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December 27, 2010

VIA HAND-DELIVERY
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Filing Room - Second Floor
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

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, 2014 to Modify its Procurement of Solar Energy Credits; Docket No. P-2008-2060309; **EXCEPTIONS OF THE SUSTAINABLE ENERGY FUND OF CENTRAL EASTERN PENNSYLVANIA**

Dear Ms. Chiavetta:

Enclosed please find an original and nine (9) copies of the Exceptions on behalf of the Sustainable Energy Fund of Central Eastern Pennsylvania in the above-captioned matter. Copies of the Exceptions have also been served upon each party as indicated on the attached Certificate of Service.

Thank you for your attention to this matter. If you should have any questions, please feel free to contact me.

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)
Office of Special Assistants
Per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period of January 1, 2011 through May 31, 2014 to Modify its Procurement of Solar Energy Credits	:	Docket No.: P-2008-2060309

EXCEPTIONS OF THE SUSTAINABLE ENERGY FUND OF CENTRAL EASTERN PENNSYLVANIA

I. BACKGROUND AND INTRODUCTION

The Sustainable Energy Fund of Central Eastern Pennsylvania ("SEF"), files the following Exceptions to the December 6, 2010 Recommended Decision ("R.D.") of Administrative Law Judge Susan D. Colwell ("ALJ"). On May 18, 2010, PPL Electric Utilities Corporation ("PPL" or "Company") filed the Petition of PPL Electric Utilities Corporation for Approval to Modify its Procurement of Solar Alternative Energy Credits Under the Default Service Procurement Plan ("Petition") which initiated this proceeding. PPL's Default Service Procurement Plan ("DSP Plan") had been previously approved by the Pennsylvania Public Utility Commission ("Commission") on June 30, 2009, at this docket principally through approval of a Settlement entered into by the parties.

This is PPL's third petition to amend its DSP Plan. In its Petition, PPL requested that the Commission allow amendment of the DSP Plan by modifications to PPL's procurement of solar alternative energy credits ("SRECs"). In particular, PPL requested approval of the following: (1) an amendment to its current DSP Plan to permit it to procure a portion of its SRECs obligation over a longer-term delivery period such that this portion will no longer be procured under its DSP Plan's fixed-price load following contracts; (2) a proposed Request for Proposals Process and Rules: Solar Receivable Energy Credits for Compliance with Pennsylvania's Alternative Energy Portfolio

Standards Act ("SREC RFP");[1] (3) a proposed Solar Receivable Energy Credit Supply Master Agreement ("SREC SMS"); and (4) revision to the Company's Generation Supply Charge – 1 to provide for the treatment of all costs and credits associated with the procurement of SRECs pursuant to its requested RFP process.[2]

With regard to procurement, PPL proposed to competitively procure a portion of its SREC obligation in three solicitations occurring once per year during 2010-2012. These solicitations were designed to procure 50% of SREC requirements for the load following full requirement products. The initial proposed targets for each solicitation were based upon the purchase of 3,500 SRECs per year, resulting in target quantities of 31,500 SRECs for solicitation 1, the nine year delivery period solicitation proposed to occur on October 28, 2010, 28,000 SRECs for the eight year delivery period solicitation proposed to occur on July 28, 2011, and 24,500 SRECs for the seven year delivery period solicitation proposed to occur on July 26, 2012. Bidders that had the ability to deliver a minimum of 5,000 SRECs over the contracted delivery period and that met the eligibility requirements could participate in the solicitation. Bid participants could provide SRECs from either current or proposed solar photovoltaic ("PV") projects, with bidders having the ability to offer any quantity of SRECs offered so long as the quantity exceeded the 5,000 delivery period minimum and did not exceed the maximum target quantity for each solicitation.

It is important to note that PPL's requested modification to its DSP Plan for SREC procurement was grounded on the basis that it would encourage the development of new solar PV projects to satisfy the AEPS Act. In addition, it's requested new, long-term SREC procurement process was a response to the Commission's proposed solar policy statement.[3] It believed that its proposal would provide the longer-term revenue stability that is likely needed to support both small-

[1] Hereinafter the Act is referred to as "AEPS Act."
[2] SEF Main Brief at 1-2; R.D. at 1-2.
[3] *Policy Statement in Support of Pennsylvania Solar Projects*, Docket No. M-2009-2140263 (December 10,. 2009) ("December 10 Order").

scale and large-scale solar development in Pennsylvania, and would remove other barriers to the development of new solar projects by increasing the number of solar projects, the number of bidders and the amount of SRECs qualified for use by PPL to meet its AEPS Act obligations.[4]

SEF filed its Answer to PPL's Petition on June 7, 2010. One of the concerns raised by SEF was whether PPL's proposed modifications to its DSP Plan fully met the Commission's goals of promoting both small-scale and large-scale solar energy development, especially where PPL's proposal favored the continued piece-meal promotion of large-scale solar projects at the expense of small-scale projects.

The parties to the case agreed to a Partial Settlement of the proceeding, with one issue reserved for litigation. The Partial Settlement included numerous provisions, but only several of those provisions are germane to the reserved issue.

The Partial Settlement provides that PPL shall use the RFP process, as described in its Petition, to purchase long-term SRECs to meet the SREC requirements of residential customers. The small C&I and large C&I procurements for SRECS approved in the DSP Plan shall remain unchanged, meaning that the small commercial and industrial full requirements SRECs will remain subject to the DSP Plan procurement through May of 2013. The Partial Settlement, therefore, provides for reduced target quantities for residential ratepayers of 27,000 SRECs for the first solicitation (the nine year delivery period), 24.000 SRECs for the second solicitation (the eight year delivery period), and 21,000 SRECs for the third solicitation (the seven year delivery period). Bidders must have the ability to deliver 3,000 SRECs, at a minimum, over the contractual delivery period, a reduction from 3,500 SRECs.

In addition to the SREC RFP procurement amounts, the Partial Settlement included a new small-scale solar project set-aside program. This program included additional amounts set aside for

[4] SEF Main Brief at 3.

procurement, on a bilateral contract basis, from solar systems with 15 kW capacity or less. The additional set aside program amount is equal to 1,000 SRECs for the nine year period, 1,100 SRECs for the eight year period and 1,600 SRECs for the seven year period.

Small-scale solar systems of 15 kW or less that desire to participate in the set aside program shall be required to contract with a solar aggregator, which shall in turn contract with PPL. The solar aggregator shall be required to certify that all credits are provided from solar systems installed on or after June 1, 2010. A solar aggregator must demonstrate that it has a minimum of 100 SRECs from qualifying solar systems over the contracted delivery period to participate in the yearly set aside.

The price to be paid to solar aggregators under the set aside program shall be equal to the average SREC price for the applicable SREC RFP, which shall be deemed to include any administrative fee retained by the solar aggregator. The solar aggregator may retain an administrative fee not greater than 10% of the bid price for each SREC.

Solar aggregators must make offers to participate in the set aside program in multiples of 100 SRECs, not to exceed the maximum set aside amount for each procurement.

SEF and PPL, while able to agree that the solar aggregator must certify that all credits are provided from solar systems installed on or after June 1, 2010 as a means of promoting new small-scale solar development, were not able to agree that a further certification was required if the set aside program was to meet the goals of the Commission's policy statement. This additional requirement would require the solar aggregator to certify that it had long-term contracts with qualifying solar systems. While SEF supported the Partial Settlement, this issue relating to the small-scale set aside program was reserved for litigation. The issue, as stated in the Partial Settlement, is whether each aggregator under the set aside program will be required to certify not only that all credits are provided from solar systems installed on or after June 1, 2010, but also that it

has long-term contracts with qualifying solar systems for SRECs equal to or longer in term length of the bilateral contract between the aggregator and PPL.

ALJ Colwell, in her December 6, 2010 Recommended Decision, approved the Partial Settlement.[5] The ALJ did not approve the requirement that solar aggregators participating in the small-scale solar set aside program should also certify that they have long-term bilateral contracts with qualifying solar systems equal to or longer than the bilateral contract between the solar aggregator and PPL. The ALJ erred in this determination and the Commission should correct this error.

II. EXCEPTIONS

EXCEPTION NO. 1 – The ALJ Erred In Determining That Solar Aggregators Under The Small-Scale Solar Set Aside Program Should Not Be Required To Certify That They Have A Long-Term Purchase Agreement Or Agreements For SRECs Equivalent To Or Longer Than The Solicitation Contract Delivery Period. (R.D. at 21-27).

As noted, 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 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 Commission's Policy Statement in Support of Pennsylvania Solar Projects ("Solar Policy Statement")[6], 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.

As SEF witness Costlow noted, PPL should be recognized for its voluntary efforts to encourage the development of new small-scale solar capacity through the set aside program in the Partial

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[5] *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, 2014 for Approval to Modify its Procurement of Solar Alternative Energy Credits*, Docket No. P-2008-2060309, December 6, 2010 Recommended Decision. Slip Op. at 5-13, Ordering ¶ 1 at 30. ("December 6 Order.")

[6] *Policy Statement in Support of Pennsylvania Solar Projects*, Docket No. M-2009-2140263 (September 16, 2010) ("September 16 Order").

Settlement for procurement of SRECs on a bilateral contract basis from 15 kW or less small solar systems.[7] The parameters and sizes of PPL's proposed longer-term acquisition of SRECs for a portion of its fixed-price load following contracts did not meaningfully promote small-scale solar projects. The small-scale SREC set aside program begins that promotion along side the promotion of large-scale projects. As noted above, PPL has agreed as a measure to promote new small-scale solar systems that solar aggregators must certify that all SREC credits are provided from solar systems installed on or after June 1, 2010. However, SEF believes that, if the policy and goals of the Commission's Solar Policy Statement are to be met, an additional certification is required. Namely, the solar aggregator should also be required to certify that it has long term contracts with qualifying solar systems for SRECs equal to or longer in term length of the bilateral contract between the aggregator and PPL.

The policy and goals of the Commission are clear. As detailed earlier, PPL posited that its requested new long-term SREC procurement process was in response to the Commission's goals in the Commission's proposed solar policy statement. The proposed solar policy statement desired to provide a framework whereby existing barriers preventing new solar projects in Pennsylvania, principally through long-term price uncertainty, could be removed. It encouraged Electric Distribution Companies ("EDCs") to issue RFPs for large-scale solar projects whose SREC output will be used to meet EDC obligations under the AEPS Act. It also encouraged EDCs to procure SRECs from small-scale solar projects, through both a competitively bid RFP process, adhering to the same standards in use for large-scale solar project RFPs, and bilateral contracts.[8] It expressly noted that the bilateral contract approach should be used to support the development of small-scale solar projects located in Pennsylvania,[9] and encouraged EDCs to contract for SRECs with solar

[7] SEF St. No. 1 at 2.
[8] Proposed Section 69.2903 of 52 Pennsylvania Code.
[9] *Id.*

aggregators that obtain SRECs from creditworthy residential owners of small-scale solar projects.[10] Standardized contracts for the long-term procurement of SRECs should be from 5 to 20 years in length.[11]

The Commission's goals were clearly stated in the December 10 Order. After reciting the requirements of the AEPS Act, the Alternative Energy Investment Act and Act 129, along with its rulemaking orders and regulations, the Commission stated:

> The legislation and regulations discussed above establish a clear policy to promote the construction of solar projects in this Commonwealth. Even with the establishment of such a clear policy, the Commission is concerned that there are still barriers to a more expansive development of solar projects within Pennsylvania. The Commission believes that Pennsylvania EDCs, their customers and those interested in developing solar projects in Pennsylvania are impeded in their economic analysis of such projects due to solar alternative energy credit price uncertainty. The purpose of this proposed policy statement is to develop a process to overcome such price uncertainty, which will in turn promote funding of future solar projects that will benefit electric consumers in this Commonwealth.[12]

The Commission also clearly stated that the intent of the proposed policy statement was to outline a process to provide more solar alternative credit price certainty and to reduce or eliminate barriers to solar project development within Pennsylvania.[13]

Following the filing of PPL's Petition, the Commission issued its September 16, 2010 Order adopting the Solar Policy Statement adding Sections 69.2901-69.2904 to Chapter 69 of the Commission's regulations in Title 52 of the Pennsylvania Code. The Commission's final policy statement is practically verbatim with the proposed policy statement, and the Commission reiterated the policy and purpose of the final policy statement quoted above.[14]

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[10] Proposed Section 69.2904 of 52 Pennsylvania Code.
[11] *Id.*
[12] December 10 Order at 5.
[13] *Id.* at 5-6.
[14] September 10 Order at 6. Long-term revenue stability is driven by removing SREC price uncertainty. As SEF witness Costlow testified, at current market rates SRECs represent more than three quarters of a solar project's annual

Thus, the Commission's Solar Policy Statement clearly states that its policy is to promote the construction of solar projects in the Commonwealth. Even with such a clear policy, the Commission is convinced that there are still barriers to a more expansive development of solar projects to support the Commonwealth's alternative energy goals. The Commission's Solar Policy Statement goal, therefore, is to insure that those interested in developing solar projects are not impeded in their economic analysis of such projects by providing longer-term revenue stability likely needed to support both small-scale and large-scale solar development. In this way, those interested in developing solar projects are not impeded by solar alternative energy credit price uncertainty. As the Commission stated: "The purpose of this policy statement is to develop a process to overcome such price uncertainty that will in turn promote funding of future solar projects that benefit electric consumers in this Commonwealth."[15]

While the certification by aggregators that all SREC credits are provided from solar systems installed on or after June 1, 2010 is a necessary beginning step in meeting the need for long-term revenue stability, this certification alone does not go far enough in meeting the Commission's goals. As SEF witness Costlow testified, this is a critical flaw in the long-term small-scale set aside program.[16]

Stable SREC revenue is critically important for developers seeking to finance new solar projects. Commercial financers look at five main factors in determining whether to extend credit to a developer, i.e., character, collateral, capital, conditions and cash flow. Of these factors, cash flow, which represents the ability of a borrower to repay the capital extended by the commercial financial institution, is preeminent.[17]

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income post federal and state incentives. The long-term SREC contracts, therefore, decrease a specific project revenue risk. SEF St. No. 1 at 4.

[15] December 10 Order at 1, 5; September 16 Order at 1, 6.

[16] SEF St. No. 1 at 3.

[17] *Id.* at 5.

As Mr. Costlow testified, since the markets current capacity to produce SREC's far exceeds the demand for SRECs required for compliance, a commercial financer would either heavily discount or completely disregard the future revenue from the sale of SRECs which would negatively impact a lender's decision.[18] Therefore, without the requirement that aggregators enter into long-term contracts with developers of solar systems under the small-scale set aside program, the public benefit resulting from the set aside procurement will be severely mitigated or destroyed. As SEF witness Costlow noted, the purpose of the Commission's statement is to encourage developers to construct new solar capacity by reducing future income risk. The purpose of the long-term contract is to create project revenue stability, reducing the income risk to developers and consequently causing construction of new solar capacity. At current market rates, SRECs represent more than three-quarters of a solar project's annual income post federal and state incentives. The long-term SREC contracts decrease a specific project's revenue risk. Stopping the long-term contracts at the aggregator, as opposed to the developer, does not reduce the developer's risk. Any failure of the proposed procurement to cause development of new solar capacity, particularly small-scale solar capacity, is contrary to the Commission's goals.[19]

Without the further certification from aggregators, the aggregator can simply purchase SRECs from projects developed after June 1, 2010. Under current market conditions, as noted by Mr. Costlow, the Commission's 2008-2009 Combined Annual Report on the Alternative Energy Portfolio Standards Act of 2004 ("AEPS Annual Report") notes that the 2010 compliance demand for solar PV generation is approximately 5.8 MW while supply in Pennsylvania is expected to be 27.8 MW.[20] Given this current excess of solar PV generation compared to compliance demand, the limiting of certification to 15 kW solar systems on or after June 1, 2010, will not prevent aggregators

[18] *Id.* Commercial loans are important to the development of solar projects since they are capital intensive requiring a sizable upfront investment with returns that occur over decades.
[19] *Id.* at 4, 5.
[20] SEF St. No. 1 at 4; SEF Exhibit 2 at page 25.

from simply procuring SRECs from 15 kW systems over the life of the nine, eight or seven year supply schedule as opposed to extending long-term contracts for such supplies, thereby defeating the purpose of the Commission's Solar Policy Statement.

PPL witness Stinner attempted to rebut this result in PPL Statement No. 1-R. First, he stated that the Commission's AEPS report clearly notes that 20 MW of the estimated 27.8 MW of supply expected to be available for 2010 was already in service as of June 2010.[21] What Mr. Stinner ignores is that, even with this result, the 7.8 MW of supply still exceeds the 5.8 MW of compliance demand.

Second, Mr. Stinner stated that the solar supply in the AEPS Report is not limited to systems of 15 kW or less. He opined that the Commission's report cannot support a claim that existing small-scale projects will be used to meet all or a substantial portion of the set aside program's SREC requirements.[22] However, SEF Exhibit 1 demonstrates that, through November 2, 2010, there are 2,880 Pennsylvania qualified solar generation facilities on the Commission's AEPS website, of which 2,617 are 15 kW or less, or 90.9%. Also, the set aside program requires approximately 403 kW of less than 15 kW annual capacity. Since June 1, 2010, as demonstrated at SEF Exhibit 1, there are 943 systems of less than 15 kW representing 6.27 MW of capacity. In addition, at June 1, 2010, there is twice as much installed solar capacity for residential interconnections on PPL's system as installed solar capacity for commercials.[23] Thus, the 2010 amount of 5.8 MW can be obtained with 15 kW or less systems installed after June 1, 2010. In addition, the post-June 1, 2010 capacity of 15 kW or less systems can already meet the set aside program requirements.

Third, PPL witness Stinner posited that an excess of eligible SREC credits from qualifying small-scale systems in 2010 is not proof that new small-scale solar PV system would not be

[21] PPL Statement No. 1-R at 5.
[22] *Id.*
[23] SEF Exhibit 3

developed without the certification of long-term contracts. This position is based upon the fact that SREC credits must be current for each year of the set aside program.[24] This analysis is the classic example of mixing apples and oranges. While 2010 SRECs cannot be used for 2011 forward over the life of the solicitation, the credits generated in 2011 and in later years by a project installed in 2010 can be used in each of those years. Thus, purchased SRECs from eligible solar systems installed on or after June 1, 2010 can be used in each year of the three solicitations so long as they generate SRECs in each year.

Finally, PPL witness Stinner posited that the relevant statewide solar demand is not 5.8 MW, but rather approximately 30 MW, citing page 30 of the Commission's AEPS Report.[25] This is so, in Mr. Stinner's view, because the credits existing in 2010 do no include the AEPS Act's procurement requirements of PECO, Allegheny Power, Penelec and Met-Ed, nor does it include the increased solar procurement requirements under the AEPS Act for compliance year 2012.[26]

Mr. Stinner's position is meritless and is based upon a selective review of the AEPS Report. The Commission's AEPS Report, after noting the demand referenced by witness Stinner, beginning in 2011, looked forward to the mid-2015 period. It estimated that solar PV demand will outpace supply in 2015 if additional generation is not added and twenty five percent of the PJM queue projects are built, which is the historic average.[27]

This leads to two results, which demonstrate the necessity for the long-term contract certification. First, the Commission's forecasts evidence that, without a certification of long-term contracts, aggregators will simply purchase SRECs from small-scale systems. This does not meet the Commission's goal of fostering new solar project development. Worse, the failure to provide

[24] PPL Statement No. 1-R at 5.
[25] PPL Statement No. 1-R at 6.
[26] *Id.*
[27] SEF Exhibit 2 at 31.

long-term revenue stability and, therefore, not promote the installation of new solar facilities contributes to the projected supply/demand imbalance in the future.

The record demonstrates that the certification by aggregators under the small-scale solar set aside program that they have long-term purchase agreements for SRECs equivalent to or longer than the contract delivery period is necessary if the program is to effectively meet the Commission's Solar Policy Statement's goal of developing new small-scale solar generation capacity. The only way to promote the necessary long-term revenue stability and thereby encourage small-scale residential solar projects is the provision of long-term contracts by the aggregator to provide a funding stream for new projects. Limiting the certification to 15 kW systems after June 1, 2010, will not prevent aggregators from simply purchasing SRECs from those systems over the life of the supply schedule, thereby defeating the purpose of the Commission's Solar Policy Statement.

PPL's principle argument against the requirement that aggregators participating in the small-scale solar set aside program certify that they have long-term contracts with qualifying solar projects is that it would create a significant barrier to entry. This argument essentially turns the Solar Policy Statement on its head. PPL witness Stinner opines that PPL should not interfere in contract negotiations between aggregators and small-scale solar PV developers since the solar market should be left to develop without significant barriers to entry.[28] He believes that if the market or individual solar aggregators conclude that long-term contracts with small-scale solar PV facility owners are the optimal means to generate credits to participate in the aggregation program, then that is what will occur.[29] The ALJ also referenced witness Stinner's supplemental direct testimony which further expounds on PPL's speculative view that the market should be left to determine the issue.[30]This is consistent with PPL's view relative to its original proposal, which is to allow winning suppliers to

[28] PPL Statement No. 1-R at 3.
[29] *Id.*
[30] R.D. at 25-27.

use any and all solar credits at their disposal.[31] PPL's speculative position is counter-intuitive and, therefore, meritless.

It is simply illogical and circular to argue that the provision of revenue stability through long-term contracts is a theoretical barrier to entry when the Commission has determined in its Solar Policy Statement determination that the principle barrier to the more expansive development of solar projects in Pennsylvania, especially small-scale solar projects, is the lack of longer-term revenue stability remedied by long-term bilateral contracts. PPL's arguments simply negate the reason for the Solar Policy Statement. If the Commission believed that the market should be left to develop on its own, with the market determining the best means to promote new solar projects, and if the Commission was comfortable with the choices being made in the market, it simply would not have bothered with a policy statement. The Commission, obviously, did not choose this course. PPL's position is simply untenable.

PPL's position, as will be seen, is also based upon complete speculation. PPL does not demonstrate that the certification by aggregators that they have long-term contracts with qualifying small-scale solar providers will create a barrier to entry, or that aggregators will not participate in the program. Indeed, the same speculation could apply to aggregators purchasing small-scale SRECS. The record offers no support for such speculation.

EXCEPTION NO. 2 – The ALJ Erred In Rejecting The Necessity For Solar Aggregators To Certify That They Have Long-Term Purchase Agreements For SRECS Based On Burden Of Proof Grounds (R.D. at 27).

The ALJ rejects the SEF's recommendation that solar aggregators under the small-scale solar set aside program should be required to certify that they have a long-term purchase agreement or agreements for SRECs equivalent to or longer than the solicitation contract delivery period since SEF has failed to sustain its burden in this matter. The ALJ erred.

[31] SEF St. No. 1 at 4.

The ALJ appears to rely on her opinion that SEF failed to carry its burden of persuasion in this case. This conclusion is meritless. As discussed previously, SEF's recommendation is entirely consistent with the Commission's Solar Policy Statement and the development of that policy statement, and is amply supported by the record. The ALJ's determination does not recognize this, but rather inappropriately relies on little more than circular speculation offered by PPL.

The ALJ's analysis is grounded in a strict burden of proof that is unjustified and, indeed, has never been applied to PPL in either its DSP Plan proposals or in its Act 129 proposal. That standard, essentially, is a definitive showing by SEF that the small-scale set aside program with a long-term contract certification will be guaranteed to be successful.

The ALJ recounts the supplemental direct testimony of PPL witness Stinner at length in her decision.[32] As the SEF summarized in its Reply Brief, this testimony is little more than a daisy chain of speculation offered as evidence that never deals with the central question of whether the certification by solar aggregators that they have a long-term bilateral contract or 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 is necessary to meet the goals of the Commission's Solar Policy Statement.

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

- SEF's proposal may discourage solar aggregastors from participating in the set aside program because certain aggregators may not wish to participate.[33]
- An aggregator may wish to acquire a portfolio of contracts with solar facility owners with varying terms and conditions.[34]

[32] R.D. at 25-27.
[33] PPL Main Brief at 8
[34] *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.[35]

- 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.[36]

SEF Reply Brief at 2-3.

The answer to the central question is clear, and not in any way demonstrated otherwise by PPL's daisy chain of speculation. 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.

The ALJ, apparently persuaded by this speculation, appears to elevate it to hard evidence, deeming the SEF recommendation a "restriction" to the small-scale set aside program. The Recommended Decision states:

> In summary, the SEF restriction would: (1) limit the option of small-scale solar owners; (2) discourage participation from those aggregators forced to comply; (3) bar the participation of new solar operators; and (4) require the company to incur additional administrative costs (to be passed onto ratepayers) by forcing it to confirm that the aggregators' contracts were long-term.[37]

Of course, it is self-evident that the record shows no such thing.

To overcome this determination, the ALJ applies an inappropriate strict standard of proof. The ALJ states:

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[35] *Id.* at 10.

[36] *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.

[37] R.D. at 27.

> There is no evidence to support a finding that requiring long-term contracts for small-scale developers would be desirable to the developers and aggregators save Mr. Costlow's opinion that the only way to promote revenue stability is to provide long-term contracts and ensure a funding stream. SEF Statement 1 at 2. SEF has not produced any evidence that solar aggregators can meet the long-term contract requirement, nor has it produced any evidence that aggregators or small system owners want long-term contracts. SEF has failed to sustain its burden in this matter.[38]

In essence, the ALJ requires that there must be a guarantee that solar aggregators can meet the long-term contract requirement attendant with certification. This is a stricter standard of proof than has been applied to any of the issues inherent in PPL's DSP Plan or its Act 129 Plan.

Initially, as the SEF noted earlier and in its Main Brief, PPL has not demonstrated that the certification by aggregators that they have long-term contracts with qualifying small-scale solar providers will create a barrier to entry, or that aggregators will not participate in the program. Indeed, the same speculation could apply to aggregators purchasing small-scale SRECs.[39]

In addition, PPL was not held to a standard of demonstrating that the purchasing of tranches of power supply and alternative energy credits in its DSP Plan would result in filling those tranches in every instance. Indeed, the ALJ noted that this is PPL's third petition to amend its plan. The first amendment, approved by Commission Order entered December 28, 2009, removed the debt rating requirement of Article 4.1.1(3). As the ALJ noted, this was intended to increase the number of solar alternative energy credits competitive bids submitted by small, non-rated entities that would not otherwise qualify to bid.[40] This action was in response to PPL's second DSP solicitation, including the bid results to the alternative energy credit RFP, wherein the Commission rejected, through Secretarial Letter of October 22, 2009, the bid results for the Tier 1 PV alternative energy credits as

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[38] *Id.*
[39] SEF Main Brief at 15-16.
[40] R.D. at 2.

non-competitive. This was because a group of relatively small size potential bidders were disqualified because they did not have a debt rating as required under Article 4.1.1 of the AEC RFP. The application of a stricter standard to SEF is inappropriate.

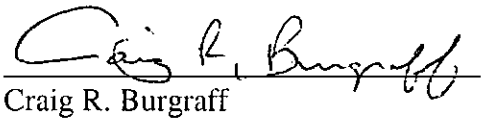
In addition, the ALJ's decision to ignore SEF witness Costlow's testimony is meritless. As PPL noted, SEF is a small-scale solar aggregator[41] and Mr. Costlow, as SEF's Director of Technical Services, is intimately involved in the SREC market. In addition, other solar aggregators are parties in this proceeding. Neither Constellation nor the Solar Alliance filed any testimony in the case evidencing either that long-term contracts for small-scale developers would be undesirable to developers and aggregators, that solar aggregators can not meet the long-term contract requirement, or that aggregators or small system owners do not desire long-term contracts. One would assume that if the long-term certification requirement was inimical to solar aggregators' interest, that they would have said so. It is self-evident that the ALJ's ignoring of SEF witness Costlow's testimony is in error.

[41] PPL Main Brief at 9.

III. CONCLUSION

For the foregoing reasons, and the reasons set forth in SEF's Main Brief and Reply Brief, the Recommended Decision should be rejected and the Commission should determine that the small-scale set aside program should include the certification from aggregators that they have a long-term purchase agreement or agreements for SRECs equivalent to or longer than the solicitation contract delivery period.

Respectfully submitted,



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Dated: December 27, 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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Dated this 27th day of December 2010