

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PETITION OF EXELON GENERATION COMPANY, LLC
AND CONSTELLATION NEWENERGY, INC.
FOR CLARIFICATION AND/OR RECONSIDERATION OF THE COMMISSION’S
FINAL IMPLEMENTATION ORDER**

Pursuant to 52 Pa. Code § 5.572, Constellation NewEnergy, Inc., and Exelon Generation Company, LLC (together, “Constellation/ExGen”) request that the Pennsylvania Public Utility Commission (“Commission”) clarify and/or reconsider its interpretation of Section 2804(2)(ii) of Act 40 of 2017 in its May 3, 2018 Final Implementation Order (the “FIO”) in the above captioned proceeding.

I. The Petitioners

1. Constellation and ExGen are indirect, wholly-owned subsidiaries of Exelon Corp., a North American energy company with significant retail operations and several merchant subsidiaries in addition to ExGen. Exelon Corp also holds regulated utility subsidiaries in Pennsylvania (PECO Energy Company), Illinois (Commonwealth Edison Company), the District of Columbia (Pepco), Maryland (Baltimore Gas and Electric Company, Delmarva and Pepco) and New Jersey (Atlantic City Electric).
2. ExGen has been granted market-based rate authority by the Federal Energy Regulatory Commission and is a buyer and seller of wholesale electricity and capacity. ExGen provides wholesale power and risk management services to wholesale customers (including, but not limited to, distribution utilities, co-ops, municipalities, power

marketers, utilities and other large load serving entities), including through participation in wholesale load procurements, in both regulated and restructured energy markets.

ExGen is a licensed participant in PJM Interconnection, L.L.C.

3. Constellation is an electric generation supplier in the Commonwealth of Pennsylvania. Constellation's national retail energy platform offers its retail residential, commercial, industrial and public-sector customers – including those in 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 Act, 73 P.S. §§ 1648.1 *et seq* (“AEPS Act”) requirements, as amended by Act 40.
4. Constellation/ExGen filed joint comments in this docket on February 5, 2018.

II. Introduction and Background

5. In the FIO, the Commission provided its interpretation and implementation of Section 11.1 of Act 40 of 2017, which was signed into law on October 30, 2017. Section 11.1 adds Section 2804 to Article XXVIII of the Administrative Code of 1929, establishing geographical requirements for solar photovoltaic (“PV”) systems that qualify for the solar PV share requirement of the AEPS Act.
6. Section 2804(2) of Act 40 provides the following language:

(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.”

(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.

7. On December 21, 2017, the Commission’s Tentative Implementation Order (“TIO”)¹ for Act 40 and the Joint Statement of Chairman Gladys M. Brown & Vice Chairman Andrew G. Place (the “Joint Statement”) were entered in this docket. The Commission received comments from many parties, including Constellation/ExGen, in response to the TIO and the Joint Statement, including comments on Section 2804(2)(ii).² In the FIO, the Commission discussed the comments regarding Section 2804(2)(ii), some of which asserted that grandfathering under Subsection 2(ii) should be limited to contracts with “entities required to comply with the AEPS Act.” Other parties, including Constellation/ExGen, asserted that a broader interpretation honoring the contracts of solar PV generators to sell SRECs in Pennsylvania entered into prior to October 30, 2017, is consistent with Act 40 and also necessary in light of the realities of the SREC market.³
8. In the FIO, the Commission explained that the purpose of Section 2804(2)(ii) is to “enjoin[] the legislation from breaching existing contracts from out-of-state Tier I Solar

¹ *Implementation of Act 40 of 2017*, Tentative Implementation Order at Docket No. M-2017-2631527 (entered Dec. 21, 2017).

² FIO at 2-3 (internal citations omitted).

³ FIO at 25 (internal citation omitted).

facilities which were entered into before passage to serve the AEPS Act needs of Pennsylvania entities.”⁴ Constellation/ExGen agrees. However, as discussed below, Constellation/ExGen requests clarification regarding the contracts that will be honored under the Commission’s subsequent more specific interpretation in the FIO:

Section 2804(2)(ii) – we interpret this section to only permit out-of-state facilities that are (a) already certified as AEPS Tier 1 Solar Photovoltaic and that (b) have entered into a contract with a Pennsylvania EDC or EGS serving Pennsylvania customers, for the sale of solar credits, to maintain certification until the expiration of the contract. We wish to clarify that, consistent with the comments provided by ET, this maintained certification should only be applicable to the amount of credits contractually committed to by an out-of-state certified facility to an EDC or EGS.⁵

9. Constellation/ExGen support the Commission’s first requirement that maintained certification under Section 2804(2)(ii) is only available for contracts for solar renewable alternative energy portfolio credits (“SRECs”) generated by out-of-state facilities that were certified prior to the effective date of Act 40, October 30, 2017. However, Constellation/ExGen requests clarification regarding the contracts eligible for maintained certification under the Commission’s second requirement for Section 2804(2)(ii).

III. Constellation/ExGen Support Community Energy, Inc., and Community Solar, LLC’s Petition for Clarification and/or Reconsideration.

10. On May 11, 2018, Community Energy, Inc., and Community Energy Solar, LLC (together, “CE”) filed a Petition for Clarification and/or Reconsideration of the Commission’s May 3, 2018 Implementation Order (the “CE Petition”). CE requests that the Commission “affirm that all contracts with EDCs and EGSs are grandfathered such that all parties holding contracts entered into prior to October 30, 2017, and within the

⁴ FIO at 25-26.

⁵ FIO at 26-27.

chain of custody of the [SRECs] supplying those contracts, are also grandfathered.”⁶ CE explains that in the FIO, “the Commission did not address the situation ... where there might be more than one party in the chain from production to retirement of the [SRECs.]”⁷ CE’s filing correctly acknowledges that there are often more than two parties and more than one contract involved in the SREC supply chain, and that any process to honor pre-existing SREC contracts must recognize the intricate wholesale market that lies in between the facility at the beginning of the supply chain and the EDCs and EGSs at the end of the supply chain.

11. On the other hand, the FIO seems to be premised on an atypical arrangement where the EDCs and EGSs procure SRECs exclusively through direct contracts with certified solar PV facilities. As CE explains and as Constellation/ExGen explained in prior comments, this is not reflective of actual market practice.⁸ It is common practice for SRECs produced by solar facilities to be bought and sold many times before being acquired and retired by an EGS or EDC to meet current load. It is also common practice for aggregators to purchase SRECs pursuant to a contract under the premise that they can re-sell those SRECs to market participants.

12. Constellation/ExGen and their affiliates take a portfolio approach to SREC procurement, contracting with many different parties to procure the SRECs necessary to meet the requirements of ExGen as a wholesale default service supplier, Constellation as an EGS, and on behalf of other entities such as EDCs. Constellation/ExGen and their affiliates procure SRECs directly from certified out-of-state solar PV facilities and through contracts with intermediaries. By leveraging its scale to purchase SRECs in bulk on

⁶ CE Petition at 2.

⁷ CE Petition at 3.

⁸ CE Petition at 3; Constellation/ExGen Comments at 5-6.

behalf of itself and its affiliated entities, ExGen can often purchase SRECs at lower prices than if each entity directly purchased its required SRECs. The benefit of using ExGen’s market expertise and bulk purchasing power flows through to Pennsylvania customers in the form of lower-price offerings. If ExGen’s contracts are not maintained, then Constellation/ExGen will need to procure new SRECs at a higher cost, which will ultimately be borne by Pennsylvania electricity customers and businesses.

IV. The grandfathering process should focus on the beginning of the supply chain, not the end of the supply chain.

13. The language in Section 2804(2)(ii) supports the view that the appropriate focus should be on the facilities, not the EDC/EGS. The statute protects “[c]ertification 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.” Section 2804(2)(ii) focuses on the *beginning* of the supply chain, the certified out-of-state solar photovoltaic system. If a system has a binding written contract for the sale and purchase of SRECs that it entered into prior to October 30, 2017, then “nothing under [Section 2804] or section 4 of the ‘Alternative Energy Portfolio Standards Act’ shall affect it.”⁹ The statute expressly contemplates that facilities meeting the requirements in Section 2804(2)(ii) will maintain their certification. Importantly, the statute does not say that facilities meeting that criteria will be decertified and may then petition to be recertified or to have their SRECs retagged in PJM Environmental Information Services’ Generation Attribute Tracking System (“PJM-GATS”).

⁹ Section 2804(2).

14. In the FIO, however, the Commission states that “Section 2804(2)(ii) enjoins the legislation from breaching existing contracts from out-of-state Tier I Solar facilities which were entered into before passage to serve the AEPS Act needs of Pennsylvania entities.”¹⁰ Thus, both the Joint Statement and the FIO focus on the *end* of the supply chain, requiring EGSs and EDCs to file petitions to protect their SREC contracts.¹¹

15. On May 16, 2018, the Commission issued a Secretarial Letter providing additional procedural information relating to petitions to be filed by EGSs and EDCs, pursuant to the FIO, seeking approval to qualify credits under Section 2804(2)(ii). In a footnote, the Commission provided guidance with respect to the “trail of contracts” that typically occurs throughout the lifetime of an SREC that would put entities at the very end of the supply chain (EDC/EGS) in a position of having to potentially trace an SREC back to its origins:

*Contracts may include those directly entered into between an out-of-state certified Tier I solar facility and an EDC or EGS; and/or a trail of contracts between an out-of-state certified Tier I solar facility, one or more intermediaries such as but not limited to wholesale default service participants or solar AEC aggregators, and an EDC or EGS which directly exhibits that a committed quantity of solar AEC output from the certified generation facility is being utilized to facilitate an EDC’s or EGS’s Tier I solar Alternative Energy Portfolio Standards obligations.*¹²

Constellation/ExGen appreciate the Commission addressing this important issue in the Secretarial Letter, but the guidance could be interpreted to require EGSs and EDCs to submit their contracts with an aggregator and the aggregator’s contract with the entity from which it purchased the SRECs, and then the next entity, tracing the contract trail all the way back to the certified facility. If that is the intent of the guidance,

¹⁰ FIO at 20.

¹¹ FIO at 26-27, 32; Joint Statement at 3.

¹² Secretarial Letter at 2, fn. 3.

Constellation/ExGen submit that submission of the entire “trail of contracts” is unnecessary, onerous and, in many cases, impossible.

16. First, for every REC in its database, GATS assigns a “Unit ID” number that is a facility-specific number and which identifies the facility that generated the SREC. GATS also identifies the name and location of each facility, when the SREC was generated, and the number of RECs in circulation (non-retired). Each SREC has its own serial number and a state-specific certification (approval). This information is enough to ensure that each SREC is only used once and there is no double counting. Having RECs in a tracking system eliminates the need for demonstrating the contract path of SRECs from the generator to current location. A copy of a GATS download for an Exelon solar generator that had a Pennsylvania solar certification is attached as **Attachment 1**.¹³

17. Second, requiring EGSs and EDCs to present a “trail of contracts” that follows the transaction-by-transaction path of an SREC from one entity to another is onerous and, in many cases, impossible. Suppose, for example, an EGS has a contract with an aggregator to purchase SRECs. The EGS can present that contract to the Commission. But, the EGS may not be able to obtain a copy of the contract pursuant to which the aggregator purchased the SRECs that it sold to the EGS. And, if the EGS is able to obtain that contract, there may still be other contracts that stand between that particular entity and the certified facility that produced the SREC. Moreover, many of these contracts have confidentiality provisions that require notice to and an opportunity for the contracting

¹³ Attachment 1 is submitted for informational purposes only so that the Commission can easily see the information that is maintained by GATS and presented to viewers who download it. This tracking information obviates the need for present an entire trail of contracts for the Commission’s review.

party to make a filing with the Commission regarding disclosures.¹⁴ Even if it is possible to access the entire trail of contracts for each SREC, notifying contracting parties and affording them reasonable time to be heard will be burdensome and slow down the process considerably.

18. One example showing the potential burden of requiring production of an entire trail of contracts involves residential generators. A trail of contracts could include thousands of contracts for one purchase by an EGS from an aggregator who aggregates residential generators. Residential facilities typically generate no more than one SREC/month. If a purchaser has a contract to buy 1,000 SRECs from an aggregator, the aggregator may have 1,000 contracts with individual homeowners to fulfill the transaction.

19. Further on this point, in most cases, Constellation/ExGen does not know the facility that generated the SRECs until they are delivered in GATS. Parties in the SREC bilateral market enter into transactions for firm quantities of SRECs at an agreed upon price and quantity, but if the contract quantity is “firm” in nature (and many purchases are), the facility need not be identified at the onset of the transaction. Rather, what matters contractually is that the SRECs meet the requirements of the applicable standard.

Fulfillment of these firm SREC transactions often comes from a portfolio of certified RECs (versus one specified facility), therein lending to the argument that providing all of

¹⁴ The following is an example of language in an SREC contract regarding disclosure of confidential information to a governmental entity:

Governmental Disclosure. If required by any law, statute, ordinance, decision, order or regulation passed, adopted, issued or promulgated, or if requested by a court, governmental agency or authority having jurisdiction over a Party, that Party may release Confidential Information, or a portion thereof, to the court, governmental agency or authority, as required or requested, and a Party may disclose Confidential Information to accountants in connection with audits, provided that, if practicable, such Party has notified the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses) to cause that court, governmental agency, authority or accountant to treat such information in a confidential manner and to prevent such information from being disclosed or otherwise becoming part of the public domain.

the contracts in the chain of custody would be nearly impossible (and in many cases would not even be possible until after delivery is made via GATS).

V. Proposed Solutions

20. ExGen/Constellation support CE’s request that the Commission clarify that grandfathering under Section 2804(2)(ii) is available for “all parties in the contractual supply chain from producer to the EDC and EGSs [and wholesale default service suppliers] acting in good faith within the boundaries of existing law[.]”¹⁵ However, as noted above, implementing this solution in the context of the complex wholesale supply chain is a formidable task. While Constellation/ExGen supports CE’s general request that the Commission “affirm that all contracts with EDCs and EGSs are grandfathered such that all parties holding contracts entered into prior to October 30, 2017, and within the chain of custody of the [SRECs] supplying those contracts, are also grandfathered,”¹⁶ Constellation/ExGen offer the following proposals to help address the difficult question of how to recognize the full SREC supply chain in the petitioning process.

1. *Alternative One: Allow the facilities, not the EGS/EDCs, to petition to maintain Tier 1 status.*

21. Focusing on the beginning of the supply chain, and clarifying that a certified out-of-state facility’s SREC contracts entered into prior to October 30, 2017 will be honored under Section 2804(2)(ii), and extending that protection to all parties in the supply chain, is consistent with the plain language of Section 2804(2)(ii). Moreover, from a practical perspective, this interpretation of Act 40 will allow for a thoughtful, deliberate “closing of Pennsylvania’s solar border” as opposed to the market uncertainty that would ultimately result were the Commission to decertify hundreds of thousands of valid

¹⁵ CE Petition at 3.

¹⁶ CE Petition at 2.

SRECs that have been purchased pursuant to negotiated contracts entered into before the effective date of Act 40.

22. This alternative is verifiable and has operational ease. As explained above, the information in PJM-GATS is enough to ensure that each SREC can be tracked to a specific facility, is only used once, and there is no double counting. And, having RECs in a tracking system eliminates the need for demonstrating the contract path of SRECs from the generator to current location.

2. *Alternative Two: Clarify that an EDC's and EGS's contracts for the sale of SRECs used to serve current and projected load, entered into prior to October 30, 2017, qualify for maintained certification under Section 2804(2)(ii).*

23. Another alternative to address the supply chain issue is for the Commission to issue a ruling clarifying that EGSs, EDCs and/or their wholesale suppliers be permitted to present contracts for the sale of SRECs commensurate with the filing entities' Pennsylvania load. Under this alternative, the supplier could only pursue the grandfathering of contracts commensurate with load served in Pennsylvania, but the supplier would decide which contracts (within its portfolio of SREC contracts) to bring forward. Constellation/ExGen present this alternative interpretation as a clear second choice to, and without waiving, its positions explained above. This alternative, more narrow interpretation offers a phased-in approach to Section 2804(2)(ii) that protects customers from higher prices that would likely result were the Commission to move forward under the FIO.

24. This alternative approach recognizes that EDCs rely primarily on contracts with wholesale default service suppliers such as ExGen to fulfill a significant portion of the default service supply (and SREC) obligation. When procuring electric generation

supply, EDCs generally require wholesale suppliers, like ExGen, to provide electric generation supply bundled with the SRECs, Tier 1, and Tier 2 alternative energy credits required to satisfy the AEPS obligations for the electric generation provided.¹⁷ To procure the necessary SRECs, wholesale default service providers do not necessarily contract directly with certified solar PV facilities and may contract with other entities to acquire SRECs. Regardless, for an EDC, the wholesale contract it signs with wholesale suppliers to serve default service load, which includes the provision of SRECs, would satisfy the EDC's obligation under Act 40. So, too, would any other contract entered into by an EDC prior to October 30, 2017 for the purchase of SRECs to serve its default service load.

25. This alternative approach also recognizes that EGSs generally purchase their SRECs from a number of sources, including aggregators. By allowing EGSs to present contracts for the sale of SRECs commensurate with their Pennsylvania load, the Commission ensures that EGSs will not incur additional costs that could be easily avoided and which will potentially be recovered in the prices that EGSs charge to their customers.¹⁸
26. In sum, the proposed alternative approach protects customers more than the FIO and protects SREC contracts entered into before October 30, 2017 for EDCs' and EGSs' Pennsylvania load.

V. SRECs from facilities subject to Section 2804(2)(ii) should be retagged in PJM-GATs.

27. Constellation/ExGen request that the Commission direct the AEC Program Administrator to coordinate with PJM-GATS to retag SRECs in PJM-GATS from facilities that are

¹⁷ See generally, 73 P.S. § 1648.3.

¹⁸ In this approach, there is still no need for EGSs to present a "trail of contracts," as explained above, and doing so would be onerous and time-consuming.

subject to Section 2804(2)(ii). In the FIO, the Commission proposed that SRECs be assigned a certification number in the following format: PA-NNNNNN-SUN-I. Out-of-state solar PV facilities that do not qualify to generate SRECs would instead only qualify to generate Tier 1 non-solar AECs, designated in the following format: PA-NNNNN-NSTI-I. On or about May 7, 2018, PJM-GATS decertified all out-of-state solar facilities and changed the designation of the SRECs they created to the Tier 1 non-solar AEC format.

28. In the FIO, the Commission held that out-of-state facilities with contracts meeting the requirements in Section 2804(2)(ii) would be allowed to “*maintain certification* until expiration of the contract.”¹⁹ Rather than maintaining certification, it appears that PJM-GATS de-tagged SRECs (from the SREC format to the Tier 1 non-solar AEC format) that may be eligible for maintained certification under Section 2804(2)(ii).

29. The FIO includes a requirement that entities seeking to qualify SRECS under Section 2804(2)(ii) “file a Petition within 60-days of the entry date of [the FIO].” For Petitions that are granted, Constellation/ExGen requests that the Commission direct the AEC Program Administrator to coordinate with PJM-GATS to recertify SRECs from out-of-state facilities. Specifically, Constellation/ExGen requests that the Commission clarify and/or reconsider that SRECs generated by facilities and sold under these contracts will be assigned, or re-assigned, as applicable, a certification number in the SREC format: PA-NNNNNN-SUN-I.

30. In the May 16, 2018 Secretarial Letter, the Commission reiterated that out-of-state solar PV systems have been assigned a certification number in the above format “to indicate that they are still eligible to be used by EDCs and EGSs to meet their AEPS Act Tier I

¹⁹ FIO at 27, 32 (emphasis added).

non-solar share requirements.”²⁰ The Letter also provided that these systems “will continue to retain the PA-NNNNNN-NSTI-I certification format even if any portion of their AECs are approved for use by an EDC or EGS under Section 2804(2)(ii) of the Adm. Code, 71 P.S. § 714(2)(ii), to meet their AEPS Act solar PV share requirements.”²¹

31. Constellation/ExGen is concerned that the action taken within PJM-GATS to “indicate that [these systems] are still eligible” amounts to a decertification of the solar PV system in PJM-GATS, thereby jeopardizing Constellation/ExGen’s ability to rely on these SRECs for compliance this year, to re-sell them, or to bank them for future use in Pennsylvania. Constellation/ExGen request that the SRECs in PJM-GATS – which originated from an out-of-state certified solar PV facility and were the subject of binding written contracts – remain certified until a petition is denied, at which point they would be re-tagged within PJM-GATS.

VI. Constellation/ExGen request that the Commission clarify/reconsider how highly-sensitive information in SREC contracts will be protected.

32. In the May 16, 2018 Secretarial Letter, the Commission addressed the confidentiality of the contracts that an EGS or EDC must file in support of a petition. The Commission held that EDCs and EGSs should provide “complete and unredacted copies of all contracts and amendments” and noted 52 Pa. Code § 1.32 shall govern the filing of confidential contracts and other documents.²²

33. Constellation/ExGen is concerned that the contracts in question include information that is so competitively sensitive, and would have such market implications if disclosed, that they require heightened protection. Constellation/ExGen anticipate that the Commission

²⁰ Secretarial Letter at 2.

²¹ Secretarial Letter at 2.

²² Secretarial Letter at 2.

will receive hundreds of contracts even if it does not require EDCs and EGSs to file a “trail of contracts.” While Constellation/ExGen has complete faith in the Commission’s ability to maintain the confidentiality of the material, even the smallest mishap at any point in the process could expose market sensitive information. Along those lines, many SREC contracts contain provisions that allow a party to only produce “portions” of the contract, and this request would fall within the parameters of that contractual language.²³

34. In that sense, Constellation/ExGen request that the confidential filed copies redact the price per SREC. The SREC price is not relevant to a solar PV facility’s eligibility status under Section 2804(2)(ii) or to any other determining factor in this proceeding, and hopefully redacting the prices will not be a controversial matter.

35. Additionally, as explained above, Constellation/ExGen is concerned that these contracts have confidentiality provisions that will make it onerous, if not impossible, to produce the contracts timely because each filing EGS and EDC might need to notify the transacting parties and afford them a reasonable time to respond.²⁴

VII. The Commission may need to extend the AEPS compliance reporting date.

36. In many cases, the SREC contracts require delivery of the SRECs by July 15, 2018 for the current compliance year (June 2017 – May 2018), and the AEPS compliance reports are due at the end of August. Because of the uncertainty arising out of the implementation of Section 2804(2)(ii), including the de-tagging of SRECs within PJM-GATS and the significant problems associated with potentially having to produce a “trail of contracts,” Constellation/ExGen recommend that the Commission consider extending the AEPS compliance reporting due date. As a prime example, Constellation/ExGen’s internal

²³ See footnote 14. Constellation/ExGen would still be required to provide notice to the other contractual party as indicated above.

²⁴ This concern is not alleviated by simply redacting, in the confidential submission, the name of the counterparty.

processes will reject a de-tagged SREC as non-compliant for delivery under a Pennsylvania SREC Purchase and Sale Agreement. Thus, the PJM-GATS designation is a significant issue not only because of the reasons expressed above but also because Constellation/ExGen and the AEPS Administrator utilize the PJM-GATS designation to determine compliance. Rejecting the substantial number of de-tagged SRECs that are contractually obligated to be delivered by July 15, 2018 will require Constellation/ExGen to expend significant resources to address, which will take time and which could definitely be avoided.

VIII. Conclusion

37. For all of the reasons discussed above, Constellation/ExGen request that the Commission:
- a. Clarify and/or reconsider its interpretation of Act 40 in the FIO to “affirm that all contracts with EDCs and EGSs are grandfathered such that all parties holding contracts entered into prior to October 30, 2017, and within the chain of custody of the [SRECs] supplying those contracts, are also grandfathered;”²⁵
 - b. Alternatively – as a clear second choice and without waiving its position expressed above – if the Commission is not inclined to grant clarification and/or reconsideration as requested, then Constellation/ExGen request that the Commission clarify and/or reconsider its interpretation of Section 2804(2)(ii) to ensure that EDCs’ and EGSs’ SREC contracts qualify for maintained certification under Section 2804(2)(ii) for their respective load;
 - c. Clarify that SRECs from facilities eligible for maintained certification under Section 2804(2)(ii) will be re-tagged as SRECs in PJM-GATS;

²⁵ CE Petition at 2.

- d. Clarify that EGSs and EDCs filing contracts be allowed to redact the REC prices and other non-relevant information in their confidential submissions to the Commission; and
- e. Extend the AEPS compliance reporting due date to ensure that EDCs and EGSs have ample opportunity to adhere to the Commission's directives regarding implementation of Act 40.

Respectfully submitted,

/S/ Holly Rachel Smith

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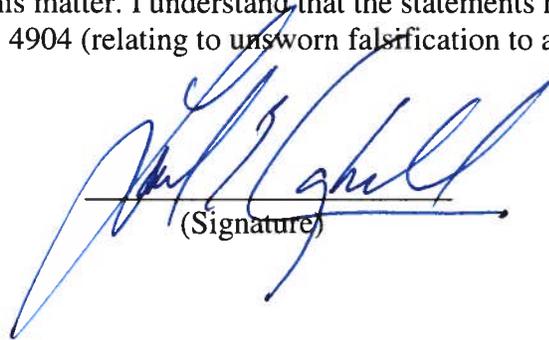
*Counsel to Constellation NewEnergy, Inc. and
Exelon Generation Company, LLC*

Dated: May 18, 2018

VERIFICATION

I, Lael Campbell, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: May 18,2018



(Signature)

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Action	Unit ID	Facility Name	Fuel Type	Loc of Gene	Month of Generation	Certificate Serial Numbers	Qty	REC Create	Previous O	New Jersey	NJ State Nu	NJ Eligibilit	Maryland	MD State I	MD Eligibil	District of C	DC State N	DC Eligibili	Pennsylv	PA State N	PA Eligibilit	Delaware	DE State N	DE Eligibilit	Illinois	IL State Nu	IL Eligibilit	Ohio	OH State N	OH Eligibilit	Virginia	VA State N	VA Eligibilit	Green-e	EPEC	EPEC Cert I	IL ZEC			
Transfer	MSET86689001	COM WEST PULLMAN 1 SP - 1	Solar - Photovoltaic	IL	4/1/2017	2891265 - 338 to 784	447	5/1/2017											Solar	PA-15038-SUN-I				Solar	IL-06454-SUN-I															
Transfer	MSET86689001	COM WEST PULLMAN 1 SP - 1	Solar - Photovoltaic	IL	5/1/2017	2993533 - 1 to 976	976	6/1/2017											Solar	PA-15038-SUN-I				Solar	IL-06454-SUN-I															
Transfer	MSET86689001	COM WEST PULLMAN 1 SP - 1	Solar - Photovoltaic	IL	6/1/2017	3105360 - 751 to 1184	434	7/1/2017											Solar	PA-15038-SUN-I				Solar	IL-06454-SUN-I															
Transfer	MSET86689001	COM WEST PULLMAN 1 SP - 1	Solar - Photovoltaic	IL	7/1/2017	3228474 - 751 to 1101	351	8/1/2017											Solar	PA-15038-SUN-I				Solar	IL-06454-SUN-I															
Transfer	MSET86689001	COM WEST PULLMAN 1 SP - 1	Solar - Photovoltaic	IL	8/1/2017	3348323 - 1 to 913	913	9/1/2017											Solar	PA-15038-SUN-I				Solar	IL-06454-SUN-I															
Transfer	MSET86689001	COM WEST PULLMAN 1 SP - 1	Solar - Photovoltaic	IL	9/1/2017	3463977 - 1 to 862	862	10/1/2017											Solar	PA-15038-SUN-I				Solar	IL-06454-SUN-I															
Transfer	MSET86689001	COM WEST PULLMAN 1 SP - 1	Solar - Photovoltaic	IL	10/1/2017	3589889 - 1 to 463	463	11/1/2017											Solar	PA-15038-SUN-I				Solar	IL-06454-SUN-I															

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Action	Unit ID	Facility Name	Fuel Type	Loc of Generator	Month of Generation	Certificate Serial Numbers	Qty	REC Create
Transfer	MSET86689001	COM WEST PULLMAN 1 SP - 1	Solar - Photovoltaic	IL	4/1/2017	2891265 - 338 to 784	447	5/1/2017
Transfer	MSET86689001	COM WEST PULLMAN 1 SP - 1	Solar - Photovoltaic	IL	5/1/2017	2993533 - 1 to 976	976	6/1/2017
Transfer	MSET86689001	COM WEST PULLMAN 1 SP - 1	Solar - Photovoltaic	IL	6/1/2017	3105360 - 751 to 1184	434	7/1/2017
Transfer	MSET86689001	COM WEST PULLMAN 1 SP - 1	Solar - Photovoltaic	IL	7/1/2017	3228474 - 751 to 1101	351	8/1/2017
Transfer	MSET86689001	COM WEST PULLMAN 1 SP - 1	Solar - Photovoltaic	IL	8/1/2017	3348323 - 1 to 913	913	9/1/2017
Transfer	MSET86689001	COM WEST PULLMAN 1 SP - 1	Solar - Photovoltaic	IL	9/1/2017	3463977 - 1 to 862	862	10/1/2017
Transfer	MSET86689001	COM WEST PULLMAN 1 SP - 1	Solar - Photovoltaic	IL	10/1/2017	3589889 - 1 to 463	463	11/1/2017

CERTIFICATE OF SERVICE

I hereby certify that this 18th day of May, 2018, I served a copy of Constellation NewEnergy, Inc.'s and Exelon Generation Company's Petition for Clarification and/or Reconsideration of the Commission's Final Implementation Order upon the persons listed below in accordance with the requirements of 52 Pa. Code § 1.54.

VIA EMAIL AND/OR FIRST-CLASS MAIL

Pennsylvania Public Utility Commission
Bureau of Investigation & Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

Lauren M. Burge, Esquire
Office of Consumer Advocate
555 Walnut Street
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Assistant Small Business Advocate
Office of Small Business Advocate
300 North Second St., Suite 202
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Date: May 18, 2018

/S/ Holly Rachel Smith
Holly Rachel Smith