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March 23, 2010

**VIA HAND DELIVERY**

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120

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

Dear Secretary McNulty:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") an original and fifteen (15) copies of the Reply Comments of Citizens' Electric Company of Lewisburg, PA ("Citizens") and Wellsboro Electric Company ("Wellsboro") (collectively, "the Companies") in the above-referenced proceeding.

Please date stamp the extra copy of this transmittal letter and the Reply Comments, and kindly return them to our messenger for our filing purposes. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By   
Shelby A. Linton-Keddie

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

SLK/lmc  
Enclosure

c: Scott Gebhart, Energy Program Specialist (via E-mail)  
Kriss Brown, Assistant Counsel, Law Bureau (via E-mail)

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## I. INTRODUCTION

On December 10, 2009, the Pennsylvania Public Utility Commission ("PUC" or "Commission") issued an Order seeking Comments on the Proposed Policy Statement in Support of Pennsylvania Solar Projects ("Solar Policy Statement" or "Policy Statement"). This Order was published in the *Pennsylvania Bulletin* on February 6, 2010. On March 8, 2010, Citizens' Electric Company of Lewisburg, PA ("Citizens") and Wellsboro Electric Company ("Wellsboro") (collectively, "the Companies"), among others, submitted Comments in order to present their preliminary position and to address their concerns regarding the Commission's proposed policy statement.

Pursuant to the established schedule in this proceeding, the Companies hereby submit these Reply Comments to address specific areas of concern with respect to other stakeholders' proposals and Comments submitted in response to the Commission's Solar Policy Statement.<sup>1</sup>

## II. COMMENTS

Unlike the Companies' Comments that generally addressed concerns regarding the PUC's Policy Statement as outlined in the Commission's December 10, 2010, Order, these Reply Comments center on various stakeholders' positions articulated in the Comments submitted on March 8, 2010.<sup>2</sup> The Companies also reserve the opportunity to address additional issues in subsequent phases of this proceeding as necessary.

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<sup>1</sup> In addition, the Companies note that the Energy Association of Pennsylvania ("EAPA") has also submitted Reply Comments regarding suggestions made by various stakeholders in Comments submitted on March 8, 2010. As members, the Companies support the Reply Comments of EAPA.

<sup>2</sup> The Companies' failure to address a specific proposal raised by any party does not represent the Companies' support for, or acquiescence to, such proposal. The Companies addressed the primary areas of concern in their Comments and submit these Reply Comments only on areas that necessitate an additional response.

**A. Issues Regarding Net Metering Should Not be Considered as Part of This Policy Statement or Proceeding**

In their March 8 Comments, both the New Oxford Municipal Authority ("New Oxford") and Carlisle School District ("Carlisle") recommend that "a full retail value of net metered energy needs to be defined" and that the stakeholder group "establish rules under which an E[lectric] D[istribution] C[ompany] will be required to provide an electric service drop consisting of a pad mounted transformer revenue grade meter and other electric interconnection equipment much the same as with any request for electric service." New Oxford Comments at 5; Carlisle Comments at 4-5. When making both of these recommendations, New Oxford and Carlisle refer to Pennsylvania's net metering and virtual metering rules, and in the case of its "electric drop" recommendation, New Oxford and Carlisle explain what they view to be a deficiency in the current net metering rules.

Although the Companies acknowledge New Oxford and Carlisle's positions regarding the net metering rules, such discussion is outside the scope of the PUC's proposed Policy Statement, which focuses on a policy explaining how EDCs could procure Solar alternative energy credits ("AECs"). New Oxford and Carlisle can raise these concerns through an appropriate request to amend or clarify the Commission's net metering rules, with the opportunity for the Companies and all interested parties to submit their views on the proposed amendments. As part of this proceeding, however, these requests related to net metering are beyond the limited purpose of this Solar Policy Statement, and, accordingly, should be rejected.

**B. The Commission Should Reject any Attempt by Parties to Elevate the Policy Statement to the Equivalent of Binding Regulations**

Several parties, including but not limited to Constellation,<sup>3</sup> the Pennsylvania Solar Energy Industries Association ("PASEIA"), the Mid-Atlantic Solar Energy Industries Association ("MSEIA") and the Solar Alliance suggest modifications to the Policy Statement that will require EDCs to procure Solar AECs in a specific manner. Such attempts are made evident when recommending clarifications on what an EDC *must* do,<sup>4</sup> or including any recommendation of what EDCs *shall* do in connection with procuring Solar AECs.<sup>5</sup> In effect, these parties are attempting to elevate the requirements in the Policy Statement to binding regulations that must be followed by all EDCs. This is inappropriate and should be rejected.

Once finalized, the policy statement will not have the force of law that attaches to a regulation.<sup>6</sup> As recognized by the Commission in *Hahn v. PPL*, 94 Pa. P.U.C. 349, 2000 WL 1409670 at \*4 (Pa. P.U.C. 2000):

...[A] policy statement does not establish a binding norm or standard of conduct which has the force of law (which a regulation does) but merely announces an agency's tentative future intentions and provides it with the flexibility to follow the announced policy or to modify it if the circumstances are appropriate.<sup>7</sup>

Because a policy statement is not binding, the PUC can adopt a policy statement outside of the regulatory review process and after a comment process such as the one that the Commission has undertaken here.

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<sup>3</sup> For purposes of its Comments, Constellation is composed of Constellation Energy Projects & Services Group, Inc. ("CEPS"), Constellation NewEnergy, Inc. ("CNE") and Constellation Energy Commodities Group, Inc. ("CCG").

<sup>4</sup> See, e.g. Constellation Comments at 9-10. (suggesting that the Commission clarify "whether each EDC *must* procure a fixed amount of Solar AECs from Small-Scale Solar Projects if bilateral purchases are employed" and "that bilateral contracts are allowed to be used *only* for Small-Scale *and not* for Large Scale Solar Projects") (emphasis in the original).

<sup>5</sup> See also, e.g. PASEIA/MSEIA Comments at 3, citing SA Comments ("...[E]ach utility *shall* submit a plan to the PUC for their Solar AEPS needs over a three year planning horizon...") (emphasis added).

<sup>6</sup> See First Energy Comments at 2 (citing *Pennsylvania Human Relations Commission v. Norristown Area School District*, 473 Pa. 334, 350, 274 A.2d 671 (1977)).

<sup>7</sup> *Hahn v. PPL*, 4 Pa. P.U.C. 349, 2000 WL 1409670 at \*4 (Pa. P.U.C. 2000) (citing *Department of Environmental Resources v. Rushton Mining Company*, 591 A.2d 1168, 1173 (Pa. Cmwlth. 1991)).

In contrast, regulations are binding requirements that must be adopted through a more formalized process. Specifically, as part of the regulatory review process, proposed regulations are first reviewed by the Office of Attorney General and then published in the *Pennsylvania Bulletin* to solicit public comment. Upon completion of the public comment period, both the proposed regulations and the comments are sent to the Independent Regulatory Review Commission ("IRRC") and legislative standing committees for review. After Commission review of IRRC, standing committee and public input, the Commission finalizes the regulations. The PUC then forwards the "final-form" regulations again to the IRRC and legislative standing committees for review. If no changes are requested by the IRRC or the legislative standing committees, the regulations become effective and are published in the *Pennsylvania Bulletin* upon review by the Office of Attorney General. *See generally IRRC The Regulatory Review Process in Pennsylvania* (January 2008). This formalized process ensures adequate review and input from various sources before promulgation, which is important and necessary because regulations require parties to act in a certain manner.

The process that the Commission is pursuing here is appropriate for a non-binding policy statement, but it is not appropriate for binding requirements. Moreover, "[i]f IRRC finds that an agency is enforcing a Statement of Policy as a regulation—*i.e.*, making compliance mandatory—then it may present the matter to the Joint Committee on Documents. The Joint Committee will decide if the documents are regulatory in nature. If it concludes that they are, the Joint Committee may order the agency either to promulgate the document as a regulation within 180 days, or desist from using it." *Id.* at 5. Accordingly, any attempt by parties to elevate the importance of this Policy Statement or to impose requirements on EDCs as a result of this policy statement should be rejected.

**C. The Commission Should Not Limit the Use of Bilateral Contracts or Establish Binding Prices for Solar AECs to be Purchased from Large-Scale or Small-Scale Projects**

In its Comments, Constellation seeks clarification from the Commission regarding when bilateral contracts may be used for purchasing Solar AECs and whether each EDC must procure a fixed amount of Solar AECs from small-scale projects if bilateral purchases are employed. *See* Constellation Comments at 9-10. Specifically, Constellation suggests that the Commission make clear that bilateral contracts are only allowed for small-scale Solar AEC purchases. *See id.* at 9-10. Similarly, the Solar Alliance recommends that a separate procurement process be put in place for Solar AECs from small-scale systems. *See* Solar Alliance Comments at 9-10. As part of this process, the Solar Alliance recommends that, for EDC procurement from small-scale systems, "the price should be developed using the weighted average of all accepted winning RFP bids within a given service territory and would remain in effect until the next time a large scale solar utility RFP took place in that territory." These restrictions are not authorized by Act 129 and would unduly restrict the tools and options available to EDCs to fulfill their statutory obligation to procure Solar AECs at the least cost to customers.

Act 129 authorizes procurement of AECs through one or more of the following: auctions, requests for proposal or bilateral agreements. *See* 66 Pa. C.S. § 2807(e)(3.1). The Alternative Energy Portfolio Standards ("AEPS") Act sets forth annual percentages of retail sales that each EDC and EGS must back with Solar AECs, with no distinction between the percentage of Solar AECs that must be procured from "large-scale" or "small-scale" projects. *See* 73 P.S. §§ 1648.1-1648.8. As such, the suggestions by Constellation and others that bilateral contracts be limited to purchases from small-scale Solar AEC projects or that a certain percentage of Solar

AECs must come from small-scale or large-scale projects are contrary to the relevant statutory provisions that the Commission is implementing through the Policy Statement.

In addition, and as explained in the Companies' Comments, the Commission has approved a Solar AEC procurement approach for the Companies that relies on bilateral contracts with no distinction between "large-scale" and "small-scale" projects. In doing so, the Commission concluded that this approach is consistent with Act 129 and will produce the best results for ratepayers. The Companies also believe that a bilateral contracting approach with no distinction between "large-scale" and "small-scale" projects will provide the best opportunity for the Companies to find an appropriate long term Solar AEC arrangement.

Finally, EDCs have an obligation to propose Solar AEC procurement plans that will result in the least cost to customers over time. *See* 66 Pa. C.S. § 2807(e)(3.4). The suggestion by the Solar Alliance to definitively establish a specific price for Solar AECs is contrary to the underlying statutory construct that the market should determine Solar AEC pricing, and may not fulfill the requirement for Solar AECs to be purchased at the least cost to customers. As such, this recommendation should be rejected.

**D. The Companies Should be Permitted to Continue Their Current Practice for Solar AEC Procurement**

In its Comments, the Office of Small Business Advocate ("OSBA") recommends that the Commission consider a statewide procurement process for Solar AECs. *See* OSBA Comments at 6-7. In support of this recommendation, among other things, the OSBA posits that statewide procurement could: (1) offer a potential opportunity to get Solar AECs at reasonable prices; (2) assure uniform rules for aggregators as well as for large and small solar projects; (3) reduce differences in Solar AEC costs across the state. *Id.* These "benefits" are entirely speculative and unsubstantiated. A statewide approach may be more appropriate for larger EDCs that require

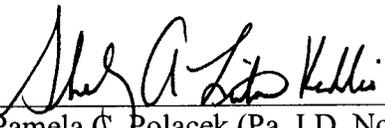
significant amounts of Solar AECs, not the Companies who require a total of 35 Solar AECs. Therefore, the Companies believe that they should be able to continue their current practice of procuring Solar AECs in accordance with their Commission-approved default service plan.

**CONCLUSION**

**WHEREFORE**, Citizens' Electric Company of Lewisburg, Pennsylvania and Wellsboro Electric Company respectfully request that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the foregoing Reply Comments.

Respectfully submitted,

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