

Pennsylvania Public Utility Commission

Ms. Rosemary Chiavetta, Secretary

Commonwealth Keystone Building, 2nd Floor, Room N-201

Harrisburg, Pennsylvania 17120

January 28, 2018

PUC Docket Number: M-2017-2631527

Dear Secretary Chiavetta,

Please accept the following formal comments from Groundhog Solar llc regarding M-2017-2631527:

Let me summarize my comments first and elaborate below:

- 1) Most PA-certified (solar) facilities have a certification that originates from
OUTSIDE the geographical boundaries of the Commonwealth of Pennsylvania!
... including MOST of those facilities that physically reside in the Commonwealth.
- 2) All current SRECs that are being held in owners, aggregators, or broker's
accounts from facilities that are located outside the geographical boundaries of
Pennsylvania should be immediately voided unless protected by a valid pre-
existing contract.

- 3) All SRECs, created from facilities located outside the geographical boundaries of Pennsylvania, that have been obtained by or traded to EDCs and EGSs after October 30, 2017 should also be immediately voided unless protected by a valid pre-existing contract.
- 4) For a pre-existing contract to be considered under Section 2804(2)(ii), the contract must be directly between the photovoltaic system Owner and the EDC or EGS retiring the credits.
- 5) All out-of-state SRECs should be immediately re-numbered according to the scheme proposed in the TIO. Then any SRECs that would qualify to still be valid can petition to be re-numbered back to their original certification code. Thus the default condition is that SRECs generated from out-of-state facilities will lose their PA Certification.

Comment #1:

This should be eye-catching. Although the proposed Tentative Implementation Order (TIO) does not indicate where any certification has originated, the TIO does seem to imply that all the current certifications have originated from within the geographical bounds of PA. This assumption is certainly reinforced by the joint statement from the Chair and Vice-Chair. However upon close inspection, you will find this assumption is erroneous. Since January 2016, InClime Solutions (located in Annapolis, MD) is the AEC Program Administrator who has issued all certifications since 1/1/2016. There is no doubt that InClime Solutions is the actual issuer of these certifications as this is

codified in Act 213 section 3e(2)(i). Over half of all in-state and over half of all solar certifications have been issued post 1/1/2016. Even before 2016, the previous AEC Program Administrator (Clean Power Markets) was also located out-of-state (Atlanta, Georgia to be specific). Although it appears that at some point in history, Clean Power Markets may have been located inside Pennsylvania. Never-the-less, according to the TIO, at least 70% of all PA-certified facilities will lose their certification and that is 70% of in-state as well as 70% of out-of-state facilities due to this technical rule if the TIO is accepted.

Furthermore, it does get messier than this. The AEC program and certification process that has been created has always been a web-based platform. Thus one can also argue that in order to be “A certification originating within the geographical boundaries...” (exact wording of Act 40) of Pennsylvania, the initial web-form needed to be filled out in Pennsylvania. But we ask the commission, does this mean

- a) the person sitting at their computer filling out the form needs to be in PA?
- b) the web server hosting the web-based platform needs to be in PA?
- c) the people maintaining the web-based platform need to be in PA?
- d) the person who clicks a button and changes the status of the application from pending to approved needs to be in PA?

Each of these would be difficult if not impossible to prove in a public and transparent manner due to the lack of records maintained and difficulty in tracing IP addresses.

One other note is that the TIO is keen to interpret the phrase “certification originating” as referring to the certification and not to the system presumably because this is the noun and verb that are put together in Act 40. However the TIO does not use the same level of interpretation of section 2804(2)(ii) in relation to “...a solar photovoltaic system with a binding written contract...”. Here the TIO seems to indicate that such contracts could exist, presumably between the OWNER of the system and some other entity. No where in Act 40, will one find a reference to the owner of a system. Either the TIO should be based without the insertion of a clarifying noun in both cases, or with the clarifying noun in both cases, to do otherwise is arbitrary and will certainly make the TIO fail a legal challenge. And we firmly believe this TIO should be rejected.

The only way to assure transparency is to use the physical location of the facility, which IS part of the public record, as the “origination” of the certification. We will leave it to others to explain how this was certainly the intent of Act 40. Either way, the PUC should give the order to revoke the certification of all physically out-of-state facilities unless there is a pre-existing ‘contract’ in force per section 2804(2)(ii).

Comments #2 & #3:

As an SREC **aggregator**, **broker**, and **bidder** for providing tranches of credits to utilities over time, I must acknowledge that everyone in this business is aware of the inherent risks associated with legal changes to the AEPS program, and these programs are known for being volatile.

Groundhog Solar notes that almost immediately after October 30, 2017, there was a lot of action by various SREC brokers to buy up Pennsylvania-cited SRECs, mostly from owners and aggregators who were unaware of the legal change. This indicates the eagerness of these SREC players to jump into a risky market even when the rules have not even been settled yet.

The intent of Act 40 is clear that only systems sited geographically in Pennsylvania should qualify for the PA AEPS Act, and the legislature put this Act into effect immediately with no waiting period. Thus the PUC has no choice but to implement the desires of the General Assembly. Because each SREC is individually tracked, it should be a rather simple process to re-number the serial numbers of all out-of-state SRECs. This is what can and should be done. This should be done without any regard to whether a broker or aggregator stands to win or lose. These players know the risks of their own business....especially after the legal changes in OH (2016) and DC (2011).

It should be noted that if pre-existing SRECs from out-of-state generators are not immediately decertified, there are enough surplus credits currently in the market to satisfy the next TWO years (2017/18 and 2018/19) of demand by EDCs and EGSs without even taking into account the many additional credits that will be generated between now and then. With these additional credits and the increasing in-state generation of solar capacity over the next several years, there will be more than enough credits to meet demand until 2020/21 at the least, and more likely 2021/22 and beyond without have a significant impact on the SREC price offered to individual generators.

This large surplus of SREC capacity due to out-of-state generators should be voided so that the PA SREC market can return to a tight supply & demand balance right away.

The only language in Act 40 about 'pre-existing' anything refers to either "certification[s] [of facilities]" or to "contracts". There is no language at all referring to "certificates" or "serial numbers". These are the two terms that would be used to refer to pre-existing SRECs that have been generated and not yet retired. Since there is no language giving these credits any type of grandfathering, they should be decertified immediately.

Act 40 also does not use the phrase "decertification", but it does say "...in order to qualify as an alternative energy source eligible to meet the photovoltaic share of this Commonwealth's compliance requirements ...". Because the compliance requirements are technically met at the end of the true-up period in September, if any of these out-of-state SRECs are attempted to be used to meet compliance requirements at that time, it would be a violation of the existing AEPS Act because those certificates would be determine at the true-up time as having not come from a qualified "energy source eligible to meet the photovoltaic share of this Commonwealth's compliance requirements". Thus Act 40 is rather clear on this matter.

Any credits, generated from out-of-state facilities, that were transferred to an EDC or EGS after October 30, 2017 should also not be allowed to meet compliance requirements. Such credits would have been obtained with the clear intent to do an end-run around Act 40. In fact, even credits held in the account of an EDC or EGS prior

to October 30, 2017 would be questionable about whether they qualify to meet compliance requirements, but Groundhog Solar does not have an opinion on that matter.

Comment #4:

An example of an indirect contract, which should not be held as valid to maintain certification, would be an aggregator/broker who has agreed to buy credits from a generator at a certain price (most likely quite low given current and past market conditions). This aggregator then bids or otherwise enters into a contract to sell credits to an EDC or EGS. These are two separate contracts that stand alone. It is nearly certain that neither contract mentions the other, that they were both made at different times, and neither contract is in jeopardy by Act 40. The aggregator/broker is still free to obtain credits that are properly certified, and the aggregator/broker is still free to sell the credits that would no longer be PA-certified. There could be a financial loss, but only indirectly. The loss would really stem from the fact that the aggregator/broker is a willing participant in the SREC market which is understood to carry financial risks and there is just as likely to be a financial gain. The aggregator/broker is also likely to still make a great deal of money because they likely have contracts to obtain credits from systems that will keep their PA certification. The windfall profit from these credits would likely offset any losses. If an aggregator/broker was making transactions using only out-of-state sources, that would constitute a risky business model for which he will simply have to “pay the piper” for a poor business model.

The SREC market is full of risks with potential losses and gains. When Ohio changed their rules there were winners and losers, but most importantly it became clear that regulatory changes are an inherent risk in the SREC market. As for Groundhog Solar, we learned that lesson when the District of Columbia changed their rules in 2011. We took a large loss as systems that were already built, had financing depending on the SREC market of DC, and in the pipeline to be certified in DC were suddenly rejected. The risks of the SREC market due to regulatory changes are inherent and well-understood by all competent players.

However, a direct contract, does seem to be a different situation. And since this was included in Act 40, these direct contracts must be allowed to remain. However, we do suggest that these contracts should be made at least partially publically available to make them transparent just as the AEPS list of certified systems is public and transparent. All contract details do not need to be public, but the buyer, seller, expiration date, and number of SRECs involved should be public. This would be necessary information for an informed SREC market participant to analyze the current and future supply and demand of PA SRECs.

Comment #5:

The default condition of having out-of-state SRECs lose their certification will allow the AEPS program to run efficiently. This is a batch process of changing all SREC Serial Numbers based on their registered site. It also places the burden of evidence on the applicant just as is currently the case for new systems being registered.