

STATEMENTS OF POLICY

Title 4—ADMINISTRATION

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Department of Education

The Executive Board approved a reorganization of the Department of Education effective September 21, 2010.

The organization chart at 40 Pa.B. 6155 (October 23, 2010) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of code).

(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)

[Pa.B. Doc. No. 10-2005. Filed for public inspection October 22, 2010, 9:00 a.m.]

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Department of Labor and Industry

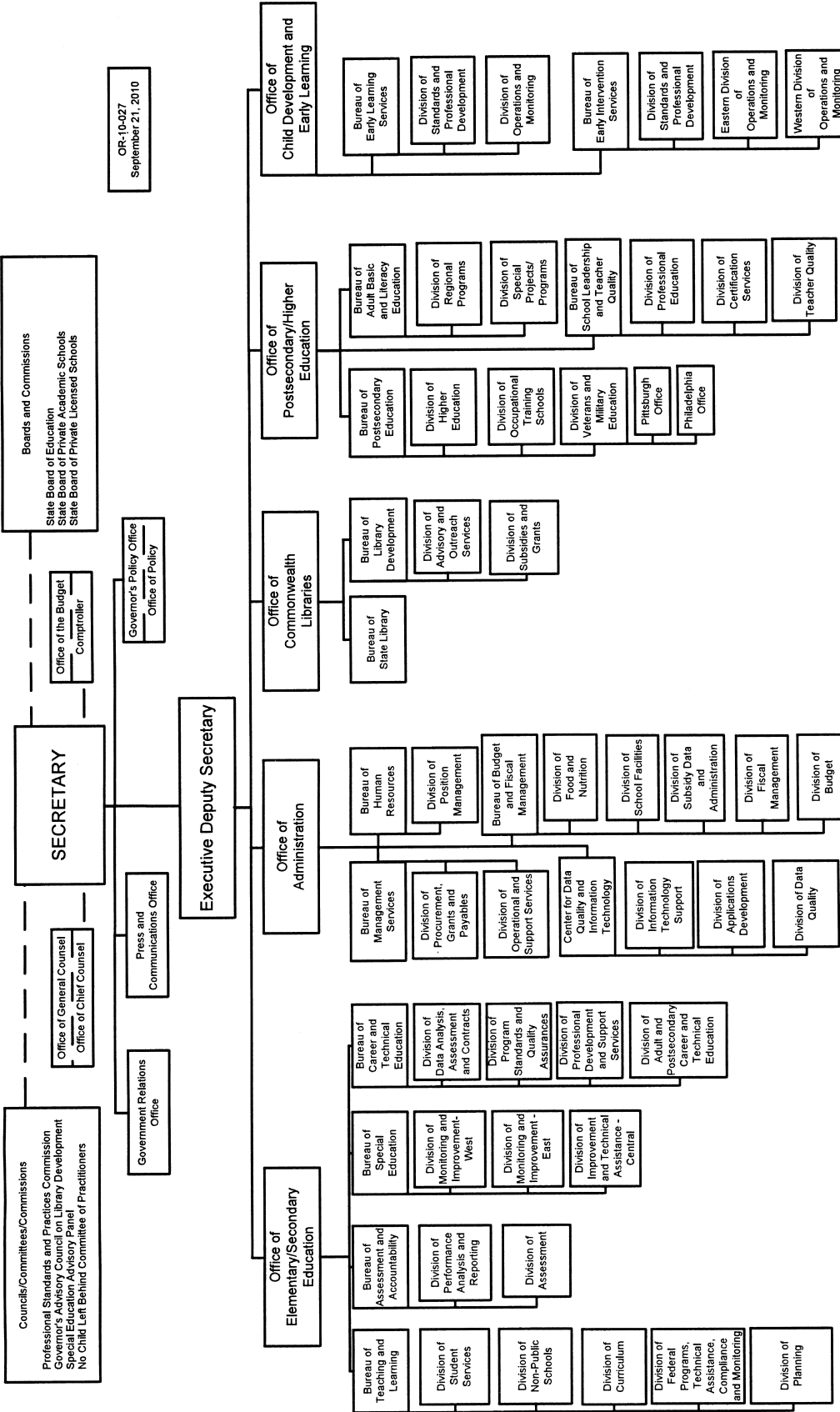
The Executive Board approved a reorganization of the Department of Labor and Industry effective September 21, 2010.

The organization chart at 40 Pa.B. 6156 (October 23, 2010) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of code).

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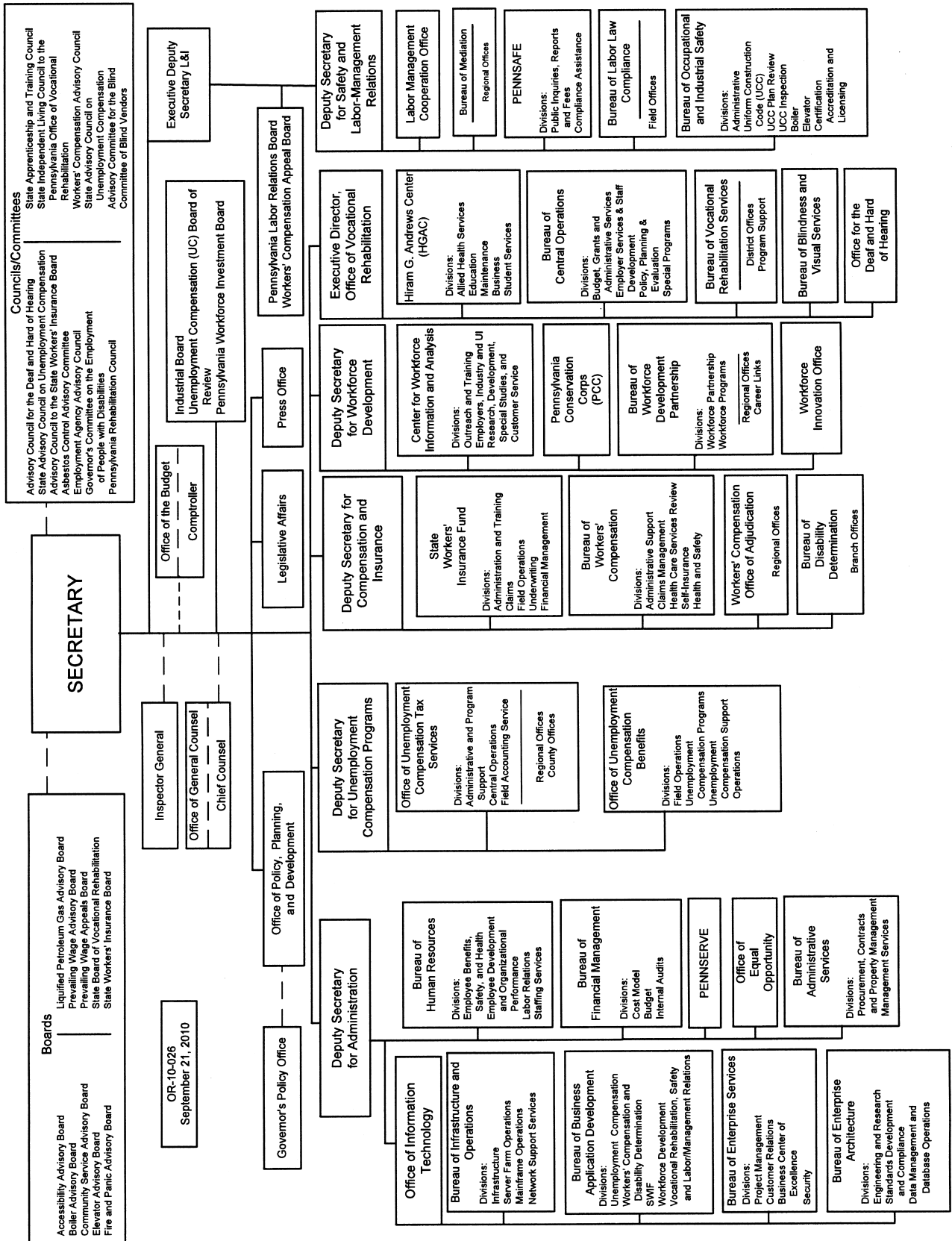
[Pa.B. Doc. No. 10-2006. Filed for public inspection October 22, 2010, 9:00 a.m.]

DEPARTMENT OF EDUCATION



OR-10-027
September 21, 2010

DEPARTMENT OF LABOR AND INDUSTRY



Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

[M-2009-2140263/57-276]

Support of Pennsylvania Solar Projects

The Pennsylvania Public Utility Commission (Commission) on September 16, 2010, adopted a final policy statement which sets forth long-term stability that is needed to support solar development and address barriers that could prevent new solar projects.

Public Meeting held
September 16, 2010

Commissioners Present: James H. Cawley, Chairperson; Tyrone J. Christy, Vice Chairperson; John F. Coleman, Jr., Statement and Joint Statement; Wayne E. Gardner; Robert F. Powelson, Joint Statement

*Policy Statement in Support of
Pennsylvania Solar Projects;
Doc. No. M-2009-2140263*

Final Policy Statement Order

By the Commission:

The Commission issued a proposed policy statement at this docket on December 10, 2009 (December 10 Order). The proposed Policy Statement was designed to provide a foundation from which this Commonwealth can achieve the solar renewable energy goals established in the Alternative Energy Portfolio Standards Act, as amended,¹ at the least cost to Pennsylvania consumers. More specifically, the proposed policy statement sought to provide longer term revenue stability 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. By this Order, we adopt the Pennsylvania Solar Projects Policy Statement contained in the Annex to this Order.

The December 10 Order and the Annex containing the proposed Policy Statement were published at 40 Pa.B. 709 (February 6, 2010). Comments on the proposed Policy Statement were due March 8, 2010, with Reply Comments due March 23, 2010.

Comments were filed by ATAS International, Inc. (ATAS); the Carlisle Area School District (CASD); Citizens' Electric Company of Lewisburg, PA and Wellsboro Electric Company (collectively, Citizens' and Wellsboro Electric); Community Energy, Inc. (CEI); ConEdison Competitive Energy Businesses (ConEdison); Constellation Energy Projects & Services Group, Inc., Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (collectively, Constellation); Duquesne Light Company (Duquesne); The Energy Association of Pennsylvania (EAPA); EnergyPeak; Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company (collectively, FirstEnergy); Gemstone Lease Management, LLC (Gemstone); Green Energy Capital Partners, LLC (Green Energy); Mid-Atlantic Renewable Energy Association (MAREA); Mid-Atlantic Solar Energy Industries Association and Pennsylvania Solar Energy Industries Association (collectively, MSEIA/PASEIA); New Oxford Municipal Authority (New Oxford); the Office of Consumer Advocate (OCA); the Office of Small Business Advocate (OSBA); the PPL Companies

(PPL); the Solar Alliance (SA); Solardelphia; the Sustainable Energy Fund (SEF); and UGI Utilities, Inc.—Electric Division (UGI). Reply Comments were filed by CASD; Citizens' and Wellsboro Electric; EAPA; FirstEnergy; Gemstone; the Industrial Customer Group² (ICG); MSEIA/PASEIA; New Oxford; SA; and West Penn Power Company d/b/a Allegheny Power (Allegheny).

Background

Governor Edward Rendell signed the Alternative Energy Portfolio Standards Act of 2004 (AEPS Act) (P.L. 1672, No. 213), into law on November 30, 2004. The AEPS Act, which took effect on February 28, 2005, established an alternative energy portfolio standard for this Commonwealth. The AEPS Act requires that an annually increasing percentage of electricity sold to retail electric customers 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 Commission and the Department of Environmental Protection (Department) are to 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 any recommendations for changes to the AEPS Act to the General Assembly on a regular basis.

Governor Edward Rendell signed Act 35 of 2007, P.L. 114, (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 EDCs' and EGSs' 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-00060180³ 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. 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

² The Industrial Customer Groups consisted of the Industrial Energy Consumers of Pennsylvania, the Duquesne Industrial Intervenor, the Me-Ed Industrial Users Group, the Penn Power Users Group, the Penelec Industrial Customer Alliance, the Philadelphia Area Industrial Energy Users Group, the PP&L Industrial Customer Alliance and the West Penn Power Industrial Intervenor.

³ Order entered on September 29, 2008.

¹ 73 P.S. §§ 1648.1—1648.8 and 66 Pa.C.S. § 2814.

method for determining the solar photovoltaic alternative compliance payment. *See* 52 Pa. Code § 75.65(b).

In addition to the above, 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 one of two later reporting years; and (4) alternative energy credits purchased in the true-up period to satisfy compliance obligations. 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).

Governor Edward Rendell signed the Alternative Energy Investment Act⁴ (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 DEP, 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). 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 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 to support the Commonwealth's alternative energy goals. The Commission believes that to meet these goals, it is important that this Commonwealth's EDCs, their customers and those interested in developing solar projects are not impeded in their economic analysis of such projects by solar alternative energy credit price uncertainty. 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.

⁴ 73 P. S. §§ 1649.101—1649.711.

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

A. 52 Pa. Code § 69.2901 (Purpose)

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

1. Commentators' Positions

The Comments addressing the purpose section of the proposed policy statement were generally supportive. (*See* CASD Comments at 3, Duquesne Comments at 1, FirstEnergy Comments at 3 and 4, New Oxford Comments at 3, PPL Comments at 3 and 4, SA Comments at 2, and UGI Comments at 1.) Duquesne and Allegheny, however, caution the Commission against favoring in-state over out-of-state solar projects. (Duquesne Comments at 1 and 2, and Allegheny Reply Comments at 2.) Duquesne further suggests that the policy statement should apply to EGSs as well as EDCs, as both have an AEPS Act compliance obligation and both serve customers in the Commonwealth. (Duquesne Comments at 2.)

EAPA expressed concern that the policy statement only addressed the benefits for solar development and did not acknowledge potential negative implications, such as burdening EDCs with long-term contracts in the face of decreasing levels of default service. (EAPA Comments at 3.) EAPA also expressed concern about the policy statement's focus on supporting both large-scale and small-scale solar projects located within the Commonwealth, suggesting that lowest cost SRECs should prevail, regardless of the size of the solar project or its location. (EAPA Comments at 4.)

FirstEnergy cautions that the policy statement must balance initiatives to promote solar projects with the Act 129 requirement that default service must be least cost over time. (FirstEnergy Comments at 4.) PPL and FirstEnergy suggest that the policy statement have a three-year sunset date as its purpose is short-term in nature. (PPL Comments at 4 and FirstEnergy Reply Comments at 2.) ICG supports PPL's recommendation to revisit the policy in 3 years' time to determine whether regulatory intervention should be lifted. (ICG Reply Comments at 7.)

ATAS and EnergyPeak suggest that the policy statement should address a prevailing wage requirement imposed by the Department of Labor and Industry. (ATAS Comments at 1 and EnergyPeak Comments at 1.)

Gemstone supported the purpose of the policy statement and disagreed with EAPA's concerns. Specifically, Gemstone asserted that the policy statement promotes the creation of SRECs from both large- and small-scale projects in a manner that is consistent with the AEPS Act. (Gemstone Reply Comments at 4.) Gemstone further asserted that the policy statement is not biased against out-of-state solar projects. (*Id.*) Gemstone opposed the suggestion by PPL that the policy statement sunset in 3

years, as it would signal to all interested stakeholders that the policy statement cannot be relied upon. (Gemstone Reply Comments at 7.)

2. Disposition

The Commission acknowledges the concerns raised by commentators regarding the implication that this policy statement favors in-state over out-of-state solar projects. The Commission, however, stresses that any reference to promoting the development of renewable or solar energy in this Commonwealth is referencing the Pennsylvania General Assembly's intent to require EDCs and EGSs serving customers in this Commonwealth to use a certain percentage of solar energy to serve its customers in this Commonwealth. As Gemstone points out in its Reply Comments, any references to procuring SRECs contained in this policy statement are silent as to the origin of the qualifying facility generating the SRECs.

Regarding the concerns raised by commentators that the policy statement favors large-scale over small-scale solar projects, the Commission points out that references to the size of solar projects simply recognizes the inherent differences between the needs of small- and large-scale solar projects. It is not the intent of the Commission to favor one size project over the other, but to promote all solar projects, by recognizing the different needs and balancing the interests of the solar developer, the regulated utility and the citizens of this Commonwealth.

The Commission agrees with Gemstone that establishing a date when this policy statement will sunset, as proposed by PPL, would make the policy statement irrelevant upon its adoption. Such a sunset date would increase regulatory uncertainty, as the Commission's stated policy would end in a relatively short period based on an arbitrary date, as opposed to a change in the conditions for solar development. The Commission stresses that this is a policy statement, not a regulation, and as such, it will not have the full force of law. The Commission, however, does recognize that the SREC market conditions may change over time and, as such, this policy statement may have to be revised to remain relevant. The Commission believes that the participants in the stakeholder working group established by this policy statement are likely to have the relevant knowledge and expertise to identify and propose solutions to issues that arise as the SREC market changes. Therefore, the Commission will encourage the stakeholder working group to propose changes to this policy statement after the policy statement has been in effect and utilized for an adequate period of time to demonstrate its effectiveness in meeting its stated purpose.

The Commission declines to address the Department of Labor's prevailing wage requirements as suggested by ATAS and EnergyPeak, as the prevailing wage requirements are beyond the Commission's jurisdiction.

B. 52 Pa. Code § 69.2902 (Definitions)

This section sets forth the definitions for the terms used within the policy statement.

1. Commentators' Positions

In their Comments, CASD and New Oxford suggest adding a definition for Electric Generation Supplier. CASD and New Oxford also question the establishment of 200kW as the dividing line between small-scale and large-scale solar projects, suggesting that some other mechanism be used to define solar project size. CASD and New Oxford question why the SREC market price contains only the price for large-scale solar projects and

suggests that the price for all SRECs be posted in real time. CASD and New Oxford suggest that the full retail value of net metered energy be more clearly defined through this policy statement. (CASD Comments at 3—5 and New Oxford Comments at 3—5.) CASD and New Oxford support the establishment of a "Market Clearinghouse" that acts like a "stock exchange" for SRECs. (CASD Reply Comments at 3 and New Oxford Reply Comments at 3.)

PPL suggests that the threshold between small- and large-scale solar projects be revised upward, from 200kW to 500kW nameplate capacity. PPL asserts that keeping the threshold at 200kW will result in increased costs associated with developing and implementing an RFP process to acquire relatively small unit quantities of SRECs from individual projects. PPL asserts that these increased administrative burdens and costs will be significant and unnecessary. PPL posits that solar projects below 500kW are best suited for aggregation. (PPL Comments at 5 and 6.) Finally, PPL suggests that the definition for solar aggregator provide for the aggregation of small-scale solar projects to a combined nameplate capacity of 500kW to make clear that solar aggregators may participate in an RFP process for large-scale solar projects. (PPL Comments at 6 and 7.) Gemstone disagrees, asserting that making the threshold 500kW would further limit the number of solar projects that could participate in an EDC RFP process. (Gemstone Reply Comments at 8.)

SEF recommends that solar projects be broken into three size categories. Specifically, SEF recommends that large-scale solar include solar projects with a nameplate capacity of 300kW or more. SEF also suggests that a medium-scale solar project be added with a nameplate capacity of 15kW to less than 300kW, with the small-scale including projects with a nameplate capacity under 15kW. (SEF Comments at 2.) SEF asserts that there is a significant difference between the market for 100kW solar systems and 10kW solar systems, noting that current residential solar project's average size is 6kW, with the small commercial solar projects averaging 79kW. SEF posits that these capacity differences result in significant differences in the ability to monetize the value of solar alternative energy credits. (SEF Comments at 1 and 2.) MAREA, CASD and New Oxford offered support for the addition of a category for solar projects with a nameplate capacity of less than 15kW. (MAREA Comments at 4, CASD Reply Comments at 3 and New Oxford Reply Comments at 3.)

EAPA comments that the AEPS Act does not distinguish among solar generators based on size, asserting that creating a separate market for SRECs based on system size is inconsistent with the AEPS Act. EAPA further posits that a 200kW size threshold for direct contracts between EDCs and generators is too low, asserting that aggregation should be used to assist project owners in selling their SRECs. (EAPA Reply Comments at 3.)

MSEIA/PASEIA notes that the policy statement recognized very small scale projects with a nameplate capacity of 15kW or less, but not as a separate category. While recognizing the differences between these very small-scale projects and small-scale projects, MSEIA/PASEIA believe that for simplicity, these projects should be bundled together. MSEIA/PASEIA asserts that the Commission should maintain the threshold level of 200kW; again noting that changing the threshold is unnecessary, as it adds another layer of complexity when taking into ac-

count other regulatory guidance, such as net metering, interconnection and the PA Sunshine Program. (MSEIA/PASEIA Reply Comments at 2.)

SA supports the solar project size threshold contained in the policy statement. SA posits that the proposed policy statement fairly balanced the costs by setting the price for small-scale generators based on the winning bids for large-scale solar project RFPs. SA notes that the policy statement does mitigate ratepayer impacts of large- and small-scale deployment needs by stating in § 69.2903(i) that “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.” (SA Reply Comments at 2 and 3.)

Solardelphia suggests that the term “bilateral contract” be defined in the context of SREC trading, especially as regards to credits sold forward in multi-year contracts. (Solardelphia Comments at 1.)

2. Disposition

We have added the definition for “electric generation supplier” as suggested. We, however, decline to extend the applicability of the policy statement to EGSs as suggested by Duquesne, as the Commission does not have rate making and rate recovery authority over EGSs. With that said, we strongly encourage EGSs to utilize, where applicable, the standards developed as a result of this policy statement.

We decline to revise the definitions of small-scale and large-scale solar projects as suggested by various parties. We agree with MSEIA/PASEIA and SA that adding an additional size category adds a level of complexity without commensurate benefit. The Commission believes that the very small projects are adequately represented within the small-scale solar project category. Regarding PPL’s suggestion that the threshold between the two categories be increased to 500kW, the Commission declines to make this change at the present time. The Commission notes, however, that as more experience is gained or the solar market changes, the Commission can revisit this issue in the future and revise the policy statement.

Regarding the suggestions by CASD and New Oxford to use the policy statement and the working group to establish specific rules for interconnection of customer-generator facilities and to revise the value of net metered energy, the Commission declines to do so as they are beyond the scope of the policy statement. As other parties point out, the rules for net metering and interconnection are established in the Commission’s regulations at 52 Pa. Code §§ 75.11—75.15, 75.21, 75.22, 75.31—75.40 and 75.51. With this Order, the Commission is establishing a policy statement that does not have the full force and effect of law and cannot be used to revise or circumvent regulations. If the Commission chooses to revise the net metering and interconnection regulations, CASD and New Oxford will have an opportunity to suggest changes to the regulations for the Commission to consider at that time.

The Commission declines to require the posting of all SREC prices as CASD and New Oxford suggest. Such data is market sensitive and may allow parties to exercise market power. The purpose of posting the average large-scale project winning bid prices is to set the maximum price of SRECs obtained from small-scale projects through bilateral contracts. The Commission believes that a competitive bidding process is the most cost-effective way to get SRECs at competitive rates. The Commission, however, recognizes that there are barriers and inefficiencies related to small-scale project participation in a competi-

tive bidding process. Therefore, the policy statement is in effect setting the average bid SREC price from competitive bid processes as the maximum price for SRECs from small-scale projects, to ensure that EDC customers get a reasonable bargain for SRECs from all solar projects.

Regarding the suggestion that the Commission establish a “stock exchange” for SRECs, the Commission declines to establish a market for SRECs at this time as we are uncertain as to whether such actions are within our authority under the AEPS Act and the Public Utility Code. We note, however, that there are private independent entities offering a market for SRECs at this time. These markets also provide a level of SREC price transparency.

C. 52 Pa. Code § 69.2903 (RFPs to establish reasonable expenses)

This section sets forth processes and standards for obtaining solar photovoltaic alternative energy credits through competitive bids and contracts.

1. SREC Procurement From Large-scale Solar Projects

This subsection endorses the use of a competitive bidding process that EDCs can use in obtaining solar photovoltaic alternative energy credits that is consistent with the Public Utility Code and Chapter 54 of the Commission’s regulations.

a. Commenters’ Positions

CASD and New Oxford both support a fair, transparent and open competitive bidding process for large-scale solar projects, but question the Commission’s ability and authority to approve or reject bids submitted to such RFPs. (CASD Comments at 5 and New Oxford Comments at 5.)

Citizens’ and Wellsboro Electric support the Commission’s goal to promote the development of solar projects, noting that as SREC obligations increase in the region, there is a concern about the adequacy and liquidity of the SREC market, especially for smaller EDCs. (Citizens’ and Wellsboro Electric Comments at 3.) Citizens’ and Wellsboro Electric believe, however, that a bilateral approach with no distinction between large-scale and small-scale projects would produce the best results for their ratepayers and provide them the best opportunity to find an appropriate long-term SREC arrangement. (Citizens’ and Wellsboro Electric Comments at 3.)

ConEdison supports the Commission’s encouragement of EDCs to use a transparent competitive procurement process for SRECs from large-scale facilities with standardized RFP documents. ConEdison posits that reliance on a standardized competitive procurement process is the most effective way to encourage participation by large-scale solar developers and will ensure the most cost-effective result. (ConEdison Comments at 4.)

Duquesne supports the RFP process for large-scale solar projects as those production facilities are fairly standard and lend themselves to an RFP process. Duquesne also expressed interest in acquiring solar power in an effort to support cost-effective solar resources in the region, noting its proposal to issue an RFP for a 5MW solar facility, with the output to be used for residential and lighting POLR supply. (Duquesne Comments at 2.)

FirstEnergy suggests provisions for a multi-EDC RFP process, asserting that it would increase administrative efficiencies and create greater interest in the RFP. (FirstEnergy Comments at 5.) FirstEnergy further suggests that the policy statement provide for a Commission

created solar market and project assessment report on a periodic basis. Finally, FirstEnergy states that the final decision on the type of solicitation and procurement implemented should be left to the individual EDC. FirstEnergy notes that the policy statement appears to allow for this flexibility, but suggests that the policy statement should be more explicit on this point. (*Id.*)

Gemstone proposes language that strongly encourages EDCs to promptly and regularly issue RFPs for SRECs from large-scale solar projects. Gemstone also proposes language that makes the price for SRECs obtained through an RFP the market price for the purchase of SRECs from small-scale solar projects. (Gemstone Comments at 2.) Furthermore, Gemstone believes that as the purpose of long-term contracts is to spur development of the solar market throughout the year, it would be more appropriate to have EDC RFPs staggered throughout the year. Gemstone, however, expressed its openness to learning more about FirstEnergy's reasoning for an annual statewide procurement process. (Gemstone Reply Comments at 6.)

Green Energy suggests that utility scale solar plants that are interconnected to PJM Interconnection, LLC (PJM) should be considered in RFPs, noting that the operational date for qualified bidders should be extended from the current 12 months to 24 months due to the long development cycles associated with PJM. (Green Energy Comments at 2.)

ICG expresses a concern that long-term contracts between solar project developers and EDCs may limit the supply of SRECs available for EGSs to purchase, thus increasing the cost of compliance for EGSs and their industrial customers. ICG suggests that the Commission monitor the availability of SRECs and be ready to declare *force majeure* if a shortage materializes. (ICG Reply Comments at 5.)

MSEIA/PASEIA suggest that no EDC should be allowed to purchase its entire yearly requirement through the RFP process. MSEIA/PASEIA further suggest that a fixed percentage of an EDC's SREC requirement should come from small-scale solar generators. Finally, MSEIA/PASEIA suggest that once an EDC's RFP bidding process is complete, the EDC should simply offer standard bilateral contracts for the purchase of SRECs from small-scale generators on a first come, first served basis, at the average weighted price established by the RFP. (MSEIA/PASEIA Comments at 5.)

The OSBA supports separate standardized bidding qualifications, such as standardized financial qualifications, for large-scale and small-scale solar projects, as well as negotiating bilateral contract qualifications for small-scale solar projects and aggregators. The OSBA posits that allowing each EDC to set its own peculiar terms and conditions adds complexity and costs, and would add barriers to potential bidder participation. (OSBA Comments at 5.) The OSBA suggests that the policy statement require a minimum of three unaffiliated bidders as a necessary condition for accepting a bid or offer. (OSBA Comments at 8.) The OSBA further suggests that the Commission should consider a single Statewide procurement of SRECs for all EDCs. (OSBA Comments at 6.) SA expressed concern that a Statewide procurement program may have significant unintended consequences. (SA Reply Comments at 4.) Citizens' and Wellsboro Electric posit that the OSBA's reasons for a Statewide procurement process are entirely speculative and unsub-

stantiated and such a process may not be appropriate for small EDCs. (Citizens' and Wellsboro Electric Reply Comments at 6.)

SA suggests that each EDC be required to submit a plan to procure SRECs every 3 years. SA asserts that this will ensure a consistent rate of development and avoid "boom and bust" cycles. (SA Comments at 3.) SA expresses a concern that a Statewide procurement program may present significant and unintended consequences that have the potential to reverse the progress made to date in solar development. SA suggests that there may be variations in the Statewide procurement approach that could preserve solar development progress that can be explored and evaluated by the working group. (SA Reply Comments at 4.)

b. Disposition

The Commission declines to revise the language in this subsection as suggested by the commentators. In response to CASD's and New Oxford's concern about the Commission's authority to approve or reject RFP bids, the Public Utility Code establishes such authority. Specifically, the Public Utility Code at 66 Pa.C.S. § 2807(e)(3.5), gives the Commission authority to approve or reject an EDC's default service plan for purchasing electric generation supply service, including alternative energy credits. Furthermore, the Commission's regulations at 52 Pa. Code § 54.188 (relating to Commission review of default service programs and rates) establishes the Commission's procedures for reviewing the results of competitive bid processes conducted in accordance with Commission approved default service plans.

Several EDCs recommended that the policy statement provide more flexibility to EDCs to establish an SREC procurement process that meets its unique needs. As this is a policy statement that does not have the full force and effect of law, EDCs will be able to propose alternative SREC procurement plans in their default service filings that meet the default service standards set forth in 66 Pa.C.S. § 2807(e) and supported by the evidence.

The Commission declines to adopt a policy statement that promotes a multi-EDC or Statewide purchase of SRECs as FirstEnergy and the OSBA suggest. The Commission does not believe that a single Statewide or multi-EDC solicitation for SRECs is authorized by the Public Utility Code. In addition, the Commission does not believe that such a method would provide the best results for EDCs, EGSs or their customers. The Commission agrees with SA that a single Statewide or multi-EDC solicitation for SRECs could have significant unintended consequences that would negatively impact solar development and the market for SRECs. Therefore, the Commission encourages the EDCs to coordinate their procurement schedules submitted in each default service plan to verify that it is consistent with the annual increase in SRECs for AEPS Act compliance obligations and to ensure that it does not conflict with other default service plan procurement schedules. Such coordination will help ensure a consistent rate of solar development, avoiding any "boom or bust" cycles that could occur if the various EDC default service plan procurement schedules inadvertently select nearly identical dates, resulting in a defacto multi-EDC procurement or long periods with no SREC procurement activity.

Finally, the Commission declines to set specific competitive bid standards and requirements in this policy statement as proposed by some commentators. The Commission believes that such standards should be developed

through the working group and developed within the context of each EDC's default service plan, based on the needs of the EDC and the evidence of record.

2. SREC Procurement From Small-Scale Solar Projects

This subsection endorses specific conditions the Commission will use in reviewing bilateral contracts between EDCs and small-scale solar photovoltaic alternative energy systems to obtain SRECs. These conditions look to historical competitive bids for SRECs to establish a reasonable price for alternative energy credits obtained through bilateral contracts with small-scale solar projects.

a. Commentators' Positions

CASD and New Oxford express confusion as to why the Commission is putting so many conditions on bilateral contracts between EDCs and small solar project developers for SRECs, again, questioning the Commission's authority over such contracts. (CASD Comments at 6 and New Oxford Comments at 6.)

ConEdison supports the use of bilateral contracts with certain conditions, as set forth in the proposed policy statement. ConEdison posits that these conditions are appropriate measures to ensure that EDC procurements result in the purchase of SRECs from a mix of large- and small-scale projects, noting that these conditions encourage the development of small-scale projects while also ensuring that EDCs obtain the most cost-effective SRECs available. (ConEdison Comments at 4.)

Constellation suggests that § 69.2903(b)(2)(v) should be clarified to make clear that bilateral contracts are only allowed for small-scale projects and not allowed for large-scale projects. (Constellation Comments at 9 and 10.) Constellation requests that the Commission clarify whether the intent of § 69.2903(b)(2)(iii) was to require EDCs to purchase a minimum amount of SRECs from small-scale solar projects. (Constellation at 10.) Citizens' and Wellsboro Electric posit that these restrictions are not authorized by Act 129 and would unduly restrict the tools and options available to EDCs to fulfill their statutory obligation to procure SRECs at the least cost to customers. (Citizens' and Wellsboro Electric Reply Comments at 5.)

Duquesne also supports the use of bilateral contracts to procure SRECs from small-scale solar projects. (Duquesne Comments at 2 and 3.) Duquesne, however, objects to the requirement that EDCs post the amount of small-scale SRECs yet to be purchased on the AEPS Credit Administrator's web site. Duquesne posits that this data is market sensitive information, and is concerned that disclosure of this information would affect the ability of an EDC to negotiate the best price for its customers. (Duquesne Comments at 3.) Duquesne also objects to subsection (iv), that limits the amount of SRECs contracted for from small-scale projects to the number of SRECs procured from large-scale projects. Duquesne posits that this is an unjustified restraint on its goal to procure SRECs in the most cost-effective manner. Duquesne stresses that small-scale solar projects collectively benefit the local EDC by reducing electrical losses and congestion, and meeting increased demand for power without construction of new high voltage transmission lines. (Duquesne Comments at 4.) Duquesne suggests that subsection (iv) be removed. (Duquesne Comments at 5.) Gemstone opposes the deletion of this subsection as it would allow EDCs to simply purchase from large systems, causing an unfair balance of systems in the market. (Gemstone Reply Comments at 7.)

Gemstone suggests that a separate RFP process for small-scale solar projects is not necessary, practical or economical. Gemstone also suggests that the large-scale solar project RFP results be used to set prices for SRECs purchased from small-scale solar projects, unless there is evidence that the large-scale project RFP price was skewed. Finally, Gemstone suggests that contracts for SRECs from small-scale projects should not be delayed; stressing that EDCs should purchase SRECs from both small- and large-scale solar projects. (Gemstone comment at 3—5.)

MAREA suggests that EDCs be permitted to purchase existing SRECs from micro-scale solar generators physically located within the EDC's service territory. MAREA posits that the purchase of existing SRECs would eliminate the need for security when dealing with micro-scale generators. In addition to the conditions for bilateral contracts set forth in the policy statement, MAREA suggests several other conditions to be applied to purchases of SRECs from micro-scale solar projects. These added conditions include setting the price at no less than 15% of the average weighted price of SRECs from the most recent RFP for large-scale projects, requiring the purchase of all micro-scale generated SRECs within the EDC's service territory before the EDC can purchase micro-scale SRECs generated outside its service territory, and limiting administrative costs imposed on micro-scale solar facility owners to 20% of SREC price. (MAREA Comments at 5 and 6.)

The OCA comments that using the same standards for procuring SRECs through an RFP process for both large- and small-scale solar projects may not produce the best results for small-scale solar projects. The OCA suggests that separate standards should be established for small-scale solar project RFPs that can be developed through the stakeholder working group. (OCA Comments at 3.) Regarding the price for SRECs generated from small-scale solar projects, the OCA suggests that the Commission consider other market price information in setting the price, as the most recent RFP for the purchase of SRECs from large-scale projects may contain stale information. (OCA Comments at 4.) The OCA further recommends that the limit on the amount of SRECs an EDC can purchase from small-scale projects be eliminated as it may impose an undue barrier to small-scale projects. (*Id.*)

PPL and Solardelphia suggest that the reference to a competitively bid RFP process be deleted from this section, asserting that aggregators of small-scale solar projects participating in a large-scale solar project RFP would be more cost-effective. PPL and Solardelphia posit that requiring EDCs to manage multiple small sources would increase the EDC's administrative burden for a relatively small number of credits. (PPL Comments at 7 and Solardelphia Comments at 1.) PPL suggests that another alternative would be to allow customer-generators to participate in an EDC's tariff offering, presumably having customer-generators relinquish ownership of any credits produced in return for a reduced rate. (PPL Comments at 7 and 8.)

SA and MSEIA/PASEIA support establishing a separate, stand alone procurement process for SRECs from small-scale solar projects that would draw heavily from the standard contract development for large-scale solar project SREC procurement and suggest several changes. Specifically, SA and MSEIA/PASEIA suggest that the price for SRECs from small-scale projects be developed using the weighted average of all accepted winning RFP bids within a given service territory that would remain in

effect until the next large-scale solar project SREC RFP took place. The weighted average price should exclude atypical bids that skew the average and would detrimentally impact the price setting mechanism. EDCs should be required to publish the amount of SRECs needed at the beginning of the buy period. A standard contract should be available and offered to small-scale solar project owners or aggregators on a first-come, first-served basis. (SA Comments at 9 and 10, and MSEIA/PASEIA Comments at 3 and 4.) EAPA suggests that the Commission should seek to strike an appropriate balance between encouraging development of more solar facilities and minimizing the cost associated with acquiring SRECs, such as encouraging the use of aggregators to assist selling of SRECs from small-scale projects. (EAPA Reply Comments at 3.)

SA and MSEIA/PASEIA suggest that EGSs that initiate RFPs should have the same requirements as the EDCs. Finally, SA and MSEIA/PASEIA suggest that aggregators should be encouraged to participate, with the Commission developing rules for certifying or otherwise approving qualified aggregators. (SA Comments at 9 and 10, and MSEIA/PASEIA Comments at 3 and 4.)

MSEIA/PASEIA further suggest that no EDC should be allowed to purchase its entire yearly requirement through the RFP process without offering a substantial quantity of capacity through the small-scale solar project standard contracts. Furthermore, MSEIA/PASEIA suggest that a fixed percentage of SREC requirements should be reserved for the small-scale solar projects, to be determined by the Commission or negotiated with the help of a small generator working group. (MSEIA/PASEIA Comments at 5.) SEF suggests that 5% and 7.5% of an EDC's SREC procurement should be allocated to micro-scale and small-scale solar projects respectively. (SEF Comments at 3.) MSEIA/PASEIA express opposition to a fixed carve out based on system size and a belief that market conditions will allow for competitive procurement options among participants, as long as there is a commitment to procurement strategies that promote all sizes of solar systems. (MSEIA/PASEIA Reply Comments at 2.)

b. Disposition

In response to CASD's and New Oxford's concerns about the Commission's authority over bilateral contracts and the conditions placed on bilateral contracts by this policy statement, as stated in Section 1 previously, the Public Utility Code and the Commission's regulations give the Commission authority to approve the procurement of alternative energy credits by EDCs for default service. See also 66 Pa.C.S. § 508. Furthermore, as expressed previously, the Commission believes that a competitive bid process will produce the best results for default service customers. The Commission also believes that bilateral contracts provide a viable avenue for EDCs to procure SRECs produced by solar projects that cannot participate or that cannot compete in a competitive bid process due to administrative or economic barriers. The conditions on bilateral contracts delineated in this policy statement strike a balance between ensuring that the EDC can obtain SRECs at a reasonable rate for its default service and encouraging the development of solar energy of all sizes for use by all classes of customers.

Duquesne objects to subsection (iv) in the proposed policy statement, that limited the amount of SRECs contracted for from small-scale projects to the number of SRECs procured from large-scale projects. Duquesne asserted that this is an unjustified restraint on its goal to procure SRECs in the most cost-effective manner. The

Commission agrees that this subsection is unnecessary and could cause confusion. As Duquesne points out, the market price for SRECs from small-scale projects should dictate the limit to be obtained from these sources. In addition, this limitation may cause confusion as to the number of SRECs an EDC can purchase from the spot or short term market. Such confusion could impact an EDC's ability to meet the mandatory requirements of the AEPS Act. As such, the Commission has deleted this subparagraph from the policy statement.

Again, the Commission declines to set further specific standards or requirements for the purchase of SRECs from small-scale projects. Again, such specific standards and requirements can be developed through the working group and in EDC default service plan proceedings based on the circumstances and the evidence presented.

3. EDC Cost Recovery

This subsection addresses the cost recovery of SRECs procured through the RFP and bilateral contract approaches described in the policy statement.

a. Commentators' Positions

Citizens' and Wellsboro Electric express concern over rate recovery language contained in the policy statement, and seek clarification as to whether this language will limit cost recovery for EDCs when the procurement is consistent with a Commission-approved procurement plan and the costs are properly recoverable under the AEPS Act and Public Utility Code. Citizens' and Wellsboro Electric believe that EDCs that comply with the AEPS Act are still entitled to cost recovery associated with the purchase of alternative energy credits, even if those purchases do not follow the procurement approaches outlined in the Solar Policy Statement. (Citizens' and Wellsboro Electric Comments at 4 and 5.)

EAPA comments that EDCs will incur administrative costs to develop and implement procurement plans consistent with the policy statement. Allegheny, EAPA and FirstEnergy suggest that the Commission should clarify that these administrative costs are also recoverable under the AEPS Act. (Allegheny Reply Comments at 3, EAPA Comments at 4 and FirstEnergy Comments at 6.)

FirstEnergy suggests that the policy statement be revised to provide for the recovery of SREC procurement costs through a non-bypassable mechanism from shopping and non-shopping customers alike, where the EDC agrees to procure SRECs on behalf of its default service supply as well as the EGS' supply. FirstEnergy posits that this cost recovery mechanism should enable consistent SREC procurement, stabilize the development of SRECs, foster the growth and development of retail energy markets without SREC overhang, and minimize costs to retail customers. (FirstEnergy Comments at 6.) Finally, FirstEnergy believes that costs related to educating customers about solar projects and promoting such projects must be fully and timely recovered. (FirstEnergy Comments at 7 and 8.)

PPL supports the cost recovery provision in the policy statement. PPL, however, recommends that the policy statement be revised to encourage EDCs to sell any excess SRECs obtained through resulting long-term contracts with revenues received from such sales credited to the EDC's customers through the AEPS Act cost recovery mechanism. In addition, PPL recommends that the policy statement explicitly state that such sales are not subject to an after-the-fact prudence review, other than for fraud or market manipulation. (PPL Comments at 8 and 9.)

Gemstone supports PPL's proposal for clarifying the cost recovery provision. (Gemstone Reply Comments at 8.)

UGI suggests that the policy statement specify that if weather normalized actual default service loads are more than 5% less than projected default service loads and the EDC is unable to resell the SRECs in the secondary market at a cost equal to or greater than the long-term contract cost, then the EDC should be able to recover the associated shortfall on a timely basis through a surcharge applicable to all the distribution rates of all customers of the affected class or classes. (UGI Comments at 2.)

b. Disposition

The Commission declines to revise the language contained in this subsection. The purpose of this provision is to express the Commission's general intent to approve cost recovery for the purchase of SRECs through the methods outlined in the policy statement, provided it is consistent with the cost recovery provisions of the AEPS Act and all other applicable law. This provision is not intended to preclude or otherwise restrict recovery of costs related to SRECs or other alternative energy credits acquired through other methods that are approved in an EDC's competitive procurement plan and consistent with the cost recovery provisions of the AEPS Act and all other applicable law. By including this provision, the Commission is not pre-judging or pre-determining what costs are to be recovered.

Specific concerns raised by Allegheny, EAPA, FirstEnergy and PPL regarding cost recovery of certain costs, such as costs associated with the sale of excess credits acquired in long-term contracts, administrative costs associated with an EDC's procurement plan, including education costs directed to potential sellers of SRECs, are best addressed in appropriate proceedings. We agree that these costs, as well as others,⁵ that are related, prudent, just and reasonable are recoverable in accordance with the AEPS Act and other applicable law. The AEPS Act specifically states that "any direct or indirect costs for the purchase by electric distribution of resources to comply with this section, including, but not limited to, . . . , payments for alternative energy credits, . . . , shall be recovered on a full and current basis . . . as a cost of generation supply under 66 Pa.C.S. § 2807." See 73 P. S. § 1648.3(a)(3)(ii). A "default service provider shall have the right to recover on a full and current basis, pursuant to a reconcilable automatic adjustment clause under section 1307 (related to sliding scale of rates; adjustments), all reasonable costs incurred under this section and a commission-approved competitive procurement plan." 66 Pa.C.S. § 2807(e)(3.9). Therefore, if the costs are proved to be related, prudent, just and reasonable during an appropriate proceeding, and are incurred under the default service provisions of the Public Utility Code and a competitive procurement plan approved by the Commission, they shall be recoverable.

Regarding concerns raised by PPL and UGI about after-the-fact prudence review and recovery of costs associated with long-term contracts for SRECs, we are reminded of our experience with purchased power agreements approved by the Commission pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA). Similar to the qualifying facilities under PURPA, solar generation has been determined to be in the public interest by its inclusion as an alternative energy source in the AEPS Act. As with Commission approved long-term

PURPA contracts, it would be inappropriate for us to endanger the development of cost-effective solar generation by holding the threat of contract re-visitation over the heads of EDCs and solar developers. We note that it has been this Commission's policy to review such contracts at the time they are presented to the Commission for approval and not to subsequently review the contracts, absent evidence of some nefarious conduct such as fraud or market manipulation. See *Petition of Pennsylvania Electric Company Request for Approval of Rate Recovery, Under the Energy Cost Rate, for the Costs proposed to be Paid under an Agreement with Scrubgrass Power Corporation*, Docket No. P-870248, 1988 Pa. PUC LEXIS 101. This is also consistent with the approach taken by our legislature for default service purchased power contracts. The Commission may not modify default service contracts or disallow their costs unless, after notice and opportunity to be heard, it is determined that the contract fails to comply with the Commission-approved procurement plan or the contract is found to be the result of "fraud, collusion or market manipulation with respect to those contracts." 66 Pa.C.S. § 2807(e)(3.8)(ii).

D. 52 Pa. Code § 69.2904 (Contracts)

This section promotes the development and utilization of standardized contracts for purchasing solar photovoltaic alternative energy credits. It sets forth suggested reasonable terms and conditions that the Commission believes are important for promoting the development of solar photovoltaic projects in this Commonwealth. A stakeholder working group is established to develop the standardized contracts. Finally, the policy statement encourages the development of an education program to inform the public about and to promote solar photovoltaic projects.

1. Standardized Contracts

This subsection encourages EDCs to use standardized contracts for purchase of SRECs from both large- and small-scale solar projects. The standardized contract with small-scale projects should be simple, understandable and provide for purchases from aggregators.

a. Commentators' Positions

CASD and New Oxford believe that it is a good idea to have standardized contracts but there may be exceptions that should be considered. CASD and New Oxford are unsure as to how the length of 5 to 20 years was chosen and how that would affect contracts that are shorter or longer. (CASD Comments at 6 and New Oxford Comments at 6.)

ConEdison recommends including a requirement that any SREC procured through long-term contracts be disposed of in a competitively neutral manner that does not create an advantage for EDCs over EGSs. ConEdison suggests limiting the procurement to SRECs as provided in the policy statement and allocating the SRECs to all load serving entities in the EDC's territory on a load ratio share basis. ConEdison posits that EDCs have potential advantages over EGSs that can be exacerbated by long-term contracts. (ConEdison Comments at 2 and 3.)

EAPA asserts that long-term contracts may allow some projects to move forward, but it should be recognized that technology can change quickly, and long-term contracts could hurt future EDC customers. The policy statement should recognize the potential negative consequences of long-term contracts. (EAPA Comments at 2 and 3.)

FirstEnergy believes that in addition to standardized contracts with terms of 5 to 20 years, EDCs should be

⁵ See 52 Pa. Code § 69.1808 (relating to default service cost elements) under the Default Service and Retail Electric Markets Policy Statement that contains a list of potentially related costs.

permitted to retain an ability to sell and purchase SRECs from brokers and aggregators to balance out the EDC's needs to meet its AEPS Act requirements. (FirstEnergy Comments at 6 and 7.) FirstEnergy also believes that standardized contracts should be used as a starting point with parties being able to make mutually agreed upon changes that have no impact on solar development. FirstEnergy also suggests that several types of standardized agreements be developed and utilized. (FirstEnergy Comments at 7.)

Gemstone asserts that to accurately relate a large-scale solar project RFP's average SREC price to small-scale solar project SREC prices with different contract lengths, a conversion method should be used to maintain consistency between SREC prices. (Gemstone Comments at 6.)

Green Energy comments that recent RFPs approved by the Commission involved firm 10-year contract terms that discriminate against solar projects that obtained Alternative Energy Investment Act grants administered by the Department of Community and Economic Development through the Commonwealth Financing Authority. Green Energy asserts that contract terms of ten or more years require the project developer to forfeit the grant. Green Energy posits that this puts projects partially funded by Alternative Energy Investment Act grants at a disadvantage compared to projects not receiving grant money. Green Energy, CASD and New Oxford suggest that contract terms be limited to 9 years or less. (Green Energy Comments at 1, CASD Reply Comments at 4 and New Oxford Reply Comments at 4.) SA, however, recommends that the policy statement set the term for long-term contracts at 10 years. SA posits that setting long-term contracts at a defined term of 10 years represents a compromise between the desire to reduce costs for ratepayers and the increased risks associated with long term term contracts, by reducing complexity and uncertainty. SA asserts that separating projects that received Alternative Energy Investment Act grants from those that compete for SREC contracts with EDCs would level the playing field. (SA Comments at 3.)

MAREA and OSBA assert that long-term contracts for small- and large-scale projects would need to be different as the projects vary considerably. (MAREA Comments at 3 and OSBA Comments at 5.) Large-scale projects generate hundreds of SRECs from a single site annually making contractual agreements, oversight, and transaction costs manageable. Small-scale projects with a nameplate capacity of less than 15kW require EDCs to purchase SRECs from many more sites that have substantially more variability and risks, such as change of ownership, litigation, contract default, system failure and damage. (MAREA Comments at 3.)

PPL agrees that the RFP process is the preferred approach to procure SRECs and standardized contracts could be beneficial for RFP procurements. PPL, however, asserts that a Statewide form of standardized contract must fairly and equitably allocate risk between solar developers, EDCs and EDCs' customers. (PPL Comments at 9.) PPL posits that if efforts to standardize contracts are not successful, existing Commission-approved default service contracts should be used as a form of contract for procurement of SRECs in the RFP processes. (PPL Comments at 10.) SA disagrees, asserting that the procurements PPL referenced were an inadequate substitute for standardized long-term contracts. (SA Reply Comments at 4 and 5.)

SA agrees that EDCs should employ standardized contracts for the purchase of SRECs from small- and

large-scale projects to reduce complexity and costs for the industry as well as ratepayers. SA, however, is concerned that certain contract provisions should be carefully considered as they may increase complexity and costs. SA would like to see a single contractual term for SRECs. SA recommends 15 year contracts for the long-term procurement of SRECs, but would accept 10 years as a single fixed term. (SA Comments at 3.) SA discusses a staged approach for long-term contracts where utilities place suppliers on a short-list based on pre-qualification and pricing, and then negotiate to a final purchase power agreement, using a standardized utility contract as a starting point. SA recommends allowing for negotiation of minor contract provisions during the selection process for larger projects that are not net-metered to create a more competitive market for new supply. (SA Comments at 10.)

CEI supports standardization of contracts for reasons provided in SA's Comments; however, CEI holds that it is problematic to fully pre-negotiate a contract for larger projects as the market is just beginning to develop. (CEI Comments at 1.) CEI and SA recommend allowing for negotiation of minor contract provisions. (CEI Comments at 1 and SA Reply Comments at 6.)

SEF asserts that EDCs should employ standardized contracts for SREC purchases from large-scale, medium-scale and small-scale solar projects. SEF also asserts that contracts for SREC purchases from medium-scale projects provide an option to purchase SRECs from solar aggregators. (SEF Comments at 2 and 4.)

b. Disposition

The Commission declines to modify this subsection as proposed by various parties. The intent of this provision is to set forth the Commission's policy determination that standardized contracts should be used where appropriate to reduce the time and administrative costs associated with developing and entering into such contracts. As written, this provision provides the working group and EDCs the flexibility to adopt many, if not all, of the suggested contract standards, terms and conditions. Again, it is not the intent of the Commission to establish binding contract standards, terms and conditions with this policy statement. Such standards, terms and conditions are to be explored and developed through the working group and within the context of the EDCs' default service plan proceedings based on the EDCs' specific circumstances and the evidence presented.

2. Contracts With Solar Aggregators

This subsection encourages EDCs to enter into agreements with solar aggregators for the purchase of SRECs from various sources.

a. Commentators' Positions

CASD and New Oxford assert that recommending a process for purchasing SRECs from aggregators seems premature as the market is so new in development at this time. In addition, CASD and New Oxford express an expectation that the Commission would oversee the establishment of reasonable financial qualifications for aggregators. (CASD Comments at 6 and 7, and New Oxford Comments at 6 and 7.)

Constellation suggests that the Commission clarify provisions regarding EDCs' use of aggregators. Specifically, Constellation suggests that the policy statement should set the prevailing SREC market price at a particular point in time based on the price paid for SRECs by the EDC to an aggregator. Constellation also suggests that the Commission should require EDCs to use a

competitive RFP process to identify the lowest cost aggregators and contract with no fewer than two of the lowest cost aggregators. In addition, the Commission should require aggregators to provide proof that they sold at least 500 SRECs in the preceding 12 months. Finally, Constellation asserts that aggregators should be subject to penalties equal to the solar alternative compliance payment. (Constellation Comments at 8 and 9.)

EAPA notes that there are currently no standards governing who may serve as a solar aggregator, nor are there requirements governing acceptable technical and financial fitness for aggregators. EAPA suggests that absent such minimum requirements, the Commission should recognize that EDCs will be forced to exercise care in entering into such contracts, such as requiring financial security from the aggregators. (EAPA Comments at 5.) EAPA also states that requiring EDCs to contract with numerous small-scale solar generators would be costly and impractical. (EAPA Comments at 3.)

FirstEnergy suggests that the policy statement provide for the procurement of SRECs from solar aggregators, not just projects. FirstEnergy posits that including solar aggregators in the RFP process would bring more competition, create a potential for creditworthy counterparties to act as intermediaries, and allow EDCs to seek bids in round numbers, with aggregators filling in any gaps through purchases or selling off excess SRECs to meet the RFP obligations. (FirstEnergy Comments at 4 and 5.) FirstEnergy posits that EDCs need the ability to contract with aggregators that are not tied to a specific project. FirstEnergy asserts that this flexibility will allow for better credit protection helping to ensure customers receive the benefit of the transaction and will allow aggregators to provide an inventory function and reduce EDC costs. (FirstEnergy Comments at 7.)

Gemstone suggests offering specific guidance on the details of agreements with aggregators on issues such as a non-burdensome procurement process, appropriate project detail, and financial qualifications. (Gemstone Comments at 7.)

The OSBA recommends that the policy statement encourage EDCs to contract for SRECs with aggregators that obtain SRECs from creditworthy small business owners of small-scale solar projects. (OSBA Comments at 8.)

b. Disposition

The Commission declines to revise this subsection as proposed by the various commentators. Specifically, the Commission declines to set specific qualifications for aggregators at this time as we are uncertain as to whether establishing specific qualifications are within our authority under the AEPS Act and the Public Utility Code. Regarding the suggestions for specific standards, terms and conditions for agreements between aggregators and EDCs, the Commission again declines to set such standards, terms and conditions in this policy statement. Such standards, terms and conditions are best developed through the working group and the EDCs' default service plan proceedings based on the EDCs' circumstances and the evidence presented.

3. Performance Guarantees, Security and Other Contract Terms

This subsection sets forth suggested bid and performance security guidelines for small-scale solar projects.

a. Commentators' Positions

CASD and New Oxford agree that small-scale solar projects should not be required to provide security relating to project completion or performance, but smaller projects may become expensive and some level of security or assurance should be provided. CASD and New Oxford suggest that this matter should be discussed in the working group. (CASD Comments at 6 and 7, and New Oxford Comments at 6 and 7.)

Duquesne believes that small projects should post security given the fines EDCs could face for non-compliance with the AEPS Act. Duquesne is concerned with the language that excludes small-scale solar projects from providing assurance for project completion and performance. Duquesne suggests that security should not be cost-prohibitive but should be in place for all projects. (Duquesne Comments at 5.) Gemstone disagrees with Duquesne's perspective that small projects should post security. (Gemstone Reply Comments at 7.)

EAPA expresses concern that if no security is in place for small-scale solar projects, EDCs will be required to buy SRECs on the spot market or make alternative compliance payments if projects fail. EAPA believes this does not adequately consider the interest of default service customers. (EAPA Comments at 5.) Gemstone notes that EAPA's Comments on aggregator requirements for security confirm that EDCs need to adjust their large-scale project security requirements for small-scale projects or small-scale projects will not be developed. Gemstone further notes that balance is critical so that small-scale projects are not impeded from participating in the SREC market with large-scale projects. (Gemstone Reply Comments at 4 and 5.)

Gemstone urges adoption of additional language that reminds EDCs that standards for development and performance security should be appropriately lower for small-scale projects due to reduced access to credit enhancements and the wider portfolio diversification inherent in small-scale projects. (Gemstone Comments at 7.)

The OCA expresses concern as to whether the 15kW size is the appropriate size point at which to require security. The OCA also expresses concern that there are no standards for establishing reasonable levels of security, performance guarantees or other terms. The OCA suggests that the Commission provide more specific guidelines to reduce uncertainty and controversy. In addition, the OCA suggests that the Commission provide additional guidance pertaining to reasonable allocation of risk for small-scale project failure due to *force majeure*, as well as reasonable financial qualifications for solar aggregators. (OCA Comments at 5.) FirstEnergy and Allegheny, however, believe that performance guarantees and bid securities are necessary to ensure the proper commitment to the fulfillment of contract obligations. (FirstEnergy Reply Comments at 3 and Allegheny Reply Comments at 3 and 4.) Allegheny further asserts that if small-scale developers are freed from security requirements, EDCs should be indemnified should the projects not deliver or otherwise default on their obligations. (Allegheny Reply Comments at 4.)

SA, MSEIA/PASEIA and Solardelphia suggest that no bid security should be required of small-scale projects, with an exception for incomplete projects, where a development security, not to exceed 2% of the contract value and not forfeited prior to 12-months of contract date, is permissible. (SA Comments at 9 and 10, MSEIA/PASEIA Comments at 3 and 4 and Solardelphia Comments at 1.)

FirstEnergy, however, posits that performance and bid securities are necessary to ensure the proper commitment to fulfilling contract obligations, as the EDCs face significant civil penalties for non-compliance with the AEPS Act. (FirstEnergy Reply Comments at 3.) FirstEnergy asserts that such a risk should be placed on solar developers. (FirstEnergy Reply Comments at 2.)

Solardelphia suggests that security deposits for solar generators under 15kW should not be required. For systems 15kW to 50kW, Solardelphia suggests that a security deposit of no more than a small percentage of the contracted amount should be authorized. (Solardelphia Comments at 1.)

b. Disposition

The Commission declines to revise this subsection as suggested by several commentators. The intent of this subsection is to express the Commission's belief that performance and security guarantees are appropriate for small-scale solar projects in a limited number of circumstances due to the nature of such projects and the persons or entities that install them. As previously stated, it is not the intent of the Commission to establish specific standards, terms and conditions for contracts between EDCs and sellers of SRECs through this policy statement. Such specific standards, terms and conditions are to be explored and developed through the working group and the EDCs' default service plan proceedings based on the EDCs' circumstances and the evidence presented.

4. Contracts on Behalf of Residential Customers

This subsection encourages EDCs to contract with solar aggregators to obtain SRECs generated by facilities owned by creditworthy residential customers.

a. Commentators' Positions

The OCA supports the provision that encourages EDCs to contract for SRECs with solar aggregators that obtain SRECs from residential owners of small-scale solar projects. The OCA, however, would like the Commission to clarify what it means to be a creditworthy residential owner and whether such a requirement would be appropriate. OCA recommends removing the word 'creditworthy' with respect to residential customers. (OCA Comments at 6.)

b. Disposition

The Commission has removed the word "creditworthy" from this subsection as OCA suggests. As we have stated throughout this Order, the specific standards, terms and conditions of contracts between EDCs, residential customers and aggregators should be explored and developed through the working group and based on the specific circumstances under which the contracts are being entered into. The Commission's intent in including this subsection is to express the Commission's belief that the development of solar energy for use by residential electric customers will benefit both the retail electric customers and the EDCs.

5. Stakeholder Working Group

This subsection establishes a working group to develop and update standardized contracts and other related documents.

a. Commentators' Positions

CASD and New Oxford question whether the working group should be used to establish standardized SREC RFPs and related contracts. (CASD Comments at 5 and New Oxford Comments at 5.) CASD and New Oxford suggest that the working group meet monthly and estab-

lish specific rules requiring EDCs to provide interconnection at locations where no customer service exists. CASD and New Oxford suggest that there should be constant monitoring and examination of contracting as it relates to SREC purchasing. (CASD Comments at 7 and New Oxford Comments at 7.)

Gemstone suggests that to keep documentation up to date, the Commission should note in the policy statement that experience gained from implementation of the policy statement should also be applied to the contract and document updating process. (Gemstone Comments at 8.) Gemstone also supports a working group quarterly review process for contract modifications. (Gemstone Reply Comments at 10.)

b. Disposition

With the adoption of this policy statement, the Commission is establishing a solar project stakeholder working group to explore and develop standardized contracts and other related documents for EDC purchase of SRECs from solar developers of both large- and small-solar projects. This working group is to meet at least semiannually. The efforts of this working group are to be published on the Commission's web site. To facilitate the efforts of this working group, the Commission has placed some proposed standard contracts and other documents on the Commission's Alternative Energy web page at http://www.puc.state.pa.us/electric/electric_alt_energy.aspx. The solar project stakeholder working group is to be composed of EDC representatives, EGS representatives, Commission staff, public advocates, solar aggregators, solar developers and other interested stakeholders. The Director of Operations is to designate the leader of this working group.

6. Customer Education

This subsection encourages EDCs to educate its retail customers about opportunities to sell SRECs.

a. Commentators' Positions

CASD and New Oxford state that customer education is critically important for the success and continued growth of the solar market. (CASD Comments at 7 and New Oxford Comments at 7.)

FirstEnergy posits that EDCs must be allowed to fully recover, in a timely fashion, any costs related to customer education about solar and to promote solar. FirstEnergy suggests that solar education initiatives be given the same cost recovery treatment as SREC acquisitions. (FirstEnergy Comments at 7 and 8.)

The OCA agrees that educating consumers on this opportunity should be included within each EDC's educational programs. (OCA Comments at 6.)

b. Disposition

The Commission adopts this subsection of the proposed policy statement to encourage EDCs to provide education to its retail customers about the opportunities available for the development of solar energy and the sale of associated SRECs. EDCs are encouraged to file solar energy education programs as part of their SREC procurement plan. Cost recovery for such education programs should be addressed in the context of the default service procurement plan filings.

Conclusion

Based on the foregoing discussion, we will adopt this Policy Statement regarding Pennsylvania Solar Projects as set forth in Annex A. *Therefore,*

It Is Ordered That:

1. Title 52 of the Pa. Code is amended by adding §§ 69.2901—69.2904 to read as set forth in Annex A.

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. This final policy statement shall become effective upon publication in the *Pennsylvania Bulletin*.

5. A solar project stakeholder working group composed of EDC representatives, EGS representatives, Commission staff, public advocates, solar aggregators, solar developers and other interested stakeholders be established. The Director of Operations is to designate the leader of this working group.

6. The efforts of the solar project stakeholder working group be published on the Commission's Alternative Energy Internet domain page.

7. A copy of this order shall be posted on the Commission's public Internet domain and be served upon all electric distribution companies 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, all licensed electric generation suppliers and all parties that filed Comments under this Docket.

8. The contact person for technical issues related to this matter 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 matter is Kriss Brown, Assistant Counsel, Law Bureau, (717) 787-4518 or kribrown@state.pa.us.

ROSEMARY CHIAVETTA,
Secretary

Statement of Commissioner John F. Coleman, Jr.

Before the Commission for consideration is the proposed adoption of a Policy Statement relating to solar projects.

Prior to joining my staff, Matthew Totino was employed by a law firm that is counsel to a party that participated in the above-captioned proceeding. Therefore, to avoid any appearance of impropriety arising from his previous employment, I wish to note that I have not been advised by Matthew Totino regarding this matter.

JOHN F. COLEMAN, Jr.,
Commissioner

Joint Statement of Commissioners Robert F. Powelson and John F. Coleman, Jr.

We wish to begin by expressing our strong concerns with any legislative attempts to increase the current Alternative Energy Portfolio Standards Act ("AEPS") requirements. In our view, it is critically important that we not change the legislative provisions in order to promote one renewable source over another. We also want to stress that additional AEPS mandates on the solar front warrant open and honest debate on compliance costs as well as the impact on ratepayers going forward. We are deeply concerned with forcing consumers to pay for additional solar energy at a cost that is three to four times higher than other generation sources.

We also firmly believe that solar renewable energy credits ("SRECs") should not be based on an artificially established floor price. The SREC market should be permitted to develop, unencumbered. Moreover, we strongly believe that agreements to purchase SRECs should not be mandated to have terms beyond 10 to 15 years in length.

With that being said, we would like to add our thoughts to the solar energy policy statement currently before us.

First, EDCs should be provided additional flexibility to manage SRECs through: 1) the extension of bank-life of purchased SRECs to five years beyond their vintage; and 2) prior to the expirations, any unused SRECs may be monetized, with any loss or gain on the sale to be borne by/shared with customers. This will permit EDCs that do not have an immediate need to participate in the SREC market.

Further, our hope is that the guidance provided today will also serve to support distributed generation solar projects completed under our Act 129 compliance programs. Additionally, to the extent that an EDC contributes capital to a solar project under a Commission-approved Act 129 compliance program, the EDC should have a right of first refusal to purchase any SRECs attributable to such a project.

ROBERT F. POWELSON,
Commissioner

JOHN F. COLEMAN, Jr.,
Commissioner

Fiscal Note: Fiscal Note 57-276 remains valid for the final adoption of the subject regulations.

Annex A**TITLE 52. PUBLIC UTILITIES****PART I. 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 customers in this Commonwealth by EDCs and EGSs must 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 1 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) (73 P.S. §§ 1649.101—1649.711) 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 SREC 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.

EGS—*Electric generation supplier*—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

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.)

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.

Stakeholder working group—A group composed of EDCs, EGSS, 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 web site.

§ 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 the 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 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 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 capacity, 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 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.

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