

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF SMALL BUSINESS ADVOCATE

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William R. Lloyd, Jr.
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March 8, 2010

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HAND DELIVERED

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

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

Dear Secretary McNulty:

In accordance with your Proposed Policy Statement, entered on December 10, 2009, I am delivering for filing the original plus fifteen copies of the Comments, on behalf of the Office of Small Business Advocate, in the above-captioned matter.

Copies of the comments have been served on Scott Gebhardt and Kriss Brown, via electronic mail. If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Lauren M. Lepkoski".

Lauren M. Lepkoski
Assistant Small Business Advocate
Attorney ID No. 94800

Enclosures

cc: Scott Gebhardt
Energy Program Specialist

Kriss Brown
Assistant Counsel

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Policy Statement in Support of
Pennsylvania Solar Projects**

:
: Docket No. M-2009-2140263

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U.S. DEPARTMENT OF ENERGY

**COMMENTS ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE
ON THE PROPOSED POLICY STATEMENT REGARDING
SOLAR RENEWABLE ENERGY**

A. Background

By Order entered December 10, 2009, the Pennsylvania Public Utility Commission (“Commission”) initiated a proposed policy statement regarding Pennsylvania Solar Projects. Ordering Paragraph No. 4 invited interested parties to submit written comments within 30 days from the date of publication of the proposed policy statement in the *Pennsylvania Bulletin*. Publication occurred on February 6, 2010. The Office of Small Business Advocate (“OSBA”) submits the following in response to the Commission’s invitation.

B. Requirements of Act 129

The act of October 15, 2008 (P.L. 1592, No. 129) (“Act 129”), repealed Section 2807(e)(3) and the “prevailing market prices” standard and imposed a new requirement that the electric distribution company (“EDC”) competitively acquire default service electricity through a “prudent mix” of contracts and at the “least cost to customers over time.”¹ Specifically, Section 2807(e)(3.2) requires the EDC to procure electricity to serve default service ratepayers through a “prudent mix” of spot market purchases, short-

¹ See Section 3 of Act 129, amending 66 Pa. C.S. §2807(e).

term contracts (for periods of up to four years), and long-term contracts (for periods of more than four years but not more than 20 years).² Section 2807(e)(3.4) provides that the “prudent mix of contracts . . . shall be designed to ensure adequate and reliable service . . . and [t]he least cost to customers over time . . .”

The shift from “prevailing market prices” to “least cost to customers over time” does not change the way default service electricity is acquired. EDCs met the “prevailing market prices” standard through competitive procurement (or by proving that their default service rates would be consistent with some other indicator of market prices).³ Under Act 129, the EDC is required to meet the “least cost” standard through competitive procurement.⁴ Specifically, under Act 129, electric power must be procured through one of the following three competitive procurement processes:

- 1.) Auction
- 2.) Request for Proposal
- 3.) Bilateral Agreement

If an EDC chooses to procure its electric power through a bilateral agreement, the price for that power must be comparable to wholesale market prices or be set through a competitive procurement process.⁵

The above-mentioned provisions of Act 129 are significant for the instant proceeding because they apply to “any type of energy purchased by a default service provider to provide electric generation supply service, including energy or *alternative*

² Under Section 2807(e)(3.3), the Commission may permit long-term contracts to extend beyond 20 years.

³ See 52 Pa. Code §54.186(a) and (b) and 52 Pa. Code §69.1807.

⁴ See 66 Pa. C.S. §2807(e)(3.1), (3.2), (3.4), and (3.7).

⁵ 66 Pa. C.S. §2807(e)(3.1).

*energy portfolio standards credits.*⁶ Therefore, solar alternative energy credits must be acquired through a competitive process.

C. Commission-Approved Solar Plans

The Commission has already approved default service programs, e.g., West Penn Power Company d/b/a Allegheny Power (“Allegheny Power”) and PPL Electric Utilities Corporation (“PPL”), in which EDCs are purchasing their Alternative Energy Credits (“AECs”) (including Solar Renewable Energy Credits (“SRECs”)) from wholesale suppliers as part of full-requirements contracts.⁷ Moreover, the Commission has already approved a settlement in which PECO Energy Company will be procuring up to 8,000 solar Tier I AECs for a ten-year period to satisfy a portion of PECO’s future solar-related Alternative Energy Portfolio Standards Act (“AEPSA”) requirements. Similarly, the Commission has approved a settlement in which the Metropolitan Edison Company (“Met Ed”) and the Pennsylvania Electric Company (“Penelec”) will be conducting a separate solar request for proposals (“RFP”) designed to meet their AEPSA requirements for the duration of their default service plans, including the solar photovoltaic

⁶ 66 Pa. C.S. §2807(e)(3.5).

⁷ In Allegheny Power’s default service proceeding, suppliers are responsible for providing supply necessary for Allegheny Power to meet most of the EDC’s obligations under the Alternative Energy Portfolio Standards Act during the term of the default service period. However, for spot market purchases, Allegheny will procure the percentage of expected AEPSA supply at intervals similar to the procurements listed in its bid schedule. *Petition of the West Penn Power Company d/b/a Allegheny Power for Approval of its Retail Electric Default Service Program and Competitive Procurement Plan for Service at the Conclusion of the Restructuring Transition Period*, Docket No. P-00072342 (Order entered July 25, 2008) at 13-16 and 21. In the PPL default service proceeding, it was agreed by the parties that under the full requirements and spot market default service contracts, suppliers will provide a proportional share of AECs. However, PPL will procure blocks of energy for the residential class; the AECs associated with the blocks will be acquired through a separate RFP procurement to occur at the same time as the procurement of the associated block of energy. *Petition of PPL Electric Utilities Corporation (PPL) for Approval of Default Service Program and Procurement Plan for the Period January 1, 2011 through May 31, 2013*, Docket No. P-2008-2060309 (Order entered June 30, 2009) at 6-9.

requirements associated with any customer load served by an electric generation supplier (“EGS”).⁸

Therefore, the Commission’s proposed policy statement should not be construed to authorize or require the alteration of the provisions of any previously-approved default service plans which impose on wholesale suppliers the obligation to provide SRECs as part of a full-requirements contract. Instead, the Commission’s policy statement should apply only to future default service plans and to previously-approved plans which do not specify the procedure for acquiring SRECs.

D. Standardized Bidding Qualifications/Contracts

The proposed policy statement encourages the use of standardized RFP documents for large-scale solar projects.⁹ The proposed policy statement also suggests that EDCs employ standardized contracts for their purchase of SRECs from large-scale solar projects and small-scale solar projects and execute master agreements with solar aggregators.¹⁰ However, the proposed policy statement gives each EDC the discretion to establish its own financial qualifications when dealing with solar aggregators. The proposed policy statement is silent on whether each EDC will have discretion in determining the type of financial qualifications that large-scale and small-scale solar projects will have to meet in order to qualify.¹¹

⁸ *Petition of PECO Energy Company for Approval to Procure Solar Alternative Energy Credits*, Docket No. P-2009-2094494 (Order entered August 28, 2009) at 1-2, and *Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Programs*, Docket Nos. P-2009-2093053 and P-2009-2093054 (Order entered November 6, 2009) at 27-32.

⁹ See Annex A, Section 69.2903(a).

¹⁰ See Annex A, Section 69.2904(a) and (b).

¹¹ See Annex A, Section 69.2904(c).

According to the Commission's proposed policy statement, large-scale solar projects, small-scale solar projects, and aggregators should have separate types of contracts/agreements.¹² The OSBA does not object to having separate types of contracts for large-scale solar projects, small-scale solar projects, and aggregators; however, there should be a standard contract for all the large-scale solar projects, a standard contract for all the small-scale solar projects, and a standard contract/master agreement for all the solar aggregators. Specifically, the proposed policy statement should make clear that the contracts are to be standardized for EDCs as a whole and that it is not sufficient for each EDC to have its own standardized contracts.

The OSBA also supports standardizing the bidding qualifications, which includes standardizing the financial qualifications which the EDCs may impose. Therefore, EDCs should have similar bidding qualifications for the large-scale solar projects, similar negotiating qualifications for the small-scale solar projects, and similar negotiating qualifications for the solar aggregators.

Giving each EDC the leeway to specify its own peculiar terms and conditions in the SREC bidding process and contracts/master agreements would add complexity and cost to the procurement process, and would hinder potential bidders' ability to enter into the market. The lack of standardization has been a problem with regard to competition in the gas industry. Specifically, as the Commission recognized in its September 11, 2008, Final Order and Action Plan in *Investigation into the Natural Gas Supply Market: Report on Stakeholders' Working Group (SEARCH); Action Plan for Increasing Effective Competition in Pennsylvania's Retail Natural Gas Supply Services Market*, Docket No. I-

¹² See Annex A, Section 69.2904(a) and (b).

00040103F0002, not having standardization creates barriers for natural gas suppliers (“NGSs”) to enter the market. In that regard, the Commission stated:

. . . we are issuing this order that sets out an action plan to reduce barriers to entry and to change the structure and operation of the retail market in order to increase competition in natural gas supply. We have selected for action the programs, practices, rules and requirements whose modification would seem to offer the greatest potential to eliminate or reduce market barriers, and thereby increase supplier participation in the marketplace.¹³

In the Final Order and Action Plan, the Commission indicated that it would institute a rulemaking to address the standardization of the creditworthiness and security requirements imposed on NGSs.¹⁴

Therefore, the Commission should consider standardizing bidder qualifications and contracts in the instant proposed solar policy statement in order to avoid the barriers that non-standardization has created in the retail gas market.

E. Statewide Procurement

The Commission should consider a statewide procurement process for SRECs. Requiring SRECs to be purchased in a single statewide procurement (rather than purchased by each individual EDC) would offer a potential opportunity for EDCs to get SRECS at reasonable prices and would assure uniform rules for large-scale solar projects, small-scale solar projects, and solar aggregators.

¹³ *Investigation into the Natural Gas Supply Market: Report on Stakeholders’ Working Group (SEARCH); Action Plan for Increasing Effective Competition in Pennsylvania’s Retail Natural Gas Supply Services Market*, Docket No. I-00040103F0002 (Order entered September 11, 2008) at 6.

¹⁴ *Investigation into the Natural Gas Supply Market: Report on Stakeholders’ Working Group (SEARCH); Action Plan for Increasing Effective Competition in Pennsylvania’s Retail Natural Gas Supply Services Market*, Docket No. I-00040103F0002 (Order entered September 11, 2008) at 7.

Acquiring SRECs for all EDCs at the same time would reduce the differences in the SREC costs across the Commonwealth. Statewide procurement would also make relaxed security requirements for small-scale projects and aggregators less problematic, in that one project or aggregator's failure to perform would have less impact on the rates of any single EDC. Statewide procurement might also increase participation, in that bidders would have the potential to sell more SRECs without a significant increase in administrative costs.

Furthermore, there is no apparent legal or practical need for EDC-specific purchases of SRECs. The AEPSA requires that the electric energy sold by an EDC or an EGS to retail electric customers in this Commonwealth be comprised of electricity generated from alternative energy sources (including solar photovoltaic) and in certain percentage amounts.¹⁵ The bidding of SRECs is not based on each EDC's specific load profile, as it is when an EDC is bidding for its default service contracts. Instead, each EDC has a certain number of SRECs it needs to acquire to satisfy the AEPSA.¹⁶

F. Three Bidders

Although the proposed policy statement encourages EDCs to issue RFPs for large-scale solar projects, the Commission does not suggest a minimum number of bidders that EDCs should be required to have before accepting a bid for SRECs. Because

¹⁵ See 73 P.S. §1648.3 (a) and (b).

¹⁶ Since the AEPSA requires that increasing percentages of the electricity sold by EGSs in the Commonwealth be generated from designated alternative energy sources (which include solar photovoltaic), the Commission should consider including EGSs in the statewide procurement as well.

the SREC market is not yet mature, SREC prices are uncertain and high.¹⁷ If an EDC's bid process produces a single bidder, there would be no comparative bids upon which to judge the offer. Therefore, the Commission should establish a minimum number of three bidders, as a necessary condition for accepting a bid or offer, in all future SREC solicitations conducted by EDCs. Furthermore, the Commission should require that the winning bidders not be affiliated with each other. This requirement is similar to the Commission-approved settlement in *Petition of PECO Energy Company for Expedited Approval to Procure Solar Alternative Energy Credits*, Docket No. P-2009-2094494 (Order entered August 28, 2009).

G. Aggregators

The Commission's proposed policy statement encourages EDCs to contract for SRECs with solar aggregators that obtain SRECs from creditworthy residential owners of small-scale solar projects.¹⁸ However, the proposed policy statement is silent on encouraging EDCs to contract for SRECs with solar aggregators that obtain SRECs from creditworthy small business owners of small-scale solar projects. The Department of Environmental Protection ("DEP") has recognized that there is a high interest among small business customers in starting solar projects. Specifically, under the PA Sunshine Solar Program, DEP is offering incentives to residential and small business customers to

¹⁷ The 2007/2008 alternative energy price range for SRECs was \$50-\$350. The 2008/2009 alternative energy price range for SRECs was \$225-\$690. See the 2007/2008 and the 2008/2009 Alternative Energy Credit Pricing on the Commission's Website at http://www.puc.state.pa.us/electric/electric_alt_energy.aspx.

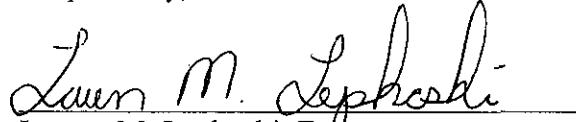
¹⁸ See Annex A, Section 69.2904(d).

start solar projects.¹⁹ Therefore, the OSBA recommends that the policy statement be revised to encourage EDCs to contract with solar aggregators that obtain SRECs from both creditworthy residential and small business owners of small-scale solar projects.

¹⁹ See http://www.portal.state.pa.us/portal/server.pt/community/in_the_news/10475/pa_sunshine_solar_program/553019.

WHEREFORE, the OSBA respectfully requests that the Commission consider the foregoing comments as it implements a policy statement regarding Pennsylvania Solar Renewable Energy.

Respectfully,



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For:

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Dated: March 8, 2010