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November 23, 2010

**VIA HAND-DELIVERY**

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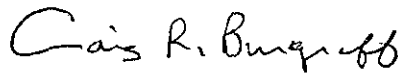
RE: Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period January 1, 2010 through May 31, 2013 to Modify its Procurement of Solar Energy Credits; Docket No. P-2008-2060309; **REPLY BRIEF OF SUSTAINABLE ENERGY FUND OF CENTRAL EASTERN PENNSYLVANIA**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are an original and nine (9) copies of Reply Brief of Sustainable Energy Fund of Central Eastern Pennsylvania. This filing has been served in accordance with the attached Certificate of Service.

If you have any questions concerning this filing, please do not hesitate to contact undersigned counsel.

Respectfully,



Craig R. Burgraff  
Counsel for Sustainable Energy Fund of Central Eastern Pennsylvania

CRB/bks

Enclosures

cc: The Honorable Susan D. Colwell (Via Electronic and Hand-Delivery)  
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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities :  
Corporation for Approval of a Default :  
Service Program and Procurement Plan : Docket No. P-2008-2060309  
for the Period January 1, 2010 through :  
May 31, 2013 to Modify its Procurement :  
of Solar Energy Credits :

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**REPLY BRIEF OF SUSTAINABLE  
ENERGY FUND OF CENTRAL EASTERN PENNSYLVANIA**

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DATED: November 23, 2010

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## **I. INTRODUCTION AND SUMMARY OF REPLY ARGUMENT**

In accordance with the briefing schedule established by Your Honor in this proceeding, the Sustainable Energy Fund of Central Eastern Pennsylvania (“SEF”) submits this Reply Brief in response to the Main Brief filed on November 16, 2010, by PPL Electric Utilities Corporation (“PPL”). In addition, SEF incorporates herein its Main Brief in this case. SEF will not repeat the arguments it raised in its Main Brief, but will respond to certain arguments raised by PPL in its Main Brief.

PPL’s arguments contrary to the certification by solar aggregators that they have long-term contracts with solar providers equal to or greater than the solicitation periods under the small-scale solar set aside program are little more than a string of speculation that does not demonstrate that the policy and goals of the Public Utility Commission’s Solar Policy Statement are met by the exclusion of such a certification. To the contrary, the record demonstrates that the certification directly meets the Commission’s policy and goals relative to the development of small-scale solar projects.

In like fashion, PPL’s argument that the certification should be rejected because the Solar Policy Statement does not explicitly require it is specious, given the nature of policy statements.

**II. THE ARGUMENTS OF PPL DO NOT SUPPORT THE REJECTION OF REQUIRING AGGREGATORS TO CERTIFY THAT THEY HAVE LONG-TERM CONTRACTS WITH SMALL-SCALE SOLAR PROVIDERS UNDER THE SMALL-SCALE SOLAR SET ASIDE PROGRAM.**

**A. The Arguments in Support of Rejection Are Unpersuasive**  
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The sole issue reserved for litigation in this proceeding is whether a solar aggregator under the Partial Settlement's small-scale solar set aside program should be required to certify that it has long-term contracts with qualifying solar facilities for the purchase of solar renewable energy credits ("SRECs") that are equal to or longer than the bilateral contract between the solar aggregator and PPL. The central question is whether this certification is necessary to meet the policy and goals of the Public Utility Commission's Policy Statement in Support of Pennsylvania Solar Projects ("Solar Policy Statement"),<sup>1</sup> which is to promote the construction of new solar projects by removing the central barrier to entry, namely the lack of long-term revenue stability and price certainty. PPL's arguments against the certification are based upon a daisy chain of speculation that never deals with this central question.

PPL advances the following with regard to why the certification of long-term contracts fails the Solar Policy Statement's policy and goals:

- SEF's proposal may discourage solar aggregators from participating in the set aside program because certain aggregators may not wish to participate.<sup>2</sup>
- An aggregator may wish to acquire a portfolio of contracts with solar facility owners with varying terms and conditions.<sup>3</sup>

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<sup>1</sup> *Policy Statement in Support of Pennsylvania Solar Projects*, Docket No. M-2009-2140263 (September 16, 2010) ("September 16 Order").

<sup>2</sup> PPL Main Brief at 8.

<sup>3</sup> *Id.* at 9.

- SEF's proposal also may inhibit the success of the small-scale set aside program because small-scale solar facility owners may be unwilling and unable to participate.<sup>4</sup>
- SEF's proposal to mandate long-term contracts between aggregators and small-scale solar facility owners may also inhibit the success of the set aside program because owners may be unwilling to lock themselves into long-term contracts. A solar facility owner may feel he or she has inadequate information to make a long-term contract commitment, or may believe that SREC prices will increase over time. Other potential small-scale solar facility owners may be unwilling to install solar facilities if their only option is a long-term contract, because they may be uncertain about how long they will remain in the home.<sup>5</sup>
- If small-scale facility owners are deterred from contracting with aggregators, aggregators may be unable to provide sufficient SRECs to fill the set aside program amounts. Therefore, SEF's long-term contract requirement may work to the detriment of development of the SREC market.<sup>6</sup>

It is instructive that, while PPL faults the SEF in several instances for an alleged failure to offer evidence, its entire case is built upon a daisy chain of speculation offered as evidence. The answer to the central question is clear, and not in any way demonstrated otherwise by PPL. The certification of aggregator long-term contracts under the small-scale set aside program is necessary if the central barrier to construction of small-scale solar projects is to be removed, namely the lack of long-term revenue stability and price certainty.<sup>7</sup>

SEF in its Main Brief outlined the paucity of PPL's speculation. PPL's market flexibility argument is summarized by its belief that the requirement of a long-term contract certification is a significant barrier to entry. As noted at pages 15-16 of SEF's Main Brief, this argument is nonsensical and completely at odds with the Solar Policy Statement. In addition, PPL's argument that such a certification is a deterrent to participation in the set aside program is also illogical. As SEF demonstrated at pages 13-15 of its Main Brief, the lack of such certification, in today's

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<sup>4</sup> *Id.* at 10.

<sup>5</sup> *Id.* at 11. The breadth of PPL's speculation is highlighted by the homeowners analogy, since the contract would stay with the system and not the homeowner.

<sup>6</sup> *Id.*

<sup>7</sup> SEF Main Brief at 10-15.

market, will simply lead to aggregators purchasing existing post – June 1, 2010 SRECs, which is, again, completely at odds with the Solar Policy Statement.

The long-term contract certification should be approved as part of the small-scale solar set aside program.

**B. PPL’s Argument that the Commission’s Solar Policy Statement Does Not Address The Long-Term Contract Issue is Specious.**

PPL posits that the Commission’s Solar Policy Statement does not address SEF’s issue related to long-term contracts between solar aggregators and individual small-scale solar facilities.<sup>8</sup> Since it does not direct that aggregators must have long-term contracts with system owners to participate in SREC procurement programs, PPL reasons that SEF’s claim that the proposed certification requirement is needed to achieve the goals of the Solar Policy Statement is without support.<sup>9</sup> This argument is meritless.

As SEF has pointed out, the Solar Policy Statement’s policy and goals is to promote the construction of solar PV facilities, especially small-scale solar PV projects, by removing the central barrier to entry, namely the lack of long-term revenue stability and price certainty. PPL never addressed how the small-scale solar set aside program without the certification of long-term contracts by aggregators accomplishes these goals, except for the general statement that its RFP carve out of SREC acquisition from its Default Service Plan as well as the small-scale solar set aside program promotes the construction of solar projects, both large and small, and creates a long-term stable market that will reduce barriers to entry and participation by small-scale solar facilities.<sup>10</sup> However, as SEF demonstrated, the ability of aggregators to simply purchase SRECs from existent solar PV projects does not meet the Commission’s goals.

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<sup>8</sup> PPL Main Brief at 6.

<sup>9</sup> *Id.* at 16.

<sup>10</sup> *Id.* at 15.

PPL notes that the Commission in its Solar Policy Statement rejected proposals from parties to set specific requirements for developing contracts with solar providers, or declined requests to set specific standards or requirements for the purchase of SRECs from small-scale projects, or failed to adopt criteria related to contracts with solar developers.<sup>11</sup> This is not surprising in the context of a policy statement. The Commission appropriately preserved its discretion to deal with issues on a case-by-case basis based on the circumstances and the evidence presented. That is precisely what is occurring in this case.

It is specious to argue, as PPL does, that the Solar Policy Statement's silence on long-term contract certification, in and of itself, leads to rejection of this certification which meets the purpose and satisfies the goals of the Solar Policy Statement.

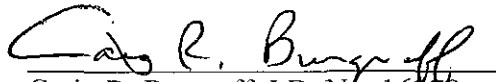
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<sup>11</sup> *Id.* at 16.

### III. CONCLUSION

The record supports the additional certification by aggregators that they have long-term contracts with solar projects under the small-scale solar set aside program. The Commission should so find and make this certification a part of the program.

Respectfully submitted,



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Dated: November 23, 2010

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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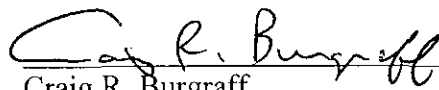
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