

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Act 40 of 2017

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Docket No. M-2017-2631527

**Comments of the
National Energy Marketers Association**

The National Energy Marketers Association (NEM)¹ hereby submits comments on the Tentative Implementation Order [hereinafter “TIO”] adopted on December 21, 2017, and published in the January 6, 2018, Pennsylvania Bulletin in the above-referenced proceeding. The TIO sets forth the Commission’s proposed interpretation and implementation of Section 11.1 of Act 40 of 2017. Specifically, Act 40 included a provision requiring that solar renewable energy credits (SRECs) must come from within the state of Pennsylvania. The law is intended to address the situation created by previously allowing SRECs to be purchased from out-of-state, but not allowing SRECs to be sold outside of the state. Act 40 became effective October 30, 2017. In addition to the TIO, Chairman Brown and Vice Chairman Place issued a Joint Statement [hereinafter “Joint Statement”] offering supplemental interpretations of Act 40 for comment.

Act 40’s locational resource mandate was passed in order to incent solar development in the Commonwealth. The reasoning being that the ability to purchase SRECs from out-of-state had depressed the value of Pennsylvania SRECs and depressed solar project building in Pennsylvania. Setting aside the merits of enacting this legislative mandate, the manner in which the Act 40

¹ The National Energy Marketers Association (NEM) is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM’s membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting and power line technologies.

mandate is interpreted, implemented and effectuated is directly within the Commission's purview. The Commission has the expertise and a longstanding history of implementing regulations in a manner that balances diverse stakeholder perspectives while supporting the functioning of the competitive retail marketplace. In this regard, NEM recommends that the proposed approach to implementation of Act 40 set forth in the TIO, rather than the proposed approach in the Joint Statement, be adopted. The proposed interpretation of Act 40 in the TIO will better accommodate the functioning of the competitive marketplace, by recognizing the sanctity and value of existing contracts entered into in reliance on prior law and regulations. Moreover, the TIO would allow for a reasoned, gradual glide path to implementation that would better mitigate the significant price increases that would otherwise be realized because of the locational resource mandate and resultant SREC shortages.

I. Background

The TIO provides the Commission's proposed interpretation of the new law. Section 2804(1) of the law establishes the locational requirements for solar PV (photovoltaic) systems to be eligible to generate energy and SRECs to meet solar PV share requirements. These provisions as proposed to be interpreted by the Commission in the TIO exclude solar PV sources located outside of Pennsylvania from qualifying. However, the TIO reasons that "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 proposes to interpret this section as permitting any solar PV system meeting the geographic requirements of Section 4, 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)." (TIO at 3).

Also of significance, the TIO addresses Section 2804(2)(i) and (ii) of Act 40 that allows grandfathering of certification compliance for certain facilities. The TIO proposes to interpret these grandfathering provisions to apply to: 1) those facilities receiving a certification from the Pennsylvania AEPS Administrator to generate Tier I SRECs before October 30, 2017; and 2) any solar facility that is not otherwise AEPS-certified but has entered into a purchase and sale contract for SRECs before October 30, 2017, may obtain Tier I solar photovoltaic share certification by providing proof of the contract to the Commission. The TIO proposes that the certification would only last for the duration of the contract and could not be extended through a contract renewal or subsequent contracts. Under the TIO, these facilities would continue to qualify to generate energy and SRECs eligible to be used by competitive suppliers and utilities to meet solar PV share requirements.

In their Joint Statement, Chairman Brown and Vice Chairman Place proposed a supplemental interpretation of the Act 40 grandfathering provisions. They propose that the phrase in 2804(2)(i) - “a certification originating within the geographical boundaries of the Commonwealth” - should refer to a *facility* located within Pennsylvania having received an AEPS Tier 1 solar PV share certification. In other words, placing the emphasis on the *facility* location, and not the location of the *certification* as proposed in the TIO. They also propose that the language in 2804(2)(ii) should be interpreted to only permit out-of-state facilities already certified as AEPS Tier I Solar PV that have entered into a contract with a Pennsylvania utility or competitive supplier serving Pennsylvania customers for the sale of SRECs to maintain certification until the expiration of the contract. Relatedly, they request comments on the status and treatment of “banked SRECs” from previously certified out-of-state facilities.

II. NEM Recommends Adoption of the TIO's Proposed Interpretation of Act 40

The Act 40 locational mandate is intended to artificially effect the supply of SRECs and drive up the price to render solar investments more economic. Also of extreme importance to all Pennsylvania customers should be the overall impact of the locational resource mandate on electricity pricing. Indeed, basic economic principles dictate, and experience gleaned from neighboring jurisdictions confirms, that the creation of mandated in-state SREC purchasing requirements drives up SREC pricing. That increase in pricing will impact all consumers because the renewable portfolio standard applies to service to all Pennsylvania customers.

Because of the expected large artificial inflation in SREC prices, and resultant impact on consumer pricing, NEM strongly recommends that the Commission adopt an interpretation of Act 40 that permits the locational resource mandate to be phased in over a reasonable time period to mitigate the consumer pricing impacts. NEM also believes it is critical in a competitive marketplace to protect the sanctity and value of existing contracts for solar resources. NEM believes that the approach set forth in the TIO, rather than the approach in the Joint Statement, is the preferable approach in satisfying these objectives and should be adopted. The TIO provides a reasonable, predictable glide path to Act 40 implementation, in particular with its proposed approach to grandfathering of resources, that will result in the price impacts to consumers of the locational resource mandate to be phased in over time. It will also better recognize the sanctity of existing contracts and parties' justified reliance on the longstanding statutory and regulatory structure for treatment of solar resources.

The interpretation set forth in the Joint Statement would take such a restrictive approach to the grandfathering of resources that it would create a "flash cut" to compliance that would harm

stakeholders that had justifiably relied on Pennsylvania's statutory and regulatory treatment of those assets and significantly inflate electricity prices to consumers. Implementing a seismic shift in law in the context of a competitive marketplace should be done in a manner that permits a more reasonable transition for market participants. NEM also questions whether the supplemental interpretation of the Joint Statement is so strict as to render the statutory grandfathering provisions to be effectively meaningless. In other words, the Joint Statement's interpretation of 2804(2)(i) would appear to only recognize resources as compliant if they satisfied the new locational requirement thereby undermining the legislative purpose of including grandfathering language in Act 40 at all. There also does not appear to be a way to accommodate a shortage of SRECs under the Joint Statement because of the proposed restrictive interpretation of the statutory language, which would further contribute to increases in consumer pricing.

The Joint Statement requested comment on the status of banked SRECs from previously certified out-of-state facilities in view of its supplemental interpretations of the grandfathering provisions. It would do great economic harm to market participants to render banked SRECs from previously certified out-of-state facilities as non-compliant and therefore valueless in Pennsylvania. Market participants reasonably relied on then-existing law and regulations in making solar resource compliance decisions. Banked SRECs that were compliant prior to Act 40 should continue to retain that status. By allowing this, it will contribute to a reasoned, phased-in approach that better accommodates market participants and mitigates consumer price increases.

III. Consideration Should Be Given to the Impact on Consumer Pricing of the Pennsylvania Solar ACP Computation and SREC Pricing

The current and future value of SRECs is largely determined by the solar Alternative Compliance Payment (ACP). The solar ACP is the fee a competitive supplier must pay in the event they do

not procure a sufficient amount of solar electricity to meet their compliance obligation under Pennsylvania's RPS. Other neighboring states, such as Ohio, Maryland and New Jersey, have adopted fixed ACP schedules that decline over time. In these states, the solar ACP acts as a price cap on SRECs. This is because if the SREC market functions properly, an SREC will not be traded at a price above the solar ACP but can be traded at a price below it.

In contrast, the solar ACP in Pennsylvania is derived based on 200% of the average SREC price paid by buyers during the reporting year. This differing computation of the solar ACP in Pennsylvania means there is no effective cap on SRECs. Moreover, because the solar ACP is determined as a function of average pricing, the solar ACP price is effectively unknown in Pennsylvania (versus other states with fixed ACP schedules). Therein lies a significant problem. The locational resource mandate of Act 40 is intended to create a resource shortage to drive up SREC pricing. However, because of the way solar ACPs are calculated in Pennsylvania, there is no effective cap on SREC pricing. Accordingly, competitive suppliers, and the consumers they serve, could see a large and unknown increase in prices. The TIO's proposed approach to grandfathering would ameliorate these potential consumer price surges through its more inclusive definition of compliant resources that phases in the locational requirement. Indeed, if there is a shortage of SRECs, the proposed interpretation under the Joint Statement would not accommodate it and thereby exacerbate the price impacts.

IV. Act 40 Implementation Should Be Aligned with the RPS Reporting Period

An additional issue from the perspective of competitive suppliers is the need for the alignment of the RPS compliance reporting period and the implementation of the locational mandate. Pennsylvania's reporting period runs from June 2017 to May 2018. Implementation of this change

during the reporting period further exacerbates its negative impact on competitive suppliers. For example, competitive suppliers that didn't buy all of the necessary SRECs until the end of the reporting year would be penalized with higher prices. Because of the uncertain nature of the size of their customer base, a competitive supplier is generally justified in waiting to buy SRECs to better align its purchasing with its overall obligation. For this reason, NEM suggests that the implementation of Act 40 be aligned with the RPS reporting period.

V. Other Potential Regulatory Barriers to Solar Deployment Should Be Explored

The legislative intent behind the passage of Act 40's locational resource mandate was to incent solar development in the Commonwealth, including residential solar installations. Of course, legislation of this nature requires a balancing of many competing factors. In this case, the impacts of the locational resource mandate on consumer electricity pricing, caused by an artificially-created SREC shortage, are likely to be significant. In addition to the importance of the adoption of the proposed approach to interpretation and implementation of the grandfathering provisions of Act 40 as proposed by the TIO, rather than the Joint Statement, in mitigating the price impacts, NEM also suggests that the Commission ensure that potential regulatory barriers to solar deployment in the Commonwealth be evaluated. For instance, the Commission should ensure that rules related to interconnection and compensation of solar installations through net metering are not and have not been discouraging investments in these resources. NEM views these rules as complementary to this inquiry inasmuch as they likewise effect the development of solar resources and availability of SRECs.

VI. Conclusion

NEM appreciates this opportunity to offer its comments on the TIO and Joint Statement. For the reasons set forth herein, NEM recommends adoption of the approach to implementation set forth in the TIO.

Sincerely,

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