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March 8, 2010

VIA E-FILING

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17102

Policy Statement in Support of Pennsylvania Solar Projects
Docket No. M-2009-2140263

Dear Secretary McNulty:

Enclosed please find the Comments of Gemstone Lease Management, LLC and Tier 1 Generation, LLC to the Proposed Policy Statement in Support of Pennsylvania Solar Projects in the above-captioned proceeding. Copies have been served as indicated in the attached certificate of service.

Very truly yours,


Adam Stern

JFP/ck
Enclosures

c: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Policy Statement in Support of : Docket No. M-2009-2140263
Pennsylvania Solar Projects :

**COMMENTS OF GEMSTONE LEASE MANAGEMENT, LLC AND TIER I
GENERATION, LLC TO THE PROPOSED POLICY STATEMENT IN
SUPPORT OF PENNSYLVANIA SOLAR PROJECTS**

I. Introduction

Gemstone Lease Management, LLC and Tier 1 Generation, LLC (“Gemstone”)¹ submits these comments on the Proposed Policy Statement In Support of Pennsylvania Solar Projects (“Policy Statement”), adopted in an order by the Pennsylvania Public Utility Commission (“Commission”) on November 6, 2009 (“Order”) in the above-captioned docket. The Order provided for publication of the Policy Statement in the *Pennsylvania Bulletin*, which occurred on February 6, 2010, and the submission of comments and replies to comments 30 days and 45 days later, respectively.

Gemstone applauds the Commission’s recognition that barriers currently exist to the development of large and small solar generation projects in Pennsylvania. The issuance of this Policy Statement has the potential to break through many of the economic, contractual and practical barriers that have prevented solar generation from becoming a major means by which citizens of Pennsylvania benefit themselves and the

¹ Gemstone Lease Management, LLC is a renewable energy finance program development and operations firm. Gemstone developed and operates a \$47 million (6mw) residential solar leasing business in CT which includes SREC aggregation. We are finalizing plans to expand into the Middle Atlantic market. Tier 1 Generation, LLC is a Gemstone affiliate which develops small commercial solar projects and aggregates SRECs.

environment. In addition, the Policy Statement prudently supports both large and small solar projects. Small solar projects provide the greatest benefit to residential and small business customers, who as owners/lessors of solar projects can thereby obtain long-term relief from market price fluctuations inherent in the purchase of electricity.

Important work still remains to be done. Gemstone respectfully suggests that their proposed modifications to the Policy Statement described in the comments that follow will strengthen the Policy Statement and provide important clear indications of the Commission's policy preferences. It is also important for the Commission to finalize the Policy Statement in an expeditious manner so that both large and small solar projects can be brought to fruition.

To assist the Commission in its endeavor, Gemstone's comments explain the reasoning behind a proposed change or addition to the Policy Statement and provide the recommended edit. Attached as Attachment 1 is a complete redline version of the entire Policy Statement reflecting all of the Gemstone recommendations.

II. Comments and Proposed Changes/Additions

A. § 69.2903(a) *SREC procurement from large-scale solar projects.*

Gemstone urges the Commission to be clear that it "strongly" encourages electric distribution companies ("EDCs") to "promptly and regularly" issue requests for proposals for large-scale solar projects. In addition, as explained in more detail below, the market price from the large-scale solar project competitive RFP process should also establish the market price for SRECs purchased by EDCs from small-scale solar projects, rather than merely constitute the ceiling price for such purchases.

See Attachment 1, § 69.2903(a) for the language implementing these recommendations.

B. § 69.2903(b) *SREC procurement from small-scale solar projects.*

In this section, Gemstone advances several important concepts relating to small-scale solar project SREC purchases that should be added to the Policy Statement. Those concepts are: 1) that a separate RFP process for small-scale solar projects is neither necessary, practical nor economic, 2) use of the large-scale solar project RFP result for small-scale solar project SREC prices is a competitive result and should be the price used rather than merely constitute a ceiling price, 3) that the Commission should reserve its option to reject a large-scale solar project RFP SREC price for use as the small-scale solar project SREC price where there is evidence the price is skewed, and 4) that the contracting process should not be unreasonably delayed and that purchases of SRECs by EDCs should be made from both large-scale and small-scale solar projects.

The proposed Policy Statement makes provision for a separate small-scale solar project RFP. Gemstone submits that such a process shall be eliminated as it will be too administratively difficult and would constitute a barrier to participation for the small-scale solar project market, which includes entities of limited resources such as installers of small projects and residential and small business customers. Moreover, a separate small-scale solar project RFP process is unnecessary to achieve the competitive benefit such a process produces so long as the competitive price result of the large-scale solar project RFP process is applied to SRECs from small-scale solar projects. Using that price for small-scale solar project SRECs is more than reasonable given that small projects are more expensive to develop on a per watt basis and therefore small projects

would inherently justify a higher SREC price than large projects. Marketing, installation, permitting and material costs are all measurably higher on a per watt basis for small-scale solar projects and buying power is unavailable to small project developers to drive down costs for owners of small projects. In addition, aggregation of small projects, all with higher costs, does not provide any economies of scale. The large-scale solar project RFP should set the price for small-scale solar project SRECs without conducting a separate small-scale project RFP.

It is also important to use the large-scale solar project RFP result as the actually small-scale solar project price, and not have it operate merely as a ceiling price that invites prolonged negotiation and utterly fails to provide needed price certainty. When a person is making the decision to commit to the installation of a small-scale solar project, an uncertain SREC price means the transaction cannot count on revenues from the sale of SRECs being part of the customers' economic decision. A person marketing a small-scale solar project cannot propose an installation without a solid SREC price, or suspend the transaction mid-way to negotiate a sale of SRECs from the project with an EDC through a bilateral contract, in order to obtain an SREC price the customer can truly rely upon to offset the costs of the project. Price certainty for the sale of small-scale project SRECs is a necessity and it can only be achieved by an assurance that the large-scale solar project SREC price will be applicable to the SRECs created by small-scale solar projects.

Before the Commission approves the price derived from the large-scale solar project RFP process, it should reserve the option to declare the result as improperly skewed by unusual factors that steer the price to unusually high or low levels and reject

the use of the bid price for small-scale solar project SRECs. For example, bids by projects that received high levels of grants could be artificially low and not reflective of true SREC market prices. In EDC POLR procurements, the Commission reserves similar discretion to reject RFP bid results. To maintain the momentum of the SREC procurement process, in the event the Commission deems a price to be skewed, the default contract price for small-scale solar project SRECs should be the Commission-approved average winning bid price from the most recent large-scale solar project RFP by another Pennsylvania EDC.

Finally, the Commission should make it clear that the contract process should not be delayed by requests to reduce prices below prevailing SREC market prices and EDCs should use their best efforts to equalize their purchases from large-scale and small-scale solar projects.

These recommendations are drafted and reflected in Attachment 1, § 69.2903(b).

C. § 69.2903(b)(1).

Gemstone submits that urging EDCs to use the same standards in procuring SRECs from large-scale solar projects for small-scale solar projects could lead to imposition of unnecessarily complex, expensive and burdensome requirements on the small-scale solar project market. The Policy Statement should instead urge the use of simple plain language in contracts, in the form of a standardized contract, and the use of standards appropriate to the small-scale solar project market.

The foregoing recommendations are reflected in Attachment 1, § 69.2903(b)(1).

D. § 69.2903(b)(2)(i)-(v).

As explained above, the Commission should specify that the price for small-scale solar project SRECs should be the same price that results from a large-scale solar project RFP process, and in lieu of such a price being available, the price should be the Commission approved average winning bid price from the most recent large-scale solar project RFP by another Pennsylvania EDC. In addition, on the issue of how contracts allocate risks, bilateral contracts should take into account the relative size and assets of the contracting parties and not impose unreasonable risks on either party.

These proposed concepts are incorporated into § 69.2903(b)(2)(i-v) of the Policy Statement that describes conditions associated with bilateral contracts. *See Attachment 1*

E. § 69.2904(a) *Standardized Contracts.*

The Commission should be commended for including the issue of standardized contracts in the Policy Statement. The Commission specifically recognized that contract lengths for SRECs can vary significantly. However, to accurately relate a large-scale solar project RFP average SREC price to small-scale solar project prices with different contract lengths, a conversion method is required to maintain consistency between the SREC prices. Gemstone recommends incorporation of a consistent conversion calculation.

Language implementing this recommendation is shown in Attachment 1, § 69.2904(a).

F. § 69.2904(b) *Contracts with solar aggregators.*

The Commission is correct to support contracts with solar aggregators by providing for a master agreement and subsidiary agreements. *See § 69.2904(b) Contracts*

with solar aggregators. Since the devil is often in the details, Gemstone urges the Commission to offer specific guidance on the details of such agreements in the Policy Statement on issues such as the importance of a non-burdensome process, appropriate project detail and financial qualifications of aggregators.

These proposed additions to the text on aggregator contracts can be seen in Attachment 1, § 69.2904(b).

G. § 69.2904(c) *Performance guarantees, security and other contract terms.*

Gemstone strongly supports the Commission's detailed direction on the contract issues of performance guarantees and security. The theme of this portion of the Policy Statement, Section 69.204(c), is the Commission's recognition of important differences between large-scale and small-scale solar projects and developers. Consistent with this theme, Gemstone urges adoption of additional language that reminds EDSs that standards of development and performance security are appropriately lower for small-scale solar project developers due to their reduced access to credit enhancements and the wider portfolio diversification inherent in small-scale solar projects. This portfolio diversification reduces the impact of project non-performance on EDCs.

See Attachment 1, § 69.2904(c) for language which implements these requirements.

H. § 69.2904(e) *Stakeholder working group.*

Finally, the Commission's endorsement of a stakeholder working group is an excellent way to update standardized contracts and other related documents. To keep such documents fully up to date, Gemstone recommends that the Commission note in the

Policy Statement that experience gained from implementation of this Policy Statement should also be brought to bear on the contract/document updating process.

See Attachment 1, § 69.2904(e) for language which implements this recommendation.

III. Conclusion

The Commission's proposed Policy Statement holds the potential to eliminate barriers that have to date limited development of solar generation in Pennsylvania. Final prompt adoption of the Policy Statement with the enhancements recommended by Gemstone, as shown in Attachment 1, will jump start solar generation project, both large and small. Gemstone thanks the Commission for its support of this important policy initiative.

Dated: March 8, 2010



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ATTACHMENT 1

ANNEX A
TITLE 52. PUBLIC UTILITIES
PART 1. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND
GUIDELINES ON FIXED UTILITIES

POLICY STATEMENT IN SUPPORT OF PENNSYLVANIA SOLAR PROJECTS

§69.2901. Purpose.

(a) Beginning in 2004, the Pennsylvania General Assembly enacted, and the Governor signed, a series of legislation promoting the development of renewable energy in Pennsylvania generally, and solar alternative energy specifically. In 2004, the Alternative Energy Portfolio Standards Act (AEPS Act) established a requirement that the power purchased for Pennsylvania customers by electric distribution companies (EDCs) and electric generation suppliers (EGSs) must include a component of solar photovoltaic electricity from solar alternative energy sources or solar alternative energy credits, known in the industry as solar renewable energy credits (SRECs). Under the AEPS Act, an SREC is referred to as a solar alternative energy credit, or solar AEC. An AEC is earned when one megawatt hour of electricity is generated from an approved alternative energy source. In 2007, the AEPS Act was amended and, among other provisions, solar thermal energy was added to the definition of Tier I alternative energy sources. This Commission is responsible for ensuring compliance with the AEPS Act.

(b) In 2008, the Alternative Energy Investment Act (AEI Act) was signed into law, providing, among other things, funding through the Department of Environmental Protection for small-scale solar projects in owner-occupied dwellings and small businesses. Additional funds for large-scale solar projects were made available by the AEI Act through the Pennsylvania Department of Community and Economic Development (DCED).

(c) These Acts establish a clear policy to promote the construction of small- and large-scale solar projects in Pennsylvania. But, even though that policy has been clearly articulated, the Commission is concerned that barriers still exist that prevent new solar projects from becoming a reality in Pennsylvania. Pennsylvania EDCs, their customers and those interested in developing solar projects of any size are impeded in their economic analysis of such projects by the uncertainty of a price to assign the SRECs that would be generated by small or large-scale solar projects. This policy statement outlines a process by which entry barriers can be overcome.

§69.2902. Definitions.

The following words and terms, when used in §§69.2901 – 69.2904, have the following meanings, unless the context clearly indicates otherwise:

EDC-- Electric distribution company-- The term has the same meaning as defined in 66 Pa.C.S. §2803 (relating to definitions).

Large-scale solar project-- An alternative energy generation system employing solar photovoltaic technology with a nameplate capacity of 200kW or more.

Small-scale solar project-- An alternative energy generation system employing solar photovoltaic with a nameplate capacity of less than 200kW.

Solar Aggregator-- A person or entity that purchases for resale, or otherwise consolidates for sale, solar renewable energy credits for resale to electric distribution companies and electric generation suppliers.

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SREC market price-- The weighted average of all accepted winning bids in response to an EDC request for proposal (RFP) for large-scale solar project solar alternative energy credits, as those credits are defined in 73 P.S. § 1648.2.

Stakeholder working group-- A group composed of electric distribution companies, electric generation suppliers, Commission staff, public advocates, solar aggregators and other interested parties that meets at least semi-annually and proposes to the Commission updates to standardized solar alternative energy credit RFPs and related contracts that are posted on the Commission's website.

§69.2903. RFPs to establish SREC values recoverable as a reasonable expense.

(a) *SREC procurement from large-scale solar projects.* The Commission strongly encourages EDCs to issue promptly and regularly requests for proposals (RFPs) for large-scale solar projects whose SREC output will be used to meet EDC obligations under the AEPS Act. RFPs should provide for a fair, transparent, and open competitive bidding process. Standardized RFP documents developed by the stakeholder working group should be utilized. The Commission will review and either approve or reject bids submitted in response to such RFPs within a reasonable period of time. The market price derived from this competitive RFP process, which shall be publically available on the Commission and EDC websites, shall also establish the market price to be used for purchases of SRECs by EDCs from small-scale solar projects.

(b) *SREC procurement from small-scale solar projects.* The Commission also, strongly encourages EDCs to meet their AEPS Act obligations through the procurement of SRECs promptly and regularly from small-scale solar projects, in order to foster and promote the expeditious development of solar energy for residential, commercial and

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industrial customers. A separate RFP process to establish an SREC market price for small-scale solar projects is not necessary due to the availability of a competitive large-scale solar project price. Also, a separate small-scale solar project RFP is not practical primarily because compliance with a formal EDC RFP process is administratively difficult for the small-scale solar project market, which includes installers and customers. To reduce costs for EDCs and their customers, standardized bilateral contracts between EDCs and sellers of SRECs including solar aggregators, should be used and contracts should utilize the SREC market price derived from the large-scale solar project RFP process administered by the EDC in whose service territory the small-scale solar project is located, unless the contracting parties mutually agree to a lower price. In the event the most recent RFP price for large-scale solar projects is without an appropriate bid application statistical sample or is skewed by other factors, such as abnormally high rebate levels, then the contract price approved for small-scale solar project SRECs should be the Commission-approved average winning bid price from the most recent large-scale solar project RFP by another Pennsylvania EDC, as reported on the Commission's AEPS Credit Administrator's website. EDCs should not unreasonably delay the contracting process with small-scale solar project installers, aggregators or customers by requesting reductions in the prevailing SREC market price in the EDC's service territory. EDCs should use their best efforts to equalize their purchases of SRECs from large-scale solar projects and small-scale solar projects. The Commission intends small-scale solar projects to be a significant proportion of purchased SRECs at all times.

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(1) Contracts for the purchase of small-scale solar project SRECs should use simple plain language and use credit and other standards appropriate to the small-scale solar project market. An EDC standardized contract that reflects this policy shall be posted on the Commission's website.

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(2) EDCs may enter into bilateral contracts for the purchase of SRECs from small-scale solar projects are subject to the following conditions:

(i) The price utilized for SRECs should not exceed the Commission-approved average winning bid price in the EDC's most recent RFP for large-scale solar projects.

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(ii) When an EDC has not utilized an RFP for a large-scale solar projects, the contract price for SRECs should be the highest Commission-approved average winning bid price from the most recent large-scale solar project RFP by another Pennsylvania EDC, as reported on the Commission's AEPS Credit Administrator's website pursuant to subparagraph (iii).

(iii) The amount of small-scale solar project SRECs yet to be procured by each Pennsylvania EDC, and each Pennsylvania EDC's historic and current average SREC market prices from its large-scale solar project procurements for the most recent two year period should be listed

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on the Commission's AEPS Credit Administrator's website, as well as the EDC's website, and updated at least monthly.

(iv) The amount of small-scale solar project SRECs procured through bilateral contracts during a single AEPS compliance year should not exceed the number of SRECs procured by the EDC in its last large-scale solar project procurement. A reasonable proportion of large-scale and small-scale solar projects should be maintained.

(v) Bilateral contracts using the price method referenced herein, should be used to support the development of small-scale solar projects located in Pennsylvania.

(vi) Bilateral contracts should not attempt to impose unreasonable risks on the counterparty or the EDC given the relative size and assets of the contracting parties.

(c) *EDC cost recovery.* The cost of SRECs acquired through the above procurement approaches may be recovered consistent with the provisions of the AEPS Act and other applicable law.

§69.2904. Contracts for the purchase of SRECs by EDCs.

(a) *Standardized contracts.* EDCs should employ standardized contracts for their purchase of SRECs from large-scale solar projects and small-scale solar projects. The standardized contract for small-scale solar projects should be simple, understandable and provide for the option to purchase SRECs from solar aggregators. Standardized contracts for the long-term procurement of SRECs should be from 5 to 20 years in length. Average prices from large-scale solar project RFPs will require a consistent conversion to small-scale solar project prices due to varying SREC contract lengths. For example, average prices could be converted to a ten year contract using a net present value calculation. Standardized contracts should reflect a consistent and fair conversion method.

(b) *Contracts with solar aggregators.* The Commission finds it reasonable and administratively efficient toward reducing EDC contracting obligations for, EDCs to execute a master agreement with, one or more solar aggregators for the purchase of a quantity of SRECs from various sources that utilizes a prevailing SREC market price at a particular point in time through letter agreements that incorporate the terms of the master agreement. In order to provide the EDC with appropriate project data and provide a process which is not unduly burdensome to either contracting party, this master agreement should utilize the standardized small-scale solar project bilateral contract with a reasonable schedule for the underlying project detail. EDCs may establish reasonable financial qualifications for solar aggregators from whom they purchase SRECs. However, when developing such qualifications, EDCs shall take into consideration that

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the underlying solar project is the EDC's primary source of risk mitigation. Therefore, the solar aggregator's required financial qualifications should relate to its ability to administer and enforce contracts with its customers.

(c) *Performance guarantees, security and other contract terms.* While EDCs may require the posting of bid security in an RFP for large-scale solar projects, bid security for small-scale solar projects is not necessary due to the manner in which the SREC market price for such projects is established. In addition, small-scale solar projects under 15kW in nameplate capacity may use estimates to report SREC generation to the PJM-GATS system, as authorized under the AEPS Act, and should not be required to provide security relating to project completion or performance. Small-scale solar project contracts for projects at or above 15kW in nameplate capacity, or from a solar aggregator selling the EDC SRECs from projects 15kW or more in nameplate capacity, may contain a security deposit, refundable upon completion of project construction and certification of initial performance, as well as a performance guarantee refundable over the performance period or at the end of the contract. These provisions may be included to ensure that the aggregated solar projects supporting the SRECs are actually constructed and perform as designed. Security deposits for projects 15kW or more in nameplate capacity, or aggregated projects 15kW or more in nameplate capacity, may be converted, upon reasonable advance notice by the EDC to the impacted parties, from a refund to a performance guarantee upon project completion and certification. In addition, small-scale solar project SREC contracts may provide for EDC remote monitoring of solar installations. Contracts between EDCs and others for the purchase of SRECs from small-scale solar projects may also provide for a reasonable allocation of the risk of a project failing due to force majeure-type events. Since it is likely that small-scale solar project developers will not have access to credit enhancements of the scale of large-scale solar project developers, the Commission strongly encourages EDC to maintain lower standards of such development and performance security as compared to large-scale projects. This is reasonable because SREC purchases from small-scale solar projects provide much wider portfolio diversification and therefore lowers the impact of project non-performance.

(d) *Contracts on behalf of residential customers.* EDCs are encouraged to contract for SRECs with solar aggregators that obtain SRECs from creditworthy residential owners of small-scale solar projects. These projects can provide a beneficial way for those customers to cope with the volatility of electricity prices.

(e) *Stakeholder working group.* An EDC standardized contract and other related documents for the purchase of SRECs from large-scale solar projects and small-scale solar projects shall be posted on the Commission's website and periodically updated via input from a stakeholder working group to ensure that such contracts reflect the most recent developments in Pennsylvania law and energy policy, as well as the experience gained from implementation of this Policy Statement.

(f) *Customer Education.* Each Pennsylvania EDC is encouraged to educate its retail customers of the opportunity to sell SRECs under the large-scale solar project RFP

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