

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Act 40 of 2017

Docket No. M-2017-2631527

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

Introduction:

The **Philadelphia Solar Energy Association** was established in 1980 as a nonprofit corporation dedicated to public education, training, and advocacy to support solar energy in the Philadelphia area and across the state of Pennsylvania. Incorporated as a tax deductible, 501 c-3 corporation in 1998, PSEA has been a volunteer based, member supported organization for almost 40 years. Its principal focus has been public education, support for local solar contractors and advocacy to create the structures needed to advance the solar energy industry in the Philadelphia metropolitan area, as well as statewide.

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, Chairman Gladys Brown and Vice 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 Philadelphia Solar Energy Association supports the supplemental interpretations in the joint statement and respectfully asks that the Commission adopt those interpretations in the final implementation order. Further, PSEA believes that banked out-of-state credits are not eligible, and late certifications are not grandfathered.

I. The proposed interpretation in the *Joint Statement* is the clear and unambiguous meaning of the language in section 2804(2)(i) of the Act.

The term “originating within the geographical boundaries of this Commonwealth” clearly refers to the location of the generating facility and not to the location of the certifying body or certification.

Regarding §2804(2)(i) of the Act, the TIO says: “The Commission proposes 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.”² The *Joint Statement* notes that “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” and

¹ 48 Pa.B. 111.

² TIO, part F.

proposes interpreting the section as referring to the location of the generating facility. PSEA agrees with the *Joint Statement* because it is the only interpretation that is consistent with the legislative language and its intent.

“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.”³

The reasonable reading of this section 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.

The intent of the language in Act 40 was to rectify a problem in the original AEPS so that only Pennsylvania-sited solar systems would qualify for the Solar Renewable Energy Credit (SREC) and that all out-of-state systems, whether they were registered in Pennsylvania previously or not, would no longer be eligible for Pennsylvania SRECs under the AEPS (unless under contract). However, the language of Act 40, as written, would still allow all in-state and out-of-state systems to qualify for Tier 1 AECs. The sole purpose of this language in Act 40 is to help encourage the growth of solar energy in Pennsylvania in order to increase jobs in the state rather than to continue to subsidize solar energy generation and jobs in other states, which has been an unintended consequence of the AEPS passed in 2004. The AEPS to date has resulted in an enormous oversupply of SRECs from out-of-state solar systems and subsequently, a decrease in jobs and solar generation opportunity within Pennsylvania. This is the problem which Act 40 was enacted to correct.

II. The intent of the General Assembly was to “close the borders” for solar renewable energy credits (SRECs) to support jobs and investment in Pennsylvania.

The solar language inserted into the act 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—it said: “[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.”⁴ 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.”⁵

³ §2804(2)(i) (*italics added*)

⁴ Sens. Scavello & Argall, Senate Co-Sponsorship Memorandum, Solar Energy Credits Legislation, (Dec. 8, 2016)

⁵ 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>*).

III. Banked SRECs from out-of-state sources do not satisfy Pennsylvania’s photovoltaic share requirement under 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).

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.⁶

IV. Only out-of-state generators certified prior to October 30, 2017 are eligible to satisfy Pennsylvania’s photovoltaic share under 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.”⁷ 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.

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

⁶ Comments of Sen. Scavello, (Dec. 27, 2018).

⁷ TIO, part F.

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.

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. In that case, 52 Pa. Code § 75.63(i) does not apply because the application must be denied.

We request that the commission adopt an implementation order consistent with this interpretation. We further note As of January 5, 2018 out-of-state solar generators have registered in PJM GATS,⁸ and we request that the commission ensure that no credits from any such generators 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.

Respectfully submitted,

Liz Robinson
Executive Director

⁸ Renewable Generators Registered in GATS, (*available at: <https://gats.pjm-eis.com/gats2/PublicReports/RenewableGeneratorsRegisteredinGATS> retrieved Jan. 5, 2018*).