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LEGAL SERVICES

VIA FEDEX NEXT DAY

March 22, 2010

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: **Proposed Policy Statement on Pennsylvania Solar Projects;
Docket No. M-2009-2140263**

Dear Secretary McNulty:

Enclosed for filing and posting at the Commission's website for public viewing are the Reply Comments of West Penn Power Company d/b/a Allegheny Power in the above-captioned proceeding. Copies of the Reply Comments have been provided electronically to the Commission's counsel and program specialist.

The Comments are filed by FedEx Next Day delivery and electronically and are deemed filed today.

Very truly yours,

A handwritten signature in black ink that reads 'John L. Munsch/sac'.

John L. Munsch
Attorney

JLM:sac

Enc.

cc: kribrown@state.pa.us
sgebhardt@state.pa.us

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proposed Policy Statement on : **Docket No. M-2009-2140263**
Pennsylvania Solar Projects :

**REPLY COMMENTS OF WEST PENN POWER COMPANY d/b/a
ALLEGHENY POWER**

West Penn Power Company d/b/a Allegheny Power (“Allegheny Power” or “Company”) provides Reply Comments on the Proposed Policy Statement of the Pennsylvania Public Utility Commission (“Commission”) concerning Pennsylvania solar projects. The Proposed Policy Statement was entered by the Commission December 10, 2009, at the above-captioned docket, and published in the February 5, 2010, *Pennsylvania Bulletin*.

Section 69.201. Purpose.

Solar developers believe their economic analysis of solar projects is impeded by the uncertainty of prices of solar renewable energy credits (“SRECs”) generated by small or large-scale solar projects. The Commission’s Policy Statement outlines a process for providing long-term price certainty for solar projects.

Allegheny Power disagrees with the Comments submitted by the Solar Alliance the “regulatory risk should be identified and placed with the utilities who are better equipped to understand the risk, manage the implications, and receive relief (if needed) from state

commissions.”¹ The Solar Alliance suggests that PURPA precedents are good public policy as they allowed development risks to be offset and placed upon utilities.

Allegheny Power submits that the proposed Guidelines do not adequately consider the potential negative ramifications of encouraging EDCs to enter into long-term contracts with solar developers. The Company notes a possible troubling analogy to old PURPA policies of offsetting the risks of development projects from the developer onto customers of EDCs. Such a redistribution of risk should be avoided as harmful to default-service customers of EDCs.

In this regard Allegheny Power notes that the requirements of the Pennsylvania Alternative Energy Portfolio Standards Act (“AEPS”) apply to both EDCs and EGSs, but the Policy Statement and Guidelines apparently apply only to EDCs. The financial burden of the contracts will not fall on all EDC customers, but only on those who remain with the EDC’s default service – probably a shrinking base of customers. To the extent the contracts are priced above the level of future market prices, the contracts will increase the price of default service, with a harmful financial effect on default service customers.

The language of the proposed policy also appears to be limited to projects located in Pennsylvania. This is inconsistent with the geographic scope of the AEPS Act, which allows consideration of projects outside Pennsylvania, such as those located out of state but within PJM.

Section 69.2903. Cost Recovery.

Allegheny Power supports the use of a standardized RFP process as outlined in the proposed guidelines. The Company agrees with the Comments of the PPL Companies² that a

¹ Comments of the Solar Alliance, p. 4.

² Comments of the PPL Companies, p. 9.

standard, statewide contract form is preferable, but the use of individual EDC contracts can provide an acceptable alternative.

With respect to the cost recovery provisions of Section 69.2903(c) the Company suggests that the Guidelines recognize and allow the recovery of administrative costs. Further, the administrative costs may be costs internal to the EDC or they may be external costs. All costs should be recoverable on a full and current basis. Allegheny Power agrees with the Comments submitted by the FirstEnergy Companies³ that administrative cost recovery should include recovery of costs related to educating customers about solar projects and costs of promoting solar projects.

Section 69.2904(a). Standardized contracts.

Allegheny Power agrees with comments submitted by New Oxford Municipal Authority⁴ and others that support the flexibility afforded by the Guidelines' provision of contract term lengths between five and 20 years.

Section 69.2904(b). Contracts with solar aggregators.

Allegheny Power disagrees with Comments submitted by the Office of Consumer Advocate⁵ and Gemstone Lease Management⁶ that collateral security for small projects less than 15 kW should not be required. The Company submits that Section 69.2904(b) promotes a poor business practice in that projects will have a limited expectation to deliver on their obligations. Projects of all sizes should have collateral security requirements and reporting standards,

³ Comments of FirstEnergy Companies, p. 7.

⁴ Comments of New Oxford Municipal Authority, p. 6.

⁵ Comments of Office of Consumer Advocate, p. 5.

⁶ Comments of Gemstone Lease Management, p.7.

otherwise customers may be paying for little or no actual generation of SRECs. If small developers are free from development and performance assurance requirements then the EDCs should be indemnified should the projects not deliver or otherwise default on their obligations. Such indemnity should include a provision that, should the EDC not be able to procure replacement RECs or should the replacement RECs be more expensive than the original contract, then any difference in price, or the cost of alternative compliance penalties due to the default, should be fully recoverable by the EDC on a current basis. If such protection for EDCs is not afforded, then credit requirements during development and performance are necessary to protect against disallowance of force majeure claims and potential alternative compliance payments.

Respectfully submitted,

Date: March 22, 2010


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