



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE GOVERNOR
HARRISBURG

THE GOVERNOR

February 5, 2018

Rosemary Chiavetta
Secretary
Public Utility Commission
400 North Street
Harrisburg, PA 17120

Re: Implementation of Act 40 of 2017
Docket No. M-2017-2631527

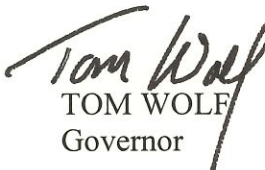
Dear Secretary Chiavetta:

Please find attached the comments of the Pennsylvania Department of Environmental Protection (DEP) regarding the above referenced proceeding. DEP's comments reflect my view of the meaning of the provisions of Act 40 of 2017 at the time I signed the bill into law. My goal in providing my signature and making Act 40 effective was to ensure that the environmental benefits of solar energy provided by Pennsylvania's Alternative Energy Portfolio Standards accrue to the commonwealth.

I believe that the interpretation provided by Chairman Brown and Vice Chairman Place in their Joint Statement accurately reflect that intent and I strongly urge the Public Utility Commission to reject the proposed Tentative Implementation Order and instead adopt their interpretation.

I am proud of our work to support the development of solar energy in Pennsylvania, and our commitment to building a diverse and robust clean energy sector, which helps deliver environmental benefits while at the same time stimulating the economy and creating good jobs. Act 40 is one piece of that effort and it is critical that it be implemented correctly. I look forward to continuing to work with the PUC to advance Pennsylvania's role as a leader in renewable and clean energy innovation.

Sincerely,


TOM WOLF
Governor

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Act 40 of 2017
Docket No. M-2017-2631527

**COMMENTS OF THE
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

The Pennsylvania Department of Environmental Protection (the Department) appreciates the opportunity to provide comments on the Public Utility Commission's (PUC) Tentative Implementation Order (TIO) concerning Act 40 of 2017, which was signed into law by the Governor on October 30, 2017. The provision at issue, Section 2804 of Act 40, amends the Administrative Code to establish geographical limits on solar photovoltaic systems that qualify for the solar share requirement of the Alternative Energy Portfolio Standards (AEPS) Act.

The Department's comments focus on ensuring that the interpretation implemented by the PUC correctly reflects the intent of the General Assembly in passing the law, and the Governor in making it effective by his signature. The Department believes that the clear intent of Act 40 was to encourage the development of new solar sources in Pennsylvania so that the environmental benefits provided by the AEPS will be experienced in the commonwealth. The interpretation put forward in the TIO would essentially nullify the purpose of Act 40, by grandfathering enough currently certified sources to prevent the law from having any environmental or other co-benefit whatsoever. Thus, the Department strongly urges the PUC to reject the TIO interpretation, and to instead adopt the interpretation proposed by Chairman Brown and Vice Chairman Place in their Joint Statement.

At issue is the interpretation of Section 2804(2)(i) which reads as follows:

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

(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."

The intention of this provision was to provide certainty that solar photovoltaic (PV) energy facilities located within the commonwealth would not be affected by the changes implemented elsewhere in Act 40. However, the TIO proposes to interpret the subsection to "grandfather solar PV AESs certified as a Pennsylvania AES before October 30, 2017, as continuing to qualify to generate energy and SRECs eligible to be used by [Electric Distribution Companies] EDCs and [Electric Generation Suppliers] EGSs to meet the solar PV share requirements." This

interpretation incorrectly focuses on the location from which the certification originated as opposed to the location of the solar generator, which was the clear purpose and intent of Act 40.

If the PUC adopts the TIO interpretation of this provision, Act 40 will be rendered essentially meaningless. As of December 2017, 82 percent of Pennsylvania's AEPS certified megawatts from solar PV systems were from out-of-state facilities. There are currently enough non-Act 40 compliant solar facilities certified by the PUC to fulfill the solar PV requirements of the AEPS indefinitely. If all of these currently certified credits are grandfathered, there will be no new incentive to develop solar in Pennsylvania, and the entire purpose of Act 40 will be nullified.

The Commonwealth's Statutory Construction Act requires that "[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions."¹ By nullifying the effect of Act 40, the TIO interpretation is entirely opposite to the intent of the legislature, a clear violation of the requirements of the Statutory Construction Act.

In place of the TIO, the Department strongly endorses the interpretation proposed in the Joint Statement of Chairman Brown and Vice Chairman Place. Their supplemental interpretation of Section 2804(2) of Act 40 accurately reflects the intent of the law and will allow for the environmental benefits of the AEPS, which are paid for by Pennsylvania electric ratepayers, to accrue in Pennsylvania as new solar sources are developed here.

The changes made in Act 40 are essential to the continued growth of Pennsylvania's solar industry and the development of additional in-state clean energy. New in-state sources in turn will help reduce greenhouse gas (GHG) emissions and improve air quality, human health, and energy resiliency. Reducing GHG emissions is critical to mitigating climate change and protecting human health across the commonwealth. Unlike fossil fuel-fired power generation, electricity generated from solar energy systems does not emit GHGs or other harmful pollutants. Thus, development of solar is vital to creating a cleaner energy supply for Pennsylvania, and a healthier place to live for Pennsylvanians.

The 2015 Pennsylvania Climate Impacts Assessment Update states that current and future concentration of GHG emissions can impact public health in numerous ways:

- The overall warming trend will increase heat-related deaths. Risks for heat-related deaths are the highest for the elderly and those with cardiovascular disease.
- Climate change could impact air quality, by increasing ground-level ozone, which can cause respiratory issues, aggravated asthma, respiratory infections, and increased mortality. Higher plant growth, more pollen produced by each plant, increased allergenicity of the pollen grains, and a longer pollen season can also be expected.

¹ 1 Pa.C.S. § 1921(a).

- Climate change could also increase water-borne pathogens, occurrence of harmful algal blooms, and flooding from tropical storms and hurricanes, which all pose a threat to human health. Increased rainfall threatens human health through vector-borne diseases, such as West Nile disease.

The interpretation of Act 40 is also significant to the growth of in-state solar electricity generation, as the SREC price increases the economic viability of projects in the commonwealth. The Department is currently convening a stakeholder planning process called Finding Pennsylvania's Solar Future to examine cost effective ways to increase solar energy generation in Pennsylvania. Throughout that process, stakeholders from across the commonwealth have noted that requiring AEPS certification of only in-state facilities is vital to spurring substantial solar industry growth and capturing environmental benefit.

Any interpretation of Act 40 that fails to change the geographic requirements of AEPS certified solar generation facilities will not foster in-state solar growth and will be counter to the intent of Act 40. The Department is proud of its work to advance solar energy and looks forward to continuing to work with the PUC to be a leader in promoting clean and renewable energy resources. We urge you to reject the TIO and adopt the interpretation proposed by the Chair and Vice Chair.

Thank you for the opportunity to comment.

Sincerely,



Patrick McDonnell
Secretary