

# PENNSYLVANIA BULLETIN

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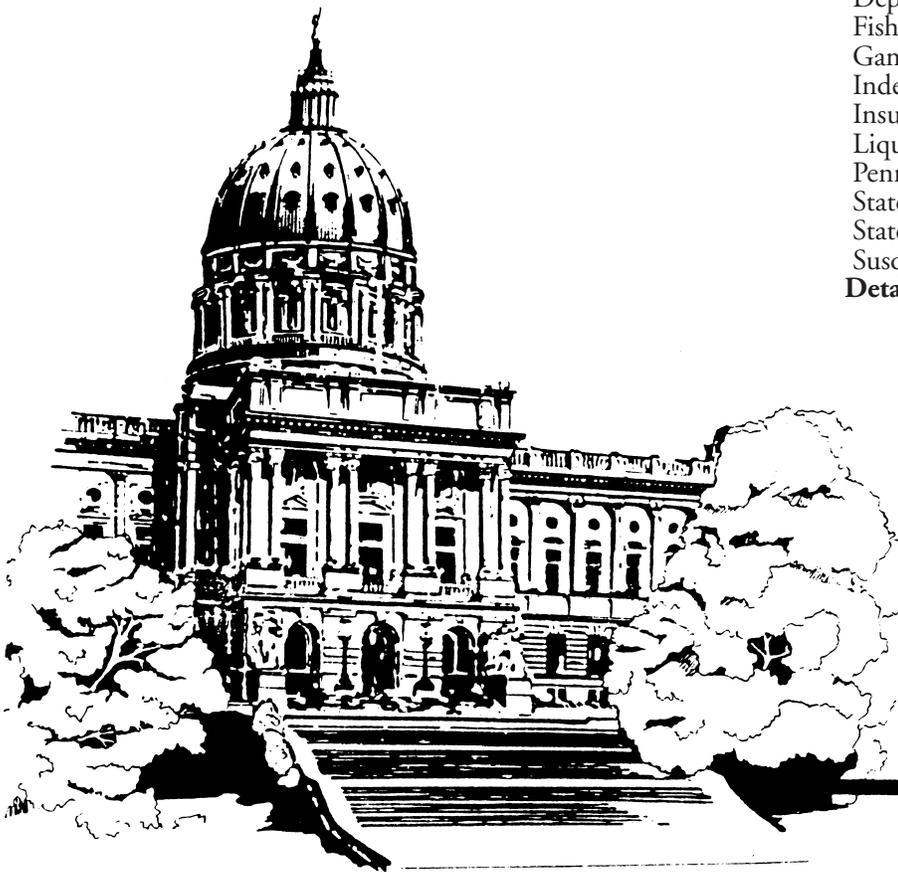
**Part I**

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for the Rules and Regulations  
and the Proposed Rulemakings

**Agencies in this issue**

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The Courts  
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- We identified the following clarity issues in the RAF:
  - The citation to the Child Protective Services Law in Question # 7 should be updated to 23 Pa.C.S. §§ 6301—6387.
  - The number of limited license funeral directors should be included in responses to Questions # 15, 16 and 19.

**Unemployment Compensation Board of Review  
Regulation # 12-112  
(IRRC # 3295)**

**Appeals from Determinations of Department  
May 12, 2021**

We submit for your consideration the following comments on the proposed rulemaking published in the March 13, 2021 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Unemployment Compensation Board of Review (Board) to respond to all comments received from us or any other source.

**4. Section 101.82. Time for filing appeal from determination of Department.—Reasonableness of requirements, implementation procedures and time-tables for compliance by the public and private sectors; Clarity and lack of ambiguity.**

Subsection (b) lists filing methods for unemployment compensation appeals. Paragraphs (4) and (4.1) provide the procedures for filing an appeal by e-mail and through the Pennsylvania UC Claims System (System), respectively. We have three concerns with these paragraphs.

First, the Preamble explains that a party is “effectively [placed] on notice that if the confirmation is not received, the appeal has not been filed, prompting additional action by the party.” What additional actions will a party need to take when confirmation is not received? We ask the Board to explain the implementation procedures when a confirmation e-mail is not received or the System does not generate an acknowledgment. We also ask the Board to explain the reasonableness of omitting additional actions a party will need to take when there are specific time-tables for compliance. The Board should consider revising these filing methods to establish standards that are achievable for the regulated community.

Second, these paragraphs do not state the deadline for timely filing of an appeal. We ask the Board to improve the clarity of these paragraphs by stating the deadline.

Third, do the confirmation sent by e-mail and the acknowledgment sent by the System include the date the appeal was deemed filed? We ask the Board to describe the information stated in the confirmation and acknowledgment and clarify these paragraphs to include these details.

**5. Regulatory Analysis Form (RAF).**

We ask the Board to submit screen shots of the portion of the System used to file an appeal in response to RAF Question # 22b.

In addition, responses to RAF Question # 29 state that the “amendments will become effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin* on the date of implementation” of the System. We note that the updated System is scheduled to be launched in June 2021. Given that the System will be operational before publication of the final-form regulation, we ask the Board to explain when these amendments will become effective and update the response to RAF Question # 29 and the Preamble accordingly.

**6. Miscellaneous clarity.**

The definition of “personal delivery” in Section 101.2 (relating to definitions) should be updated to cross-reference Section 101.82(b)(1)—(4.1). (Emphasis added.)

GEORGE D. BEDWICK,  
*Chairperson*

[Pa.B. Doc. No. 21-817. Filed for public inspection May 21, 2021, 9:00 a.m.]

## INSURANCE DEPARTMENT

### Application for Approval to Acquire Control of Health Partners Plans, Inc.

Thomas Jefferson University, a Pennsylvania nonprofit corporation, has filed an application regarding the acquisition of control of Health Partners Plans, Inc., a Pennsylvania domestic nonstock, nonprofit health maintenance organization, by acquiring the 50% ownership interest in Health Partners Plans, Inc. currently indirectly held by Temple University Health System, Inc. The filing was received on May 5, 2021, and was made under the requirements of Article XIV of The Insurance Company Law of 1921 (40 P.S. §§ 991.1401—991.1413).

Persons wishing to comment on this acquisition are invited to submit a written statement to the Insurance Department (Department) within 30 days from the date of publication of this notice in the *Pennsylvania Bulletin*. Each written statement must include the name, address and telephone number of the interested party; identification of the application to which the statement is addressed; and a concise statement with sufficient detail and relevant facts to inform the Department of the exact basis of the statement. Written statements must be e-mailed to Cressinda Bybee, cbybee@pa.gov. Comments received will be part of the public record regarding the filing and will be forwarded to the applicant for appropriate response.

JESSICA K. ALTMAN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 21-818. Filed for public inspection May 21, 2021, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Implementation of Act 114 of 2020

Public Meeting held  
May 6, 2021

*Commissioners Present:* Gladys Brown Dutrieuille, Chairperson; David W. Sweet, Vice Chairperson; Ralph V. Yanora; John F. Coleman, Jr.

*Implementation of Act 114 of 2020; M-2020-3023323*

#### Final Implementation Order

*By the Commission:*

On November 23, 2020, Governor Wolf signed into law Act 114 of 2020, which amends the Fiscal Code, 72 P.S. §§ 1 et seq. Act 114, inter alia, establishes geographical limits on energy resources that qualify as Tier II re-

sources under the Alternative Energy Portfolio Standards (AEPS) Act, 73 P.S. §§ 1648.1 et seq. The Pennsylvania Public Utility Commission's (Commission) administrative responsibilities for implementing the provisions of Act 114 are contained within Sections 10 and 14 of Act 114. In general, Sections 10 and 14 amend the Fiscal Code at Article XVII-E (relating to the AEPS Act) by adding Sections 1728-E and 1799.10-E, respectively. This Final Implementation Order provides the Commission's interpretation as well as implementation of Sections 10 and 14 of Act 114.

### Background

Section 10 of Act 114 of 2020 revises the definition of customer-generator in Section 2 of the AEPS Act, 73 P.S. § 1648.2, by adding new distributed generation systems that qualify as customer generators. Specifically, it adds to the definition of customer-generator net-metered distributed generation systems owned, operated, or supporting the Department of Military and Veterans Affairs (DMVA) on property owned or leased and operated by the DMVA with a nameplate capacity not exceeding the DMVA's annual electric needs to support the DMVA's facilities on its property.

Section 14 of Act 114 of 2020 established a limitation to Section 4 of the AEPS Act, 73 P.S. § 1678.4, that energy derived from alternative energy sources (AES) inside the geographical boundaries of Pennsylvania shall be eligible to meet compliance requirements under the AEPS Act. Section 4 also provides that energy derived from AESs located outside the geographical boundaries of the Commonwealth but within the service territory of a regional transmission organization (RTO) that manages the transmission system in any part of Pennsylvania shall be eligible to meet the AEPS Act compliance requirements of EDCs or electric generation suppliers (EGSs) located within the service territory of the same RTO. Finally, Section 4 provides that AESs located in the PJM Interconnection, L.L.C. RTO (PJM) or its successor service territory shall be eligible to fulfill the AEPS Act compliance obligations of all EDCs and EGSs. See 73 P.S. § 1648.4.

On January 14, 2021, the Commission adopted a Tentative Implementation Order (Tentative Order) at the above referenced Docket seeking comments on proposed interpretations and implementation of Sections 10 and 14 of Act 114.<sup>1</sup> Written comments were to be submitted within 30 days of the publication of the Tentative Order in the *Pennsylvania Bulletin*, January 30, 2021.<sup>2</sup>

Comments were filed by the following: the Appalachian Region Independent Power Producers Association (ARIPPA); Cleveland-Cliffs Steel LLC (Cleveland-Cliffs); Constellation/ExGen, Inc. (Constellation), and Exelon Generation Company, LLC (ExGen) (collectively Constellation/ExGen); the Virginia Electric and Power Company (d/b/a Dominion Energy Virginia) (Dominion Energy); Duquesne Light Company (Duquesne Light); Metropolitan Edison Company (FirstEnergy), Pennsylvania Power Company, and West Penn Power Company (collectively FirstEnergy); PPL Electric Utilities Corporation (PPL Electric); WGL Energy Services, Inc. (WGL Energy); Wheelabrator Technologies;<sup>3</sup> Senator David G.

<sup>1</sup> See Implementation of Act 114 of 2020, Tentative Order at Docket No. M-2020-3023323 (entered January 14, 2021).

<sup>2</sup> The Tentative Order was published in the *Pennsylvania Bulletin* on January 30, 2021 at 51 Pa.B. 667.

<sup>3</sup> Wheelabrator Technologies' comments generally stated that they support the Commission's Tentative Order and support adopting it without changes. Accordingly, further discussion of these comments is unnecessary.

Argall, Senator Lisa M. Boscola, Representative Frank Burns and Representative Doyle Heffley (collectively the Legislature).<sup>4</sup>

### Discussion

## I. SECTION 10 OF ACT 114

### A. Section 1728-E

This Section revises the definition of customer-generator in Section 2 of the AEPS Act, 73 P.S. § 1648.2, by adding new distributed generation systems that qualify as customer generators. The definition of customer-generator in Section 2 of the AEPS Act defines a customer-generator as a nonutility owner or operator of a net metered distributed generation system with a nameplate capacity of not greater than 50 kilowatts if installed at a residential service or not larger than 3,000 kilowatts at other customer service locations. However, customers may exceed the three megawatt limit up to five megawatts when such customers make their systems available to operate in parallel with the electric utility during grid emergencies as defined by the regional transmission organization or where a microgrid is in place for the primary or secondary purpose of maintaining critical infrastructure, such as homeland security assignment, emergency services facilities, hospitals, traffic signals, wastewater treatment plants or telecommunications facilities, provided that technical rules for operating generators interconnected with facilities of an electric distribution company (EDC), electric cooperative or municipal electric system have been promulgated by the Institute of Electrical and Electronic Engineers and the Pennsylvania Public Utility Commission.

Section 1728-E specifically states the following:

The definition of "customer-generator" in Section 2 of the act of November 30, 2004 (P.L. 1672, No. 213), known as the Alternative Energy Portfolio Standards Act, shall include net-metered distributed generation systems owned, operated or supporting the Department of Military and Veterans Affairs on property owned or leased and operated by the Department with a nameplate capacity not to exceed the Department's annual electric needs to support the Department's facilities on its property.

72 P.S. § 1728-E.

In the Tentative Order, the Commission stated that Section 1728-E's addition to the definition of customer-generator includes net-metered distributed generation systems owned, operated, or supporting the DMVA on property owned or leased and operated by the DMVA with a nameplate capacity not exceeding the DMVA's annual electric needs to support the DMVA's facilities on its property. In the Tentative Order the Commission proposed to interpret this section as permitting the DMVA to own or operate net-metered distributed generation systems with a nameplate capacity that does not exceed the annual electric needs of the DMVA's facilities on its respective property.

In the Tentative Order we noted that Section 1728-E did not include other limiting language on the nameplate capacity to the net-metered distributed generation systems identified in the AEPS Act's amended definition of customer-generator. The Commission proposed to interpret Section 1728-E as permitting DMVA to own or operate net-metered distributed generation systems that exceed the three and five megawatt limitations. Addition-

<sup>4</sup> The comments submitted from each member of the Legislature were identical copies. Accordingly, the Commission will address the Legislature's comments as one.

ally, we noted in the Tentative Order that this is limited by several conditions. First, we interpreted the phrase “owned, operated or supporting the DMVA” as allowing DMVA or a third-party to own or operate the system, provided the system is designed and interconnected in a way that it only supports facilities operated by DMVA. Second, the system must be located on property owned or leased and operated by DMVA. Third, if DMVA intends to use virtual meter aggregation, any load meter DMVA intends to aggregate must be on a DMVA account, be within two miles of the facility and be in the same EDC’s service territory. Finally, we proposed that the net-metered distributed generation system cannot exceed the respective DMVA’s property’s annual cumulative electric needs.

With respect to a DMVA property’s annual electric needs, the Commission noted in the Tentative Order that DMVA’s annual electric needs may vary from year to year due to weather. The Commission also recognized that the output of any AES, such as solar photovoltaic facilities will vary from year to year due to weather conditions. As such, designing and installing an AES that exactly matches the DMVA’s annual electric needs is difficult, if not impossible to implement. Accordingly, the Commission proposed in the Tentative Order a 110% design limit on any AES the DMVA proposes to net meter under this provision of Act 114. The Commission opined in the Tentative Order that this would be a reasonable way to implement the phrase “with a nameplate capacity not to exceed the Department’s annual electric needs to support the Department’s facilities on its property.”

The Commission clarified in the Tentative Order that the 110% limitation was proposed to be part of the criteria used in designing a system that is installed to support the DMVA’s facilities on its property. The Commission proposed that the 110% design limit would be based on DMVA’s historical or estimated annual system output and facility usage, both of which are affected by weather that is beyond the control of DMVA.

The Commission further proposed that the 110% limitation should apply to the cumulative consumption of all DMVA customer meters that qualify for virtual meter aggregation under the AEPS Act and the Commission’s regulations. As such, the Commission proposed that the 110% limitation as a design criterion of DMVA AESs shall apply to the cumulative consumption of all meters that are eligible for virtual meter aggregation in accordance with the AEPS Act and the Commission’s regulations.

The Tentative Order also addressed new construction that does not have historical usage data, to which the Commission proposed the use of square footage, occupancy, and comparisons to similar buildings as all valid recommendations that could be utilized. The Commission recognizes that the DMVA or its AES developer has the responsibility to provide an estimate of annual electric consumption for the new building, along with supporting data, to demonstrate that the AES design does not exceed 110% of that annual consumption. The DMVA or its AES developer will have to provide adequate support for their usage estimate, which may include one or more years of historical usage or estimates based on similarly equipped and utilized buildings. The Commission proposed that this estimated consumption be provided to the EDC when filing the interconnection application.

In the Tentative Order, the Commission indicated that the 110% limitation should apply as a design criterion for the sizing of an entire AES, to include any proposed expansion of an existing system. As such, the Commission

proposed as policy that DMVA customer-generators with third-party owned and operated systems should provide, with the interconnection application, adequate supporting data to demonstrate that the AES is designed to provide no more than 110% of the DMVA customer-generator’s annual electric usage.

#### 1. *Comments*

FirstEnergy, Duquesne Light and PPL Electric submitted comments in response to the Commission’s proposed interpretation of Section 1728-E. FirstEnergy commented that the Commission should ensure that EDCs retain the ability to approve or disapprove DMVA customer-generators. FirstEnergy expressed concern that Section 1728-E should not be interpreted to mean that DMVAs have an absolute right to interconnect AESs with a 5 MW or greater capacity. FirstEnergy Comment at 4-5. FirstEnergy asserts that EDCs must retain the ability to deny interconnection requests from DMVAs that will compromise their ability to provide safe and reliable service to their customers. FirstEnergy Comment at 5. FirstEnergy requests that the Commission affirmatively state that EDCs will still have this capability with respect to DMVAs requesting interconnection regardless of whether the facility in question complies with the newly revised definition of customer-generators. FirstEnergy Comment at 5.

Duquesne Light also commented on the Commission’s proposed interpretation of Section 1728-E and requested that the Commission clarify whether the Commission’s regulation governing large customer-generators, 52 Pa. Code § 75.16, will apply to DMVA projects that exceed 3 MW. Duquesne Light Comment at 3. Duquesne Light noted that Section 75.16(b) of the Commission’s regulations provides that customer-generator projects greater than 3 MW and up to 5 MW may be eligible for net metering if the customer-generator makes the system available to operate in parallel with the grid during grid emergencies. Duquesne Light Comment at 3. Duquesne Light contends that the Commission’s Tentative Order is silent as to whether Act 114 exempts DMVA projects from Section 75.16 and that without express clarification, Duquesne Light would interpret Act 114 as requiring DMVA net-metered projects over 3 MW in size to comply with Section 75.16. Duquesne Light does not offer a recommendation as to how the Commission should interpret Act 114’s interaction with Section 75.16 but advises that the Commission should clarify this in the Final Implementation Order.

Finally, PPL Electric commented on the Commission’s proposed maximum size for DMVA projects. While PPL Electric agreed with the Commission that it is difficult to pinpoint the exact size of a system at a given point in time to match a DMVA usage profile, PPL Electric contends that the Commission’s 110% limit is too high considering that this would apply to large AESs in excess of 5 MW. PPL Electric Comment at 3. PPL Electric recommends that the Commission carefully consider the implications of establishing a 110% limit for systems that have no maximum size limits like DMVA sites and further cautions that additional 10% of generation above a site’s load could be significant with respect to sites over 5 MW. PPL recommends that the Commission consider setting the size limit at 105% for any DMVA site in excess of 5 MW. PPL Electric Comment at 3.

#### 2. *Disposition*

Upon review of the comments, the Commission will adopt the Tentative Order’s interpretation of Section 1728-E with amendments. The Commission agrees that it

should clarify how it will interpret Section 1728-E. The Commission clarifies that EDCs will retain the ability to approve or disapprove AESs at DMVA sites. We recognize that while there has been no limiting language with respect to the nameplate capacity of DMVA project sizes, we will interpret Section 1728-E as still requiring EDC approval for interconnection. With respect to the requirements the AEPS Act imposes upon customer-generator AESs that are 3 MW and up to 5 MW the Commission interprets Section 1728-E as not imposing the requirement to operate in parallel during a grid emergency. The language in Section 1728-E expressly addresses DMVA projects and it does not impose any requirement that DMVA projects operate in parallel during grid emergencies. Accordingly, the Commission will not recognize the requirements for customer-generators enumerated under Section 2 of the AEPS Act, 73 P.S. § 1648.2, as applying to DMVA projects.

Finally, the Commission agrees with PPL Electric's recommendation that the size limit for DMVA customer-generators proposed in the Tentative Order was too high considering the effects from large customer generators. Accordingly, the Commission amends its previous DMVA AES project size limit from 110% to 105% of the electricity needed at the DMVA service site.

## II. SECTION 14 OF ACT 114

### A. Section 1799.10-E(a)(1)

In the Tentative Order, the Commission determined that this Section creates a limitation to Section 4 of the AEPS Act, 73 P.S. § 1648.4, that established, inter alia, that energy derived from AESs inside the geographical boundaries of Pennsylvania shall be eligible to meet compliance requirements under the AEPS Act. Section 4 also provides that energy derived from AESs located outside the geographical boundaries of the Commonwealth but within the service territory of an RTO that manages the transmission system in any part of Pennsylvania shall be eligible to meet the AEPS Act compliance requirements of EDCs or EGSs located within the service territory of the same RTO. Finally, Section 4 provides that AESs located in the PJM RTO or its successor service territory shall be eligible to fulfill the AEPS Act compliance obligations of all EDCs and EGSs. See 73 P.S. § 1648.4.

Section 1799.10-E(a) specifically states the following:

(1) Notwithstanding Section 4 of the act of November 30, 2004 (P.L. 1672, No. 213), known as the Alternative Energy Portfolio Standards Act, in order to qualify as an alternative energy source eligible to meet the Tier II share of this Commonwealth's compliance requirements under Section 3(c) of the Alternative Energy Portfolio Standards Act and to qualify for Tier II Alternative Energy Portfolio credits, each Tier II source must do one of the following:

(i) Directly deliver the electricity it generates to a retail customer of an electric distribution company or to the distribution system operated by an electric distribution company operating within this Commonwealth and currently obligated to meet the compliance requirements contained under the Alternative Energy Portfolio Standards Act.

(ii) Be directly connected to the electric system of an electric cooperative or municipal electric system operating within this Commonwealth.

(iii) Connect directly to the electric transmission system at a location that is within the service

territory of an electric distribution company operating within this Commonwealth.

(iv) Generate electricity at generation units whose construction and operation is subject to and complies with permits issued by the Department of Environmental Protection of the Commonwealth under the Act of January 8, 1960 (1959 P.L. 2119, No. 787), known as the Air Pollution Control Act, or the Act of July 7, 1980 (P.L. 380, No. 97), known as the Solid Waste Management Act.

72 P.S. § 1799.10-E(a)(1). Section 1799.10-E(a)(1) modifies Section 4 of the AEPS Act to limit the eligibility of Tier II AESs to those that meet the requirements of subparagraphs i through iv.

#### 1. Comments

No comments were submitted concerning Section 1799.10-E(a)(1), specifically. However, we received comments from ARIPPA, the Legislature and Wheelabrator Technologies that generally supported adopting the entire Tentative Order.

#### 2. Disposition

Upon review of the Comments, the Commission adopts the Tentative Order interpretation and will permit any Tier II system meeting the geographic requirements of Section 4 of the AEPS Act, 73 P.S. § 1648.4, as continuing to be eligible to generate Tier II alternative energy credits (AECs).

### B. Section 1799.10-E(a)(1)(i)

In the Tentative Order, we determined that this subsection provides two scenarios where AESs qualify to generate Tier II AECs for use by EDCs and EGSs for compliance with the AEPS Act Tier II share requirements. The first scenario that qualifies is when the AES directly delivers the electricity it generates to an EDC's retail customer within the Commonwealth and is currently obligated to meet the compliance requirements contained under the AEPS Act. The Commission proposed to interpret this section as applying to Tier II AESs physically connected to an EDC's customer's internal electric system.

The second scenario that qualifies is when a Tier II AES directly delivers its power to the distribution system operated by an EDC that has an obligation to meet the AEPS Act compliance requirements. The Commission proposed to interpret this provision as applying to Tier II AESs physically interconnected to a Pennsylvania EDC's distribution system.

#### 1. Comments

The Commission did not receive specific comments concerning Section 1799.10-E(a)(1)(i). However, we received comments from ARIPPA, the Legislature and Wheelabrator Technologies that generally supported adopting the entire Tentative Order.

#### 2. Disposition

Upon review of the comments, the Commission adopts the Tentative Order interpretation of Section 1799.10-E(a)(1)(i). As the Commission did not receive specific comments suggesting amendments to the proposed interpretation of this subsection, the Commission adopts its proposed interpretation of Section 1799.10-E(a)(1)(i) from its Tentative Order in its entirety and will recognize Tier II AESs physically connected to an EDC's customer's internal electric system and Tier II AESs directly delivering its power to the distribution system operated by an EDC as qualifying for Tier II treatment under the AEPS Act.

C. *Section 1799.10-E(a)(1)(ii)*

This subsection addresses the scenario where a Tier II AES is directly connected to the electric system of an electric cooperative or municipal electric system operating within the Commonwealth. The Commission proposed to interpret this subsection as permitting Tier II AESs physically connected to a Pennsylvania electric cooperative's or municipal electric system's distribution network to qualify to generate energy and AECs eligible to be used by EDCs and EGSs to meet their Tier II share requirements.

1. *Comments*

The Commission did not receive specific comments concerning Section 1799.10-E(a)(1)(ii). However, we received comments from ARIPPA, the Legislature and Wheelabrator Technologies that generally supported adopting the entire Tentative Order.

2. *Disposition*

Upon review of the comments, the Commission adopts the Tentative Order interpretation of Section 1799.10-E(a)(1)(ii). As the Commission did not receive specific comments suggesting amendments to the proposed interpretation of this subsection, the Commission adopts its proposed interpretation of Section 1799.10-E(a)(1)(ii) from its Tentative Order in its entirety. The Commission will recognize Tier II AESs physically connected to a Pennsylvania electric cooperative's or municipal electric system's distribution network as able to qualify to generate energy and AECs eligible to be used by EDCs and EGSs to meet their Tier II share requirements.

D. *Section 1799.10-E(a)(1)(iii)*

This subsection addresses the scenario where a Tier II AES is directly connected to the electric transmission system at a location that is within the service territory of an EDC. The Commission proposed to interpret this subsection as permitting Tier II AESs physically located in Pennsylvania and interconnected to a transmission system that is also located in Pennsylvania to qualify to generate energy and AECs eligible to be used by EDCs and EGSs to meet the AEPS Act Tier II share requirements. This would include utility scale Tier II AESs that are physically interconnected to a transmission system within an EDC's service territory and operating under PJM rules as a wholesale generator.

1. *Comments*

The Commission did not receive specific comments concerning Section 1799.10-E(a)(1)(iii). However, we received comments from ARIPPA, the Legislature and Wheelabrator Technologies that generally supported adopting the entire Tentative Order.

2. *Disposition*

Upon review of the comments, the Commission adopts the Tentative Order interpretation of Section 1799.10-E(a)(1)(iii). As the Commission did not receive specific comments suggesting amendments to the proposed interpretation of this subsection, the Commission adopts its proposed interpretation of Section 1799.10-E(a)(1)(iii) from its Tentative Order in its entirety. The Commission will recognize Tier II AESs physically located in Pennsylvania and interconnected to a transmission system that is also located in Pennsylvania to qualify to generate energy and AECs eligible to be used by EDCs and EGSs to meet the AEPS Act Tier II share requirements. This will include utility scale Tier II AESs that are physically interconnected to a transmission system

within an EDC's service territory and operating under PJM rules as a wholesale generator.

E. *Section 1799.10-E(a)(1)(iv)*

This subsection addresses the scenario where Tier II AESs generate electricity at generation units whose construction and operation is subject to and complies with permits issued by the Department of Environmental Protection (Department) of the Commonwealth under the Air Pollution Control Act, 35 P.S. §§ 4001 et seq., or the Solid Waste Management Act, 35 P.S. § 6018.101 et seq. The Commission proposed to interpret this subsection as permitting AESs to qualify for Tier II AECs when the Department has issued permits to generation units that comply with the Air Pollution Control Act or the Solid Waste Management Act.

1. *Comments*

The Commission did not receive specific comments concerning Section 1799.10-E(a)(1)(iv). However, we received comments from ARIPPA, the Legislature and Wheelabrator Technologies that generally supported adopting the entire Tentative Order.

2. *Disposition*

Upon review of the comments, the Commission adopts the Tentative Order interpretation of Section 1799.10-E(a)(1)(iv). As the Commission did not receive specific comments suggesting amendments to the proposed interpretation of this subsection, the Commission adopts its proposed interpretation of Section 1799.10-E(a)(1)(iv) from its Tentative Order in its entirety. The Commission will interpret this section as permitting AESs to qualify for Tier II AECs when the Department has issued permits to generation units that comply with the Air Pollution Control Act of the Solid Waste Management Act.

F. *Section 1799.10-E(a)(2)(i)*

This subsection provides that a Tier II AES's certification originating within the geographical boundaries of the Commonwealth granted prior to the effective date of Act 114 will not be affected by Section 1799.10-E or Section 4 of the AEPS Act. This section sets forth a condition to which Section 1799.10-E(a) does not apply. Specifically, Section 1799.10-E(a)(2)(i) states the following:

(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 Tier II energy generator as a qualifying alternative energy source eligible to meet the Tier II share of this Commonwealth's alternative energy portfolio compliance requirements under the Alternative Energy Portfolio Standards Act.

72 P.S. § 1799.10-E(a)(2)(i).

The Commission proposed to interpret “[a] certification originating within the geographical boundaries of this Commonwealth. . .” in the same manner it interpreted this language in the Implementation of Act 40 of 2017, Docket No. M-2017-2631527 (Order entered May 3, 2018). In the Implementation of Act 40 of 2017, the Commission interpreted Section 2804(2)(i) of the Administrative Code of 1929, 71 P.S. § 714(2)(i), as closing Pennsylvania's borders to solar photovoltaic share AECs.

The Commission recognized that the language in Section 2804(2)(i) was unclear and that the Commission was obligated to ascertain the General Assembly's intent

under the Rules of Statutory Construction. *Id.* at 17-18. The Commission received comments from Governor Tom Wolf, and several Senators and Representatives. As lawmakers who effectuated Act 40, the Commission found that these commenters were uniquely qualified to provide information regarding the intent of the statute. *Id.* Each of the comments provided by lawmakers stated that their intent was to “close the borders” for Tier I solar credit qualifications and was consistent with the design utilized by a number of our neighboring states to promote economic development. *Id.* This interpretation was further consistent with the supplemental interpretation provided in the Joint Statement of Chairman Gladys M. Brown-Dutrieuille and Vice Chairman Andrew G. Place.

Accordingly, the Commission opined:

When reviewing the totality of comments described above, it becomes evident that Section 2804(1)(i), 2804(1)(ii), and 2804(1)(iii) explicitly describe the qualifications for Tier I Solar facilities after passage of Act 40; Section 2804(2)(i) clarifies that all Tier I Solar facilities certified before passage of Act 40 that are located within the geographic boundaries of Pennsylvania are to be held harmless from this legislation; and 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. Therefore, we believe we must support the adoption of our interpretations of Section 2804(2)(i) and 2804(2)(ii) in a manner consistent with the Joint Statement by Chairman Gladys M. Brown-[Dutrieuille] and Vice Chairman Andrew G. Place to the Tentative Order. The interpretation of Section 2804(2)(i) of the Adm. Code, 71 P.S. § 714(2)(i) is as follows:

Section 2804(2)(i)—We interpret the phrase “[a] certification originating within the geographical boundaries of this Commonwealth. . .” as a facility located within Pennsylvania having received an AEPS Act Tier I solar photovoltaic share certification.

*Id.* at 20.

The Commission accordingly proposed to interpret the phrase “[a] certification originating within the geographical boundaries of this Commonwealth. . .” in Section 1799.10-E(a)(2)(i) as meaning a facility located within Pennsylvania having received an AEPS Act Tier II certification.

#### 1. Comments

The Commission received comments from the Legislature that approved the Commission’s interpretation of “[a] certification originating within the geographical boundaries of this Commonwealth. . .” in Section 1799.10-E(a)(2)(i). They collectively opined that:

This statute is not intended to “grandfather” any out-of-state facilities certified before November 23, 2020, to generate Tier II AEPS credits, except for those Tier II AECs subject to “existing contracts” used for AEPS compliance during the limited period for which they are specifically “grandfathered” in Act 114. To allow any Tier II AESs not located in Pennsylvania, including out-of-state AESs located in a transmission zone extending into the Commonwealth, does nothing to “close the borders.”

Legislature Comments at 2.

ARIPPA also expressed support of this interpretation asserting that limiting the eligibility of AEPS Act Tier II

as proposed in the Tentative Order is consistent with prior legislative action by Pennsylvania and neighboring states to encourage domestic alternative energy production and economic development. ARIPPA Comment at 7. Further, ARIPPA agrees that the Tentative Order implementing Section 14 is consistent with the Commission’s precedent and contends that there are sufficient Tier II generation sources located in Pennsylvania to produce the AECs necessary for all EDCs and EGSs to comply with the current and future AEPS Act Tier II requirements. ARIPPA Comment at 8 and 10.

#### 2. Disposition

Upon review of the comments, the Commission adopts the Tentative Order interpretation. Given the Legislature’s comments clearly expressing the intent of Section 1799.10-E(a)(2)(i) and the Commission’s previous interpretation of the phrase “[a] certification originating within the geographical boundaries of this Commonwealth. . .” the Commission will interpret this phrase in Section 1799.10-E(a)(2)(i) as meaning a facility located within Pennsylvania having received an AEPS Act Tier II certification.

#### G. Section 1799.10-E(a)(2)(ii)

This subsection addresses the scenario where a Tier II AES had received a Pennsylvania certification as an AES eligible to meet the Tier II share requirement prior to November 23, 2020, the effective date of Act 114. Specifically, this subsection grandfathers certification of a Tier II AES with a binding written contract for the sale and purchase of Tier II AECs derived from Tier II energy sources for the remaining term of the contract as of the effective date of this section, but only until the current term of the contract terminates.

In the Tentative Order we proposed to interpret the language used in Section 1799.10-E(a)(2)(ii) consistently with the Commission’s interpretation of the same language used in Section 2804(2)(ii) of the Administrative Code of 1929 in relation to the Commission’s treatment of solar photovoltaic resources. 71 P.S. § 714.

Specifically, we interpreted this section to only permit out-of-state facilities that are (a) already certified as a Tier II AES and that (b) have entered into a contract with a Pennsylvania EDC or EGS serving Pennsylvania customers, for the sale of Tier II AECs, to maintain certification until the expiration of the contract. If the Commission deems the existing contract for Tier II AECs eligible, eligibility will be valid for the term of the contract and in accordance with the banking provisions. For open-ended contracts or contracts that automatically renew, we proposed that eligibility will terminate at the end of the current term of the last renewal that occurred prior to November 23, 2020.

#### 1. Comments

The Commission received comments from Constellation/ExGen, Dominion Energy, Duquesne Light, PPL Electric and WGL Energy. Constellation/ExGen commented that contracting for AECs is rarely accomplished through a single contract between a facility and an EDC or EGS. Constellation/ExGen Comment at 3. Constellation/ExGen suggests that we clarify that all contracts with EGSs, EDCs and/or their wholesale suppliers, as well as any other entity holding contracts entered into prior to November 23, 2020 and within the chain of production of the Tier II AECs supplying those contracts may file a petition.

Similarly, Dominion Energy recommends that the Commission amend its language from the Tentative Order to

indicate that AECs that are generated by an out-of-state AES and sold to an intermediary party that holds an existing contractual relationship with a Pennsylvania EDC or EGS should be recognized as being “grandfathered” under Section 1799.10-E(a)(2)(ii). Dominion Energy Comment at 3. Dominion Energy agrees with the Commission that Section 1799.10-E(a)(2)(ii)’s intent is to “grandfather” Tier II sources certified prior to the enactment of Act 114 with existing contracts. Dominion Energy Comment at 2. However, Dominion Energy believes that the Commission should read Section 1799.10-E(a)(2)(ii) liberally because this could immunize the Commonwealth from contracts clause and takings claims and it would lessen the burden on regulated entities in maintaining compliance with the AEPS Act. Dominion Energy Comment at 2.

Constellation/ExGen and Dominion Energy also contend that the Commission should take a liberal view as to what constitutes an agreement in existence prior to November 23, 2020. Dominion Energy asserts that there is no requirement in Pennsylvania contract law to support the Commission’s proposed requirement that there be a binding written contract to qualify for the agreement being in existence prior to November 23, 2020. Dominion Energy Comment at 4. Dominion Energy argues that there is no intent in the legislation that any specific type of written contract is required and that there are no preconceived notions as to how or in what form the parties must contract. Dominion Energy Comment at 4-5. As such Dominion Energy proposes the following change to the language on page 10 of the Commission’s Tentative Order:

[W]e interpret this section to only permit out-of-state facilities that are (a) already certified as a Tier II AES and that (b) provide evidence demonstrating the formation of a contractual relationship or relationships that result in the sale of Tier II AECs to a Pennsylvania EDC or EGS serving Pennsylvania customers, to maintain certification until the expiration of the contract.

Dominion Energy Comment at 5. Similarly, Constellation/ExGen requests that the Commission be flexible in its treatment of evidence supporting binding written contracts that EDCs, EGSs and wholesale suppliers submit given that Act 114 gave only one business day notice of the change to out-of-state Tier II AECs. Constellation/ExGen Comment at 4. Constellation/ExGen recommends that the Commission recognize broker confirmations as binding written contracts under Act 114. Constellation/ExGen Comment at 4.

Additionally, Constellation/ExGen, Duquesne Light, FirstEnergy, PPL Electric and WGL Energy all expressed concern regarding the treatment of AECs generated out-of-state prior to November 23, 2020 that are not part of an existing contract. Duquesne Light recommended that Tier II credits retain their Tier II attribute assigned to it at the time of generation until it expires because this would allow EGSs to use any credits that were appropriately secured and put into reserve prior to the legislative changes imposed by the AEPS Act. Duquesne Light Comment at 5. Duquesne Light, FirstEnergy and PPL Electric all suggested that the Commission direct PJM-GATS to issue unique labels for in-state Tier II AECs like the labeling created to designate in-state solar resources from our implementation of Act 40 of 2017. Duquesne Light Comment at 4, FirstEnergy Comment at 8, PPL Electric Comment at 4. WGL Energy also requested clarification that AECs generated out-of-state on or before November 23, 2020 qualify for Tier II treatment and do

not require a petition to qualify these AECs under the AEPS Act. WGL Energy Comment at 2.

The Commission also received comments from the Legislature. The Legislature opined:

Regarding “grandfathering” of existing contracts, language was added to further emphasize that existing contracts shall be allowed to sunset, however “only until the current term of the contract terminates.” Once those contracts sunset, they will not be renewed if the Tier II AES is not within the geographical boundaries of the Commonwealth.

With respect to how banked AECs from out-of-state Tier II AESs will be categorized and permitted to fulfill the AEPS Tier II requirement, the intent of Act 114 is that out-of-state AESs will no longer qualify to meet the compliance requirements of Tier II of the AEPS; however, out-of-state Tier II AESs could still be eligible for selling AECs created prior to November 23, 2020 if the AESs were registered for AEPS prior to that date.

The Legislature Comment at 2.

## 2. Disposition

The Commission will adopt the Tentative Order’s proposed interpretation of Section 1799.10-E(a)(2)(ii) with clarification. The Commission agrees with Constellation/ExGen and Dominion Energy that clarification is needed regarding how we will interpret the grandfathering provision in Section 1799.10(a)(2)(ii). A key phrase in this section is “for the sale and purchase of alternative energy credits.” AECs are defined in the AEPS Act and our regulations as “[a] tradable instrument that is used to establish, verify and monitor compliance with [the AEPS Act].” The definition goes on to state that “[a] unit of credit shall equal one megawatt hour of electricity from an alternative energy source.” See 73 P.S. § 1648.2 and 52 Pa. Code § 75.1. A Tier II system that produces electricity is an alternative energy source under the AEPS Act. See 73 P.S. § 1648.2 (definition of alternative energy source). Therefore, one megawatt hour of electricity produced by a Tier II system can produce one AEC, if it is used to meet the requirements of the AEPS Act and meets all the other requirements of the AEPS Act, as amended.

We clarify that Section 1799.10-E(a)(2)(ii) specifically requires that the contract relate to the sale and purchase of AECs. Accordingly, in order to qualify under Section 1799.10-E(a)(2)(ii), the sale and purchase of a Tier II AEC must be connected, in some way, to use by an EDC or EGS for compliance with the AEPS Act before it can even be considered an AEC. We further clarify that Section 1799.10-E(a)(2)(ii) only applies to the amount of credits committed to by an out-of-state certified facility to an EDC or EGS.

We agree partly with Constellation/ExGen, and we clarify that all contracts with EGSs, EDCs and/or their wholesale suppliers, as well as any other entity holding contracts entered into prior to November 23, 2020, and within the chain of production of the Tier II AECs supplying those contracts may qualify for recognition as a Tier II AEC under the AEPS Act. However, the Commission will only accept and review petitions for such contracts from regulated entities, i.e., EDCs and EGSs. In the Implementation of Act 40 of 2017, the Commission accepted petitions for recognition of out-of-state AEPS Act Tier I solar photovoltaic share from unregulated entities i.e., AEC wholesale suppliers. The submissions from unregulated entities made it challenging for the Commis-

sion to exert its authority over what information it received from such unregulated entities. This ultimately resulted in an inefficient process of reviewing the validity of grandfathered out-of-state solar share Tier I AECs and in instances of duplications of petitions for the same AECs. Therefore, in implementing the grandfathering provision for Tier II AECs, the Commission will only accept petitions for recognition of out-of-state Tier II AECs from EDCs and EGSs.

The petitions that EDCs and EGSs submit may seek to have the AECs covered by the contracts with their wholesale supplier certified for compliance with the AEPS Act Tier II requirement. We emphasize that only the AECs directly attributable to an EGS serving load in Pennsylvania, an EDC serving load in Pennsylvania or its wholesale supplier will be eligible to be used for the AEPS Act Tier II share requirement pursuant to Section 1799.10(a)(2)(ii).

Additionally, to ensure certainty among marketplace participants, the Commission will accept petitions to qualify eligible out-of-state Tier II AECs no later than one-hundred-and-eighty (180) days from the date of the entry date of this order. The Commission will not review petitions for eligible out-of-state Tier II AECs after the one-hundred-and-eighty (180) days from the entry date of this order.

With respect to Dominion Energy's comments regarding binding written contracts, the Commission disagrees that the Tentative Order creates an artificial requirement for a binding written contract. Section 1799.10-E(a)(2)(ii) expressly states:

- (ii) Certification of a Tier II source with a binding written contract for the sale and purchase of alternative energy credits derived from Tier II energy sources for the remaining term of the contract as of the effective date of this section, but only until the current term of the contract terminates.

72 P.S. § 1799.10-E(a)(2)(ii).

Despite Pennsylvania case law recognizing the formation of contracts without a written agreement, the statute the Commission is tasked with implementing expressly directs that contracts for Tier II AECs must be written binding contracts. Therefore, the Commission will not stray from the plain meaning of the requirements in the statute.

Finally, the Commission addresses the comments submitted from Duquesne Light, FirstEnergy, PPL Electric and WGL Energy regarding the labeling of Tier II AECs that were generated out-of-state prior to November 23, 2020 and the Tier II AECs generated out-of-state after November 23, 2020 pursuant to a contract in existence prior thereto. The Commission did not include a proposed implementation of Section 1799.10-E(a) in its Tentative Order but based upon the comments it received requesting that "grandfathered" AECs receive distinguishable labeling from PJM-GATS, the Commission must discuss what has transpired administratively in the interim between the enactment of Act 114 and the final implementation of Act 114. As of November 23, 2020, PJM-GATS tentatively suspended out-of-state Tier II AES facilities' Pennsylvania certification.<sup>5</sup> This was done to protect market participants by ensuring that no out-of-state Tier II AECs could be generated without an existing contract. However, this has no effect on out-of-state Tier II AECs generated prior to November 23, 2020, and these AECs retained their Pennsylvania certification label and

can be used for AEPS Act Tier II compliance in accordance with the banking provisions of the AEPS Act and Commission Regulations.

With respect to providing distinct labeling for Tier II AECs generated by out-of-state facilities after November 23, 2020, this is unnecessary. As there can be no Tier II AECs generated from an out-of-state facility after November 23, 2020, unless the Commission determines that there is a contract for AECs from the out-of-state facility that existed prior to November 23, 2020, there is no need to adopt a new labeling system for out-of-state Tier II AECs. The Commission will, however, reinstate a facility's Pennsylvania AEPS Act certification in PJM-GATS when the Commission grants a petition to approve a preexisting contract for Tier II AECs generated by an out-of-state facility after November 23, 2020. Accordingly, there is no need for a new labeling system for Tier II AECs generated out-of-state.

#### H. Section 1799.10-E(b)

This section provides that contracts entered into or renewed on or after the effective date of Section 1799.10-E, are subject to the provisions of Section 1799.10-E. In the Tentative Order, the Commission proposed to interpret this subsection as limiting the eligibility of systems certified under the contract exception in Subsection 1799.10-E(a)(2)(ii) to the duration of the contract for the sale and purchase of AECs where the contract was entered into prior to November 23, 2020. We also proposed to limit a Tier II AES owner from extending its facility's eligibility through a renewal of the original contract or subsequent contracts. However, the Commission further proposed that the AECs generated and transferred to an EDC or EGS prior to expiration of the contract would continue to be eligible to be used by that EDC or EGS to meet their Tier II share requirements in accordance with 52 Pa. Code § 75.69 (relating to the banking of AECs).

#### I. Implementation of Section 1799-E(b)

To implement this provision, the Commission proposed that any EDC or EGS seeking to use Tier II AECs generated after November 2020 from AESs located outside the Commonwealth that were acquired through contracts entered into prior to November 23, 2020, to meet their Tier II share requirements file a petition with the Commission after the entry date of the Final Implementation Order. The Commission proposed that EDCs and EGSs should clearly identify in their petitions the information they believe is pertinent for the Commission to determine whether their AECs are eligible to be used by the EDC or EGS to meet its AEPS Act Tier II share requirements. We set forth the proposed minimum information and supporting documentation that EDCs and EGSs should provide in their petitions as follows:

- (1) Complete and unredacted copies of all contracts, and amendment(s) thereto supporting the claim for approval of AECs to be used by the EDC or EGS to meet its Tier II share requirements of the AEPS Act;
- (2) Documentation that the out-of-state Tier II facilities were certified as an AEPS Act Tier II resource before November 23, 2020;
- (3) Documentation that the EDC or EGS entered into a contract prior to November 23, 2020, for the purchase of AECs;
- (4) Documentation of the expiration date of the contracts;
- (5) Documentation of the number of AECs being purchased by the EDC or EGS; and

<sup>5</sup> This tentative suspension has no effect on a facilities' certification in other states.

(6) Verification pursuant to 52 Pa. Code § 1.36.

The Commission proposed that EDCs and EGSs file their petitions with the Commission in accordance with 52 Pa. Code § 5.41. We further proposed that these petitions should be served on the Office of Consumer Advocate, the Office of Small Business Advocate, and the Bureau of Investigation and Enforcement.

#### 1. Comments

We received comments from Cleveland Cliffs, Constellation/ExGen and Dominion Energy regarding the implementation of Section 1799.10(b). The comments received focus on the documentation we proposed to request with a petition and what parties may file a petition for recognition of out-of-state Tier II AECs.

Cleveland Cliffs noted in its comments that while it is a licensed EGS, it does not provide its services to any third parties. Cleveland Cliffs Comment at 2. Instead, it provides electric power through the PJM wholesale market only for its own Pennsylvania and Ohio steelmaking operations as well as serving certain affiliates. Cleveland Cliffs Comment at 2. Since it is a licensed EGS, Cleveland-Cliffs Steel must comply with the AEPS Act. Cleveland-Cliffs Comment at 2. However, neither Cleveland-Cliffs nor its affiliates have cogeneration facilities physically located within Pennsylvania. Cleveland-Cliffs Comment at 2. Cleveland-Cliffs has met its Tier II AEPS Act requirements by supplying Tier II credits from within its own corporate structure which happens to reside outside of Pennsylvania. Cleveland-Cliffs Comment at 2. Cleveland-Cliffs requests that the Commission take into consideration Pennsylvania businesses that have internal business arrangements in place to support AEPS Act compliance. Specifically, it requests that we amend the language describing the minimum information and supporting documentation that must be submitted for proving an existing binding written contract. Cleveland Cliffs Comment 4.

Cleveland Cliffs suggests that the Commission request documentation showing that the EDC or EGS entered into a contract or arrangement prior to November 23, 2020, for the purchase, transfer or use of AECs. Cleveland-Cliffs Comment at 4. Additionally, Cleveland-Cliffs requests that we add another document request with the following language:

An EGS that limits its retail sales to itself and/or its affiliated companies may submit documentation of its arrangement(s) for the transfer or use of AECs generated by the EGS through internal corporate documents and cost accounting principles.

Cleveland-Cliffs Comment at 4.

Constellation/ExGen noted that when the Commission issued the Act 40 Final Implementation Order it was followed by a Secretarial Letter that included the requirement for petitions seeking to confirm that AECs generated by out-of-state facilities still qualified under the AEPS Act based on pre-existing contracts with EDCs or EGSs, for the remaining term of such contracts. Constellation/ExGen Comment at 2. Constellation/ExGen and Dominion Energy contend that the Commission should accept petitions from wholesale suppliers and other entities besides EDCs and EGSs. Constellation/ExGen Comment 2 and Dominion Energy Comment at 3. Specifically, Constellation/ExGen contends that the language we used in the Act 40 Clarification Order applies equally to the implementation of Act 114.

Constellation/ExGen also commented that the contracts submitted with petitions should be permitted to have

pricing information redacted and only be submitted confidentially if it becomes an issue during the proceeding. Constellation/ExGen contends that these binding written contracts contain sensitive pricing information and that this information is not necessary in proving the existence of a contract prior to November 23, 2020.

#### 2. Disposition

The Commission will adopt the Tentative Order's proposed implementation of Section 1799.10-E(b) with clarification. With respect to the comments received pertaining to the entities that may file petitions for out-of-state Tier II AECs, the Commission clarifies that it will accept petitions from EDCs and EGSs only. As previously stated, *supra*, this will enable the Commission to review petitions more efficiently for out-of-state Tier II AEC contracts and ensure that all of the regulated entities have recourse before the Commission. However, we emphasize that only the AECs directly attributable to an EGS serving load in Pennsylvania, an EDC serving load in Pennsylvania or its wholesale supplier will be eligible to be used for the AEPS Act Tier II share requirement pursuant to Section 1799.10-E(a)(2)(ii). To do otherwise would make Section 1799.10-E(a)(2)(ii) meaningless by making the exception become the rule, in that it would permit the sale and purchase of all credits generated by out-of-state facilities eligible and include contracts not entered into prior to November 23, 2020.

The Commission is cognizant that it will take additional time for review of petitions for recognition of existing contracts for Tier II AECs generated by an out-of-state facility. As such, the Commission further directs EDCs and EGSs submitting petitions for authorizing contracted for Tier II AECs generated by an out-of-state facility to also submit a petition to extend their AEPS Act compliance true-up period for Tier II compliance, if necessary. Such request for extension will only apply to the EDCs or EGSs Tier II compliance obligations, not their Tier I or Tier I Solar compliance obligations.

With respect to Cleveland Cliffs' request for changes to the petition requirements we enumerated in the Tentative Order, the Commission will not adopt these changes. However, for clarification, the Commission intends for the petitioning process to provide affected EDCs and EGSs the opportunity to present their respective AEPS Act Tier II circumstances to the Commission where the Commission can address these individual circumstances on a case-by-case basis. The Commission finds that broadening the request for documents to be submitted with petitions could invite extraneous documentation that is irrelevant to making a determination of an existing written contract reducing the Commission's efficiency in rendering a decision. Accordingly, with these clarifications, the Commission adopts the Tentative Order's implementation of Section 1799.10-E(b).

Finally, we agree with Constellation/ExGen's request that EDCs and EGSs be permitted to redact pricing information from contracts it submits with petitions. We clarify that petitions submitted for proving the existence of a binding written contract prior to November 23, 2020 may have pricing information redacted from the contracts submitted if it is not necessary to determine the existence of the agreement. To the extent any party filing a petition has the need to submit confidential information, it may file such documentation marked "confidential" with the Commission's Secretary with the corresponding docket noted.

*J. Section 1799.10-E(c)*

This section provides definitions for the following terms to be used only in Section 1799.10-E unless the context clearly indicates otherwise. Section 1799.10-E(c) provides that the terms “Alternative energy source” and “Electric distribution company” are defined as they are defined in Section 2 of the AEPS Act. Accordingly, the Commission proposed to interpret these terms as they are already defined in Section 2 of the AEPS Act.

*1. Comments*

No comments were submitted concerning Section 1799.10-E(c), specifically. However, we received comments from ARIPPA, the Legislature and Wheelabrator Technologies that generally supported adopting the entire Tentative Order.

*2. Disposition*

The Commission will adopt its interpretation of Section 1799.10-E(c) from its Tentative Order in its entirety. Accordingly, the Commission interprets these terms as they are already defined in Section 2 of the AEPS Act.

*Conclusion*

With this Order we begin the process of implementing Act 114, while recognizing that there are complexities in implementing and complying with the Act that may reveal issues which require further Commission action. The Commission will address any such issues, at this docket, and in a manner that provides all interested parties appropriate notice and opportunity to be heard; *Therefore,*

*It Is Ordered That:*

1. The Commission hereby adopts the interpretation and implementation of Section 1728-E and 1799.10-E of the Fiscal Code, 72 P.S. §§ 1 et seq, as set forth in this Order.

2. A copy of this order be served on all jurisdictional electric distribution companies, all licensed electric generation suppliers, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, Department of Military and Veterans Affairs, and any party that filed comments at this Docket.

3. Electric Distribution Companies and Electric Generation Suppliers seeking to qualify credits under Section 1799.10-E(a)(2)(ii) of the Fiscal Code, 72 P.S. § 1799.10-E(a)(2)(ii), are required to file a Petition within one-hundred-and-eighty (180) days of the entry date of this Order.

4. Electric Distribution Companies and Electric Generation Suppliers seeking to qualify credits under Section 1799.10-E(a)(2)(ii) of the Fiscal Code, 72 P.S. § 1799.10-E(a)(2)(ii), may simultaneously file a petition to extend their true-up period for their Tier II Alternative Energy Credit compliance obligations, if necessary.

5. A copy of this Order shall be published in the *Pennsylvania Bulletin* and posted on the Commission's website at [www.puc.pa.gov](http://www.puc.pa.gov).

6. The Office of Competitive Market Oversight shall electronically send a copy of this Order to all persons on the contact list for the Committee Handling Activities for Retail Growth in Electricity.

7. The contact persons for this Final Implementation Order are Aspasia V. Staevska, Assistant Counsel, Law Bureau, [astaevska@pa.gov](mailto:astaevska@pa.gov), (717) 425-7403, Joseph P. Cardinale, Jr., Assistant Counsel, Law Bureau, [\[pa.gov\]\(http://pa.gov\), \(717\) 787-5558, and Darren Gill, Bureau of Technical Utility Services \[dgill@pa.gov\]\(mailto:dgill@pa.gov\), \(717\) 783-5244.](mailto:jcardinale@</a></p>
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ROSEMARY CHIAVETTA,  
*Secretary*

ORDER ADOPTED: May 6, 2021

ORDER ENTERED: May 6, 2021

[Pa.B. Doc. No. 21-819. Filed for public inspection May 21, 2021, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. PECO Energy Company

Public Meeting held  
May 6, 2021

*Commissioners Present:* Gladys Brown Dutrieuille, Chairperson; David W. Sweet, Vice Chairperson, Statement; John F. Coleman, Jr.; Ralph V. Yanora

*Pennsylvania Public Utility Commission, Bureau of  
Investigation and Enforcement v. PECO Energy Company;  
M-2021-3014286*

### Opinion and Order

#### *By the Commission:*

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Joint Petition for Approval of Settlement (Joint Petition, Settlement or Settlement Agreement) filed on February 12, 2021, by the Commission's Bureau of Investigation and Enforcement (I&E) and PECO Energy Company (PECO or Company) (collectively, the Parties), with respect to an informal investigation conducted by I&E concerning improper electric service terminations for approximately 49,500 customers. Both Parties submitted Statements in Support of the Settlement. The Parties submit that the proposed Settlement is in the public interest and consistent with the Commission's Policy Statement at 52 Pa. Code § 69.1201, Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations—statement of policy. Settlement ¶ 39 at 13. We will publish the Settlement in the *Pennsylvania Bulletin* and seek comments from interested parties within twenty-five days after the date of its publication. We shall also direct that the Settlement be posted to PECO's website.

#### *History of the Proceeding*

On June 25, 2018, PECO's call center third-party vendor made a dialer platform change resulting in two separate computer errors that ultimately caused improper service termination for approximately 49,500 electric customers between June 25, 2018 and September 10, 2019.

PECO discovered the first error on August 9, 2018, and suspended all service terminations. This error led to the termination of a large number of electric customers without those customers first receiving the required second seventy-two-hour telephone call to either the customer or an adult occupant of the household at least three days, or seventy-two hours, prior to the scheduled termination. PECO reported the incident to the Commission's Bureau of Consumer Services (BCS) on August 16,