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March 23, 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 Reply 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

Enclosures

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

Introduction

Gemstone Lease Management, LLC and Tier I Generation, LLC (“Gemstone”) submits these Reply Comments to the comments previously submitted at this docket on the Pennsylvania Public Utility Commission’s (“Commission”) Proposed Policy Statement In Support of Pennsylvania Solar Projects (“Policy Statement”).

Numerous supportive comments were submitted on the Policy Statement, which confirms that a Policy Statement on these issues is needed and would be greatly beneficial toward promoting the development of large and small solar projects. However, not all comments were truly supportive and in particular, some proposals that would impair development of small-scale solar projects were advanced. Thus it is important for the Commission to expeditiously finalize a Policy Statement that resolves these policy issues correctly so that the benefits of both large-scale and small-scale solar projects can begin to accrue. Before Gemstone proceeds to specific replies on the filings made on March 8, 2010, some other general observations are in order about consistent themes that appear in the comments.

First, a broad review of the comments shows there is a real need for the Commission to stand firmly behind its support for small solar projects. It is with respect to small-scale solar projects that the greatest need for regulatory impetus is needed due to different viewpoints on issues that must be addressed ranging from how the SREC price is set, contract issues, security issues and quantities purchased by electric distribution companies (“EDCs”). Absent the Commission indicating its policy preferences in these issues, it will be easy for small solar projects to fall by the wayside and deny to smaller customers the benefits of stabilizing their electricity costs through the use of purchased or leased solar generation facilities. Market set SREC prices that are transparent and readily available from purchases of SRECs are necessary to make these projects a reality.

Comments that disparage long term contracts, express concern about “stranded” SRECs and suggest no real distinctions are needed between large and small projects on issues such as development security, performance security and complexity of contracts display a preference for large projects that the Policy Statement must overcome. Both types of projects should be encouraged and the Commission should stand fast and adopt Gemstone’s proposed balanced amendments to the Policy Statement that were detailed in its initial comments.

Gemstone thanks the Commission for its Policy Statement initiative and replies as follows to the comments filed by interested parties.

OCA

Gemstone appreciates the support of the Office of Consumer Advocate (“OCA”) to allow more wide-scale deployment of small solar projects in Pennsylvania. We agree

with the OCA's support of easy and accessible by which means for small customers can cost effectively aggregate and sell their AEC's as well as the need for reasonable security requirements for contracts involving small systems.

We commend the OCA for its comments that the Commission should provide specifics as to how small systems, SRECs will be procured, how risk will be balanced, and what security requirements are appropriate in order to reduce uncertainty and controversy.

Energy Association of Pennsylvania

The Energy Association of Pennsylvania (“EAPA”) warns that encouraging long term contracts for solar renewable energy credits (“SREC’s) could burden EDC default service customers if they are later unneeded and such contracts could contain prices that are later deemed to be above market. That viewpoint was countered by Constellation’s opinion that rather than a liability, long term SREC contracts were an unfair advantage for EDCs and procuring SRECs with an allocation to EGSs would level the playing field.

The Policy Statement got it right by recognizing that long term contracts are an authorized method of procurement of SRECs under the AEPS Act which will help spur the development of solar projects. EAPA’s concerns about inconsistency with the AEPS Act are misplaced.

The fact that the AEPS Act does not itself distinguish between large and small solar projects in no way prohibits the Commission from recognizing in its Policy Statement the reality that different approaches are necessary to make large and small solar projects a reality. The Commission correctly discerned that one size does not fit all.

A policy that promotes the creation of all types of SRECs, from large and small projects, is fully consistent with the AEPS Act whose goal is to promote renewable energy. It is inconceivable that a policy that increases the creation of SRECs would be inconsistent with the AEPS Act. EAPA has not recognized the important benefit of rate stability that small solar projects bring to small customers that own or lease such projects, regardless of whether they are default service customers or shop for their electricity needs that are not met by their own solar generation. With regard to some purchases of SRECs later being deemed unneeded (an unlikely outcome given the consistent state and federal support for renewable energy and the potential for a national renewable energy portfolio requirement), EDCs should be assured of cost recover without penalty, in the event those SRECs need to be resold prior to use in the future.

Contrary to EAPA's concern, Gemstone does not view the Policy Statement as signaling a bias against non-Pennsylvania solar projects. No geographic limitations are included in the proposed Policy Statement. If the name of this docket, which references Pennsylvania solar projects, is viewed as signaling bias against out-of-state projects, it should be changed to dispel that impression. Nothing in the Policy Statement discourages projects from being located out-of-state.

EAPA's comments on aggregator requirements for security confirm that the Commission must signal that EDCs need to adjust their large project security requirements for small-scale projects or small projects will fail to materialize. The balance urged in Gemstone's initial comments on security and aggregation should be adopted. The uphill challenge small solar projects face is evidenced in MAREA's comments which note that no small-scale projects could participate in the PECO RFP and

currently only 1% of the systems registered in the Pennsylvania AEPS program are larger than 200 kW.

The Commission should stay the course with its large versus small project distinctions and support small projects with the policy that is needed to ensure they are not impeded in sharing the SREC market with large projects.

Citizens' Electric Company of Lewisburg, PA and Wellsboro Electric Company

The Comments of Citizens' Electric Company of Lewisburg and Wellsboro Electric Company encourage the Commission to dismiss the distinction between large and small solar projects. To dismiss this distinction would also dismiss, erroneously, an important public policy. That is, solid SREC values for small solar projects owned or leased by small customers provide those customers with important protection from electricity price volatility by making solar projects economically feasible for small customers when the decision to commit to a solar project needs to be made.

FirstEnergy

Like FirstEnergy, Gemstone supports the use of aggregators for small scale projects but want to note that, in most cases, the existence of aggregators will not provide "additional" credit enhancement the EDC. An aggregator who is not the owner of the underlying assets will only be able to provide credit enhancement to the projects based on the enforceability of its agreement with its client. In other words, credit is not any better than if the EDC contracted directly with the small project. The role of the aggregator

should be viewed as one that eliminates the administrative burden and related costs to the EDC, not as additional security.

If in fact the purpose of long term contracts is to spur the solar market and development happens throughout the year, Gemstone believes it more appropriate to have RFPs staggered throughout the year across the state. That said, we are open to learning more about FirstEnergy's reasoning for their proposed annual statewide procurement process.

Gemstone supports EDC flexibility on procurement, but the law provides only 3 ways to procure – bilateral long or short contracts, RFPs or spot market purchases. We agree with the consensus that the RFP provides the lowest price, but such a process would be an administrative nightmare for the industry and EDCs relative to small systems. Therefore, we proposed a process which uses the RFP price incorporated into bilateral contracts using that published (albeit adjusted if necessary) price. The price can change up or down whenever the EDC wants to issue another RFP for large scale projects. This provides the market with transparency and the EDC with flexibility and low administrative costs.

Gemstone is in support of the EDC's ability to contract with aggregators without having specific support to an underlying project; however, the Commission should note this is not the case under the current FirstEnergy or PECO large scale solicitations. The EDC should determine if it wants specific project data as it develops its application and other forms which would be exhibits to contracts. Gemstone firmly believes contracts on the small market should be standardized for costs reasons. We would be interested in learning more about FirstEnergy's "take all produced" concept for small scale projects.

Duquesne Light Company

Gemstone commends Duquesne's intent to purchase small system SRECs up to 5mw and we are hopeful that the proposal is one that achieves the overall objectives of the industry (growth of solar across all customer income classes and fair distribution of jobs/projects) while at the same time minimizes costs to the EDC and therefore ratepayers. We cannot however support their comments to eliminate section (iv) of the Policy Statement to give EDCs full flexibility. Left unaddressed, the EDC could simply purchase from large systems which would cause an unfair balance of systems in the market. It does not seem to be Duquesne's intent, but properly it seems to be the intent of the policy to prevent this occurrence. Therefore, the Commission should confirm it supports a balance of large and small systems being developed.

Gemstone appreciates Duquesne's perspective on security deposits, but disagrees with addressing this issue via upfront payments as explained in our initial comments.

PPL

PPL's comments contain several proposals that could frustrate the Commission's aim to support small-scale solar projects. First PPL proposes a built in "sunsetting" of the Policy Statement after three years. Such a provision would signal that the Policy Statement is not a policy stance by the Commission that EDCs, solar developers and customers of EDCs can rely upon for anywhere near the operational lifespan of a solar system. If there is a concern with the Policy Statement being sufficiently "nimble" or up to date with the renewable energy market, the Commission is free to revisit the issues and revise the Policy Statement as appropriate at any time in the future.

PPL also proposes modifying the descriptions of large and small-scale solar projects so that large projects would be 500 kW and up, and small-scale projects would be below 500 kW. In addition, a mandatory small-scale solar project RFP would only be available to aggregators, and unspecified “small” projects would only have recourse to a tariffed option to sell SRECs to the EDC.

These proposals, while perhaps well-intended, would make it more difficult for small project owners and developers to obtain EDC commitments to purchase SRECs. Under PPL’s proposals, participation in the large project RFPs would be reserved for an even smaller number of potential solar projects (500 kW and above) and smaller projects would be required to proceed through aggregation. Offering a solar SREC procurement via tariff is an interesting idea, but if such a process was not standard across all EDCs, simplified and quick, it would not benefit small customers.

Gemstone supports the Commission removing the risk from EDCs that having purchased and banked SRECs, they should not be financially penalized if later they are forced to sell them at a price less than the price at which they were purchased. Gemstone agrees that if SRECs are resold in this fashion, the Policy Statement should confirm that such sales are given cost recovery absent evidence of fraud or market manipulation.

PPL is generally leery of standardized contracts, which are critical to avoiding delay and expense in SREC contracting. Standardized contracts should be pursued and updated via a stakeholder working group. However the most important reason that contract terms need to be addressed in the Policy Statement was not mentioned by PPL. That is, the need for the Commission to ensure that the same contracting standards that are appropriate for large scale solar projects are not unreasonably and unnecessarily

applied to small scale solar projects in the name of providing protection to default service customers. Gemstone appreciates the care and thoughtfulness of PPL's comments and looks forward to collaborating with the Company on implementation of the policies inherent in the Policy Statement.

Constellation

Gemstone applauds Constellation's suggestion to look at other markets for examples of price certainty. However, using the competitive RFP method, as suggested by the Commission, provides sufficient actual pricing predictability. The maximum price or solar alternative compliance payment ("SACP") does not fully support this mission since we do not believe a competitive market would ever request that maximum price in a long term contract. Since the basis for long term contracts is to spur the development of solar projects of all sizes and since the financing markets seek predictability of cash flows from the sale of SRECs, we believe it is equally important to provide transparency to the actual SREC contract price over a long term period.

Gemstone appreciates Constellation's support of the small solar market. While we understand there are some details that need to be resolved among the stakeholder group, we believe our initial comments help provide the requested clarification surrounding small solar aggregation and procurement procedures, including where penalties are practical and necessary. We support the specific suggestion that an aggregator should have experience in the sale and management of SRECs. We also support a meaningful purchase of SRECs from small solar projects, but appreciate the EDCs and EGSs need to manage the specific amounts. To the extent possible, we believe

there should be equality in large project/small project purchasing, but understand that this may not happen from quarter to quarter or year to year and therefore did not request a mandated level of large and small project purchases.

Community Energy

Gemstone agrees with Community Energy's Comments that the regulatory change in law risk is an important issue as both the developers and the EDCs cannot currently shelter that risk. The developers and their financing sources, at this time under these very tight markets, cannot accept that risk. We would propose that the Commission informally encourage the EDCs to accept this risk in any contract entered into for the next year until a longer term solution can be explored and allow them to receive rate recovery for such a specific and remote circumstance such as change in law.

While there might be a case for contract modifications in large system procurement, Gemstone is not in favor of small scale contract changes – this would put too great of an administrative burden on the EDC which we believe would add unnecessary costs to the market. However, that said it is critical that the final standardize contract work for both parties upfront and Gemstone supports a quarterly review process by the PUC/stakeholder group.

Solar Alliance

Gemstone commends the Solar Alliance comments in support of a fair and balanced solar market, including the small solar market. We also commend Solar Alliance's work in the SAG group.

Solar Alliance makes very valid points as to the contracting provisions and as a developer and renewable energy investment banker, Gemstone recognizes these are real impediments to financing solar projects, large and small.

We are in support of the mechanisms and thresholds that were suggested by Solar Alliance, including the role of aggregators.

Conclusion

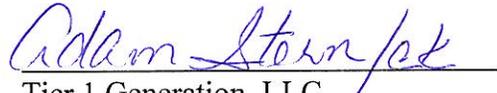
Given the number generally favorable character of the many comments submitted at this docket, the Policy Statement in Support of Solar Projects can already be considered one of the Commission's most notable recent accomplishments. Gemstone urges the Commission to complete this important effort with issuance of a final Policy Statement as quickly as possible.

Gemstone looks forward to working with the Commission, its staff and other interested parties on the important substantive work that will be propelled forward by this Policy Statement.

March 23, 2010

Handwritten signature of Adam Stern in blue ink, written over a horizontal line.

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