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November 23, 2010

BY E-FILE

Rosemary Chiavetta
Secretary
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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, 2011 Through May 31, 2013 - Docket No. P-2008-2060309

Dear Secretary Chiavetta:

Enclosed, for filing, is the Reply Brief of PPL Electric Utilities Corporation in the above-referenced proceeding.

Copies have been provided to the persons in the manner indicated on the Certificate of Service.

Respectfully Submitted,

Michael W. Hassell

MWH/jl

Enclosures

cc: Honorable Susan D. Colwell
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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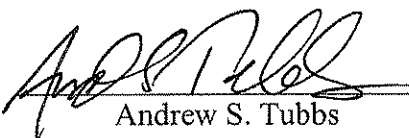
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities :
Corporation for Approval of a Default : Docket No. P-2008-2060309
Service Program and Procurement Plan for :
the Period January 1, 2011 Through May
31, 2013

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I. INTRODUCTION

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) hereby submits this Reply Brief in response to the Main Brief filed by Sustainable Energy Fund of Central Pennsylvania (“SEF”) in the above captioned proceeding. PPL Electric, in its Main Brief, explained its position on the issue pending before the Administrative Law Judge (“ALJ”). In so doing, PPL Electric anticipated and responded to most of the arguments raised by SEF. Nevertheless, it is appropriate for PPL Electric to respond to certain contentions advanced by SEF in its Main Brief. In responding to these, PPL Electric will minimize repetition of explanations provided in its Main Brief.

In this proceeding, PPL Electric requests Pennsylvania Public Utility Commission (“Commission”) approval of an amendment to its Default Service Procurement Plan (“DSP Plan”) to add a long-term procurement of Solar Renewable Energy Credits (“SRECs”). A Joint Petition for Partial Settlement (“Partial Settlement”), supported or unopposed by all of the parties in this proceeding, was filed on November 16, 2010.¹ The Partial Settlement resolved all but one issue raised in this proceeding. The sole issue reserved for litigation relates to whether a solar aggregator under the Partial Settlement’s small-scale solar system set-aside program² should be required to certify that it has long-term contracts with qualifying solar facilities for the purchase of SRECs that are equal to or longer than the bilateral contract between the solar aggregator and PPL Electric. As explained in PPL Electric’s Main Brief and in this Reply Brief, PPL Electric opposes SEF’s proposed certification requirement.

¹ The signatories to the joint settlement are PPL Electric, the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Sustainable Energy Fund of Central Pennsylvania (“SEF”) and Solar Alliance.

² For purposes of the Partial Settlement, small-scale solar systems are defined as solar facilities with a DC rating of 15 kW or less.

PPL Electric notes that it is continually examining alternatives available for SREC procurement. The Company's DSP Plan currently procures SRECs through its one and two year full requirements contracts and spot market contracts. In this proceeding, PPL Electric has proposed to expand its program to include long-term procurement, and has established through the Partial Settlement a set-aside to acquire SRECs solely from extremely small-scale solar systems through bilateral contracts with solar aggregators.³ With this plan for longer term procurement, PPL Electric also proposes to utilize the banking provisions of the Alternative Energy Portfolio Standards ("AEPS") Act provisions that allow for the banking of SRECs. PPL Electric will be filing a new DSP procurement plan in 2012, to replace its current DSP Plan that expires in 2013. At that time, PPL Electric will review all of its procurement processes, including its SREC procurements, and propose appropriate refinements derived from experience. This will include the extent to which further long-term SREC procurements are needed or effective.

For reasons explained below and in PPL Electric's Main Brief, the Joint Petition for Partial Settlement filed by the parties in this proceeding should be approved without modification, and SEF's proposal to dictate the length of contracts between aggregators and small system owners should be rejected.

³ PPL Electric notes that solar aggregators also can participate in the SREC Request for Proposal ("RFP") process. Thus, the Partial Settlement provides two alternatives for solar aggregators to provide SRECs on a long-term basis.

II. AGREEMENT

A. SEF'S CLAIMS REGARDING "EXCESS" SRECS DO NOT SUPPORT ITS PROPOSED CONTRACT REQUIREMENT.

1. SEF'S CONTENTION THAT EXISTING SREC SUPPLY EXCEEDS DEMAND IS NOT CONSISTENT WITH ITS CLAIMS THAT SOLAR PROJECTS REQUIRE LONG-TERM SREC FUNDING IN ORDER TO BE VIABLE.

SEF contends that long-term funding is a necessary element to increase development of small-scale solar systems. SEF Brief, p. 11. At the same time, however, SEF contends that there is an excess of supply in the SREC market, and that more small systems are currently being built. *Id.* These positions are internally inconsistent.

If it is true that solar systems will not be built without long-term contracts, then the "excess" credits that SEF identifies in its brief must be tied up in long-term contracts, and are, therefore, not excess and not available for use in future SREC procurement. PPL Electric Main Brief, pp. 13-15. However, if there truly are substantial excess SRECs available for purchase at this time, then it cannot be accurate for SEF to assert that long-term contracts are necessary to develop solar projects. As PPL Electric's witness Mr. Stinner stated:

"Given the number of systems that have been constructed, one can reach one of two conclusions: Either long-term guaranteed financing is not always necessary to project development, or all of the projects that have been developed are already committed under long-term contracts." PPL Electric St. 1-R, p. 2.

There is no logically consistent way to reconcile the positions taken by SEF.

PPL Electric has shown that solar aggregators have not been limited to offering long-term contracts to encourage new projects. The market currently supports a variety of contract lengths between solar aggregators and small-scale solar systems. PPL Electric Exhibit DRS-R2. The Company produced evidence that the current market includes both short-term contracts of one or two years, and long-term contracts extending beyond those SEF proposes as a requirement in this

proceeding. Exhibit DRS-R2. If long-term contracts were a necessary element in developing small-scale solar system projects, then solar aggregators would not offer anything other than long-term contracts. This would be logically true because no other contract term would be accepted by potential small-scale solar system owners. However, the market shows that this is clearly not the case. Solar aggregators are offering a variety of contracts because the market supports a variety of contract lengths.

PPL Electric's position in this proceeding does not inhibit the development of long-term contracts if that turns out to be the option that small-scale solar systems prefer. However, there is no evidence at this time that small-scale solar systems should be deprived of the freedom to choose the duration of their contract with solar aggregators. SEF's proposal would place PPL Electric in the middle of contract negotiations between aggregators and developers, and deprive small system owners of any freedom in how they participate in the SREC program. SEF's requirement would give small system owners only two options. They must either commit to a term of seven to nine years, or they cannot participate in the SREC set-aside program at all. SEF's proposal to substantially limit the options available to small-scale solar system owners may stifle the development of small-scale solar systems and should be rejected.

2. PROJECTIONS OF POTENTIAL SHORT-TERM EXCESSES IN SRECS SUPPORT FLEXIBILITY IN CONTRACT TERMS BETWEEN AGGREGATORS AND SMALL-SCALE SOLAR SYSTEM OWNERS.

SEF states in its brief that SREC supply in the PJM footprint will exceed demand until the year 2015. SEF Brief, p. 14. PPL Electric notes that these are projections, which are by their very nature uncertain. As the Commission's AEPS Report for 2008-2009 notes, there could be a solar PV supply deficit of 11 MWs by 2015 if anticipated projects in the PJM queue are not built or SREC supplies could be plentiful if more solar projects are built. Ultimately, the AEPS

Report concludes that “it is difficult to predict what will happen in 2015.” SEF Exh. 2, p. 31. However, if the projections are correct, this supports giving aggregators the flexibility to purchase small-scale system SRECs using different approaches.

Short-term projections of excess supply may influence some aggregators to choose a layered procurement approach, which would encourage new projects throughout the term of the bilateral contracts. In the layered approach, the aggregator would acquire a “portfolio of contracts with solar facility owners with varying terms and conditions.” PPL Electric St. 1-S, p. 5. Flexibility to adjust to changing circumstances is necessary in the SREC market, because the market is just starting to take shape. Without flexibility, solar aggregators and small-scale solar facilities may not be able to survive or thrive, or may take a wait and see approach rather than accept long-term obligations. *Id.*

If the Commission adopts SEF’s long-term contract requirement, it will limit participation in PPL Electric’s set-aside program to only those small-scale solar systems that are built or have been built after June 1, 2010 and before the beginning of the bilateral contracts in 2011, 2012, or 2013. As Mr. Stinner identified in his testimony, “Solar facilities that come into service during the duration of these long-term contracts will not have any opportunity to supply the SREC’s set-aside in this proceeding.” PPL Electric 1-S, p. 6. That means that for the next 9 years only those systems in existence at the time of the procurement process will be allowed to participate, and any system that comes online in the interim will be excluded. PPL Electric St. 1-R, p. 6. Thus, SEF’s proposal may encourage, rather than discourage, solar aggregators to enter into contracts with existing systems over a long period, in order to participate in the set-aside, rather than encourage contracts with new systems.

PPL Electric's set-aside program will encourage small-scale solar development by creating demand for small-scale solar generation that is long-term and stable. SEF's proposal does nothing to improve the revenue risk for future projects, because its recommendation prohibits participation by those future projects in the current set-aside program. SEF's proposal is counterproductive to long-term development of small-scale solar projects and should not be adopted.

B. PPL ELECTRIC HAS COMPLIED FULLY WITH THE LETTER AND SPIRIT OF THE COMMISSION'S POLICY STATEMENT.

The Commission developed its Solar Policy Statement to address issues that it had identified as limiting the growth of the solar industry in Pennsylvania. In its proposed policy statement, the Commission stated:

The Commission is concerned that barriers currently exist that prevent the development of solar projects, such as alternative energy credit price uncertainty. The intent of this proposed policy statement is to outline a process to provide more alternative energy credit price certainty and to reduce or eliminate barriers to solar project development within Pennsylvania.

Policy Statement in Support of Pennsylvania Solar Projects, Docket No. M-2009-2140263, p. 6 (Order entered December 10, 2009). PPL Electric has complied fully with the guidelines contained in the policy statement and has gone beyond the language of the policy statement to adopt in the Partial Settlement an aggregation program that acquires SRECs produced by extremely small-scale solar systems.⁴

PPL Electric has endeavored to make it as simple as possible for small-scale solar systems to participate in the SREC process, which accomplishes the Commission's goal of

⁴ The Commission, in its Order adopting the policy statement, rejected proposals to include provisions specific to so-called "micro-scale" solar projects. *Policy Statement in Support of Pennsylvania Solar Projects*, Docket No. M-2009-2140263 (September 16, 2010), at pp. 22-24. PPL Electric notes that the Commission's statements of policy do not have the force of law that attend a regulation. *Pennsylvania Human Relations Commission v. Norristown Area School District*, 473 Pa. 334, 350, 374 A.2d 671 (1977).

lowering the barriers to entry. For small-scale solar systems to participate in PPL Electric's procurement process, they must do only one thing: They must enter into an agreement with a solar aggregator. Everything else about participation is accomplished through the set-aside program. SEF's requirement of long-term contracts would put PPL Electric in the middle of the relationship between the solar aggregator and the small-scale solar system. This would limit the freedom of both of those parties without any quantifiable benefit to either one, and would make the process unnecessarily complicated. The Commission specifically encouraged the use of aggregators, particularly for small-scale solar projects, in order to make the process more efficient for all parties involved. 52 Pa. Code § 69.2904. SEF's demand in this proceeding is in conflict with both the Commission's words and intentions in the Solar Policy Statement.

PPL Electric has created a platform to allow participation in the SREC market by small-scale solar systems, which creates price certainty and stability. By announcing its commitment to purchase a specific supply of SRECs at a given price over a number of years, PPL Electric has created a stable market for developers. Developers can now look at PPL Electric's procurement requirements and determine the number of SRECs that will be purchased on a long-term basis. There is no further benefit in adding the additional layer of contract requirements promoted by SEF. The long-term contracts with aggregators proposed by PPL Electric in the set-aside program allows aggregators to offer revenue guarantees for the purchase of SRECs throughout the contract term. This benefit flows through to small-scale solar facilities which can anticipate stable price terms from solar aggregators for their SRECs over the 7, 8, or 9 year life of the bilateral contract. This arrangement, on its own, creates long-term price certainty, without any need for PPL Electric to dictate long-term contracts between the solar aggregator and the small-scale solar facilities.

Finally, and critically, SEF has conceded that the Solar Policy Statement does not specifically address how best to achieve the Commission's objectives. Indeed, SEF has acknowledged that the Solar Policy Statement does not specify how to encourage expansion of small-scale solar projects. Tr. 514. SEF's statement on brief that the Commission determined that "the lack of long-term revenue stability [is] remedied by long-term bilateral contracts," SEF Brief, p. 16, is a mischaracterization of the Commission's Solar Policy Statement. What the Commission actually said was that it refused to "establish binding contract standards, terms, and conditions with this policy statement." *Policy Statement in Support of Pennsylvania Solar Projects*, Docket No. M-2009-2140263, p. 32 (September 16, 2010). While the Commission identified bilateral contracts and aggregation as one mechanism to further develop the SREC market, particularly for smaller solar systems, it did not direct the terms of the contracts between aggregators and system owners through the Solar Policy Statement. As explained next, there is no evidence of record that supports a need to direct such terms.

C. SEF HAS NOT MET ITS BURDEN OF PROOF IN THIS PROCEEDING.

The proponent of a rule or order in any Commission proceeding has the burden of proof 66 Pa. C.S. § 332. As the applicant in the initial filing, PPL Electric had the burden to show that its proposed amendment to its DSP Plan was in the public interest. PPL Electric met its burden. SEF is the proponent of the proposed certification requirement, and therefore has the burden of proof on the one outstanding issue in this proceeding. SEF must prove its case by a preponderance of the evidence, or evidence which is more convincing than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.3d 854 (1950); *Samuel J. Lansberry, Inc. v. Pa. Publ. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). SEF has failed to meet this burden.

SEF has provided no evidence to demonstrate that aggregators can acquire sufficient SRECs for the set-aside if they are restricted to seven to nine year contracts. At the November 4, 2010, hearing held in this matter, ALJ Colwell specifically questioned whether solar aggregators could obtain long-term contracts under SEF's proposal. SEF responded by acknowledging that its proposal may potentially endanger the success of the entire set-aside program by making it impossible for aggregators to participate. Tr. 515. If aggregators cannot participate, then small-scale solar systems will be left out of the process, which clearly does not meet the goals found in the Solar Policy Statement. SEF failed to provide any evidence to show that solar aggregators can meet the long-term contract requirements. Therefore it has failed to meet its burden of proof on this issue.

In addition, SEF provided no evidence that aggregators or small system owners want to be locked into long-term contracts. SEF's failure to include such evidence is fatal to its case. SEF is proposing a long-term contract requirement based on its assertion that such a requirement is necessary to the continued development of the small-scale solar system SREC market. SEF was required to produce at least some evidence to show that such a requirement is necessary, and that without such a requirement small-scale solar projects will not be developed. SEF provided no such evidence.

PPL Electric did provide evidence on this issue. The Company showed that the market currently offers a variety of contracts, which may be short or long-term, Exhibit DRS-R2, and that both aggregators and small-scale solar facilities prefer to have a variety of contract options at their disposal. PPL Electric St. 1-S, p. 5. Because SEF failed to produce any evidence on this issue, PPL Electric's uncontested evidence should be accepted as persuasive. Therefore SEF's

failure to show that there is a need for long-term contracts between solar aggregators and small-scale solar system owners should result in a finding that SEF has not met its burden of proof.

Finally, PPL Electric provided evidence in this case that identified a number of problems with SEF's long-term contract requirement. PPL Electric explained that long-term contracts could produce results that are contrary to the Commission's stated objectives in its Solar Policy Statement. For example, requiring all small-scale solar systems to enter long-term contracts may severely limit the ability for some owners to participate in the SREC program. PPL Electric St. 1-S, p. 4. If the only option available is long-term contracts, some owners of small-scale solar facilities may stay out of the market. PPL Electric St. 1-S, p. 5. As a result, aggregators may not be able to acquire enough long-term contracts to participate in the bid process. PPL Electric further explained the added difficulties it would experience to manage the set-aside program with SEF's certification requirement. PPL Electric St. 1-S, p. 6. SEF offered no evidence throughout the proceeding to demonstrate that long-term contracts between aggregators and small-scale solar system owners are necessary, and no evidence to rebut what was produced by PPL Electric. PPL Electric's evidence shows that imposing a long-term contract requirement between aggregators and small system owners will not further the goals of the Commission's Solar Policy Statement.

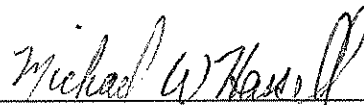
SEF has failed to meet its burden in this proceeding, and its proposed long-term contract certification requirement should be rejected.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, PPL Electric Utilities Corporation respectfully requests that the Administrative Law Judge and the Pennsylvania Public Utility Commission:

1. Approve the Joint Petition for Partial Settlement filed by the Parties in this proceeding without modification; and
2. Approve PPL Electric's proposed treatment of small-scale solar facilities and solar aggregators without the additional requirement that each solar aggregator certify that small-scale solar facilities are locked into contracts for a period equal to or longer than the term of the bilateral contract between PPL Electric and the solar aggregator.

Respectfully Submitted,



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