

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IN THE MATTER OF)
) **DOCKET NO. M-2017-2631527**
IMPLEMENTATION OF ACT 40 OF)
2017)

**INITIAL COMMENTS OF CONSTELLATION NEWENERGY, INC.
AND
EXELON GENERATION COMPANY, LLC**

Pursuant to Ordering Paragraphs (1) and (3) of the Commission’s Tentative Implementation Order (the “TIO”) and the Joint Statement of Chairman Gladys M. Brown & Vice Chairman Andrew G. Place (the “Joint Statement”), both entered in this docket on December 21, 2017, Constellation NewEnergy, Inc. (“Constellation”) and Exelon Generation Company, LLC (“ExGen”) (together, “Constellation/ExGen”) offer the following comments regarding the Commission’s proposed interpretations of Act 40 of 2017.

I. INTRODUCTION

ExGen is a wholly-owned subsidiary of Exelon Corporation, a holding company, headquartered at 10 South Dearborn Street, Chicago, Illinois, with operations and business activities in 48 states, the District of Columbia and Canada. Exelon Generation, a subsidiary of Exelon Corporation (NYSE: EXC), is one of the largest, most efficient clean energy producers in the U.S., with a generating capacity of more than 35,500 megawatts, including more than 11,683MW of capacity from 20 generation plants in Pennsylvania. Exelon Generation operates the largest U.S. fleet of carbon-free nuclear plants with 20,300 megawatts of capacity from 23 reactors at 14 facilities nationwide including five reactors in Pennsylvania. Exelon Generation also operates a diverse mix of wind, solar, landfill gas, hydroelectric, natural gas and oil facilities

in 18 states with more than 15,200 megawatts. Exelon Generation owns solar generation assets that the Act 40 certification requirements would apply to.

Constellation’s national retail energy platform offers its retail residential, commercial, industrial and public-sector customers – including those in the Pennsylvania – electric and natural gas commodity, energy efficiency and load management solutions, and both grid-scale and behind-the-meter distributed energy resource development. These competitive retail customers include approximately 2,250,000 residential customers in states such as Pennsylvania, New York, Connecticut, Illinois, Maryland, Massachusetts, New Jersey, Ohio, and Texas, as well as approximately 225,000 commercial, industrial, public sector and institutional customers – located in Pennsylvania and throughout the U.S. – including two-thirds of the Fortune 100. As an active EGS in Pennsylvania, Constellation is subject to the Alternative Energy Portfolio Standards (“AEPS”) Act requirements, as amended by Act 40.¹

II. COMMENTS

The TIO proposes interpretations of subsections (1) through (4) of Section 2804 of Act 40, which amend the qualifications to certify Tier I solar photovoltaic share facilities under the AEPS Act. Through the TIO, the Commission seeks comments on the proposed interpretations. Chairman Brown and Vice Chairman Place offer alternative interpretations of Sections 2804(2)(i) and 2804(2)(ii) in the Joint Statement, seeking comments on the alternative interpretations as well as the status of banked “Tier I solar share renewable energy credits” (“SRECs”) from out-of-state facilities previously certified by Pennsylvania’s AEPS Administrator. Section 2804(2) of Act 40 provides the following grandfathering language:

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

¹ 73 P.S. § 1648.1 *et seq.*

- (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.

Constellation/ExGen offer the following comments on some of the issues raised in the TIO and Joint Statement, as well as other issues needing clarification.

A. Purchased and banked SREC eligibility must be preserved.

The Commission should confirm SRECs purchased prior to October 30, 2017, by a Pennsylvania EGS or EDC, certified as PA Tier 1 SRECs and banked within PJM GATS to meet future Pennsylvania compliance requirements remain eligible for use in the AEPS Program. Because Act 40 affects certification of solar photovoltaic systems, it should not be interpreted to affect the status of SRECs generated, certified, and banked in PJM GATS prior to October 30, 2017.

The TIO's interpretation of Act 40 does not jeopardize banked SRECs because it only applies the Act 40 solar facility certification restrictions to facilities that are not yet certified by the Alternative Energy Program Administrator ("AEC Administrator").² By contrast, the alternative interpretation of Section 2804(2)(i) in the Joint Statement would limit grandfathering under that section to certified solar facilities located in Pennsylvania, while excluding certified out-of-state facilities. Moreover, the Joint Statement's alternative interpretation of Section 2804(2)(ii) would limit grandfathering under that section to solar facilities located outside of

² TIO at 3, 5-7.

Pennsylvania that have received an AEPs Tier 1 solar photovoltaic share certification and a pre-existing contract for the sale of Pennsylvania SRECs. In the Joint Statement, Chairman Brown and Vice Chairman Place asked for comments on how to address banked SRECs from previously certified out-of-state facilities under the narrower interpretations of Sections 2804(2)(i)-(ii) offered in the Joint Statement.

In Comments filed in this docket on December 27, 2017, Senator Scavello argues that “out-of-state, banked and not contracted-for SRECS” should not be permitted to meet the AEPS solar requirement. On that point, it is important to distinguish between: (1) unsold and uncontracted for “SRECs” banked by an out-of-state solar producer; and (2) SRECs purchased prior to October 30, 2017, by a Pennsylvania EGS or EDC, certified as PA Tier 1 SRECs and banked within GATS to meet future Pennsylvania compliance requirements. The latter are the “**Banked SRECs**” to which Constellation/ExGen are referring. In interpreting Act 40, Constellation/ExGen recommend that the Commission not retroactively diminish or invalidate these “Banked SRECs.”

Banked SRECs, as defined above, were: (1) generated by solar facilities that received AEPs Tier 1 solar photovoltaic share certification; (2) tagged accordingly in PJM GATS; and (3) purchased by an EDC, EGS, or other entity required to retire SRECs to meet an AEPS compliance requirement. Therefore, by definition, Banked SRECs are from facilities that were certified prior to October 30, 2017, and delivered pursuant to contracts. There is no reasonable interpretation of Section 2804(2)(i)-(ii) of Act 40 that could jeopardize the validity of these SRECs.

Constellation/ExGen request that the Commission confirm that previously purchased and Banked SRECs from a facility (whether in-state or out-of-state) certified before October 30, 2017 will not be negatively affected under the Commission’s interpretation of Act 40.

B. SREC purchase contracts qualify as “existing contracts” under Section 2804(2)(ii).

Constellation/ExGen request clarification regarding qualification as an “existing contract” for grandfathering purposes under Section 2804(2)(ii). Both the TIO and Joint Statement discuss this section, but neither addresses what contracts qualify for exemption.³ Pennsylvania SREC purchasers subject to the AEPS Act often contract with an entity owning or serving as wholesale marketing agent to a portfolio of generation assets, rather than contracting directly with the facilities themselves. The TIO and Joint Statement do not address this common industry practice, but the Commission should clarify that these wholesale SREC contracts between EGS’ and wholesale portfolio owners (and/or aggregators) of SREC generating assets will not be prejudiced by the Commission’s interpretation of Act 40.

The interpretations of Section 2804(2)(ii) do not address the following: whether a binding contract for SRECs between (1) a Pennsylvania EDC, EGS serving Pennsylvania customers, LSE, electric cooperative, or municipal cooperative and (2) an entity that owns SREC generating facilities (but is not itself a generating facility) would be grandfathered. The language of the Section 2804(2)(ii) should not be interpreted to require the generating facility to be a party to the contract.

The critical point is that the SREC output from the facility must be the subject of the contract. Specifically, Section 2804(2)(ii) provides that the Act shall not affect “[c]ertification of a solar photovoltaic system with a binding written contract for the sale and purchase of

³ TIO at 7-8; Joint Statement at 3.

alternative energy credits...” The Commission should confirm that exemption under this section is available for SRECs under contract. A requirement that the generating facility itself must be a party to the contract, as opposed to the generating facility’s owner, agent or aggregator, could exclude the grandfathering of numerous SREC contracts and impose undue economic harm on businesses and electricity consumers.

Therefore, Constellation/ExGen request that the Commission recognize the variety of business structures and contracting arrangements in the marketplace, and confirm that it will not limit grandfathering only to contracts for SRECs with the facility itself.

C. The Commission could confirm that there are no SREC transfer limitations.

Existing SRECs predating Act 40 should be freely transferrable. Neither the TIO nor the Joint Statement address transferability of existing SRECs. The Commission may have been silent on this issue because it does not interpret Act 40 to affect the transfer of existing SRECs. The continued eligibility of purchased and “Banked SRECs,” as defined above, must be preserved. Likewise, the Commission should confirm that Act 40 does not adversely affect eligibility of existing SRECs when transferred from one party to another. Transferability should not be restricted under the Commission’s interpretation of Act 40, nor should transfer jeopardize SREC eligibility status to qualify as a “Tier 1 solar photovoltaic share credit.”

D. Section 2804(2)(ii) maintains certification of solar systems for the SRECs under contract.

Neither the TIO nor the Joint Statement address the issue of whether certification under Section 2804(2)(ii) will apply to the SREC output under contract or extend to uncontracted output. The TIO provides three conditions for eligibility:

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

(2) The contract is for the sale and purchase of 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).⁴

Constellation/ExGen recommend that the Commission clarify that the exemption in Section 2804(2)(ii) applies to the SREC output under contract, but not to uncontracted output.

E. Process and timing clarity regarding the AEC Program Administrator's certification process with PJM GATS to identify grandfathered SRECs.

In the TIO, the Commission contemplates a new SREC identification and naming scheme to be implemented in PJM GATS.⁵ The timing and process for the AEC Administrator's certification process with PJM GATS to identify grandfathered SRECs under the new naming scheme is important for entities subject to AEPS requirements. Therefore, Constellation/ExGen request 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.

⁴ TIO at 7.

⁵ TIO at 4-6.

III. CONCLUSION

ExGen/Constellation appreciate this opportunity to submit these Comments on the proposed interpretations of Act 40 offered in the TIO and Joint Statement.

Respectfully submitted,

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