BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISION

Implementation of Act 40 of 2017 **Docket No. M-2017-2631527**

COMMENTS OF PENNSYLVANIA SOLAR ENERGY INDUSTRIES ASSOCIATION IN SUPPORT OF THE JOINT STATEMENT OF CHAIRMAN GLADYS BROWN AND VICE CHAIRMAN ANDREW PLACE

Pennsylvania Solar Energy Industries Association (PASEIA) appreciates the opportunity to submit comments on the *Tentative Implementation Order (TIO) regarding Implementation of Act 40 of 2017.*

PASEIA, a division of the Mid-Atlantic Solar Energy Industries Association (MSEIA), has a Pennsylvania focus and currently represents over 30 solar businesses. MSEIA is a not-for-profit trade association of companies and businesses working in New Jersey, Pennsylvania and Delaware involved in the development, manufacturing, design, construction and installation of solar photovoltaic (PV) and solar thermal systems. MSEIA is the local chapter of the national Solar Energy Industries Association (SEIA), which has nearly 1,000 members, including solar equipment manufacturers, installation companies, financing companies, and electric utilities.

PASEIA has collaborated with PennFuture and others regarding the Joint Comments they submitted on this docket, with additional comments included here, based on the attached memo submitted to the PUC Commissioners prior to the TIO release, and the attached document regarding rate impact analysis.

Introduction

On January 6, 2018, the Pennsylvania Public Utility Commission (the Commission) published its Tentative Implementation Order (TIO) regarding Implementation of Act 40 of 2017 (hereinafter “the Act”).[1] In addition to the TIO, the Commission’s Chairman Gladys Brown and Vice

[1] 48 Pa.B. 111.

Chairman Andrew Place submitted a Joint Statement (*Joint Statement*) containing supplemental interpretations of language in the Act that differ from those proposed in the TIO. The Pennsylvania Solar Energy Industries Association strongly supports the supplemental interpretations in the joint statement and respectfully asks that the Commission adopt those interpretations in the final implementation order. Furthermore, PASEIA strongly believes that banked out-of-state solar energy credits (SRECs) are no longer eligible to comply under the PA Alternative Energy Portfolio Standard (AEPS)'s solar requirement, and late certifications (after the enactment of Act 40, on October 30, 2017) of out-of-state solar facilities are not grandfathered.

Specifically, PASEIA would like to briefly comment on four important points regarding the proper interpretation of Act 40, including, 1) language relating to "certification," 2) banked SRECs, 3) binding contracts, and 4) ineligible certifications of out-of-state solar facilities approved after the Act 40 enactment date.

1. **Language Relating to "certification" in Act 40.**

   Regarding §2804(2)(i) of the Act: the phrase "*a certification originating within the geographical boundaries of this Commonwealth*" clearly refers to the location of the generating facility. However, as mentioned in the *Joint Statement*, the TIO "proposes to interpret this phrase as a reference to systems certified by the Commission's [Alternative Energy Credit] Program Administrator...", implying the location of the certifying body. Ironically, the AEPS Administrator that is responsible for certifying qualified solar facilities is located in Maryland. It clearly seems the TIO disregards the legislative intent and strips the phrase "within the geographical boundaries" of any meaning.

   The law was clearly intended to permit only qualified solar facilities located in Pennsylvania to be eligible for Pennsylvania's solar renewable energy credits (SRECs) and to no longer allow out-of-state systems to qualify (unless they are under a qualified binding contract as mentioned in Section §2804(2)(ii)); however, they would be eligible to comply as AEPS's Tier 1 alternative energy credits (AECs).

One of the most important parameters for a certification to be issued for a physical generating facility is its geographical location; otherwise its certification is useless. In other words, **no generating facility can possibly be certified without a geographical location, and Act 40 requires the geographic location to be within the boundaries of the Commonwealth**.

The solar language inserted into the Act originated in, and remains substantially the same as, that proposed in SB 404 (Scavello). The co-sponsorship memorandum circulated prior to proposal makes the intent clear, as it state, *"[this] legislation will essentially 'close the borders' of the Commonwealth on SREC purchases, similar to many neighboring states. Electric distributors will have to purchase their credits from within the Commonwealth, thereby limiting the available supply of these SRECs."*[2] Senator Scavello has further said "Electric distributors will now have to purchase their credits from within the Commonwealth, protecting Pennsylvania-based solar credits and putting us in line with many of our neighboring states. In addition, 'closing the borders' ensures that PA rate-payers are supporting jobs, investment and tax revenue here in Pennsylvania."[3]

Further note, along with Senator Scavello's comments on the benefits to Pennsylvanians with regard to 'closing the borders', PASEIA estimated the ratepayer impact - assuming a rise in the SREC price from $10/SREC to $50/SREC by 2021 – would insignificantly increase the average residential electric bill by only $2 per year (see attached document).

Therefore, regarding Section 2804(2)(i) there is no reasonable rationale to interpret that solar facilities not located within the boundaries of the Commonwealth under Act 40 should be grandfathered (unless they are under qualified binding contract as mentioned in Section §2804(2)(ii)). If these systems are permitted to be grandfathered, then the intent of Act 40 will be completely disregarded and rendered useless.

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[2] Sens. Scavello & Argall, Senate Co-Sponsorship Memorandum, Solar Energy Credits Legislation, (Dec. 8, 2016)

[3] Website of Sen. Scavello (*retrieved* Jan. 3, 2018, *available at: http://www.senatorscavello.com/2017/11/02/scavello-provision-boost-solar-energy-pennsylvania-becomes-law/i).*

2. **Banked SRECs from out-of-state sources are not eligible to comply with Pennsylvania's solar requirement under the AEPS.**

The *Joint Statement* asks for comments on how the commission should "address the status of banked SRECs from previously certified out-of-state facilities." The Commission should find that banked SRECs from out-of-state sources do not satisfy Pennsylvania's photovoltaic share under AEPS for the following reason:

The Act establishes a general rule that generators are not eligible to be a source of credits used to satisfy the photovoltaic share under AEPS unless it delivers energy to an electric distribution company or other Pennsylvania entity as specified in Section 2804(1). Following this general rule the Act, Section 2804(2), specifies two specific cases where it does not apply retroactively to existing certifications. Those cases are i) where the generator is physically located within the geographical boundaries of Pennsylvania or, ii) where there is a pre-existing contract for the sale and purchase of credits. The legislature clearly intended the provisions in 2804(1) to have retroactive effect on the qualification of generators. If this were not the case, it would be unnecessary to have the specific exemptions in 2804(2).

An out-of-state system not under binding written contract is not be eligible under Act 40 to receive SRECs after October 30, 2017 (as described above), so therefore, any credits—past, present or future—earned by that now ineligible system are also ineligible to be sold as Pennsylvania SRECs after that date. They can be sold as Tier 1 AECs. While Act 40 does not specifically address banked SRECs, in order to meet the intent and direction of the law, the Commission must ensure that banked credits from out-of-state facilities that are not under contract may not be used to satisfy the photovoltaic share of the AEPS.

We also note that the exception provided for binding written contracts in 2804(2)(ii) further specifies that the contract be for the "sale and purchase" of credits. This indicates that there must be a bilateral contract between the seller and purchaser. Any other contractual arrangement such as a contract between a generator and a broker to sell

banked credits on consignment would not be for the "sale and purchase" of credits as required.

Because the rule applies retroactively and provides no exception for banked credits, the Commission must ensure that banked credits from out-of-state sources that are not under contract may not be used to satisfy the photovoltaic share.[4]

3. Interpretation of Contracts in Act 40.

A "binding, written contract" mentioned in the Section 2804(2)(ii) refers only to contracts made directly with an entity that is obligated to meet the requirements of the AEPS including an electrical distribution company, electric generation supplier serving Pennsylvania customers, load serving entities, electric cooperatives or municipal cooperatives. Contracts with other parties for the sale and purchase of SRECs are irrelevant to Act 40. Furthermore, SREC contracts used to satisfy AEPS compliance are the only ones that would be reasonably accessible to the PUC. Any other contracts regarding SREC transactions for other purposes would be impossible to track.

4. Out-of-state solar facility applications submitted to the AEPS Administrator prior to October 30, 2017, but not yet approved for certification are not eligible to comply with Pennsylvania's solar requirement under the AEPS.

The TIO "seeks comments on whether completed solar PV system applications that were received before October 30, 2017, but not approved by the program administrator until after October 30, 2017, should be grandfathered in as a solar PV AES eligible to meet the solar PV share."[5] The plain language of the Act requires that to be eligible a facility must have a certification "prior to the effective date of this section"—that is, October 30, 2017. If the commission were to hold that the restrictive clause "prior to the effective date" language modifies the other conditions found in Section 2804(2) (i.e. the generator being within Pennsylvania or with an appropriate contract), that would create the absurd result implying that a generator might move out of state and retain its certification.

[4] Comments of Sen. Scavello, (Dec. 27, 2018).
[5] TIO, part F.

The TIO references 52 Pa. Code § 75.63(i) to justify possibly allowing later certifications in cases where an application was received prior to Oct 30, 2017. That section of the code says "[a]n alternative energy system may begin to earn alternative energy credits on the date a complete application is filed with the administrator," but this is contingent on subsequent approval of the application. If the application were denied, those credits would not be eligible.

This is particularly sensitive because the current AEPS data shows that a total of 121 out-of-state solar facilities equaling 153 MW (one system being greater than 140 MW alone), were certified between Oct 30 and Dec 12, 2017, after Act 40 was enacted on Oct 30, 2017. These systems alone could generate over 35% of the SREC requirement for 2018.

If an out-of-state generator applies for certification prior to October 30, 2017 but is not actually certified as of that date, the AEPS administrator or the Commission lacks the authority to issue the certification under any circumstances. In that case, 52 Pa. Code § 75.63(i) does not apply because the application must be denied.

We urge the Commission adopt an implementation order consistent with this interpretation to ensure that no credits from any such out-of-state generators certified after Act 40 was enacted on October 30, 2017, will be eligible for the photovoltaic share under AEPS.

Summary

For the above reasons, we respectfully ask that the Commission to adopt the interpretations proposed by the *Joint Statement,* clarify that banked out-of-state credits are not eligible, and late certifications are not grandfathered. Between 61% and 70% of the SREC requirement for 2017 was met by out-of-state solar facilities, which will only grow larger if the TIO is adopted, as is. Many of the out-of-state solar facilities had weeks if not months to renegotiate contracts to ensure their eligibility as a certified solar generator to comply with the AEPS solar requirement before Act 40 was enacted.

Please see the attached memo submitted to the PUC Commissioners prior to the TIO release, which was the basis for most of these comments, as well as the ratepayer impact analysis document.

Thank you for the opportunity for PASEIA to submit these comments.