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

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|  | Public Meeting held April 19, 2018 |
| Commissioners Present: |  |
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| Gladys M. Brown, Chairman |  |
| Andrew G. Place, Vice Chairman |  |
| Norman J. Kennard |  |
| David W. Sweet |  |
| John F. Coleman, Jr. |  |
|  |  |
| Implementation of Act 40 of 2017 | M-2017-2631527 |
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**FINAL IMPLEMENTATION ORDER**

**BY THE COMMISSION:**

On October 30, 2017, Governor Wolf signed into law Act 40 of 2017, which amends the Administrative Code, 71 P.S. §§ 1 *et seq*. Act 40, *inter alia,* establishes geographical limits on solar photovoltaic (solar PV) systems that qualify for the solar PV share requirement of the Alternative Energy Portfolio Standards (AEPS) Act, 73 P.S. §§ 1648.1 *et seq*. The Pennsylvania Public Utility Commission’s (Commission) administrative responsibilities for implementing the provisions of Act 40 are contained within Section 11.1 of Act 40. In general, Section 11.1 amends Article XXVIII of The Administrative Code of 1929 (relating to the powers and duties of the Pennsylvania Public Utility Commission) by adding section 2804 (relating to the AEPS Act). This Final Implementation Order provides the Commission’s interpretation as well as implementation of Section 11.1 of Act 40.

**BACKGROUND**

Section 11.1 of Act 40 of 2017 amends the Administrative Code, 71 P.S. §§ 1 *et seq*., by adding Section 2804 to the Administrative Code (Adm. Code), 71 P.S. § 714, that amends the Alternative Energy Portfolio Standards Act (AEPS Act), 73 P.S. §§ 1648.1 – 1648.8, 66 Pa. C.S. § 2814, by establishing geographical limits on solar photovoltaic (solar PV) systems that qualify for the solar PV share requirement in Section 3 of the AEPS Act, 73 P.S. § 1648.3(b)(2). Section 2804 of the Adm. Code became effective on October 30, 2017.

On December 21, 2017, the Commission adopted a Tentative Implementation Order (Tentative Order) at the above referenced Docket seeking comments on proposed interpretations and implementation of Section 2804 of the Adm. Code.[[1]](#footnote-1) In addition to the Tentative Order, Chairman Gladys M. Brown and Vice Chairman Andrew G. Place issued a joint statement that presented supplemental interpretations of Section 2804(2)(i) and 2804(2)(ii) of the Adm. Code, as well as the status of banked solar PV alternative energy credits (SRECs) for comment. Written comments were to be submitted within 30 days of the publication of the Tentative Order in the *Pennsylvania Bulletin*, February 5, 2018.[[2]](#footnote-2)

Comments were filed by the following: American Municipal Power, Inc. (AMP); Anthill Farm (Anthill); Sen. Argall; Back to Life Urban Sanctuary (BLUS); Lucyna de Barbaro; Dara Bortman; Rep. Carroll; Nina Catanzarite; Citizens for Pennsylvania’s Future (PennFuture); Clean Air Council (CAC); Robert Concilus; Mark J. Connolly; Consolidated Edison Development, Inc. (ConEd); Constellation NewEnergy, Inc. and Exelon Generation Company, LLC (collectively, CE); Cypress Creek Renewables, LLC (CCR); William Delaney; Sen. DiSanto; DTE Energy Trading, Inc. (DTE); Duke Energy Renewables, Inc. (DER); Duquesne Light Co. (Duquesne); Energy Independent Solutions (EIS); ET Capital Solar Partners (USA), Inc. (ET); Exact Solar; Dorothy S. Falk; Richard Flarend; Sen. Fontana; Rep. Frankel; Friends Fiduciary Corp. (FFC); Future Times Energy (FTE); Gary J. Gillen; GP Energy Management (GPEM); Marjorie E. Greenfield; Sen. Greenleaf; GreenWorks Development (GWD); Brent Groce; Groundhog Solar LLC (GS); Horizon Energy, LLC (HE); Miriam E. Lindauer and Alan E. Johnson (Lindauer and Johnson); Ryan Kerney; Sen. Killion; David Krewson; Rep. Marsico & Rep. Helm; Matthew S. Matell; Dennis McOwen; Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively FirstEnergy); Mid‑Atlantic Renewable Energy Association (MAREA); Mid‑Atlantic Renewable Energy Coalition (MAREC); Nelson & Patrica Nafzinger; National Electrical Contractors Association (NECA); National Energy Marketers Association (NEM); The Nature Conservancy (NC); NextEra Energy Resources, LLC (NextEra); Office of Consumer Advocate (OCA); Office of Small Business Advocate (OSBA); Mike Pacolay; Paradise Energy Solutions (PES); Vincent J. Paul; PECO Energy Company (PECO); PennEnvironment *et. al*. (PennEnviro); Pennsylvania Chamber of Business and Industry (Chamber); Pennsylvania Department of Environmental Protection (DEP); Pennsylvania Farm Bureau (PFB); Pennsylvania Solar Energy Industries Association (PASEIA); Philadelphia Solar Energy Association (PSEA); Pocono Raceway (PR); Corey Poncavage; PPL Electric Utilities Corp. (PPL); Ms. Meenal Raval; Sen. Reschenthaler; Retail Energy Supply Association (RESA); Rep. Roe; Sen. Scavello; Schell Solar Farm, LLC (SSF); Henry J. Sokolowski; Solar Renewable Energy LLC (SRE); Solar Unified Network of Western Pennsylvania, *et. al*. (SUNWP); SOTA Construction Services, Inc. (SOTA); SRECTrade, Inc. (SRECT); Dennis & Eileen Stanton; Sunrise Energy, LLC (SE); Sunrun, Inc. (Sunrun); Teichos Energy (TE); Howard E. & Carol E. Vines; James Weaver; Sen. Yudichak & Sen. Costa.

**DISCUSSION**

**A. Section 2804(1)**

This Section of the Adm. Code, 71 P.S. § 714(1), creates a limitation to Section 4 of the AEPS Act, 73 P.S. § 1648.4, which established, *inter alia*, that energy derived from alternative energy sources (AESs) inside the geographical boundaries of Pennsylvania shall be eligible to meet compliance requirements under the AEPS Act. Section 1648.4 also provides that energy derived from AESs located outside the geographical boundaries of the Commonwealth but within the service territory of a regional transmission organization (RTO) that manages the transmission system in any part of Pennsylvania shall be eligible to meet the AEPS Act compliance requirements of electric distribution companies (EDCs) or electric generation suppliers (EGSs) located within the service territory of the same RTO. Finally, Section 1648.4 provides that AESs located in the PJM Interconnection, L.L.C. RTO (PJM) or its successor service territory shall be eligible to fulfill the AEPS Act compliance obligations of all EDCs and EGSs. *See* 73 P.S. § 1648.4.

Section 2804(1) of the Adm. Code, 71 P.S. § 714(1), specifically states the following:

(1) Notwithstanding Section 4 of the Act of November 30, 2004 (P.L. 1672, No. 213), known as the “Alternative Energy Portfolio Standards Act,” in order to qualify as an alternative energy source eligible to meet the photovoltaic share of this Commonwealth’s compliance requirements under the “Alternative Energy Portfolio Standards Act” and to qualify for solar renewable alternative energy portfolio credits, each solar photovoltaic system must do one of the following:

1. Directly deliver the electricity it generates to a retail customer of an electric distribution company or to the distribution system operated by an electric distribution company operating within this Commonwealth and currently obligated to meet the compliance requirements contained under the “Alternative Energy Portfolio Standards Act.”
2. Be directly connected to the electric system of an electric cooperative or municipal electric system operating within this Commonwealth.
3. Connect directly to the electric transmission system at a location that is within the service territory of an electric distribution company operating within this Commonwealth.

In the Tentative Order we stated that Section 2804(1), 71 P.S. § 714(1), modifies Section 4 of the AEPS Act to exclude solar PV sources located outside of Pennsylvania from qualifying as an AES eligible to generate power and solar renewable alternative energy portfolio credits (SRECs) eligible to be used to meet the solar PV share requirement. Section 2804(1) introduces a new undefined term, “solar renewable alternative energy portfolio credit.” In the Tentative Order the Commission proposed to interpret this term as identifying SRECs eligible to meet the AEPS Act solar PV share requirements found in Section 3(b)(2) of the AEPS Act, 73 P.S. § 1648.3(b)(2).

In the Tentative Order we noted that Act 40 did not amend or otherwise revise the definitions of Alternative Energy Credit, Alternative Energy Source or Tier I Alternative Energy Source found in Section 2 of the AEPS Act, 73 P.S. § 1648.2. Significantly, Section 2804(4) of the Adm. Code, 71 P.S. § 714(4), specifically defines “Alternative Energy Source” as the term “Alternative Energy Sources” is defined in Section 2 of the AEPS Act. Furthermore, Section 2804(1) of the Adm. Code only modifies Section 4 of the AEPS Act, 73 P.S. § 1648.4, and only refers to the solar PV share requirement. Accordingly, as solar PV has been and still is a Tier I AES that was eligible to meet the Tier I non-solar PV share requirements, the Commission proposed to interpret this section as permitting any solar PV system meeting the geographic requirements of Section 4 of the AEPS Act, 73 P.S. § 1648.4, as continuing to be eligible to generate Tier I alternative energy credits (AECs) eligible to be used to meet the Tier I non-solar PV share requirements in Section 3(b)(1) of the AEPS Act, 73 P.S. § 1648.3(b)(1).

**1. Comments**

Duquesne, FirstEnergy, MAREC, NEM, and RESA[[3]](#footnote-3) indicate they support the Tentative Order interpretation permitting any solar PV system meeting the geographic requirements of Section 4 of the AEPS Act, 73 P.S. § 1648.4, as continuing to be eligible to generate Tier I alternative energy credits (AECs) eligible to be used to meet the Tier I non-solar PV share requirements in Section 3(b)(1) of the AEPS Act, 73 P.S. § 1648.3(b)(1). BLUS, Dorothy S. Falk, Sen. Fontana, Lindauer and Johnson, David Krewson, PSEA, PASEIA & SUNWP, Sen. Scavello and Dennis & Eileen Stanton[[4]](#footnote-4) concur with the Tentative Order interpretation. OCA[[5]](#footnote-5) indicates that it does not object to the Tentative Order interpretation of Section 2804(1).

**2. Disposition**

Upon review of the comments, the Commission adopts the Tentative Order interpretation and will permit any solar PV system meeting the geographic requirements of Section 4 of the AEPS Act, 73 P.S. § 1648.4, as continuing to be eligible to generate Tier I alternative energy credits (AECs) eligible to be used to meet the Tier I non-solar PV share requirements in Section 3(b)(1) of the AEPS Act, 73 P.S. § 1648.3(b)(1).

**B. Section 2804(1)(i)**

In the Tentative Order we stated that this subsection of the Adm. Code, 71 P.S. § 714(1)(i), provides two scenarios where solar PV will qualify to generate energy and SRECs eligible to be used by EDCs and EGSs to meet the solar PV share requirements. The first scenario that qualifies is a solar PV generation source that directly delivers its power to an EDC’s retail customer. In the Tentative Order the Commission proposed to interpret this section as applying to solar PV systems physically connected to an EDC’s customer’s internal electric system, such as a roof mounted solar PV array.

The second scenario that qualifies is a solar PV generation source that directly delivers its power to the distribution system operated by an EDC that has an obligation to meet the AEPS Act compliance requirements. In the Tentative Order the Commission proposed to interpret this provision as applying to solar PV systems physically interconnected to an EDC’s distribution system.

**1. Comments**

Duquesne, MAREC, and RESA[[6]](#footnote-6) indicate their support of the Tentative Order interpretations that solar PV physically connected to an EDC’s customer’s internal electric system or physically interconnected to an EDC’s distribution system will qualify to generate energy and SRECs eligible to be used to meet solar PV share requirements. OCA[[7]](#footnote-7) indicates that it does not oppose the Tentative Order interpretation of Section 2804(1)(i). FirstEnergy[[8]](#footnote-8) also supports the Tentative Order interpretations. FirstEnergy, however, notes that a very small portion of the Pennsylvania Electric Company (Penelec) distribution system extends into New York State and it is possible that a Penelec customer physically located in New York could have a solar PV system connected to the Penelec customer’s electrical system or connected to the Penelec distribution system. FirstEnergy believes such systems qualify as eligible for certification and asks the Commission to provide clarity.

**2. Disposition**

Upon review of the comments, the Commission adopts the Tentative Order interpretation with one clarification. We agree with FirstEnergy that a solar PV system connected to a Penelec customer’s internal electrical system or to Penelec’s distribution system, whether in Pennsylvania or New York and within the PJM control area, are eligible to generate energy and SRECs eligible to be used by EDCs and EGSs to meet the solar PV share requirements. We find that this is appropriate as subsection 2804(1)(i) of the Adm. Code, 71 P.S. § 714(1)(i), only requires electricity generated by the PV system be delivered to a jurisdictional EDC’s retail customer or delivered to a jurisdictional EDC’s distribution system. Accordingly, we adopt the Tentative Order interpretation that solar PV systems will qualify to generate energy and SRECs eligible to be used by EDCs and EGSs to meet the solar PV share requirements when solar PV systems are physically connected to an EDC’s customer’s internal electric system or physically interconnected to an EDC’s distribution system.

**C. Section 2804(1)(ii)**

In the Tentative Order we stated that this subsection of the Adm. Code, 71 P.S. § 714(1)(ii), addressed the scenario where a solar PV system is directly connected to the electric system of an electric cooperative or municipal electric system operating within Pennsylvania. In the Tentative Order the Commission proposed to interpret this subsection as permitting solar PV systems physically connected to a Pennsylvania electric cooperative’s or municipal electric system’s distribution network to qualify to generate energy and SRECs eligible to be used by EDCs and EGSs to meet the solar PV share requirements.

**1. Comments**

Duquesne, FirstEnergy, MAREC, and RESA[[9]](#footnote-9) indicate support of the Tentative Order interpretation that solar PV systems physically connected to a Pennsylvania electric cooperative’s or municipal electric system’s distribution network qualify to generate energy and SRECs eligible to be used by EDCs and EGSs to meet the solar PV share requirements. OCA[[10]](#footnote-10) indicates that it does not oppose the Tentative Order interpretation of Section 2804(1)(ii).

**2. Disposition**

Upon review of the comments, we adopt the Tentative Order interpretation permitting solar PV systems physically connected to a Pennsylvania electric cooperative’s or municipal electric system’s distribution network to qualify to generate energy and SRECs eligible to be used by EDCs and EGSs to meet the AEPS Act solar PV share requirements.

**D. Section 2804(1)(iii)**

In the Tentative Order we stated that this subsection of the Adm. Code, 71 P.S. § 714(1)(iii), addressed the scenario where a solar PV system is directly connected to the electric transmission system at a location that is within the service territory of an EDC. In the Tentative Order the Commission proposed to interpret this subsection as permitting solar PV systems physically connected to an EDC’s transmission system within the EDC’s service territory to qualify to generate energy and SRECs eligible to be used by EDCs and EGSs to meet the solar PV share requirements. In the Tentative Order we noted that this would include utility scale solar PV systems that are physically interconnected to an EDC’s transmission system within the EDC’s service territory and operating under PJM rules as a wholesale generator.

**1. Comments**

Duquesne, MAREC, and RESA[[11]](#footnote-11) indicate support of the Tentative Order interpretation permitting solar PV systems physically connected to an EDC’s transmission system within the EDC’s service territory to qualify to generate energy and SRECs eligible to be used by EDCs and EGSs to meet the solar PV share requirements. PennFuture[[12]](#footnote-12) notes that the language in Act 40 has one substantive change from SB 404, to permit solar PV systems that “connect directly to the electric transmission system…with (sic) the service territory of an electric distribution company operating within this commonwealth.” PennFuture went on to note that while this potentially expands the number of photovoltaic systems that may generate SRECs, it is unambiguously limited to those with a direct physical connection to Pennsylvania.

OCA[[13]](#footnote-13) submits that the Tentative Order interpretation where it refers to “an EDC’s transmission system” should be changed to permit solar PV systems physically connected to “any” transmission system in Pennsylvania. OCA contends that under Section 2804(1)(iii), any solar PV system directly connecting to a transmission system in Pennsylvania should qualify to generate energy and SRECs eligible to meet solar PV share requirements. FirstEnergy[[14]](#footnote-14) indicates support of the Tentative Order interpretation but notes that transmission systems serving EDCs in Pennsylvania may not be owned by the EDCs and suggests that the Commission’s proposal be revised to clarify that a solar PV system interconnected with a transmission system located within a Pennsylvania EDC’s service territory would meet the eligibility requirements.

**2. Disposition**

Upon review of the comments and in recognition of the comments from FirstEnergy and OCA, we will clarify the interpretation of this subsection to permit solar PV systems physically connected to any transmission system that is in Pennsylvania to qualify to generate energy and SRECs eligible to be used by EDCs and EGSs to meet the AEPS Act solar PV share requirements. This would include utility scale solar PV systems that are physically interconnected to a transmission system within an EDC’s service territory and operating under PJM rules as a wholesale generator.

**E. Implementation of Section 2804(1)**

In the Tentative Order we proposed that the Alternative Energy Credit Program Administrator (AEC Program Administrator) work with PJM‑GATS to modify the Pennsylvania certification numbers it assigns to solar PV systems. Specifically, we proposed that systems that qualify to generate SRECs will be assigned a certification number in the following format: PA‑NNNNNN‑SUN‑I. Whereas solar PV systems that only qualify to generate Tier I non‑solar AECs will be assigned a certification number in the following format: PA‑NNNNNN‑NSTI‑I.

**1. Comments**

FirstEnergy, GS, and RESA[[15]](#footnote-15) support the certification number format proposed in the Tentative Order. Duquesne[[16]](#footnote-16) avers that the proposed naming process is necessary and will be adequate once the AEC Administrator and the facilities are able to make changes necessary to accommodate the proposed numbering format.

PPL[[17]](#footnote-17) indicates support of the Tentative Order certification number format and offers two comments on the implementation of Section 2804(1). PPL emphasizes the need for a clear communication line when entities provide evidence to the Commission of contracts that are grandfathered and suggests for transparency that PJM‑GATS add a new column for the new certification numbers as opposed to overwriting old certification numbers.

CE[[18]](#footnote-18) notes that the timing and the process for changing the SREC naming is important to entities with AEPS Act requirements. CE requests that the Commission clarify the procedure and timing for the AEC Program Administrator, in coordination with PJM‑GATS, to identify and mark grandfathered SRECs in PJM‑GATS.

**2. Disposition**

Upon review of the comments, we adopt the procedure proposed in the Tentative Order to have the AEC Program Administrator work with PJM‑GATS to modify the Pennsylvania certification number it assigns to solar PV systems. Specifically, systems that qualify to generate SRECs will be assigned a certification number in the following format: PA‑NNNNNN‑SUN‑I. Whereas solar PV systems that only qualify to generate Tier I non‑solar AECs will be assigned a certification number in the following format: PA‑NNNNNN‑NSTI‑I.

**F. Section 2804(2)(i)**

In the Tentative Order we stated that this section of the Adm. Code, 71 P.S. § 714(2)(i), sets forth a condition to which Section 2804(1) of the Adm. Code, 71 P.S. § 714(1), does not apply. Specifically, Section 2804(2)(i) of the Adm. Code, 71 P.S. § 714(2)(i) states the following:

(2) Nothing under this section or section 4 of the “Alternative Energy Portfolio Standards Act” shall affect any of the following:

(i) A certification originating within the geographical boundaries of this commonwealth granted prior to the effective date of this section of a solar photovoltaic energy generator as a qualifying alternative energy source eligible to meet the solar photovoltaic share of this Commonwealth’s alternative energy portfolio compliance requirements under the “Alternative Energy Portfolio Standards Act.”

In the Tentative Order we stated that this subsection addresses the scenario where a solar PV system had received a Pennsylvania certification as an AES eligible to meet the solar PV share requirement prior to October 30, 2017, the effective date of Section 2804 of the Adm. Code. In the Tentative Order the Commission proposed to interpret this subsection to grandfather solar PV AESs certified as a Pennsylvania AES before October 30, 2017, as continuing to qualify to generate energy and SRECs eligible to be used by EDCs and EGSs to meet the solar PV share requirements.

In the Tentative Order the Commission proposed to interpret the language “a certification originating within the geographical boundaries of this Commonwealth” as a reference to systems certified by the Commission’s AEC Program Administrator in accordance with 52 Pa. Code §§ 75.62, 75.63 & 75.64. These systems received a unique Pennsylvania certification number that identifies them as a Pennsylvania qualifying alternative energy source eligible to meet the solar PV share requirements. We noted that many systems may also qualify for certification in another state’s renewable portfolio standards program and receive a unique certification number for that state as well, thus, many systems may have multiple state certification numbers.

Accordingly, this subsection, as the Commission proposed to interpret it, precludes a solar PV system that does not meet the Section 2804(1) of the Adm. Code, 71 P.S. § 714(1), requirements and was certified in another state, but not in Pennsylvania prior to October 30, 2017, from being qualified to generate energy and SRECs eligible to be used by EDCs and EGSs to meet the solar PV share requirements in Pennsylvania. The Commission, however, as noted above, proposed to interpret Section 2804 of the Adm. Code as permitting such systems to be certified as a Tier I non‑solar alternative energy resource eligible to be used by EDCs and EGSs to meet the Tier I non‑solar requirements.

In their Statement, Chairman Brown and Vice Chairman Place stated the following:

While the Commission’s interpretation, as outlined in the [Tentative Order], reflects a strict textual review, we acknowledge that such implementation may run counter to the intent of the provisions in Act 40. Numerous iterations of legislation have been proposed over previous General Assembly sessions aiming to “close the borders” in a manner “similar to many neighboring states.” Here the [Tentative Order] only proposes to close the borders on a going forward basis, commencing on the date Act 40 was enacted. Review of the current supply and demand for AEPS qualifying Tier I solar share credits and capacity indicates that grandfathering all out‑of‑state solar facilities may result in, at best, a negligible impact on in‑state solar development and SREC prices. Such an outcome would fail to achieve the potential intentions of the General Assembly to foster economic development in the state, to support environmental stewardship, and to instill electric reliability. Failure to effectuate the intentions of the General Assembly would conflict with the principles of statutory construction.

Chairman Brown and Vice Chairman Place went on to state that they “propose to interpret the phrase ‘[a] certification originating within the geographical boundaries of this Commonwealth…’ as a facility located within Pennsylvania having received an AEPs [sic] Tier I solar photovoltaic share certification.”

**1. Comments**

The Commission received comments in opposition and in support of the Commission’s proposed interpretation of Subsection 2(i). Some Commentators assert that the language as written in Act 40 is unclear and ambiguous.[[19]](#footnote-19) Several Commentators assert that the reasonable reading of Subsection 2(i) is that a certification originates within the geographical boundaries of this Commonwealth only if the source of generation being certified is physically located within those geographical boundaries.[[20]](#footnote-20) Senators Jay Costa and John T. Yudichak state that the Tentative Order interpretation is counter to the intentions of the General Assembly, which was to join neighboring states that have similarly “closed solar borders” and to advance a commitment to promote economic and job growth in Pennsylvania’s solar energy industry.[[21]](#footnote-21) Some commentators assert that the Commission’s interpretation of Subsection 2(i) would render Subsection 2(ii) redundant because there would be no need to further protect existing facilities that have entered into agreements with Pennsylvania EDCs and EGSs participating in the Pennsylvania markets.[[22]](#footnote-22)

Other commentators indicate their support for the Commission’s interpretation in the Tentative Order of Subsection 2(i) as “grandfathering” existing certified solar PV systems physically located outside of the Commonwealth. Some commentators noted that to require a facility to be physically located within the Commonwealth to be exempted under Subsection 2(i) would be unnecessary to preserve the certification of in-state Pennsylvania facilities under Act 40.[[23]](#footnote-23) SSF[[24]](#footnote-24) asserts that failing to grandfather existing solar PV systems with existing contracts would impair obligations of contracts. Several commentators assert that the Rules of Statutory Construction presume against a retroactive effect unless the legislation clearly makes that intent known.[[25]](#footnote-25) Several Commentators also assert that interpreting the Act this way is appropriate given that the language of the statute is clear and unambiguous.[[26]](#footnote-26)

RESA[[27]](#footnote-27) asserts that Subsection 2(i) should be interpreted to apply to any existing SRECs (in contrast to the qualification of the solar PV facility) that has already been certified as compliant with the Pennsylvania AEPS requirements. RESA asserts that this interpretation also supports the Chairman’s Joint Statement’s interpretation because the integrity of the already certified SRECs are being preserved.

**2. Disposition**

The Core issues in this proceeding are the Commission’s interpretation of Sections 2804(2)(i) and 2804(2)(ii). These read:

(2) Nothing under this section or section 4 of the “Alternative Energy Portfolio Standards Act” shall affect any of the following:

(i) A certification originating within the geographical boundaries of this Commonwealth granted prior to the effective date of this section of a solar photovoltaic energy generator as a qualifying alternative energy source eligible to meet the solar photovoltaic share of this Commonwealth’s alternative energy portfolio compliance requirements under the “Alternative Energy Portfolio Standards Act.”

(ii) Certification of a solar photovoltaic system with a binding written contract for the sale and purchase of alternative energy credits derived from solar photovoltaic energy sources entered into prior to the effective date of this section.

Interpretation of these sections has been challenging for the Commission, particularly because the verbiage in Section 2804(2)(i) is not precise. The question here is whether or not this statute is intended to “grandfather” out‑of‑state facilities certified before October 30, 2017, to generate Tier I Solar credits. Given this lack of clarity, Chairman Gladys M. Brown and Vice Chairman Andrew G. Place issued a Joint Statement in conjunction with the adoption of the Tentative Order offering supplemental statutory interpretations to spur comments in an effort to inform the record.[[28]](#footnote-28)

The OCA succinctly states the challenge in interpreting Section 2804(2)(i) of Adm. Code.

The OCA submits that the language as written in Act 40 is unclear and the OCA is unable to discern the intent of the section as written.[[29]](#footnote-29)

Likewise, the comments of PennFuture share similar sentiments as OCA, stating:

Section 2804(2)(i) of Act 40 is ambiguous in regard to how and when the qualification of a facility as an alternative energy generator originates.[[30]](#footnote-30)

We agree with the commentators that asserted that the language of Section 2804(2)(i) is unclear. Consequently, we are obligated, under rules of statutory construction, to ascertain the intent of the General Assembly. The Statutory Construction Act of 1972 provides in relevant part that:

When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.

1 Pa. C.S. § 1921(b). Since, as the OCA and PennFuture point out, the verbiage here is unclear, we conduct a statutory analysis. The Statutory Construction Act provides in relevant part:

When the words of a statute are not explicit, the intention of the General Assembly may be ascertained by considering, among other matters:

\* \* \*

(2) The circumstances under which it was enacted.

(3) The mischief to be remedied.

(4) The object to be attained.

\* \* \*

(6) The consequences of a particular interpretation

(7) The contemporaneous legislative history.

(8) Legislative and administrative interpretations of such statute.

1 Pa. C.S. § 1921(c). The comments filed in response to the Tentative Order have proven instructive in regard to why the General Assembly drafted this legislation, why the Governor signed it into law, and the mischief to be remedied.

Comments filed by Governor Tom Wolf, Senators Mario M. Scavello, Tom Killion, John T. Yudichak, Jay Costa, John M. DiSanto, Steward J. Greenleaf, David G. Argall, Wayne D. Fontana, Guy Reschenthaler, and Representatives Michael B. Carroll, Eric M. Roe, Ronald S. Marsico, and Sue Helm are particularly insightful. As lawmakers who effectuated Act 40, these commenters are uniquely qualified to provide the Commission with information regarding the intent of the statute. Each of the comments provided by lawmakers states that their intent to ‘close the borders’ for Tier I solar credit qualifications was consistent with the design utilized by a number of our neighboring states to promote economic development. This interpretation is consistent with the supplemental interpretation provided in the Joint Statement of Chairman Gladys M. Brown and Vice Chairman Andrew G. Place and contrary to the proposal of the Commission in the Tentative Order.

Senators Jay Costa and John T. Yudichak descriptively summarize the sentiments and intentions of these lawmakers, stating the following:

The Commission’s proposed interpretation under the Tentative Implementation Order published in the Pennsylvania Bulletin on January 6, 2018, would “grandfather” systems that are certified in Pennsylvania, rather than physically located in this state. We must respectfully disagree with this interpretation, which we find counter to the intentions of the General Assembly and especially of our colleagues who supported and voted in favor of this legislation.

Instead, the joint statement submitted by Chairperson Gladys M. Brown and Vice Chairperson Andrew G. Place better reflects our intentions in approving this legislation. Please know that legislation to “close our solar borders” for the purposes of satisfying the Alternative Energy Standards Portfolio Act has been considered in recent sessions and discussions have been exclusive to the physical locations of systems.

While we certainly recognize the potential need to address and honor existing contracts, the long-term and primary goals set forth by this legislation have been clear. Specifically, we seek to join our neighboring states that similarly have “closed solar borders” and to advance our commitment to promoting economic and job growth within Pennsylvania’s solar energy industry.[[31]](#footnote-31)

In further support of interpreting Sections 2804(2)(i) and 2804(2)(ii) consistent with the Joint Statement of Chairman Gladys M. Brown and Vice Chairman Andrew G. Place, DEP states that the intention of this provision was to provide certainty that solar photovoltaic energy facilities located within the Commonwealth would not be affected by the changes implemented elsewhere in Act 40. DEP also submits that the interpretation outlined in the Tentative Order would essentially nullify the purpose of Act 40 by grandfathering enough currently-certified sources to prevent the law from having any environmental or other co-benefit whatsoever.[[32]](#footnote-32) Comments from the PFB also echo this sentiment, stating that the Tentative Order interpretation would limit farmers’ options for compliance with ever-increasing environmental protection standards.[[33]](#footnote-33)

Further, ET submits that the Commission’s tentative interpretation of Section 2804(2)(i) would make the additional language of Section 2804(2)(ii) redundant.[[34]](#footnote-34) ET states that if the legislative intent of Section 2804(2)(i) follows the Commission’s tentative interpretation, there would be no need for the additional language of Section 2804(2)(ii) to further protect existing facilities that have entered into agreements with Pennsylvania electric distribution companies (EDCs) and electric generation suppliers (EGSs) participating in the Pennsylvania markets. Therefore, ET contends that the language of Section 2804(2)(ii) is further evidence that the legislative intent of Act 40 of 2017 is to stimulate further investment in solar facilities within the Commonwealth and not to allow out-of-state facilities to capture Pennsylvania ratepayer payments.[[35]](#footnote-35) Again, the rules of statutory construction are guiding here. The Statutory Construction Act provides in relevant part:

In ascertaining the intention of the General Assembly in the enactment of a statute the following presumptions, among others, may be used:

\* \* \*

(2) That the General Assembly intends the entire statute to be effective and certain.

1 Pa. C.S. § 1922. Case law further clarifies the interpretation of this provision, stating that the General Assembly does not intend words to be “mere surplusage.”[[36]](#footnote-36)

When reviewing the totality of comments described above, it becomes evident that Section 2804(1)(i), 2804(1)(ii), and 2804(1)(iii) explicitly describe the qualifications for Tier I Solar facilities after passage of Act 40; Section 2804(2)(i) clarifies that all Tier I Solar facilities certified before passage of Act 40 that are located within the geographic boundaries of Pennsylvania are to be held harmless from this legislation; and Section 2804(2)(ii) enjoins the legislation from breaching existing contracts from out‑of‑state Tier I Solar facilities which were entered into before passage to serve the AEPS Act needs of Pennsylvania entities. Therefore, we believe we must support the adoption of our interpretations of Section 2804(2)(i) and 2804(2)(ii) in a manner consistent with the Joint Statement by Chairman Gladys M. Brown and Vice Chairman Andrew G. Place to the Tentative Order. The interpretation of Section 2804(2)(i) of the Adm. Code, 71 P.S. § 714(2)(i) is as follows:

Section 2804(2)(i) – We interpret the phrase “[a] certification originating within the geographical boundaries of this Commonwealth…” as a facility located within Pennsylvania having received an AEPS Act Tier I solar photovoltaic share certification.

**G. Implementation of 2804(2)(i)**

In the Tentative Order we proposed that solar PV systems that were certified as a Pennsylvania AES in accordance with 52 Pa. Code §§ 75.62, 75.63 & 75.64, prior to October 30, 2017, will be identified by the following certification number format: PA‑NNNNNN‑SUN‑I. Whereas solar PV systems that only qualify to generate Tier I non‑solar AECs will be assigned a certification number in the following format: PA‑NNNNNN‑NSTI‑I.

In the Tentative Order we noted that currently, the program administrator has 30 days from the date a complete AES application is received to provide written notice as to whether the system qualifies as an AEPS Act AES. If a system is found to qualify as an AEPS Act AES, the system qualification date can be the date the complete application was received by the program administrator. *See* 52 Pa. Code § 75.63(i).[[37]](#footnote-37) The Commission sought 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 requirements, as their certification date would be the date the completed application was received.

**1. Comments**

FirstEnergy and PPL[[38]](#footnote-38) support grandfathering of PV system applications received before October 30, 2017, but approved by the program administrator after October 30, 2017, as solar PV AES eligible to meet the solar PV share requirements. FirstEnergy noted that the finite number of applications submitted prior to October 30, 2017, “were submitted at point where solar PV systems would have been acting in reliance upon the laws in effect at the time of the application will further minimize the cost of compliance for customers.” PPL avers that “grandfathering of such facilities supports the development of solar renewable energy and can support the State’s transition to the new Act 40 requirements.

GPEM[[39]](#footnote-39) submits that the rules should remain consistent with the current program whereby the qualification date becomes the date the application was received rather than when it was approved and avers that consistent rules would be operationally simpler for market participants. GPEM notes that grandfathering systems with applications submitted prior to October 30, 2017, is inconsistent with the contract grandfathering language from Section 2804(2)(ii) and aligns more with the Commission’s initial interpretation of Section 2804(2)(i) that all systems certified prior to October 30, 2017 would be grandfathered in and continue creating eligible SRECs.

Anthill, Duquesne, PennFuture, PASEIA and PSEA,[[40]](#footnote-40) oppose grandfathering of PV system applications received before October 30, 2017, but approved by the program administrator after October 30, 2017, as solar PV AES eligible to meet the solar PV share requirements. Duquesne avers that systems with applications submitted but not approved by October 30, 2017, are not eligible for the exemptions provided in Act 40 that only apply to systems with Pennsylvania certifications granted prior to the effective date. PennFuture, PASEIA and PSEA, note that the Act requires that to be eligible a facility must have a certification granted prior to the effective date of Act 40.[[41]](#footnote-41) They further state that if an out-of-state generator applies for certification prior to October 30, 2017, but is not actually certified as of that date, the Commission lacks the authority to issue the certification under any circumstances. They further note that in such a case, 52 Pa. Code § 75.63(i) does not apply because the application must be denied.

**2. Disposition**

After review of the comments and based on our interpretation of Section 2804(2)(i), we agree with commenters that the language at Section 2804(2)(i) is clear that certification must have been actually granted prior to October 30, 2017, the effective date of Act 40. Therefore, only solar PV systems located within Pennsylvania that actually received certification by the AEC Program Administrator prior to October 30, 2017, fall under the Section 2804(2)(i) provisions. Accordingly, any facility that did not actually receive certification by the AEC Program Administrator prior to October 30, 2017, must meet the qualifications of Section 2804(1), 71 P.S. § 714(1) to be eligible to generate energy and credits that EDCs and EGSs can use to meet the Section 3 AEPS Act solar PV share requirements, 73 P.S. § 1648.3(b)(2).

In addition, as we have found that Section 28014(2)(i) only applies to facilities located within Pennsylvania, we direct the AEC Program Administrator work with PJM‑GATS to modify the Pennsylvania certification number it assigns to all solar PV systems located outside of Pennsylvania or that do not meet the requirements of 2804(1) of the Adm. Code. Specifically, as these out‑of‑state solar PV systems only qualify to generate Tier I non‑solar AECs they will be reassigned a certification number in the following format: PA‑NNNNNN‑NSTI‑I.

**H. Section 2804(2)(ii)**

In the Tentative Order we stated that this section of the Adm. Code, 71 P.S. § 714(2)(ii), sets forth a condition to which Section 2804(1) of the Adm. Code, 71 P.S. § 714(1), does not apply. Specifically, Section 2804(2)(ii) of the Adm. Code states the following:

(2) Nothing under this section or section 4 of the “Alternative Energy Portfolio Standards Act” shall affect any of the following:

(ii) Certification of a solar photovoltaic system with a binding written contract for the sale and purchase of alternative energy credits derived from solar photovoltaic energy sources entered into prior to the effective date of this section.

In the Tentative Order we stated that this subsection of the Adm. Code addresses the scenario where a binding written contract for the sale and purchase of AECs derived from a solar PV source was entered into prior to October 30, 2017. In the Tentative Order the Commission proposed to interpret this subsection as permitting the AEC Program Administrator to certify a solar PV system that does not meet the provisions of Section 2804(1) of the Adm. Code, 71 P.S. § 714(1), and was not certified prior to October 30, 2017, to qualify to generate energy and SRECs eligible to be used by EDCs and EGSs to meet the solar PV share requirements under the following conditions:

(1) There is a binding written contract entered into prior to October 30, 2017.

(2) The contract is for the sale and purchase of the alternative energy credits generated by a solar PV system that is not already certified in Pennsylvania.

(3) The solar PV system does not meet the requirements of § 2804(1).

In the Tentative Order the Commission further proposed to limit the certification to the duration of the contract. For example, if the contract was for the purchase of AECs for 24 months, from June 1, 2017 through May 31, 2019, the certification to qualify to generate energy and SRECs eligible to be used by EDCs and EGSs to meet the solar PV share requirements would end on June 1, 2019 and be transferred to a Tier I non‑solar certification. Under this example, the credits generated prior to June 1, 2019 and transferred to an EDC or EGS would continue to be eligible to meet the solar PV share requirements in accordance with 52 Pa. Code § 75.69 (relating to the banking of alternative energy credits).

In their Statement, Chairman Brown and Vice Chairman Place stated the following:

[W]e propose to interpret [Section 2804(2)(ii)] to only permit out‑of‑state facilities already certified as AEPS Tier I Solar Photovoltaic [systems] that have entered into a contract with a Pennsylvania electric distribution company, electric generation supplier serving Pennsylvania customers, load serving entity, electric cooperative, or municipal cooperative, for the sale of SRECs may maintain [its] certification until the expiration of the contract.

1. **Comments**

Several Commentators assert that the Commission’s proposed interpretation of the word “contract” in Subsection 2(ii) does not comport with the legislative intent of Act 40. Commentators suggest that the word “contract” in Subsection 2(ii) should be interpreted to only mean those entities required to comply with the AEPS Act because contracts with any other parties are irrelevant under Act 40.[[42]](#footnote-42) Others comment that the word “contract” should not only apply to contracts between entities required to comply with the AEPS Act because this would unfairly nullify other supply contracts which is not supported by the language of Act 40.[[43]](#footnote-43)

Several Commentators assert that failure to interpret Subsection 2(ii) as grandfathering solar PV generators with binding written contracts to sell SRECs in Pennsylvania entered into prior to October 30, 2017, would unduly burden projects and expose the Commonwealth to legal challenges.[[44]](#footnote-44) Duquesne[[45]](#footnote-45) asserts that the Commission’s interpretation of Subsection 2(ii) in its Tentative Order attains Act 40’s goal of closing the border over time as all facilities that were not granted Pennsylvania certification before October 30, 2017, and do not otherwise qualify under Act 40 will not be able to provide eligible SRECs. GPEM[[46]](#footnote-46) asserts that the Commission’s interpretation of Subsection 2(ii) conflicts with the Commission’s proposed interpretation of Subsection 2(i) because the contracts would not need to be grandfathered if the entire solar PV systems were to be grandfathered.

**2. Disposition**

As discussed in the preceding section, the Statutory Construction Act dictates that when the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit. 1 Pa. C.S. § 1921(b). The Statutory Construction Act also provides in relevant part:

When the words of a statute are not explicit, the intention of the General Assembly may be ascertained by considering, among other matters:

\* \* \*

(2) The circumstances under which it was enacted.

(3) The mischief to be remedied.

(4) The object to be attained.

\* \* \*

(6) The consequences of a particular interpretation

(7) The contemporaneous legislative history.

(8) Legislative and administrative interpretations of such statute.

1 Pa. C.S. § 1921(c). The Commission finds Subsection 2(ii) to be ambiguous.

For the reasons expressed in Section F.2. above, when reviewing the totality of comments described above, it becomes evident that Section 2804(1)(i), 2804(1)(ii), and 2804(1)(iii) explicitly describe the qualifications for Tier I Solar facilities after passage of Act 40; Section 2804(2)(i) clarifies that all Tier I Solar facilities certified before passage of Act 40 that are located within the geographic boundaries of Pennsylvania are to be held harmless from this legislation; and Section 2804(2)(ii) enjoins the legislation from breaching existing contracts from out‑of‑state Tier I Solar facilities which were entered into before passage to serve the AEPS Act needs of Pennsylvania entities. Therefore, we believe we must support the adoption of our interpretations of Section 2804(2)(i) and 2804(2)(ii) in a manner consistent with the Joint Statement by Chairman Gladys M. Brown and Vice Chairman Andrew G. Place to the Tentative Order.

The interpretation of Section 2804(2)(ii) of the Adm. Code, 71 P.S. § 714(2)(ii) is as follows: Section 2804(2)(ii) – we interpret this section to only permit out-of-state facilities that are (a) already certified as AEPS Tier I Solar Photovoltaic and that (b) have entered into a contract with a Pennsylvania EDC or EGS serving Pennsylvania customers, for the sale of solar credits, to maintain certification until the expiration of the contract. We further wish to clarify that, consistent with the comments provided by ET, this maintained certification should only be applicable to the amount of credits contractually committed to by an out-of-state certified facility to an EDC or EGS.[[47]](#footnote-47)

**I. Section 2804(3)**

In the Tentative Order we stated that this section of the Adm. Code provides that contracts entered into or renewed on or after October 30, 2017, the effective date of Section 2804 of the Adm. Code, are subject to the provisions of Section 2804(1) of the Adm. Code, 71 P.S. § 714(1). In the Tentative Order the Commission proposed to interpret this subsection of the Adm. Code as limiting the eligibility of systems certified under the contract exception in Subsection 2804(2)(ii), 71 P.S. § 714(2)(ii), to the duration of the contract for the sale and purchase of AECs when it was entered into prior to October 30, 2017. We further stated that a solar PV system owner cannot extend its eligibility through a renewal of the original contract or subsequent contracts. We proposed that at the end of the contract entered into prior to October 30, 2017, the solar PV system would be re‑certified as a Tier I non‑solar alternative energy resource. The Commission, however, proposed that the AECs generated and transferred to the EDC or EGS prior to the re‑certification would continue to be eligible to meet the solar PV share requirement in accordance with 52 Pa. Code § 75.69 (relating to the banking of alternative energy credits).

In their Statement, Chairman Brown and Vice Chairman Place stated the following:

The proposed supplemental interpretations above [from their statement] require that we address the status of banked SRECs from previously certified out‑of‑state facilities. We respectfully ask parties to address the handling of such SRECs.

**1. Comments**

Commentators[[48]](#footnote-48) state that eligibility for banked SRECs should occur at the time when the SREC is sold to meet the AEPS Act obligation, not when the SREC is generated. Other Commentators[[49]](#footnote-49) state that banked credits from out‑of‑state facilities that are not under contract should not be used to satisfy the solar PV share requirements. Commentators[[50]](#footnote-50) also assert that previously banked SRECs must remain eligible to meet the AEPS Act compliance obligations or investments made by parties in reasonable reliance on the pre‑existing statutory and regulatory regime would be unfairly impaired. OCA[[51]](#footnote-51) states that banked SRECs have already been purchased by EDCs or EGSs and the EDCs and EGSs would have to purchase additional SRECs if the previously purchased credits are no longer usable, increasing costs to consumers. RESA[[52]](#footnote-52) states that EGSs may elect to procure varying vintage AECs for use in future years in accordance with the prevailing banking rules, thus, the ability to rely on banked AECs is an important component necessary for EGSs to effectively manage and satisfy their AEPS Act obligations.

**2. Disposition**

Upon review of the comments, we adopt the Tentative Order proposal to interpret this subsection of the Adm. Code as limiting the eligibility of systems certified under the contract exception in Subsection 2804(2)(ii), 71 P.S. § 714(2)(ii), to the duration of the contract entered into by an EDC or EGS for the sale and purchase of AECs when it was entered into prior to October 30, 2017. We further state that an EDC or EGS cannot extend the eligibility of the SRECs through a renewal of the original contract or subsequent contracts.

Given the interpretations expressed in Sections F2 and H2 above, we are also required to provide implementation procedures associated with banked credits. The AEPS Act permits EDCs and EGSs to bank, or place in reserve, credits produced in one reporting year for compliance in the next two reporting years.[[53]](#footnote-53) Implementation procedures are necessary to address handling of a credit generated by an out-of-state Tier I solar qualified facility before October 30, 2017, and not retired in PJM’s Generation Attribute Tracking System before October 30, 2017. Since Act 40 omits any directive expressly empowering the Commission to modify the attributes of such credits, we believe that these credits should retain the tier attribute assigned at the time the credit was generated. To do otherwise would appear to modify the legal status, or tier attribute, of a credit without explicit statutory authority. The Statutory Construction Act does not presume retroactive effect of statutes. The Statutory Construction Act provides in relevant part:

No statute shall be construed to be retroactive unless clearly and manifestly so intended by the General Assembly.

1 Pa. C.S. § 1926.

Further, the Commonwealth Court has provided guidance here when it determined the following:

A retroactive law is one which relates back to and gives a previous transaction a legal effect different from that which it had under the law in effect when it transpired. This Court has held that “[a] law is given retroactive effect when it is used to impose new legal burdens on a past transaction or occurrence.” *R & P Services, Inc. v. Commonwealth, Department of Revenue*, 541 A.2d 432, 434 (Pa. Cmwlth. 1988). However, section 1926 of the Statutory Construction Act provides that “no statute may be construed to be retroactive unless clearly and manifestly so intended by the General Assembly.” 1 Pa. C.S. § 1926.

[*Kuziak v. Borough of Danville*](https://1.next.westlaw.com/Document/Ib19b328666c011e5b86bd602cb8781fa/View/FullText.html?originationContext=docHeader&contextData=(sc.RelatedInfo)&transitionType=Document&needToInjectTerms=False&docSource=15f9c06906964196ac49f4a4b4e9086a), 125 A.3d 470, 477 (Pa. Cmwlth. 2015).

Therefore, given Act 40’s omission of any directive to change the attribute of these banked credits, we submit that any out-of-state Tier I solar credit generated before October 30, 2017, should retain its Tier I solar attribute for the banking life span enumerated in the AEPS Act. This interpretation is supported by the comments of RESA, which states that EGSs may elect to procure varying vintage credits for use in future years in accordance with the prevailing banking rules, thus, the ability to rely on banked credits is an important component necessary for EGSs to effectively manage and satisfy their AEPS Act obligations.[[54]](#footnote-54)

In conclusion, we submit that the interpretations provided herein are necessarily required by this Commission consistent with the rules of statutory construction enumerated *supra* and also consistent with The Statutory Construction Act, which provides that:

The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions.

1 Pa. C.S. § 1921(a).

**J. Implementation of Sections 2804(2)(ii) and 2804(3)**

To implement these provisions, in the Tentative Order the Commission proposed that any solar PV system seeking to be eligible to generate SRECs that was not certified prior to October 30, 2017, and that does not meet the requirements of 2804(1) of the Adm. Code, 71 P.S. § 714(1), must submit a copy of the binding written contract for the sale and purchase of AECs, and any additional information requested by the AEC Program Administrator, along with its application for alternative energy system qualification in accordance with 52 Pa. Code § 75.62. In the Tentative Order we proposed that the AEC Program Administrator would make the determination as to whether the system qualifies to generate energy and SRECs eligible to be used by EDCs and EGSs to meet the solar PV share requirements and the duration of that qualification. We further proposed that when the contract ends the AEC Program Administrator would re‑certify the system as a Tier I non‑solar alternative energy source. Finally, we proposed that the decision by the AEC Program Administrator may be appealed consistent with 52 Pa. Code § 5.44 (relating to petitions for reconsideration from actions of the staff).

**1. Comments**

PPL[[55]](#footnote-55) requests clarification regarding the time the AEC Program Administrator will be governed by for review and decision surrounding such an application. CCR[[56]](#footnote-56) requests that the Commission should consider implementing an orderly and transparent program for decertification of previously certified solar PV systems that are, or become, ineligible under Act 40. RESA[[57]](#footnote-57) states that while there are some general types of supply contracts in use today, the specific terms and conditions of the supply contracts vary greatly and may cover only Pennsylvania obligations, while others may span multiple jurisdictions.

**2. Disposition**

To begin with, we note that Sections 2804(2)(ii) and 2804(3) only apply to out‑of‑state facilities that are (a) already certified as AEPS Tier I Solar Photovoltaic and that (b) have entered into a contract with a Pennsylvania EDC or EGS serving Pennsylvania customers, for the sale of solar credits, to maintain certification until the expiration of the contract. We further wish to clarify that, consistent with the comments provided by ET,[[58]](#footnote-58) this maintained certification should only be applicable to the amount of credits contractually committed to by an out-of-state certified facility to an EDC or EGS.[[59]](#footnote-59) EDCs and EGSs seeking to qualify credits under this provision are required to file a Petition within 60-days of the entry date of this order. Procedures for the 2804(2)(ii) contract approval process will be provided by the Commission at this docket.

**K. Section 2804(4)**

In the Tentative Order we stated that Section 2804(4) of the Adm. Code, 71 P.S. § 714(4), provides that the terms “Alternative Energy Source” and “Electric Distribution Company” maintain their respective definitions as set forth in Section 2 of the AEPS Act, 73 P.S. § 1648.2. In the Tentative Order we proposed that solar PV systems not meeting Section 2804(1) of the Adm. Code requirements or the exceptions thereto in Section 2804(2) of the Adm. Code would still generate credits eligible to meet the Tier I non‑solar share requirements.

**1. Comments**

CCR, FirstEnergy, PPL, RESA, SRECT[[60]](#footnote-60) indicate they support the Tentative Order interpretation permitting solar PV systems not meeting Section 2804(1) of the Adm. Code requirements or the exceptions thereto in Section 2804(2) of the Adm. Code would still generate credits eligible to meet the Tier I non-solar share requirements. BLUS, NECA, PASEIA, SUNWP and Sunrun[[61]](#footnote-61) included language not directly supporting but concurring with the Tentative Order interpretation. OCA[[62]](#footnote-62) indicates that it does not object to the Tentative Order interpretation of Section 2804(4).

**2. Disposition**

Upon review of the comments, we adopt the Tentative Order interpretation permitting solar PV systems not meeting the Section 2804(1) of the Adm. Code, 71 P.S. § 714(1), requirements or the exceptions thereto in Section 2804(2) of the Adm. Code, 71 P.S. § 714(2), are still eligible to generate electricity and credits eligible to be used by EDCs and EGSs to meet the Tier I non-solar AEPS Act share requirements at 73 P.S. § 1648.3(b)(1).

**CONCLUSION**

With this Order we begin the process of implementing Act 40, while recognizing that there are complexities in implementing and complying with the Act that may reveal issues which require further Commission action. The Commission will address any such issues, at this docket, and in a manner that provides all interested parties appropriate notice and opportunity to be heard; **THEREFORE,**

 **IT IS ORDERED:**

1. That the Commission hereby adopts the interpretation and implementation of Section 2804 of the Adm. Code, 71 P.S. § 714, as set forth in this Order.

2. That a copy of this order be served on all jurisdictional electric distribution companies, all licensed electric generation suppliers, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate and any party that filed comments at this Docket.

3. That Electric Distribution Companies and Electric Generation Suppliers seeking to qualify credits under Section 2804(2)(ii) of the Administrative Code, 71 P.S. § 714(2)(ii), are required to file a Petition within sixty (60) days of the entry date of this Order.

4. That a copy of this Order shall be published in the *Pennsylvania Bulletin* and posted on the Commission’s website at [www.puc.pa.](http://www.puc.pa.)gov.

5. That the Office of Competitive Market Oversight shall electronically send a copy of this Order to all persons on the contact list for the Committee Handling Activities for Retail Growth in Electricity.

6. That the contact persons for this Final Implementation Order are Kriss Brown, Assistant Counsel, Law Bureau, kribrown@pa.gov, (717) 787-4518 and Darren Gill, Bureau of Technical Utility Services, dgill@pa.gov, (717) 783-5244.

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: April 19, 2018

ORDER ENTERED: May 3, 2018

1. *See Implementation of Act 40 of 2017*, Tentative Implementation Order at Docket No. M‑2017‑2631527 (entered December 21, 2017). [↑](#footnote-ref-1)
2. The Tentative Implementation Order was published in the *Pennsylvania Bulletin* on January 6, 2018 at 48 Pa.B. 111. [↑](#footnote-ref-2)
3. Duquesne Comments at 5-6; FirstEnergy Comments at 3-4; MAREC Comments at 2; NEM Comments at 2; and RESA Comments at 8. [↑](#footnote-ref-3)
4. BLUS Comments at 1; Dorothy S. Falk Comments; Sen. Fontana Comments at 1; Lindauer and Johnson Comments; David Krewson Comments; PSEA Comments at 2; PASEIA & SUNWP 12/18/2017 Comments at 1; Sen. Scavello Comments and Dennis & Eileen Stanton Comments. [↑](#footnote-ref-4)
5. OCA Comments at 2. [↑](#footnote-ref-5)
6. Duquesne Comments at 5-6; MAREC Comments at 2‑3; and RESA Comments at 8. [↑](#footnote-ref-6)
7. OCA Comments at 2-3. [↑](#footnote-ref-7)
8. FirstEnergy Comments at 3-5. [↑](#footnote-ref-8)
9. Duquesne Comments at 5-6; FirstEnergy Comments at 3-4; MAREC Comments at 2‑3; and RESA Comments at 8. [↑](#footnote-ref-9)
10. OCA Comments at 3. [↑](#footnote-ref-10)
11. Duquesne Comments at 5-6; MAREC Comments at 2-3; and RESA Comments at 8. [↑](#footnote-ref-11)
12. PennFuture Comments at 4. [↑](#footnote-ref-12)
13. OCA Comments at 3. [↑](#footnote-ref-13)
14. FirstEnergy Comments at 4-5. [↑](#footnote-ref-14)
15. FirstEnergy Comments at 3-4; GS Comments at 2; and RESA Comments at 13. [↑](#footnote-ref-15)
16. Duquesne Comments at 6. [↑](#footnote-ref-16)
17. PPL Comments at 2-3. [↑](#footnote-ref-17)
18. CE Comments at 7. [↑](#footnote-ref-18)
19. OCA Comments at 5 and PennFuture Comments at 1. [↑](#footnote-ref-19)
20. Sen. Scavello Comments at 1; SOTA Comment at 1; Rep. Carroll Comment at 1; Lindauer and Johnson Comments at 1; Dorothy S. Falk Comments at 1; Dennis & Eileen Stanton Comments at 1; David Krewson Comments at 1; PennFuture Comments at 1-2; PSEA Comments at 1-2; Sen. Fontana Comments at 1; Sunrun Comments at 3; BLUS Comments at 1-2; GPEM Comments at 2-3; SUNWP Comments at 1; and Mark J. Connolly, Comments at 1. [↑](#footnote-ref-20)
21. Comments of Senator John T. Yudichak and Senator Jay Costa filed on February 2, 2018. [↑](#footnote-ref-21)
22. ET Comments at 2; NECA Comments at 1-2; PASEIA Comments at 2-3; and DEP Comments 2-3. [↑](#footnote-ref-22)
23. DER Comments at 2; and NEM Comments 5. [↑](#footnote-ref-23)
24. SSF Comments at 1. [↑](#footnote-ref-24)
25. AMP Comments at 5-6; and NextEra Comments at 2-3. [↑](#footnote-ref-25)
26. AMP Comments at 4-5; Duquesne Comments at 7-8; OSBA Comments at 2-3; DTE Comments at 2; CE Comments 4-5; and Chamber Comments at 1. [↑](#footnote-ref-26)
27. RESA Comments at 9-10. [↑](#footnote-ref-27)
28. Joint Statement of Chairman Gladys M. Brown and Vice Chairman Andrew G. Place entered December 21, 2017 at the instant Docket. [↑](#footnote-ref-28)
29. OCA Comments at 5. [↑](#footnote-ref-29)
30. PennFuture Comments at 1. [↑](#footnote-ref-30)
31. Comments of Senator John T. Yudichak and Senator Jay Costa filed on February 2, 2018. [↑](#footnote-ref-31)
32. DEP Comments at 1. [↑](#footnote-ref-32)
33. PFB Comments at 1. [↑](#footnote-ref-33)
34. ET Comments at 2. [↑](#footnote-ref-34)
35. ET Comments at 2-3. [↑](#footnote-ref-35)
36. *Thomas Jefferson University Hospitals, Inc. v. Pa. Department of Labor and Industry*, 162 A.3d 384, 393 (Pa. 2017), *see also Holland v. March*, 883 A.2d 449, 455-56 (Pa. 2005); *Green Acres Contracting Comp. v. Commonwealth*, 163 A.3d 1147 (Pa. Cmwlth. 2017) and *Pa. State Police, Bureau of Liquor Control Enforcement v. Legion Post 304 Home Assoc.*, 164 A.3d 612, 619 (Pa. Cmwlth. 2017) (holding that the rules of statutory construction require that courts, whenever possible, give each word in a statutory section meaning and not treat any word as surplusage). [↑](#footnote-ref-36)
37. Section 75.63(i) of the Commission’s regulations states “[a]n alternative energy system may begin to earn alternative energy credits on the date a complete application is filed with the administrator, provided that a meter or inverter reading is included with the application.” 52 Pa. Code § 75.63(i). [↑](#footnote-ref-37)
38. FirstEnergy Comments at 6; and PPL Comments at 4. [↑](#footnote-ref-38)
39. GPEM Comments at 6-7. [↑](#footnote-ref-39)
40. Anthill Comments at 1; Duquesne Comments at 8‑9; PennFuture Comments at 5-6; PASEIA Comments at 5-6; and PSEA Comments at 3-4. [↑](#footnote-ref-40)
41. Citing Act 40 Section 2804(2)(i). [↑](#footnote-ref-41)
42. Sen. Scavello Comments at 1; Lindauer and Johnson Comments at 1; Dorothy S. Falk Comments at 1; Dennis & Eileen Stanton Comments at 1; David Krewson Comments at 1; PennFuture Comments 5; PSEA Comments at 3; Sunrun Comments at 3-4; BLUS Comments at 5; GS Comments 7-8; SUNWP Comments at 1; NECA Comments at 2; and PASEIA and SUNWP Comments 5. [↑](#footnote-ref-42)
43. RESA Comments at 11; MAREC Comments at 3; DTE Comments at 2; DER Comments at 3; and CE Comments at 3-4. [↑](#footnote-ref-43)
44. CE Comments at 3-4; SSF, LLC Comments at 1; RESA Comments at 10; and CCR Comments at 5. [↑](#footnote-ref-44)
45. Duquesne at 9. [↑](#footnote-ref-45)
46. GPEM Comments at 5-6. [↑](#footnote-ref-46)
47. For purposes of implementation, any alteration, such as a change, update, or extension to a contract applicable under this provision, and, entered into after October 30, 2017, would not be recognized under Section 2804(2)(i). [↑](#footnote-ref-47)
48. Sen. Scavello Comments at 1; Sen. Fontana Comments at 1-2; and BLUS Comments at 5; [↑](#footnote-ref-48)
49. Lindauer and Johnson Comments at 1; Dorothy S. Falk Comments at 1; Dennis & Eileen Stanton Comments at 1; David Krewson Comments at 1; Anthill Comments at 1; GS Comments at 1, 4‑7; SUNWP Comments at 1; PASEIA Comments at 2, 4; PSEA Comments at 3; and PennFuture Comments at 5. [↑](#footnote-ref-49)
50. CCR Comments at 5; Duquesne Comments at 10; FirstEnergy Comments at 6; and PPL Comments at 7. [↑](#footnote-ref-50)
51. OCA Comments at 7-8. [↑](#footnote-ref-51)
52. RESA Comments at 7. [↑](#footnote-ref-52)
53. The Alternative Energy Portfolio Standards Act of 2004, 73 P.S. § 1648.3(e)(6). [↑](#footnote-ref-53)
54. RESA Comments at 7. [↑](#footnote-ref-54)
55. PPL Comments at 7. [↑](#footnote-ref-55)
56. CCR Comments at 5. [↑](#footnote-ref-56)
57. RESA Comments at 6. [↑](#footnote-ref-57)
58. ET Comments at 2-3. [↑](#footnote-ref-58)
59. For purposes of implementation, any alteration, such as a change, update, or extension to a contract applicable under this provision, and, entered into after October 30, 2017, would not be recognized under Section 2804(2)(i). [↑](#footnote-ref-59)
60. CCR Comments at 5; FirstEnergy Comments at 3-4; PPL Comments at 7; RESA Comments at 14; and SRECT Comments at 1-2. [↑](#footnote-ref-60)
61. BLUS Comments at 5; NECA Comments at 2; PASEIA Comments at 4; PASEIA & SUNWP 12/18/2017 Comments at 5; SUNWP Comments at 1; and Sunrun Comments at 4. [↑](#footnote-ref-61)
62. OCA Comments at 9. [↑](#footnote-ref-62)