



800 North Third Street, Suite 301 • Harrisburg, Pennsylvania 17102
Telephone (717) 901-0600 • Fax (717) 901-0611 • www.energypa.org

March 18, 2010

VIA HAND-DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Commonwealth Keystone Building
Harrisburg, PA 17105-3265

Re: Proposed Policy Statement on Pennsylvania Solar Projects
Docket No. M-2009-2140263
Letter Petition to file Comments Nunc Pro Tunc.

RECEIVED
2010 MAR 18 PM 1:45
SECRETARY'S BUREAU

At its Public Meeting on November 6, 2009, the Commission adopted a Proposed Policy Statement on Pennsylvania Solar Projects. This document was published in the *Pennsylvania Bulletin* on February 5, 2010, and interested parties were provided 30 days to file comments, and 45 days to file reply comments. Under this schedule, comments were due on March 8, 2010, and reply comments are due on March 23, 2010.

On March 8, 2010, the Energy Association of Pennsylvania ("EAPA") emailed comments to the Commission's staff in accordance with ordering paragraph 6 of the Order initiating this proceeding, but inadvertently did not file written copies of the comments with the Secretary in accordance with paragraph 4 of the Order. Because of this, EAPA's comments appear on the Commission's Alternative Energy section of the website, but do not appear on the public documents section of the website.

EAPA apologizes for its filing misstep and respectfully requests permission to file written copies of its comments *nunc pro tunc*, which are enclosed. The failure to file written copies of the comments on March 8, 2010 was inadvertent, as demonstrated by the fact that the comments were emailed to the staff of the Commission. To the extent deemed necessary by the Commission, EAPA also requests an extension of the period for filing reply comments in this proceeding for up to an additional 15 days from the date of this letter to allow other interested parties, who may not have viewed EAPA's comments on the alternative energy section of the Commission's website, to review the comments and reply to them.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Donna M.J. Clark".

Donna M.J. Clark
Vice President & General Counsel

Enclosures

Cc: Kriss Brown, Assistant Counsel
Scott Gebhardt, Energy Program Specialist

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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SECRETARY'S PUBLIC UTILITY BUREAU

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

COMMENTS OF THE
ENERGY ASSOCIATION OF PENNSYLVANIA

I. Introduction

At its Public Meeting on November 6, 2009, the Commission adopted a Proposed Policy Statement regarding "Pennsylvania Solar Projects." This document was published in the *Pennsylvania Bulletin* on February 5, 2010, and interested parties were provided 30 days to file comments. The Energy Association of Pennsylvania ("EAPA") files these comments on behalf of its Electric Distribution Company ("EDC") members.¹

The purpose of the proposed policy is to further promote the development of solar projects within Pennsylvania, beyond the requirements of the Alternative Energy Portfolio Standards Act² and the implementing regulations. It encourages EDCs, in their roles as default service suppliers, to sign long-term contracts with

¹ EDC members supporting these comments include: Allegheny Power, Citizens' Electric Company, Duquesne Light Co., Metropolitan Edison Company, PECO Energy Co., Pennsylvania Electric Company, Pennsylvania Power Company, Pike County Light & Power Co., PPL Electric Utilities, UGI Utilities, Inc. (Electric Division) and Wellsboro Electric Company.

² 73 P.S. §1648.1 et seq.

both large-scale and small-scale solar project developers. It encourages the use of requests for proposals (“RFPs”) and also provides for bilateral contracts with small-scale projects. It encourages standardized contracts, contracts with solar aggregators, and customer education by EDCs regarding opportunities to sell solar renewable energy credits (“SRECs”). It also calls for a standardized contract to be published on the Commission’s website and updated with input from a stakeholder group.

EAPA recognizes that long-term contracts between EDCs and developers of solar projects are permissible under the Public Utility Code and can, in some circumstances, serve the public interest. Such contracts might allow some projects to go forward that otherwise would not be built. At the same time, it should be recognized that technology can change quickly, and long-term contracts could cause harm to future customers of the EDCs’ default service. The policy statement should recognize these potential negative consequences. In addition, the policy statement should be amended to the extent that it conflicts with existing law.

II. Comments on Specific Sections of the Proposed Policy Statement

A. Section 69.2901. Purpose

This section states that the AEPS Act and the Alternative Energy Investment Act³ establish a clear policy “to promote the construction of small- and large-scale solar projects in this Commonwealth.” The section goes on to say that uncertainty surrounding the price of SRECs is a barrier to solar development, and that the policy statement is intended to overcome this barrier.

³ 73 P.S. §1649.101 et seq.

Clearly, these laws were intended to promote the development of renewable energy, including solar energy, but those laws also set out specific means to achieve these goals. For example, the AEPS Act mandated that both EDCs acting as default suppliers and electric generation suppliers (“EGSs”) purchase specific percentages of alternative energy as part of the portfolio of sources they use to serve customers. The policy statement seeks to provide additional tools beyond those set out in the statute to achieve these goals. Additional tools such as encouraging long-term contracts can be appropriate if they are consistent with the law and are applied in a reasonable manner that considers all of the potential impacts from use of these tools.

On its face, the proposed policy does not consider the potential negative ramifications of encouraging EDCs to enter into long-term contracts with solar developers; it only looks at the benefits of developing solar energy. While the AEPS requirements apply to both EDCs and EGSs, the policy statement applies only to EDCs. *The financial burden of these contracts will fall, in most cases, on those customers who remain with the EDC’s default service.* With shopping levels approaching 25% in the PPL service territory, the Commission should consider the possibility that these contracts could be paid for by a shrinking base – perhaps a minority at some point -- of the EDC’s customers⁴. And to the extent these contracts are priced above the level of future market prices, they will raise the price of default service, and even more default service customers will be encouraged to enter the market.

⁴ The General Assembly is currently considering legislation to authorize municipal aggregation of customers. Customers served under such an aggregation plan would also not be covered by these contracts.

In addition, EAPA is concerned that two aspects of the proposed policy are inconsistent with the AEPS Act. First, the proposal establishes criteria for “small-scale” and “large-scale” solar projects, and encourages EDCs to sign long-term contracts with both types of project. The AEPS Act does not distinguish among solar projects based upon size, so there is not a statutory basis for attempting to ensure that both types of projects are successful. From the standpoint of a default service customer, whatever type of solar project can provide energy at the lowest cost should succeed.

Second, the language of the proposed policy appears on its face to be limited to projects located within the Commonwealth. This is inconsistent with the geographic scope of alternative energy projects under the AEPS Act, which allows consideration of projects located within PJM or the area of the regional transmission organization serving that part of Pennsylvania.⁵ Again, from the perspective of a default service customer, limiting the geographic scope of projects limits competition among developers and can only increase costs.

B. Section 69.2903 (c). Cost recovery

The proposed policy states that the cost of SRECs may be recovered consistent with the AEPS Act and applicable law.

EDCs will incur administrative costs to develop and implement procurement plans related to these contracts. The Commission should clarify that these administrative costs are also recoverable under the Act.

⁵ 73 P.S. Sec. 1648.4

C. Section 69.2904 (b). Contracts with solar aggregators

The proposed policy encourages EDCs to execute master agreements with solar aggregators for the purchase of SRECs from various sources. There are currently no standards governing who may serve as a solar “aggregator,” nor are there requirements governing technical and financial fitness. In the absence of licensing requirements for these aggregators, the Commission should recognize that EDCs will be forced to exercise care in entering into such contracts, and are likely to require financial security from such aggregators.

D. Section 69.2904 (c). Performance guarantees, security and other contract terms.

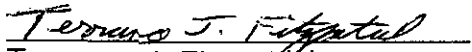
This section of the proposed policy statement encourages EDCs to not require financial security for long-term contracts with small-scale solar projects.

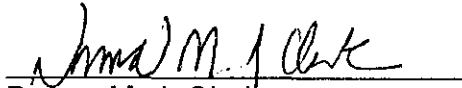
This section fails to adequately consider the interest of default service customers, as it may encourage non-viable projects to bid. If these projects fail and adequate security is not in place, EDCs will be required to buy SRECs on the more expensive spot market, or to make alternative compliance payments.

III. CONCLUSION

The proposed policy statement appropriately considers that long-term contracts and other policies may encourage development of solar projects, but it does not balance this with consideration of the harm these policies could cause to the default service customers of EDCs. The EAPA requests that the Commission carefully consider its comments regarding the potential negative consequences of these policies.

Respectfully submitted,


Terrance J. Fitzpatrick
President & CEO
Energy Association of Pennsylvania
800 North Third Street, Suite 301
Harrisburg, PA 17102
(717) 901-3912
tfitzpatrick@energypa.org


Donna M. J. Clark
Vice President & General Counsel
Energy Association of Pennsylvania
800 North Third Street, Suite 301
Harrisburg, PA 17102
(717) 901-0631
dclark@energypa.org

Dated: March 8, 2010