

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265

Implementation of Act 40 of 2017

Public Meeting: December 21, 2017
2631527-LAW

Docket No. M-2017-2631527

**JOINT STATEMENT OF CHAIRMAN GLADYS M. BROWN &
VICE CHAIRMAN ANDREW G. PLACE**

Before the Commission today is the Tentative Implementation Order (TIO) regarding Act 40 of 2017. Act 40, signed by Governor Wolf on October 30, 2017, *inter alia*, amends the qualifications to certify Tier I solar photovoltaic share facilities under Pennsylvania's Alternative Energy Portfolio Standards (AEPS) Act. Today the Commission issues this TIO to guide the AEPS marketplace toward compliance, and seeks comment on the Commission's proposed interpretations. We wish to highlight the Commission's tentative interpretations 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.

The TIO interprets these sections in the following manner. First, all facilities receiving a certification from Pennsylvania's AEPS Administrator to generate Tier I solar share renewable energy credits (SRECs) before October 30, 2017 be grandfathered into future certification compliance. When interpreting the phrase "[a] certification originating within the geographical boundaries of this Commonwealth..."

the TIO appears to focus on the origin of the certification, i.e. from the Pennsylvania Administrator, as opposed to the location of the facility.

Second, in alignment with the interpretation proposed above, the Commission's TIO also proposes to interpret 2804(2)(ii) of the Act to read that any solar facility not otherwise AEPS certified which has entered into a purchase and sale contract for SRECs before October 30, 2017 may obtain Tier I solar photovoltaic share certification by providing the Commission proof of that contract and its provisions related to SREC purchase and sale. This interpretation is based on a textual review of Act 40 language. There is no limiting language as it relates to certification, or lack thereof, or to location for the buyer or seller of the SRECs.

While the Commission's interpretations, as outlined in the TIO, reflect 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."¹ Here the TIO 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.² 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. The Rules of Statutory Construction at 1 Pa. C.S. § 1921(a) provide that:

(a) 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.

Therefore, in an effort to inform the record of this proceeding, we issue the following supplemental interpretations for comment.

Sections 2804(2)(i) - Here we propose to interpret the phrase "[a] certification originating within the geographical boundaries of this Commonwealth..." as a facility

¹ See Co-Sponsorship Memoranda from Senator Mario M. Scavello and Senator David G. Argall, posted December 8, 2016, Subject Heading "Solar Energy Credits Legislation," referring to SB 1346 from 2015-2016 session and SB 404 from the 2016-2017 session. Also, see proposed House Bill 1580 prime sponsored by Representative Chris Ross during the 2011-2012 session.

² See the Commission's 2016 Annual Report on AEPS – issued November of 2017.

located within Pennsylvania having received an AEPs Tier I solar photovoltaic share certification.

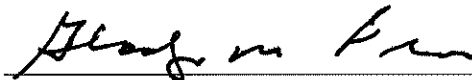
2804(2)(ii) - Here we propose to interpret this section to only permit out-of-state facilities already certified as AEPS Tier I Solar Photovoltaic that have entered into a contract with a Pennsylvania electric distribution company, electric generation supplier serving Pennsylvania customers, load serving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

Banked SRECs - The proposed supplemental interpretations above inherently 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.

We look forward to all interested parties' comments on the TIO and these supplemental implementation proposals. We hope these comments will help frame the Commission's understanding of the General Assembly's true intentions for this section of Act 40.

December 21, 2017

Date



Gladys M. Brown, Chairman



Andrew G. Place, Vice Chairman