

STATEMENTS OF POLICY

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

[M-2009-2140263]

Pennsylvania Solar Projects

The Pennsylvania Public Utility Commission (Commission) on November 6, 2009, adopted a proposed policy statement which seeks to provide long-term revenue stability that is needed to support solar development and address barriers that could prevent new solar projects.

Commissioners Present: James H. Cawley, Chairperson; Tyrone J. Christy, Vice Chairperson; Kim Pizzingrilli; Wayne E. Gardner, Absent; Robert F. Powelson, Statement

Public Meeting held
November 6, 2009

Proposed Policy Statement

By the Commission:

Beginning in 2004, the Pennsylvania General Assembly enacted, and the Governor signed, a series of legislation promoting the development of renewable energy in this Commonwealth generally, and solar alternative energy specifically. The following proposed policy statement is designed to provide a foundation from which we can achieve these solar renewable energy goals at least cost to Pennsylvania consumers. More specifically, this proposed policy statement seeks to provide the longer term revenue stability that is likely needed to support both small scale and large scale solar development, and to address other barriers that could prevent new solar projects from coming to fruition in this Commonwealth.

Background

Governor Edward Rendell signed the Alternative Energy Portfolio Standards Act (AEPS Act) into law on November 30, 2004. (73 P.S. §§ 1648.1—1648.8.) The AEPS Act, which took effect on February 28, 2005, established an alternative energy portfolio standard for Pennsylvania. Generally, the AEPS Act requires that an annually increasing percentage of electricity sold to retail electric customers in this Commonwealth by electric distribution companies (EDCs) and electric generation suppliers (EGSs) be derived from alternative energy resources. The Commission has been charged with using its general powers to carry out, execute and enforce the provisions of the AEPS Act. The Department of Environmental Protection (Department) has been specifically charged with ensuring compliance with all environmental, health and safety laws and standards relevant to the AEPS Act's implementation. The Commission and the Department will jointly monitor compliance with the AEPS Act, the development of the alternative energy market, the costs of alternative energy and to conduct an ongoing alternative energy planning assessment. The Commission and the Department are to report their findings and recommendations for changes to the AEPS Act to the General Assembly on a regular basis.

Governor Edward Rendell signed Act 35 of 2007, which amended the AEPS Act (Act 35) into law on July 17, 2007, which took effect immediately. Act 35 amended the AEPS Act in several respects. In particular, Act 35

revised the schedule for the solar photovoltaic requirements such that the requirements increase on an annual basis as opposed to increases in 5 year increments. *See* 73 P.S. § 1648.3(b)(2). This legislation also made it clear that the solar photovoltaic requirement is a percentage of total retail sales, not a percentage of the Tier I requirements. *Id.* In addition, the Act 35 amendments required the Commission to consider an EDC's or EGS's efforts in obtaining alternative energy credits through competitive solicitations and seeking to procure alternative energy credits or alternative energy through long-term contracts in any force majeure determination. *See* 73 P.S. § 1648.2.

At the September 25, 2008, public meeting, the Commission adopted a Final Rulemaking Order at Docket No. L-00060180¹ that codified prior Commission interpretations of the AEPS Act and resolved issues relevant to its implementation. Among other things, the Commission set forth the specific Tier I, solar photovoltaic, and Tier II targets an EDC and EGS must meet in every compliance year. *See* 52 Pa. Code § 75.61. The Commission also set forth the method for determining alternative compliance payments that EDCs and EGSs pay for failure to obtain the required number of alternative energy credits, to include the minimum required number of alternative energy credits from solar photovoltaic facilities. *See* 52 Pa. Code § 75.65. While alternative compliance payments for nonsolar photovoltaic Tier I and Tier II requirements are set at \$45 per credit, the solar photovoltaic alternative compliance payment is determined by the average prevailing market price for solar photovoltaic credits and the amount of subsidies given to customer-generators for installing solar photovoltaic systems. *See* 73 P.S. § 1648.3(f). The Commission's regulations set forth the method for determining the solar photovoltaic alternative compliance payment by taking the average market value for such credits sold during the reporting period, adding the levelized up-front rebates received by sellers of such credits, and multiplying this sum by 200%. *See* 52 Pa. Code § 75.65(b).

In addition to the preceding, the Commission's regulations permit default service providers to recover reasonable and prudent costs for the following: (1) electricity generated by an alternative energy system and delivered to the default service provider's customers; (2) alternative energy credits purchased and used within the same reporting period for compliance purposes; (3) alternative energy credits purchased in one reporting year and banked for use in 1 of 2 later reporting years; and (4) alternative energy credits purchased in the true-up period to satisfy compliance obligations, among others. 52 Pa. Code § 75.68. The Commission's regulations also require default service providers to identify a competitive procurement process for acquiring alternative energy credits. 52 Pa. Code § 75.68(b).

The Commission has designated the PJM Environmental Information Services, Inc.'s Generation Attribute Tracking System as the alternative energy credit registry to track the creation and transfer of certified alternative energy credits. *See Implementation of the Alternative Energy Portfolio Standards Act of 2004: Designation of the Alternative Energy Credits Registry Final Order at Docket No. M-00051865, entered on January 31, 2006.*

¹ Order entered on September 29, 2008.

EDCs and EGSs must record the price paid for each alternative energy credit in the registry. *See* 52 Pa. Code § 75.70.

Governor Edward Rendell signed the Alternative Energy Investment Act² (AEI Act) into law on July 9, 2008, which became effective on the same day. Among other things, the AEI Act established funding, administered by the Department, for solar energy projects installed at owner-occupied dwellings and small businesses. *See* 73 P. S. § 1649.306. In addition, the AEI Act established funding, administered by the Commonwealth Financing Authority with assistance from the Department of Community and Economic Development, for solar energy related alternative energy production projects. *See* 73 P. S. § 1649.307.

Governor Edward Rendell signed Act 129 of 2008, P. L. 1592, (Act 129) into law on October 15, 2008, which took effect on November 14, 2008. Among other things, Act 129 requires default service providers to acquire electric power through competitive procurement processes that must include one or more of the following: (1) auctions; (2) requests for proposal; or (3) bilateral agreements. 66 Pa.C.S. § 2807(e)(3.1) (relating to duties of electric distribution companies). This power must include a prudent mix of spot market purchases, short-term contracts and long-term contracts of more than 4 years, but not more than 20 years. 66 Pa.C.S. § 2807(e)(3.2). These provisions apply to any type of energy purchased by a default service provider, including alternative energy credits for compliance with the AEPS Act. 66 Pa.C.S. § 2807(e)(3.5). A prudent mix of contracts must be designed to ensure adequate and reliable service, and the least cost to customers over time for comparable types of energy sources. 66 Pa.C.S. § 3807(e)(3.4) and (3.5).

Discussion

The legislation and regulations discussed in this preamble 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 this Commonwealth. The Commission believes that EDCs in this Commonwealth, their customers and those interested in developing solar projects in this Commonwealth are impeded in their economic analysis of these projects due to solar alternative energy credit price uncertainty. The purpose of this proposed policy statement is to develop a process to overcome price uncertainty, which will in turn promote funding of future solar projects that will benefit electric consumers in this Commonwealth.

As such, the Commission proposes a Policy Statement in Support of Pennsylvania Solar Projects. In the following sections, we will review each element of the proposed policy statement.

A. § 69.2901 (Purpose)

This section sets forth the intent and reason for the policy statement. Specifically, the Commission believes that the General Assembly established a policy to promote the construction of solar projects, both large and small, in this Commonwealth. 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 alterna-

tive energy credit price certainty and to reduce or eliminate barriers to solar project development within this Commonwealth.

B. § 69.2902 (Definitions)

This section proposes definitions to terms used within this proposed policy statement. Specifically, the proposed policy statement defines the following terms: “electric distribution company;” “large-scale solar project;” “small-scale solar project;” “solar aggregator;” “SREC market price;” and “stakeholder working group.” Comments proposing changes to these proposed definitions or additional terms and definitions to be included in this policy statement are welcome.

C. § 69.2903 (RFPs to establish reasonable expenses)

This section proposes a process and standards for obtaining solar photovoltaic alternative energy credits through competitive bidding processes and contracts. Specifically, we propose a competitive bidding process for use by EDCs in obtaining solar photovoltaic alternative energy credits that is consistent with 66 Pa.C.S. Part I and Chapter 54. In addition, we propose specific conditions the Commission will use in reviewing bilateral contracts between EDCs and small-scale solar photovoltaic alternative energy systems to obtain solar photovoltaic alternative energy credits. The proposed conditions look to historical competitive bids for solar photovoltaic alternative energy credits to establish a reasonable price for these alternative energy credits obtained through bilateral contract with small-scale solar projects. The Commission invites comments regarding the adequacy, completeness and practicability of these conditions.

D. § 69.2904 (Contracts)

This section proposes that EDCs develop and utilize a standardized contract for purchasing solar photovoltaic alternative energy credits. This proposal sets forth suggested reasonable terms and conditions that the Commission believes are important for promoting the development of solar photovoltaic projects in this Commonwealth. The Commission proposes a stakeholder working group to develop specific standardized contracts. Finally, the Commission proposal encourages the development of an education program to inform the public about and to promote solar photovoltaic projects. The Commission invites comments on all aspects of this proposal.

Conclusion

The Commission welcomes comments on all aspects of this proposed policy statement. This proposed policy statement will be published in the *Pennsylvania Bulletin*. Interested parties will have 30 days from the date of publication in the *Pennsylvania Bulletin* to file comments, with reply comments due 15 days thereafter. Interested parties are to file an original and 15 copies of any comments and reply comments with the Commission’s Secretaries Bureau. The contact person for technical issues related to this rulemaking is Scott Gebhardt, Energy Program Specialist, Bureau of Conservation, Economics and Energy Planning, (717) 425-2860 or sgebhardt@state.pa.us. The contact person for legal issues related to this proposed policy statement is Kriss Brown, Assistant Counsel, Law Bureau, (717) 787-4518 or kribrown@state.pa.us. Parties are asked to provide an electronic copy of comments and reply comments to Scott Gebhardt and Kriss Brown at the e-mail address listed previously. Therefore,

² 73 P. S. §§ 1649.101–1649.711.

It is ordered that:

(1) The proposed policy statement set forth in Annex A, is issued for comment.

(2) The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

(3) The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

(4) Interested parties shall have 30 days from the date of publication of this proposed policy statement in the *Pennsylvania Bulletin* to file an original and 15 written comments to the Pennsylvania Public Utility Commission, Attention: Secretary James J. McNulty, P. O. Box 3265, Harrisburg, PA 17105-3265.

(5) Interested parties shall have 45 days from the date of publication of this proposed policy statement in the *Pennsylvania Bulletin* to file an original and 15 written reply comments to the Pennsylvania Public Utility Commission, Attention: Secretary James J. McNulty, P. O. Box 3265, Harrisburg, PA 17105-3265.

(6) Comments and reply comments shall be electronically mailed to Scott Gebhardt, Energy Program Specialist, at sgebhardt@state.pa.us and Kriss Brown, Assistant Counsel, at kribrown@state.pa.us, and these comments will in turn be placed on the Commission's website for public viewing at www.puc.state.pa.us. Attachments may not exceed three megabytes.

(7) Comments should, where appropriate, address the issues identified in this order and should include, where applicable, a numerical reference to the attached Annex A that the comments address, proposed language, and a clear explanation for recommendations.

(8) A copy of this order and Annex A be filed at Docket No. M-2009-2140263 and be served upon all EDCs operating in this Commonwealth, the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff, the Department of Environmental Protection, the Department of Community and Economic Development and all licensed EGSs.

(9) The contact person for technical issues related to this proposed policy statement is Scott Gebhardt, Energy Review Specialist, Bureau of Conservation, Economics and Energy Planning, (717) 425-2860 or sgebhardt@state.pa.us. The contact person for legal issues related to this proposed policy statement is Kriss Brown, Assistant Counsel, Law Bureau, (717) 787-4518 or kribrown@state.pa.us.

JAMES J. McNULTY,
Secretary

Fiscal Note: 57-276. No fiscal impact; (8) recommends adoption.

Statement of Commissioner Robert F. Powelson

Today we are issuing for comment a proposed Policy Statement designed to support solar projects throughout the Commonwealth. I wish to be clear that, in issuing this Policy Statement, we are in no way expanding the current Alternative Energy Portfolio Standards ("AEPS") requirements, nor are we advocating for an expansion of those requirements.

The goal of this Policy Statement is to provide price transparency for small solar projects in order to make it easier for those projects to sell their solar renewable energy credits ("SRECs"). I believe our actions today

represent the "all hands on deck" approach necessary to meet the Commonwealth's AEPS goals. It will also provide the necessary framework for creating long-term contracts necessary to grow this industry by providing financial security needed to finance solar projects.

Further, I believe this policy will dovetail perfectly with the Act 1 grants provided for by the Legislature and Governor under Pennsylvania's Energy Independence Strategy and administered by the Department of Environmental Protection.

In this context I support the Chairman's initiative. However, I reiterate, this is not an endorsement of House Bill 80 or any other efforts to expand the current solar requirements.

I look forward to reviewing all interested parties' comments on this very important issue.

Annex A

TITLE 52. PUBLIC UTILITIES

PART 1. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

PENNSYLVANIA SOLAR PROJECTS

§ 69.2901. Purpose.

(a) Beginning in 2004, the General Assembly enacted, and the Governor signed, a series of legislation promoting the development of renewable energy in this Commonwealth generally, and solar alternative energy specifically. In 2004, the AEPS Act established a requirement that the power purchased for Pennsylvania customers by EDCs and electric generation suppliers (EGSs) shall include a component of solar photovoltaic electricity from solar alternative energy sources or solar alternative energy credits, known in the industry as SRECs. Under the AEPS Act, an SREC is referred to as a solar alternative energy credit, or solar Alternative Energy Credit (AEC). An AEC is earned when one megawatt hour of electricity is generated from an approved alternative energy source. In 2007, the AEPS Act was amended and, among other provisions, solar thermal energy was added to the definition of Tier I alternative energy sources. The Commission is responsible for ensuring compliance with the AEPS Act.

(b) In 2008, the Alternative Energy Investment Act (AEI Act) was signed into law, providing, among other things, funding through the Department of Environmental Protection for small-scale solar projects in owner-occupied dwellings and small businesses. Additional funds for large-scale solar projects were made available by the AEI Act through the Department of Community and Economic Development (DCED).

(c) These acts establish a clear policy to promote the construction of small- and large-scale solar projects in this Commonwealth. Even though that policy has been clearly articulated, the Commission is concerned that barriers still exist that prevent new solar projects from becoming a reality in this Commonwealth. EDCs in this Commonwealth, their customers and those interested in developing solar projects of any size are impeded in their economic analysis of those projects by the uncertainty of a price to assign the SRECs that would be generated by small or large-scale solar projects. This section and §§ 69.2902—69.2904 (relating to definitions; RFPs to establish values recoverable as a reasonable expense; and

contracts for the purchase of SRECs by EDCs) outline a process by which entry barriers can be overcome.

§ 69.2902. **Definitions.**

The following words and terms, when used in § 69.2901, 69.2903 and 69.2904, have the following meanings, unless the context clearly indicates otherwise:

AEPS Act—The Alternative Energy Portfolio Standard Act (73 P. S. §§ 1648.1—1648.8).

EDC—*Electric distribution company*—The term has the same meaning as defined in 66 Pa.C.S. § 2803 (relating to definitions).

Large-scale solar project—An alternative energy generation system employing solar photovoltaic technology with a nameplate capacity of 200kW or more.

RFP—Request for proposal

SRECs—Solar renewable energy credits.

Small-scale solar project—An alternative energy generation system employing solar photovoltaic with a nameplate capacity of less than 200kW.

Solar aggregator—A person or entity that purchases for resale, or otherwise consolidates for sale, solar alternative energy credits for resale to EDCs and electric generation suppliers.

SREC market price—The weighted average of all accepted winning bids in response to an EDC RFP for large-scale solar project solar alternative energy credits, as those credits are defined in section 2 of the AEPS Act (73 P. S. § 1648.2.)

Stakeholder working group—A group composed of EDCs electric generation suppliers, Commission staff, public advocates, solar aggregators and other interested parties that meets at least semiannually and proposes to the Commission updates to standardized solar alternative energy credit RFPs and related contracts that are posted on the Commission's website.

§ 69.2903. **RFPs to establish SREC values recoverable as a reasonable expense.**

(a) *SREC procurement from large-scale solar projects.* The Commission encourages EDCs to issue RFPs for large-scale solar projects whose SREC output will be used to meet EDC obligations under the AEPS Act. RFPs should provide for a fair, transparent, and open competitive bidding process. Standardized RFP documents developed by the stakeholder working group should be utilized. The Commission will review and either approve or reject bids submitted in response to such RFPs within a reasonable period of time.

(b) *SREC procurement from small-scale solar projects.* EDCs are encouraged to procure SRECs from small-scale solar projects through competitively bid RFP processes and bilateral contracts.

(1) When an RFP process is used, EDCs should adhere to the same standards in use for large-scale solar project RFPs. The Commission will review and evaluate bids for small-scale solar RFPs within a reasonable period of time.

(2) EDCs may enter into bilateral contracts for SRECs from small solar projects subject to the following conditions:

(i) The price negotiated for SRECs should not exceed the Commission-approved average winning bid price in the EDC's most recent RFP for large-scale solar projects.

(ii) When an EDC has not utilized an RFP for a large-scale project, the price negotiated for SRECs should not exceed the Commission-approved average winning bid price from the most recent large-scale solar RFP by another EDC in this Commonwealth, as reported on the Commission's AEPS Credit Administrator's web site under subparagraph (iii).

(iii) The amount of small-scale solar project SRECs yet to be procured by the EDC, and the EDC's historic and current average SREC market prices from each of the EDC's large solar project procurements should be listed on the Commission's AEPS Credit Administrator's web site, as well as the EDC's web site, and updated at least monthly.

(iv) The amount of small-scale solar project SRECs procured through bilateral contracts during a single AEPS compliance year should not exceed the number of SRECs procured by the EDC in its last large-scale solar project procurement.

(v) The bilateral contract approach should be used to support the development of small-scale solar projects located in this Commonwealth.

(c) *EDC cost recovery.* The cost of SRECs acquired through procurement approaches referred to in subsection (a) and (b) may be recovered consistent with the provisions of the AEPS Act and other applicable law.

§ 69.2904. **Contracts for the purchase of SRECs by EDCs.**

(a) *Standardized contracts.* EDCs should employ standardized contracts for their purchase of SRECs from large-scale solar projects and small-scale solar projects. The standardized contract for small-scale solar projects should be simple, understandable and provide for the option to purchase SRECs from solar aggregators. Standardized contracts for the long-term procurement of SRECs should be from 5 to 20 years in length.

(b) *Contracts with solar aggregators.* The Commission finds it reasonable and efficient, and therefore encourages, EDCs to execute a master agreement with a solar aggregator for the purchase of SRECs from various sources that establishes a prevailing SREC market price at a particular point in time through letter agreements that incorporate the terms of the master agreement.

(c) *Performance guarantees, security and other contract terms.* While EDCs may require the posting of bid security in an RFP for large-scale solar projects, bid security for small-scale solar projects is not necessary due to the manner in which the SREC market price for these projects is established. In addition, small-scale solar projects under 15kW in nameplate capacity may use estimates to report SREC generation to the PJM-GATS system, as authorized under the AEPS Act, and should not be required to provide security relating to project completion or performance. Small-scale solar project contracts for projects at or above 15kW in nameplate capac-

ity, or from a solar aggregator selling the EDC SRECs from projects 15kW or more in nameplate capacity, may contain a security deposit, refundable upon completion of project construction and certification of initial performance, as well as a performance guarantee refundable over the performance period or at the end of the contract. These provisions may be included to ensure that the aggregated solar projects supporting the SRECs are actually constructed and perform as designed. Security deposits for projects 15kW or more in nameplate capacity, or aggregated projects 15kW or more in nameplate capacity, may be converted, upon reasonable advance notice by the EDC to the impacted parties, from a refund to a performance guarantee upon project completion and certification. In addition, small-scale solar project SREC contracts may provide for EDC remote monitoring of solar installations. Contracts between EDCs and others for the purchase of SRECs from small-scale solar projects may also provide for a reasonable allocation of the risk of a project failing due to force majeure-type events. EDCs may establish reasonable financial qualifications for solar aggregators from whom they purchase SRECs.

(d) *Contracts on behalf of residential customers.* EDCs are encouraged to contract for SRECs with solar aggregators that obtain SRECs from creditworthy residential owners of small-scale solar projects. These projects can provide a beneficial way for those customers to cope with the volatility of electricity prices.

(e) *Stakeholder working group.* An EDC standardized contract and other related documents, for the purchase of SRECs from large-scale solar projects and small-scale solar projects should be posted on the Commission's web site and periodically updated by means of input from a stakeholder working group to ensure that these contracts reflect the most recent developments in Pennsylvania law and energy policy.

(f) *Customer education.* An EDC is encouraged to educate its retail customers of the opportunity to sell SRECs under the large-scale solar project RFP solicitation and the small-scale solar program in support of local development of solar resources.

[Pa.B. Doc. No. 10-222. Filed for public inspection February 5, 2010, 9:00 a.m.]
