

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held February 24, 2011

Commissioners Present:

James H. Cawley, Chairman, Statement
Tyrone J. Christy, Vice Chairman, Dissenting
John F. Coleman, Jr.
Wayne E. Gardner
Robert F. Powelson

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 for Approval to
Modify its Procurement of Solar Alternative
Energy Credits

P-2008-2060309

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of the Sustainable Energy Fund of Central Eastern Pennsylvania (SEF) to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Susan D. Colwell issued on December 17, 2010, wherein she recommended approval of the Joint Petition for Partial Settlement, which was filed on November 16, 2010 (Joint Partial Settlement Petition), regarding the Petition of PPL Electric Utilities Corporation (PPL or the Company) for Approval to Modify its Procurement of Solar Alternative Energy Credits Under the Default Service Procurement Plan, which was filed on May 18, 2010 (May 18, 2010 Petition). On January 3, 2011, PPL filed Replies to Exceptions.

History of the Proceeding

On August 28, 2008, PPL filed a petition with the Commission seeking approval of a default service program and procurement plan (DSP Plan) for the period January 1, 2011 through May 31, 2013. The purpose of the DSP Plan was to establish the terms and conditions under which PPL acquires and supplies default service, including competitive procurement of Provider of Last Resort (POLR) supply and related alternative energy credits; rate design; an explanation of Regional Transmission Organization compliance and consistency; and a contingency plan. The Petition and attachments were served on a lengthy list of entities and utility counsel. R.D. at 1.

Following litigation, the parties came to a full settlement (Original Settlement) of all issues but two, which were fully litigated and subject to a Commission decision in an Order entered June 30, 2009. On July 1, 2009, PPL filed its compliance tariff which satisfied the directive in the Commission's June 30, 2009 Opinion and Order. R.D. at 1.

The instant May 18, 2010 Petition is PPL's third petition to amend the Original Settlement. The first amendment, which removed the debt rating requirement of Article 4.1.1(3), was approved by the Commission in an Order entered on December 28, 2009. This was intended to increase the number of solar renewable energy credits (SREC) competitive bids submitted by small, non-rated entities that would not otherwise qualify to bid. The second amendment was approved by the Commission in an Order entered on June 24, 2010, and permitted the reinstatement of an Auction Revenue Rights (ARR) allocation in a manner consistent with the Competitive Bridge Plan Supply Master Agreement (SMA) permitting PPL to proportionally assign the ARRs to participating wholesale suppliers. R.D. at 2.

The instant Petition, filed by PPL on May 18, 2010, requests that the Commission amend the terms of the Original Settlement by modifying its procurement of SRECs. PPL filed its Petition in response to the Commission's *Proposed Policy Statement in Support of Pennsylvania Solar Projects*, Docket No. M-2009-2140263 (Order entered December 10, 2009).¹ The Petition was served on all parties to the original proceeding. On June 7, 2010, the Office of Consumer Advocate (OCA), Office of Small Business Advocate (OSBA) and SEF each filed an Answer to PPL's Petition. R.D. at 2.

By Order entered July 22, 2010, the Commission directed the Office of Administrative Law Judge to develop an evidentiary record and to prepare a recommended decision on an expedited basis. R.D. at 2.

By Notice issued July 28, 2010, a prehearing conference on remand was scheduled for August 18, 2010. Prehearing memos were submitted by PPL, OCA, OSBA, SEF, Mr. Epstein and Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (Constellation). Petitions to intervene were filed by Exelon Generation Company, LLC, and the Solar Alliance. These petitions are addressed in a separate order. R.D. at 2.

The prehearing conference was held as scheduled, and the following were present: PPL, OCA, OSBA, SEF, Mr. Epstein, Constellation, PP&L Industrial Customer Alliance (PPLICA), and Solar Alliance. The Parties agreed upon a schedule which was adopted in the scheduling order issued August 19, 2010. R.D. at 2.

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

On October 13, 2010, the Parties indicated that they had reached a settlement in principle, with one reserved issue, and asked for the following: (1) cancellation of the due date for the filing of direct testimony of parties other than the Company; (2) rescheduling of direct testimony due date for all parties for the reserved issue; (3) making the rebuttal due date for all parties set for November 1st; and (4) cancellation of the November 3, 2010 hearing date in favor of November 4, 2010. The request was granted by Amended Scheduling Order issued October 13, 2010. The hearing was held as scheduled on November 4, 2010. R.D. at 3.

As noted, on November 16, 2010, the Parties filed a Joint Partial Settlement Petition, signed by PPL, OCA, OSBA, SEF, and the Solar Alliance. Letters of non-opposition were filed by OTS, PPLICA and Constellation. Mr. Epstein has indicated that he does not oppose the Joint Partial Settlement Petition. Statements in Support of the Joint Partial Settlement Petition were filed by PPL, OSBA, SEF, OCA and the Solar Alliance. Also on November 16, 2010, Main Briefs were filed by PPL and SEF. Both filed Reply Briefs on November 23, 2010. The record closed upon their receipt and on December 17, 2010, the Commission issued ALJ Colwell's R.D.

As noted, all of the Parties to the proceeding reached an agreement on all but one issue associated with PPL's proposed amendment. The one unresolved issue is whether each aggregator under the set aside program will 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 ALJ concluded in her R.D. that the terms of the Joint Partial Settlement Petition are in the public interest and, therefore, should be approved without modification. With regard to the unresolved issue, the ALJ recommended denial of the modification proposed by SEF that would require that aggregators for participation in the small system set aside program be

required to enter long-term contracts with solar renewable energy credit providers. The ALJ concluded that SEF failed to sustain its burden of proof.

The Joint Partial Settlement

The Joint Petitioners agree that PPL's request to amend its current DSP Plan to permit it to procure a portion of its SRECs required under the Alternative Energy Portfolio Standards Act over a long term delivery period should be approved, as described in the Solar Petition and subject to the following terms and conditions:

- (a) The Company shall use the RFP process, as described in its Solar Petition, to purchase long-term SRECs to meet the SREC requirements of residential customers based upon the purchase of 3,000 SRECs per year, resulting in target quantities of 27,000 SRECs for Solicitation 1 (a delivery period of 9 years), 24,000 SRECs for Solicitation 2 (a delivery period of 8 years), and 21,000 SRECs for Solicitation 3 (a delivery period of 7 years). These represent initial target quantities that are subject to revision as provided in Section 2.3.2 of the SREC RFP Process and Rules. The Small C&I and Large C&I procurements for SRECs approved in the DSP Plan Settlement shall remain unchanged.
- (b) To reflect the terms and conditions of the Settlement, the Company shall adopt and implement the following, modified consistent with the terms of this Settlement: (i) the SREC RFP Process and Rules, attached as Appendix A to the Petition; (ii) the SREC SMA, attached as Appendix B to the Petition; (iii) the Addendum to DSP Plan SMA, attached as Appendix C to the Petition; and (iv) the Revisions to Generation Supply Charge-1, attached as Appendix D to the Petition.
- (c) The initial solicitation may be undertaken at any time, in the Company's discretion, following Commission approval of the Settlement.

(d) All DSP Plan transaction confirmations entered into prior to implementation of this long-term SREC procurement process shall remain unchanged and obligations set forth therein, in amount and by customer class, shall continue.

(e) Following implementation of this long-term SREC procurement process, the Company shall issue an Addendum to the Default Service SMAs, in the form set forth in Appendix C, to be applicable to Transaction Confirmations issued subsequent to Commission approval of this Settlement. Pursuant to the Addendum, "Exhibit B" to the SMA shall specify the Seller's AEPS Obligation for each prospective solicitation. A form of the modification to "Exhibit B" is attached hereto as Appendix F. Initially, the Company intends to reduce the percentage obligation of SRECs under the Default Service SMA for procurements related to residential customers to one-half the statutorily required amounts.

Joint Partial Settlement Petition at 5-6.

In addition to the foregoing, the Joint Petitioners agree to the following:

(a) The independent RFP Manager will submit a confidential solar market benchmarking analysis to the Commission prior to each SREC bid closing date. The RFP Manager will provide the solar market benchmarking analysis to OCA and PPL (if they so desire), on a confidential basis, five days prior to the date that the analysis is submitted to the Commission. OCA will have three (3) days to submit, on a confidential basis, any comments on the benchmarking analysis to PPL and the RFP Manager. The RFP Manager will retain the discretion to take into account or respond to the comments as it believes appropriate in preparation of its report to the Commission on the results of the SREC procurement. The RFP Manager will append any comments submitted by OCA to its analysis submitted to the Commission.

(b) Bidders must have the ability to deliver, at a minimum, 3,000 SRECs over the contracted delivery period, and meet all other eligibility requirements to participate in these solicitations.

(c) PPL will release the average weighted price of the winning bids no later than fourteen (14) calendar days after all executed transaction confirmations for a solicitation have been returned. The average weighted price will be released regardless of the number of winning bidders, but the number of winning bidders will not be released.

(d) In any given Compliance Period, a Seller must transfer SRECs into PPL’s PJM Generation Attributes Tracking System (“GATS”) account in accordance with the following minimum supply schedule:

	Jun.	Jul.	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May
Percent Obligation	10%	10%	10%	9%	9%	6%	6%	6%	6%	9%	9%	10%

(e) Sellers may transfer excess credits, above the minimum monthly required percentage, but not to exceed 200% of the required monthly percentage. Excess credits will be applied to future monthly obligations on a rolling basis. The aggregate quantity of SRECs transferred may not exceed the annual obligation for a Compliance Period. No credits may be transferred to PPL in advance of a future Compliance Period. Sellers will be paid for actual SRECs delivered.

(f) Article 2.3(c) of the SMA shall be revised to read as follows:

Within 70 days after the end of each calendar month during the Delivery Period, but not to exceed 50 days after the end of the Delivery Period per Article 2.3 (e), the Seller shall transfer SRECs into the Buyer’s GATS account(s) in an amount commensurate with Specified Amount provided by the Seller during said calendar month.

(g) Article 3.1 of the SREC SMA shall be revised to read as follows:

3.1 Recovery of SREC Costs. Buyer's obligations under this agreement are premised upon Buyer's ability to recover all costs incurred by it under this Agreement from its retail customers in full on a current basis, as recognized by the AEPS Act. In the event that the Buyer has previously filed for and received regulatory approval for the SREC procurement plan underlying this Agreement, and any subsequent Order of the Pennsylvania Public Utility Commission has the effect of suspending, limiting, or denying Buyer's ability to recover fully such costs from its retail customers on a current basis, Buyer may exercise one of the following two options, but only after undertaking reasonable best efforts to challenge such action before the Pennsylvania Public Utility Commission:

(1) terminate this Agreement upon 30 calendar days notice; or

(2) elect to continue performing under the Agreement and pay the Seller only the costs for the SRECs which the Buyer is permitted to recover on a current basis from its retail customers. However, if Buyer elects to reduce its payments under this Agreement to that which it is permitted to recover on a current basis from its retail customers as a result of an action of the Public Utility Commission, Seller may terminate this Agreement upon not less than 30 calendar days notice.

(h) Article 12.3 of the SREC SMA shall be revised to read as follows:

Unsecured Credit. During the term of this Agreement, Buyer shall extend, solely with respect to the Performance Assurance set forth in Section 12.1 (Requirement for Performance Assurance), Unsecured Credit, as defined in Article 1 of this Agreement, to

Seller in an amount initially determined on the Effective Date and redetermined each Business Day thereafter pursuant to this Section 12.3.

For purposes of determining Unsecured Credit for Sellers with credit ratings, the relevant Unsecured Credit Limit for Aggregate Transactions shall not exceed the Unsecured Credit Limit listed in the following table that corresponds to Seller's (or Seller's Guarantor's) lowest Credit Rating most recently published by S&P, Fitch and/or Moody's. The relevant Tangible Net Worth (TNW) Amount shall be calculated using the TNW Percentage listed in the following table that corresponds to Seller's (or Seller's Guarantor's) lowest Credit Rating most recently published by S&P, Fitch and/or Moody's.

CREDIT RATING				
S&P	Fitch	Moody's	TNW Percentage	Unsecured Credit Limit
A- or above	A- or above	A3 or above	5%	\$75,000,000
BBB+	BBB+	Baa1	5%	\$50,000,000
BBB	BBB	Baa2	5%	\$35,000,000
BBB-	BBB-	Baa3	5%	\$20,000,000
Below BBB-	Below BBB-	Below Baa3	5%	\$0

The Buyer also retains the discretion to extend Unsecured Credit to non-rated Sellers based on an evaluation of reasonable credit criteria, which shall at a minimum consist of a review of 3 (three) years of audited financial statements.

Pursuant to this Article 12 and Article 1, the analysis of Unsecured Credit will also include consideration of the Guaranty Agreement, if any, submitted by Seller in connection with this contract.

(i) In addition to the SREC RFP procurement amounts, additional amounts will be set aside for procurement, on a bilateral contract basis, from solar systems with a DC rating of 15 kW or less. The form of bilateral contract shall be similar to the SREC SMA, revised to reflect the requirements set forth herein and to remove provisions not relevant to a bilateral procurement. The set aside amount shall be equal to 1,000 SRECs for the 9-year term, 1,100 SRECs for the 8-year term and 1,600 SRECs for the 7-year term.

(i) Solar systems with a DC rating of 15 kW or less that desire to participate in the set aside 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 asides.

(ii) The price to be paid to solar aggregators under the set aside 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.

(iii) Solar aggregators must make offers to participate in the set aside in multiples of 100 SRECs, not to exceed the maximum set aside amount for each procurement. Offers will be submitted through an electronic mailbox. Following announcement of the applicable average SREC price, offers will be accepted on a first come-first serve basis. Offers will be ranked

based upon the e-mail submission time stamp. If the final offering in a solicitation exceeds the number of SRECs remaining for solicitation, the accepted final offering will be limited to the number of SRECs remaining.

Joint Partial Settlement Petition at 6-12.

The Joint Petitioners further agree that:

(a) SEF will not contend, in the 10-year unit entitlement procurement filing to be made pursuant to the DSP settlement,² that the 10-year unit entitlement procurement should be based upon a renewable energy system.

(b) The intervention of Solar Alliance is limited to the proposal to add a new form of procurement for SRECs into the DSP Plan, and shall not be precedent for parties that were not part of the original DSP Plan proceeding to intervene after the fact in any future proceeding involving the DSP Plan.

Joint Partial Settlement Petition at 12.

The Joint Petitioners assert that the modification of PPL's DSP Plan to authorize a revised procedure for prospective acquisition of SRECs, subject to the terms and conditions set forth above, reflects a carefully balanced compromise of the interests of all the Joint Petitioners in this proceeding. The Joint Petitioners conclude that the Settlement is in the public interest. Petition at 12.

² As part of PPL's settlement of its DSP Plan, the Company agreed to procure a portion of its default service supply for the residential customer class through a 50 MW 10-year unit entitlement procurement. The details of the 10-year unit entitlement request for proposal were deferred to a collaborative and will be filed separately with the Commission for approval.

Discussion

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission's decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

The ALJ made seventeen Findings of Fact and reached eleven Conclusions of Law. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

Before addressing the Exceptions, it is noted that any issue or Exception that we do not specifically discuss shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pennsylvania Public Utility Commission*, 625 A.2d 741 (Pa. Cmwlth. 1993).

In its first Exception, SEF submits that 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. SEF states that if the policy and goals of the Commission's Solar Policy Statement are to be met then 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. Exc. at 5-6.

SEF agrees that, 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, such certification alone does not go far enough in meeting the Commission's goals. SEF points out that this is a critical flaw in the long-term small-scale set aside program. Exc. at 8.

SEF argues that 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. Exc. at 9.

SEF avers that without a certification of long-term contracts, aggregators will simply purchase SRECs from small-scale systems and therefore the Commission's goal of fostering new solar project development will not be met. SEF argues that 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. Exc. at 11-12.

SEF also submits that PPL does not demonstrate that the certification of 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. SEF points out that the same speculation could apply to aggregators purchasing small-scale SRECs. Exc. at 13.

SEF submits in its second Exception, that the ALJ subjected it to an inappropriate burden of proof. SEF argues that the ALJ is requiring 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. Exc. at 15-16.

In reply, PPL avers that SEF's proposal to require aggregators to offer only long-term contracts to purchase SRECs from small system owners is not supported by the Commission's prior determination or by the record evidence. PPL argues that 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. PPL opines that granting the Joint Partial Settlement Petition will provide long-term revenue stability to encourage the development of small-scale solar projects. R. Exc. at 2-3.

PPL posits that solar aggregators should be given the flexibility to acquire SRECs from small-scale facilities using a variety of approaches. PPL argues that market uncertainty increases the need for flexibility in contract terms, so that market participants can adjust to unforeseen situations. R. Exc. at 5.

PPL contends that its position in this proceeding does not inhibit the use of long-term contracts provided that is the option that small-scale solar systems prefer. PPL points to the record evidence that shows that solar aggregators are currently offering a variety of contract lengths ranging from one to ten years. Thus, PPL argues that long-term contracts are available to market participants who prefer that option. R.Exc. at 6.

PPL opines that SEF in misinterpreting the Recommended Decision in that the ALJ did not require that SEF "guarantee that solar aggregators can meet the long-term contract requirements attendant with certification." PPL points out that the ALJ did require that SEF support its position with record evidence. PPL argues that SEF offered no evidence and therefore, failed to meet its burden of proof. R. Exc. at 7.

PPL submits that it offered evidence to show that the proposed certification requirement is neither prudent nor necessary. PPL argues 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. R. Exc. at 7.

As summarized by the ALJ, the SEF restriction would: (1) limit the options 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.

We agree with PPL that a long-term contract certification requirement on the aggregator, as proposed by SEF, may discourage solar aggregators from participating in the set aside program. Requiring small-scale solar facility owners to enter into minimum length long-term agreements may limit the options available for all participants that cannot or do not wish to sign long-term contracts with a term at least as long as the specified procurement period. Therefore, we shall deny SEF's proposed long-term contract certification requirement on aggregators as this additional requirement is not in the best interest of the solar facility owner, aggregators, the competitive SREC market or PPL.

With regard to the burden of proof issue, we agree with the ALJ and PPL that SEF has not provided 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. Therefore, we agree with the ALJ's conclusion that SEF has failed to sustain its burden of proof.

Conclusion

Based on the above discussion, we shall deny the Sustainable Energy Fund's Exceptions and adopt the ALJ's Recommended Decision, which approves the Joint Partial Settlement Petition; **THEREFORE**,

IT IS ORDERED:

1. That the Exceptions of the Sustainable Energy Fund of Central Eastern Pennsylvania, filed on December 27, 2010, are denied.
2. That the Recommended Decision of Administrative Law Judge Susan D. Colwell is adopted, consistent with this Opinion and Order.
3. That the Joint Petition for Partial Settlement filed on November 16, 2010, in the case captioned 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 (Petition of PPL Electric Utilities for Approval to Modify its Procurement of Solar Alternative Energy Credits), at Docket No. P-2008-2060309, is approved without modification.
4. That the Modification proposed by the Sustainable Energy Fund of Central Eastern Pennsylvania, to require that aggregators for participation in the small system set aside program be required to enter long-term contracts with solar renewable energy credit providers, is denied, consistent with this Opinion and Order.

5. That this matter be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive style with a large initial "R".

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: February 24, 2011

ORDER ENTERED: March 1, 2011