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Pennsylvania Public Utility Commission  
Attn: Secretary  
400 North Street  
Harrisburg, PA 17120

DTE Energy Trading's Comments in Docket M-2017-2631527, Regarding the Implementation of Act 40 of 2017, the Tentative Implementation Order, and the Joint Statement of Chairman Gladys M. Brown & Vice Chairman Andrew G. Place

### **Introduction**

DTE Energy Trading, Inc. ("DTE") appreciates the opportunity to offer comments on the Tentative Implementation Order ("TIO") and the Joint Statement of Chairman Gladys M. Brown & Vice Chairman Andrew G. Place ("Joint Statement") regarding the Implementation of Act 40 of 2017 ("Act") in docket M-2017-2631527. DTE is an energy commodity marketing and trading business whose primary activity is the physical delivery of power, gas and environmental commodities to others, including utilities that participate in provider of last resort wholesale auctions. DTE is also an active participant in Pennsylvania's Alternative Energy Portfolio Standards ("AEPS"). DTE works with renewable developers, aggregators, and other market participants to buy Tier 1 renewable energy certificates ("RECs") and solar RECs ("SRECs"). These contracts are structured to concurrently purchase current year generation *and* multiple years of future generation. In turn, DTE sells electricity generation, Tier 1 RECs, and SRECs

to serve load through Pennsylvania's EDC default service programs; DTE also sells Tier 1 RECs and SRECs to other load serving providers in Pennsylvania and other buyers.

### **The Act Allows Grandfathering of Solar Facilities and SRECs if a Pre-existing Contract Existed**

Section 2804(1) of the Act restricts the geographic eligibility of solar facilities for the solar photovoltaic portion of the AEPS. This geographic restriction begins with the effective date of the Act, October 30, 2017. However, Section 2804(2) states, *inter alia*, that the new geographic restriction shall not effect...

*(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.*

In other words, if a contract existed prior to October 30, 2017, then the solar facility retains its eligibility.

Even if the solar facility is located outside of Pennsylvania, if a pre-existing contract for SRECs exists, then it retains its eligibility for the solar photovoltaic portion of the AEPS. That much is clear.

Furthermore, because the primary purpose of a solar facility's AEPS certification is to ensure that the SRECs it sells are eligible for the AEPS, it is safe and reasonable to conclude that Section 2804(2)(ii) clearly protects the eligibility of SRECs bought and sold in pre-existing contracts. Act 40's intent is to protect pre-existing contracts and DTE argues that the Public Utilities Commission ("PUC") should adhere to this intent.

### **The Act Grandfathers DTE's SRECs, but the PUC Needs to Provide Further Clarity**

DTE is a provider of electric generation supply for the default service programs run by Pennsylvania electric distribution companies ("EDC") pursuant to Chapter 28 of the Public Utility Code. EDCs, as part of the procurement processes, buy RECs and SRECs to meet their AEPS requirements.

DTE participated in EDC default service procurements and was awarded contracts with EDCs. DTE's contracts with EDCs were executed prior to the enactment of Act 40 and were for electric generation

supply, Tier I RECs, and SRECs to satisfy the solar photovoltaic portion of the AEPS. The time periods covered by these contracts span past, current, and future energy years.

To serve its default service contracts, DTE purchased SRECs from out-of-state solar facilities that were eligible for the solar portion of the AEPS. These contracts were executed prior to the enactment of Act 40. DTE took delivery of SRECs from these out-of-state solar facilities and, in turn, a portion of these SRECs were delivered to EDCs – again, prior to the enactment of Act 40. DTE plans to deliver the remaining portion of the SRECs to EDCs in future years. In other words, DTE is holding SRECs from contracts that pre-date the enactment of Act 40 in accordance with the banking provisions in 52 Pa. Code § 75.69.

DTE believes the SRECs it owns remain eligible for AEPS compliance under Act 40 because (i) DTE is an electric generation supplier which purchased and received SRECs under contracts executed prior the enactment of Act 40 to (ii) serve default service contracts with EDCs that were also executed prior to the enactment of Act 40. DTE believes Section 2804(2)(ii) and Section 2804(3) of the Act support its position and do not contradict its position.

Notwithstanding the intent and language of Act 40 to protect pre-existing contracts, the TIO and the Joint statement do not address the situation of DTE (and likely other market participants) or provide enough clarity and certainty.

#### The Tentative Implementation Order

In the Discussion portion of the TIO, the PUC generally supports the grandfathering of banked RECs, but it mentions the treatment of SRECs already received from the solar facility only twice, in discussion points G and H. In both instances, however, the examples given only seem to contemplate a single contract scenario where a solar facility has sold SRECs directly to an EDC or EGS. As described previously,

EDCs manage default service programs that specifically procure electric generation supply *and* AEPS-eligible SRECs *and* Tier I RECs, pursuant to Chapter 28 of the Public Utility Code. Nearly all solar facilities, especially AEPS-eligible solar facilities, are unable to provide the full suite of products and services required to meet default service needs. It's only through a wholesale provider of electric generation supply, such as DTE, that many solar facilities can sell their SRECs to EDCs. This necessarily creates a situation where multiple counterparties and contracts exist to transfer SRECs from AEPS-eligible solar facilities to the EDC. DTE does not believe the Act, the TIO, or the PUC intend to exclude the grandfathering of a pre-existing multi-contract chain that serves the needs of default service programs, but the way the TIO is written does not make this clear.

#### The Joint Statement

The Joint Statement is much shorter than the TIO and more narrowly focused on what should and should not be grandfathered. It proposes that Section 2804(2)(ii) of the Act be understood as, *inter alia*, grandfathering out-of-state solar facilities that have a pre-existing contract with a "Pennsylvania electric distribution company, electric generation supplier serving Pennsylvania customers, [or] load serving entity..." Again, this interpretation contemplates protection for a simplified single-contract scenario. In real market conditions, however, it's necessary and common for multiple contracts to exist between the solar facility and the EDC, electric generation supplier, or load serving entity. The most obvious examples are DTE's pre-existing contracts with the EDC and solar facilities to serve default service programs under Chapter 28 of the Public Utility Code. DTE does not believe the Joint Statement intends to exclude pre-existing multi-contract chains that serve default service programs, but the Joint Statement does not make this clear.

## Conclusion

The Act restricts the geographic eligibility of solar facilities for the AEPS, but it clearly grandfathers facilities and SRECs if a contract existed prior to the enactment of the Act. Prior to the enactment of Act 40, DTE executed contracts to (i) purchase SRECs from out-of-state solar facilities and (ii) sell electric generation supply, Tier 1, and SRECs to EDCs to serve the needs of Pennsylvania's default service programs. DTE believes these pre-existing contracts are grandfathered under the Act. However, the TIO and Joint Statement do not specifically address DTE's circumstances or provide sufficient clarity. The TIO and Joint Statement use simplified scenarios to highlight their points, but these examples are so limited that DTE is not able to apply the guidance to its situation. Therefore, DTE respectfully requests that the PUC explicitly clarify that DTE's SRECs – purchased, received, and banked under pre-existing contracts from out-of-state solar facilities – remain eligible for the solar portion of the AEPS.

DTE appreciates the opportunity to comment and looks forward to working with PUC staff should they have questions on the comments above.

Sincerely,

A handwritten signature in black ink, appearing to read "Ian McGowan". The signature is fluid and cursive, written over a light gray rectangular background.

Ian McGowan  
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