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May 29, 2018

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Please accept this letter in lieu of a more formal answer of Cypress Creek Renewables, LLC (“Cypress Creek”) to the Petition of Exelon Generation Company, LLC and Constellation NewEnergy, Inc. (“Constellation/ExGen”) for Clarification and/or Reconsideration of the Commission’s Final Implementation Order entered May 3, 2018 (“FIO”) in this proceeding.

As discussed in its Petition for Clarification or Reconsideration filed May 16, 2018, Cypress Creek is a utility-scale solar developer with eleven solar facilities located outside of Pennsylvania but within the PJM region. Prior to the passage of Act 40 on October 30, 2017, the Cypress Creek solar facilities were certified as AEPS Tier I Solar Photovoltaic and contracted to sell Pennsylvania solar renewable alternative energy portfolio credits (“SRECs”) to third-party SREC middle marketers.

Cypress Creek supports Constellation/ExGen’s request that the Commission clarify its implementation of Act 40 to conform to the plain language of the Act and grandfather from its in-state limitation all SREC contracts entered into prior to October 30, 2017.¹ Cypress Creek believes that the statutory language plainly applies to all contracts that satisfy its terms and therefore to all parties in the supply chain that have executed such contracts.² Cypress Creek agrees with Constellation/ExGen’s position that requiring a “trail of contracts” that follows an SREC from one entity to another to qualify under the Commission’s grandfathering petition process would be onerous and, in many cases, impossible to satisfy.³ In addition, Cypress Creek

¹ 71 P.S. § 714(2)(ii) grandfathers “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.”

² Constellation/ExGen Petition for Clarification and/or Reconsideration at 10.

³ Constellation/ExGen Petition for Clarification and/or Reconsideration at 7-8.

fully supports the requested clarification that SRECs from facilities eligible for maintained certification under Section 2804(2)(ii) be re-tagged as SRECs in PJM-GATS.⁴

Constellation/ExGen's first alternative solution – to allow certified facilities to present their pre-Act contracts for approval and thereby grandfather SRECs sold pursuant to those contracts is fully consistent with the Act and, as Constellation/ExGen notes, would be extremely easy to administer.⁵ Cypress Creek supports this solution. However, Cypress Creek opposes the second alternative solution set forth by Constellation/ExGen – that only EDCs, EGSs and and/or their wholesale suppliers be allowed to submit pre-Act contracts for approval. This approach, as described by Constellation/ExGen is complicated and confusing, but more importantly is not consistent with the plain language of the Act grandfathering all pre-existing SREC contracts.

Cypress Creek agrees that all otherwise valid EDC and EGS SREC purchase contracts entered into prior to the effective date of the Act should be grandfathered under Section 2804(2)(ii). However, any implementation of the Act that protects only EDC and EGS contracts would ignore the plain language of the Act and illegally exclude numerous SREC contracts entered into prior to October 30, 2017, including those between an owner of a solar photovoltaic system and a broker or an aggregator for resale to parties with SREC compliance obligations. In its Petition, Constellation/ExGen suggests that, under this alternative approach, an EGS would decide which contracts (within its SREC portfolio) to bring forward for Commission review. There is simply no basis for looking to the alleged intent of the Legislature in order to interpret the clear and unambiguous language of Act 40.⁶ Act 40 expressly states that Section 2804(2)(ii) applies to all systems with contracts for the sale and purchase of SRECs that meet the stated criteria (through the term of those contracts), not just those made directly with an EDC/EGS.⁷

Cypress Creek believes that the only legal way in which to grant Constellation/ExGen relief is to recognize that any contract for sale and purchase of SRECs from a facility that was certified to produce SRECs prior to the passage of Act 40 is eligible for grandfathering under Section 2804(2)(ii). Any other interpretation is simply not consistent with the specific language of Act

⁴ Constellation/ExGen Petition for Clarification and/or Reconsideration at 12-14.

⁵ Cypress Creek submits that an interpretation of Constellation Ex/Gen's first alternative solution to afford only contracts with EDCs and EGSs and the "trail of contracts" to the EDCs and EGSs the grandfathering protections of Section 2804(2)(ii) is inconsistent with the language of Act 40. The Act provides no such limitation in its grandfathering provision. As explained in Cypress Creek's Petition for Clarification or Reconsideration, it is common for a system owner to have entered into a binding written contract to sell all of its PA SREC output to a middle marketer for a defined period of time without that party necessarily having yet in turn contracted for the resale of such PA SRECs to an EDC or EGS. See Cypress Creek Petition for Clarification or Reconsideration at 4, n. 6.

⁶ It is well established that it is inappropriate to examine legislative intent where, as here, statutory language is clear and unambiguous. *F. W. Woolworth Co. v. City of Pittsburgh*, 284 A.2d 143 (Pa. Commw. Ct. 1971) (finding that the intent of legislature should be gathered from language of statute alone where such language is clear and unambiguous).

⁷ Petition of Cypress Creek for Clarification or Reconsideration at 11.

40 that plainly states that any 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 October 30, 2017 continues to be qualified to sell Pennsylvania SRECs pursuant to such contract for the remainder of the term of the contract.

Sincerely,

A handwritten signature in cursive script that reads "Daniel Clearfield". The signature is written in black ink and is positioned to the right of the typed name.

Daniel Clearfield

Enclosure

cc: Certificate of Service (w/enc.)

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Cypress Creek Renewables, LLC's foregoing Letter upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

VIA EMAIL AND/OR FIRST CLASS MAIL

Pennsylvania Public Utility Commission
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Date: May 29, 2018


Daniel Clearfield, Esq.