

Dear Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission (“PUC” or “Commission”) are Comments submitted on behalf of Cleveland-Cliffs Steel LLC in the above-referenced proceeding.

Please contact the undersigned if you have any questions regarding this filing. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

A handwritten signature in black ink that reads 'Susan E. Bruce'. The signature is written in a cursive, flowing style.

By
Susan E. Bruce (Pa. I.D. No. 80146)

Counsel to Cleveland-Cliffs Steel LLC

SEB/lh

Enclosures

c: Certificate of Service
Aspassia V. Staevska, Assistant Counsel, Law Bureau (via email)
Joseph P. Cardinale, Jr., Assistant Counsel, Law Bureau (via email)
Darren Gill, Bureau of Technical Utility Services (via email)
Michelle Savin, Esq., Cleveland-Cliffs Steel LLC (via email)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IN RE: :
: :
IMPLEMENTATION OF ACT 114 : Docket No. M-2020-3023323
OF 2020 : :
:

COMMENTS OF CLEVELAND-CLIFFS STEEL LLC

TO THE HONORABLE, PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to Ordering Paragraphs 1 and 4 of the Commission’s Tentative Implementation Order entered in this docket on January 14, 2021, Cleveland-Cliffs Steel LLC (“Cleveland-Cliffs Steel”) submits these limited comments regarding the Commission’s proposed interpretation of Act 114 of 2020, specifically regarding the types of documentation that the Commission will consider in its review of long-standing business arrangements eligible for grandfathering. As set forth below, Cleveland-Cliffs Steel offers modest modifications to Section (II)(I) of the Tentative Implementation Order for Commission consideration.

I. INTRODUCTION

Cleveland-Cliffs Steel is a wholly owned subsidiary of Cleveland-Cliffs Inc. (“Cleveland-Cliffs”). Cleveland-Cliffs is the largest flat-rolled steel company and the largest iron ore pellet producer in North America. The company is vertically integrated from mining through iron making, steelmaking, rolling, finishing and downstream with hot and cold stamping of steel parts and components. Cleveland-Cliffs has five steelmaking operations in Pennsylvania and is a sizeable employer in the Commonwealth. As an energy-intensive, trade-exposed

business, Cleveland-Cliffs' total Pennsylvania electric consumption is significant, and energy costs are a critical component of the company's overall cost structure.

Since 2011, Cleveland-Cliffs Steel (formerly known as ArcelorMittal USA LLC) has been a licensed electric generation supplier ("EGS") in the Commonwealth of Pennsylvania at Docket No. A-2011-2233438.¹ Cleveland-Cliffs Steel is relatively unique among Pennsylvania EGSs as it does not provide electric generation services to any third parties. Rather, Cleveland-Cliffs Steel procures electric power through the PJM wholesale market only for its own Pennsylvania and Ohio steelmaking operations as well as serving certain affiliates.² See License Application of ArcelorMittal USA LLC, Docket No. A-2011-2233438, Public Meeting held June 9, 2011, entered June 10, 2011, slip op at 2. Cleveland-Cliffs Steel serves no unaffiliated, third-party customers.

As a licensed EGS, Cleveland-Cliffs Steel complies with the Alternative Energy Portfolio Standards Act. Cleveland-Cliffs Steel has historically met its Tier II obligations almost exclusively through Tier II credits generated by the cogeneration facility of its affiliate, Cleveland-Cliffs Cleveland Works LLC ("Cleveland Works"), which is in Ohio.³ While Cleveland-Cliffs Steel and its affiliates may have cogeneration facilities in several other states, neither Cleveland-Cliffs Steel nor its affiliates have cogeneration facilities in Pennsylvania that could generate Tier II credits. Cleveland-Cliffs Steel strategy for Tier II compliance has focused on supplying Tier II credits from within the Cleveland-Cliffs' corporate structure. Cleveland-

¹ On January 8, 2021, Cleveland-Cliffs provided notice to the Commission of the upstream change of ownership. On January 15, 2021, Cleveland-Cliff filed an Application with the Commission to change the name of the electric generation supplier license from ArcelorMittal USA LLC to Cleveland-Cliffs Steel LLC. The name change application is pending before the Commission as of the date of these comments.

² Cleveland-Cliffs Steel and its affiliate Cleveland-Cliffs Plate LLC operate steel mills in Pennsylvania in the territories of PECO Energy, PPL Electric Utilities Inc., and West Penn Power Company.

³ Cleveland Works LLC is assigned AEPS Certification No. PA-36010-BFG-II.

Cliffs Steel seeks to ensure that the Commission’s implementation of Act 114 appropriately accounts for such longstanding business arrangements that may not be memorialized in a typical bilateral contract. Such implementation is consistent with the Commission’s mandate to avoid undue discrimination.

II. COMMENTS

Cleveland-Cliffs Steel acknowledges that the legislative purpose of Act 114 was to “close the borders” to Tier II credits generated outside of Pennsylvania in an effort to increase the value of Tier II credits generated by Pennsylvania alternative energy sources.⁴ In addition to this blanket prohibition against the certification of new non-Pennsylvania facilities, the Act contains a limited ability to “grandfather” out-of-state facilities under specific criteria. To be eligible, the non-Pennsylvania facility must have been certified as a Tier II alternative energy source prior to November 23, 2020. Additionally, the facility must have entered into a contract prior to November 23, 2020, with a Pennsylvania electric distribution company (“EDC”) or EGS for the sale of Tier II credits. The TIO proposes to limit the facility’s eligibility under such contracts by disallowing renewals. The Commission proposes to determine the eligibility of such credits by the EDG/EGS filing a petition with the Commission to approve specific contract(s).

Cleveland-Cliffs Steel respectfully requests that the Commission, in implementing the letter and spirit of Act 114, be mindful of the effects of its interpretations of Act 114 on those Pennsylvania businesses that have internal, but no less valid, business arrangements in place to support AEPS compliance. To that end, Cleveland-Cliffs Steel encourages the Commission to

⁴ The Commerce Clause of the United States Constitution generally prohibits states from engaging in economic protectionism. That is, there are constitution implications when a state law favors local entities at the expense of out of state competitors. As it interprets Act 114 of 2020, the Commission should be careful not to interpret Act 114 as facially discriminatory because facially discriminatory laws are virtually *per se* invalid. *See Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978) ([b]arriers to the free flow of commerce based on point of origin or other geographic factors to benefit local interests are virtually *per se* invalid”).

interpret Act 114 in a manner that respects not only contractual arrangements, but also other types of business arrangements and investments entered into in good faith based on then-existing Pennsylvania law.

Specifically, Cleveland-Cliffs Steel respectfully submits the following comments to Sections II (G)-(I) of the TIO regarding the proposed procedures outlined for petitions to the Commission for the grandfathering of contracts “for the sale and purchase of AECs where the contract was entered into prior to November 23, 2020.” *See* TIO at 11. In the view of Cleveland-Cliffs Steel, the TIO’s language regarding “sale and purchase” may unintentionally limit, if not preclude, Cleveland-Cliffs Steel (and similarly situated EGSs, if any) from being eligible to petition the Commission for approval of non-traditional business arrangements that may not be considered “sale and purchase” contracts. For example, Cleveland-Cliffs Steel has internal business protocols and accountings to support Cleveland-Cliffs Steel’s self-supply of Tier II RECs from affiliated businesses. As such, Cleveland-Cliffs Steel requests the Commission consider the following amendments to Section II(I) of the TIO which would facilitate EGSs such as Cleveland-Cliffs Steel to petition the Commission for the approval of its internal business arrangements:

1. Modify Section II(I)(3) as follows (new language in bold):
 3. Documentation that the EDC or EGS entered into a contract **or arrangement** prior to November 23, 2020, for the purchase, **transfer or use** of AECs;
 2. Modify Section II(I) to include a new subsection (new language in bold):
- #. An EGS that limits its retail sales to itself and/or its affiliated companies may submit documentation of its arrangement(s) for the transfer or use of AECs generated by the EGS through internal corporate documents and cost accounting principles.**

These modest changes to Section II(I) will afford EGSs affected by Act 114 an opportunity to offer for Commission consideration internal business arrangements that warrant grandfathering.

III. CONCLUSION

For the foregoing reasons, Cleveland-Cliffs Steel respectfully requests the Pennsylvania Public Utility Commission to incorporate the foregoing recommendations in its Implementation Order, which will allow Cleveland-Cliffs Steel to petition the Commission for the grandfathering approval of its internal business arrangements to satisfy Tier II requirements.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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Dated: March 1, 2021

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

VIA E-MAIL

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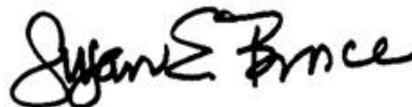
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Susan E. Bruce

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Dated this 1st day of March, 2021, in Harrisburg, Pennsylvania