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January 3, 2011

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
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 3, 2013 for Approval to Modify its Procurement of Solar Alternative Energy Credits
Docket No. P-2008-2060309

Dear Secretary Chiavetta:

Enclosed for filing please find PPL Electric Utilities Corporation's Reply Exceptions to the Exceptions of Sustainable Energy Fund of Central Eastern Pennsylvania 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/skr
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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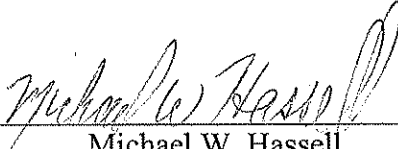
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Michael W. Hassell

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY EXCEPTIONS OF PPL ELECTRIC UTILITIES CORPORATION
TO THE EXCEPTIONS OF SUSTAINABLE ENERGY FUND
OF CENTRAL EASTERN PENNSYLVANIA**

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I. INTRODUCTION

On May 18, 2010, PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) filed its Petition for Approval to Modify Its Procurement of Solar Alternative Energy Credits Under the Default Service Procurement Plan (“SREC Petition”). PPL Electric filed its petition in response to the Public Utility Commission’s (“Commission’s”) *Proposed Policy Statement in Support of Pennsylvania Solar Projects*, Docket No. M-2009-2140263 (Order entered December 10, 2009).¹ The petition proposed to amend PPL Electric’s Default Service Procurement Plan (“DSP Plan”) to procure a portion of the Company’s default service solar alternative energy credit (“SREC”) requirements through long-term procurements.

All parties to the proceeding reached an agreement on all but one issue associated with PPL Electric’s proposed amendment. The Joint Petition for Partial Settlement (“Partial Settlement”), supported or unopposed by all of the parties in this proceeding, was filed on November 16, 2010.² The Partial Settlement was approved by Administrative Law Judge Susan D. Colwell (“ALJ”) in a Recommended Decision issued on December 6, 2010. The Partial Settlement establishes a Request for Proposals (“RFP”) process for long-term procurement of a portion of PPL Electric’s default service SREC requirements. The Partial Settlement also establishes a separate set aside program for long-term procurement of SRECs from solar aggregators of SRECs produced by small-scale solar systems.³ In the set aside program, PPL Electric will procure additional SRECs through bilateral contracts with solar aggregators who

¹ On September 16, 2010, the Commission entered an order adopting a final *Policy Statement in Support of Pennsylvania Solar Projects* (“*Policy Statement Order*”), Docket No. M-2009-2140263. Both the proposed and final policy statements will be referred to as the “Solar Policy Statement” in these Reply Exceptions.

² 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.

³ Small-scale solar systems are defined as those with a Direct Current (“DC”) rating of 15 kW or less.

must certify that their SRECs come from small-scale solar systems that are installed on or after June 1, 2010. The additional quantities will be 1,000 SRECs for the life of the 9-year term, 1,100 SRECs for the life of the 8-year term and 1,600 SRECs for the life of the 7-year term.⁴ The price to be paid under the bilateral contracts will be equal to the average SREC price resulting from the applicable SREC RFP.

The sole issue reserved for litigation in this proceeding is a modification proposed by the Sustainable Energy Fund of Central Eastern Pennsylvania (“SEF”), which would require PPL Electric to impose an added condition on solar aggregators to certify that they have contracts in place with individual small-scale solar facilities with terms that are equal to or longer than the term of the bilateral contract between the solar aggregator and PPL Electric.

The ALJ, in a well reasoned Recommended Decision issued on December 6, 2010, rejected SEF’s proposed modification. The ALJ found that SEF failed to provide any evidence supporting its proposal, and therefore failed to meet its burden of proof in this matter. SEF has filed Exceptions to the Recommended Decision. PPL Electric responds here to those Exceptions.

II. ARGUMENT

A. SEF’S PROPOSAL TO REQUIRE AGGREGATORS TO OFFER ONLY LONG-TERM CONTRACTS TO PURCHASE SRECS FROM SMALL SYSTEM OWNERS IS NOT NECESSARY TO CONFORM TO THE COMMISSION’S SOLAR POLICY STATEMENT.

SEF’s first Exception contends that its proposal to require PPL Electric to dictate the length of contracts between solar aggregators and owners of small-scale solar systems is necessary to meet the goals of the Commission’s Solar Policy Statement. SEF’s proposal is not supported by the Commission’s prior determinations or by the record evidence.

⁴ The terms are scheduled to start in 2011 for the 9-year term, 2012 for the 8-year term, and 2013 for the 7-year term.

PPL Electric has voluntarily proposed to amend its DSP Plan to include a long-term procurement of SRECs to address the barriers to entry for solar developers identified by the Commission in its Solar Policy Statement.⁵ Through its Solar Policy Statement, the Commission seeks to encourage the construction of new solar projects, and the Commission has identified long-term revenue stability as one barrier to entry. PPL Electric Reply Brief, p. 8. However, contrary to SEF's contention in its first Exception, the Solar Policy Statement does not purport to interject the Commission or Electric Distribution Companies ("EDCs") into the negotiations between developers and solar aggregators. Indeed, SEF's contention that the Solar Policy Statement requires the certification of long-term contracts between aggregators and small-scale solar facilities is not supported by the language of the Solar Policy Statement or by the evidence presented in this case.

The Partial Settlement, as approved by the ALJ, will provide long-term revenue stability to encourage the development of small-scale solar projects. As described above, the Partial Settlement sets aside a specific number of credits over a period of 7-, 8- and 9-years that must be procured from small-scale solar facilities, ensuring that there will be demand for SRECs from small-scale solar systems. As described in the Partial Settlement, and in PPL Electric's Main Brief, the Company has developed a system by which small-scale solar facilities will receive a fair and predictable long-term price for their SRECs as developed from the separate SREC RFP process. PPL Electric M.B., pp. 7-8. The approved Partial Settlement also guarantees that this demand for SRECs produced by small-scale solar facilities must be filled by new solar facilities that are installed on or after June 1, 2010.

⁵ 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).

In this proceeding SEF seeks to establish a requirement that is not present in the Commission's Solar Policy Statement. SEF is demanding that the Commission impose an added condition on solar aggregators to certify that they have contracts in place with individual small-scale solar facilities with terms that are equal to or longer than the term of the bilateral contract between the solar aggregator and PPL Electric. However, in its Order adopting the Solar Policy Statement, the Commission declined requests to set specific standards or requirements for the purchase of SRECs from small-scale projects, or to adopt criteria related to contracts with solar aggregators. *Solar Policy Statement Order*, pp. 33-38. Instead, the Commission deferred to the EDCs to develop contract proposals based on the "circumstances and the evidence presented." *Id.*, p. 32. The Commission further stated that it was not its intention to "establish binding contract standards, terms, and conditions" with the Solar Policy Statement. *Id.* 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 claim that the Commission's Solar Policy Statement requires the certification of long-term contracts between aggregators and small-scale solar facilities is contrary to the Commission's clearly expressed intent.

Further, the Recommended Decision properly concludes that SEF's proposal is not supported by record evidence. SEF attempts to support its position by asserting in its first Exception that no new projects will be built without the proposed certification requirement. SEF contends that long-term contracts between solar aggregators and solar system owners for purchase of SRECs are necessary for the construction of new solar projects. SEF Exceptions, p. 9. SEF attempts to maintain this position while also claiming that there is currently an excess of SREC credits above that needed to satisfy the Alternative Energy Portfolio Standards Act ("AEPS Act"), both in general and from small-scale solar facilities in particular. *Id.* It is logically impossible for both of these statements to be true. Either projects are being built

without the assurance of a long-term stream of revenue, and are therefore the source of the “excess credits” SEF has pointed to, or all of the small-scale solar facilities currently in existence were built only because they were locked into long-term contracts, leaving no excess credits and negating SEF’s concern that aggregators will simply buy up existing credits to fulfill their contract requirement with PPL Electric. PPL Electric St. 1-R, p. 2. This logical fallacy does not support SEF’s contention that long-term contract certifications must be required.

PPL Electric notes that much of SEF’s argument is based on projections of excess credits existing for an extended period of time.⁶ Such projections are by their very nature uncertain. However, if the projections SEF relies upon are correct, this supports PPL Electric’s position to give solar aggregators the flexibility to acquire SRECs from small-scale facilities using a variety of approaches. Market uncertainty increases the need for flexibility in contract terms, so that market participants can adjust to unforeseen situations. If anything, the projections cited by SEF support a conservative approach that would increase, rather than reduce, the procurement options available to market participants. In the absence of SEF’s certification requirement, the solar aggregators will be free to determine how best to fill their long-term SREC requirements. This may include a layered approach, more fully explained in PPL Electric’s Main Brief, which would allow solar aggregators to utilize the SRECs of new facilities as they come online, even if that occurs in the middle of the existing bilateral contract between the aggregator and PPL Electric. PPL Electric M.B., pp.8-9.

If the Commission adopts SEF’s long-term contract certification requirement, it will limit participation in PPL Electric’s set-aside program to only those small-scale solar systems that are installed on or after June 1, 2010 and before the beginning of the bilateral contracts in 2011,

⁶ PPL Electric has explained that any excess credits that exist in 2010 are not relevant to procurements to be undertaken in future years, particularly because excess credits existing in 2010 do not take into account that most EDCs in Pennsylvania are not subject to the AEPS Act’s provisions until 2011. PPL Electric St. 1-R, p. 6.

2012, or 2013. As PPL Electric's expert, 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 SRECs set-aside in this proceeding." PPL Electric St. 1-S, p. 6. Therefore, SEF's proposed long-term contract certification requirement will not accomplish its alleged goal of encouraging the development of new small-scale solar facilities through the set-aside program.

PPL Electric's position in this proceeding does not inhibit the use of long-term contracts if that turns out to be the option that small-scale solar systems prefer. The record evidence in this proceeding clearly shows that solar aggregators are currently offering a variety of contract lengths which range from one to ten years. PPL Electric Exh. DRS-R2. Thus, long-term contracts are available to market participants who prefer that option. However, the Commission should not dictate the terms between solar aggregators and small-scale solar system owners, particularly where those terms will decrease, rather than increase, the pool of potential participants. The Commission should reject SEF's proposal, and thereby reaffirm its prior determination that the details of the contracts between solar aggregators and individual developers are best left to the determination of those parties. *Solar Policy Statement Order*, at p. 32.

B. THE ALJ CORRECTLY CONCLUDED THAT SEF PROVIDED NO EVIDENCE TO DEMONSTRATE THAT SMALL SYSTEM OWNERS AND AGGREGATORS NEED OR WANT TO BE LIMITED TO ONLY LONG-TERM CONTRACTS.

In its second Exception, SEF claims that the ALJ improperly subjected it to an inappropriate burden of proof. SEF Exceptions, p. 15. SEF quotes from the Recommended Decision, which states that "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.” Recommended Decision, p. 28. SEF then argues that this language imposed an evidentiary standard upon it that amounted to a “guarantee.” SEF’s argument is without merit.

It is clear from the language quoted above that SEF is misinterpreting the Recommended Decision. The ALJ did not require that SEF “guarantee that solar aggregators can meet the long-term contract requirements attendant with certification.” SEF Exceptions, p. 16. However, the ALJ did require that SEF support its position with record evidence. Indeed, the ALJ required what the courts of this state have long required, i.e., enough evidence to meet a party’s burden of proof.⁷ SEF offered no evidence, and, accordingly, failed to meet its burden of proof.

SEF, as the proponent of the proposed long-term contract certification requirement, had to produce evidence showing that solar aggregators could fulfill their bilateral contracts using only long-term contracts, and that there was demand for long-term contracts among small-scale solar facilities. SEF failed to provide any evidence at all on either of these two points. Critically, SEF does not point to any record evidence in its Exceptions to dispute the ALJ’s conclusions.

In contrast, PPL Electric offered evidence to show that the proposed certification requirement is neither prudent nor necessary. PPL Electric offered testimony showing that the imposition of the long-term contract requirement may create a new barrier to entry, as some owners of small-scale solar facilities may refuse to participate. This would result in aggregators who are unable to meet their contractual obligations. PPL Electric St. 1-S, p. 5. The Company also showed that the market currently offers a variety of contracts, which may be short or long-term, and that both aggregators and small-scale solar facilities prefer to have a variety of contract

⁷ *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).

options at their disposal. PPL Electric Exh. DRS-R2; PPL Electric St. 1-S, p. 5. PPL Electric's evidence was not rebutted by SEF.⁸ SEF's failure to provide evidence, coupled with PPL Electric's unrebutted evidence, supports the conclusion reached by the ALJ in the Recommended Decision.⁹

Finally, SEF brings up two contentions not previously raised. First, SEF attempts to contrast the burden of proof applied in prior PPL Electric DSP Plan proceedings with the burden of proof applied to SEF in this case. SEF Exceptions, p. 16. This claimed contrast is without merit. As shown above, the burden of proof applied in this case was not a standard of "guarantee" as SEF claims, but instead was the same burden previously applied to PPL Electric. That burden was to provide a preponderance of the evidence to show that the DSP Plan, and any amendments thereto, would meet statutory requirements to acquire default service requirements at a least cost over time. It must be noted that the prior amendments to the DSP Plan have always been undertaken in an effort to increase participation where problems had been identified. PPL Electric has demonstrated in this proceeding that SEF's proposal may decrease participation by solar aggregators, as well as small-scale solar system owners. SEF did not rebut the Company's evidence. SEF's attempted reliance on this argument is in error.

Second, SEF attempts to bolster its position by referring to Constellation and Solar Alliance, two parties to this proceeding, who SEF claims have not objected to SEF's proposed certification requirement. Not only is it inappropriate for SEF to raise this argument at this point

⁸ For further record evidence supporting PPL Electric's position and the Recommended Decision, see PPL Electric's Reply Brief, pp. 11-12.

⁹ SEF further claims that the ALJ wrongly rejected the testimony of its expert witness. SEF Exceptions, p. 17. An ALJ "is free to accept or reject the testimony of any witness...in whole or in part, and determinations regarding credibility and weight of the evidence are within the province of the ALJ." *DePaolo v. Dept. of Pub. Welfare*, 865 A.2d 299 (Pa. Cmwlth 2005).

in the proceeding,¹⁰ but in addition the conclusion SEF draws is entirely unsupported. There is no evidence that either of these parties have any interest in the small system set-aside program.¹¹ Their silence in this proceeding on this issue cannot be equated to support for SEF's position. It is just as valid to assume that if the certification requirement was in their interest, Constellation and Solar Alliance would have said so through participation in these proceedings. Therefore, their silence could just as readily be construed as support of the settlement terms without the additional certification proposed by SEF. The most reasonable conclusion is that they have no opinion on the matter. SEF's inclusion of this observation in support of its position is both procedurally inappropriate and factually insufficient.

In light of PPL Electric's evidence showing the problems with the long-term contract certification requirement, and SEF's failure to provide any substantial evidence in this proceeding in support of that proposal, the Recommended Decision by ALJ Colwell was appropriate and reasonable. SEF's second Exception should be denied.

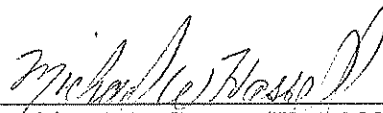
¹⁰ 52 Pa. Code § 5.431(b) states that "After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion." SEF has not satisfied these requirements.

¹¹ It is noted that none of the parties to this proceeding, other than PPL Electric and SEF, presented testimony or submitted briefs on the reserved issue.

III. CONCLUSION

WHEREFORE, for all the foregoing reasons, and the reasons set forth in its Main Brief and Reply Brief, PPL Electric Utilities Corporation respectfully requests that the Exceptions of SEF be rejected, and the Recommended Decision be approved.

Respectfully submitted,



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