

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held April 4, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Petition of Williams Companies, Inc. for
Declaratory Order

P-2023-3041485

ORDER

BY THE COMMISSION:

On June 26, 2023, Williams Companies, Inc. (Williams) filed a Petition for Declaratory Order (Petition) requesting issuance of a Declaratory Order to determine whether Williams' planned two 11 megawatts (MWs) solar photovoltaic (PV) energy projects not directly connected to a distribution system of an electric distribution company (EDC) or a transmission system operated by a regional transmission organization (RTO) qualifies to generate Solar Alternative Energy Credits (SREC) under the Alternative Energy Portfolio Standards (AEPS) Act, 73 P.S. §§ 1648.1-1648.9, as amended.

Pursuant to the Commission's regulations at 52 Pa. Code § 5.42, Williams served its Petition on the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and InClima, Inc. (InClima), the current program administrator of the AEPS Act. On February 17, 2024,

the Commission published notice of the Petition in the Pennsylvania Bulletin noting that answers and petitions to intervene are to be filed within 20 days of its publication and reply comments to be filed within 40 days of its publication. 54 Pa.B. 904. No answers or petitions to intervene were filed.

THE PETITION

Williams is an energy company with a primary focus on natural gas infrastructure. Williams owns a subsidiary, Transcontinental Gas Pipe Line Company, LLC (Transco), that operates the Transco natural gas pipeline, a major interstate pipeline system that transports approximately 15% of the nation's natural gas. Transco operates multiple natural gas compressor stations along the pipeline. Transco plans to construct two large solar PV energy projects, each with a nameplate capacity of approximately 11 MWs, to provide electricity to two of its natural gas compressor stations in Pennsylvania. One of the solar PV projects is going to be constructed at a Transco compressor station located in Wyoming County, Pennsylvania and the other will be constructed at a Transco compressor station located in Columbia County, Pennsylvania. Petition ¶¶ 2-4.

The two compressor stations at issue receive electric service from PPL Electric Utilities (PPL), and Transco is the customer of record with PPL at both the Wyoming County and Columbia County compressor station locations. For each solar PV project, the solar arrays will be located on land adjacent to the compressor station and be physically connected to the compressor station's existing internal electric system. The power from these solar PV arrays will flow directly into the compressor stations internal electric system to support the stations' operations, and the entirety of the solar generation is expected to be consumed by the compressor stations, reducing the electrical load supplied by PPL. Petition ¶¶ 5-7.

Williams is seeking to have its solar PV projects qualify for SRECs. To qualify for SRECs Williams must register a project with the AEPS Act Program Administrator,

InClime. Williams shared summaries and its views of its projects with InClime. Petition ¶ 14. InClime informed Williams that it was not certain whether Transco’s solar PV projects would qualify for SRECs because the projects would not be directly interconnected with an EDC’s distribution system or an RTO’s transmission system. Petition ¶ 15. InClime directed Williams to obtain direction from the Commission on the projects’ qualification to generate SRECs under the AEPS Act. Petition ¶ 15. Williams contends in its Petition that pursuant to the plain language of the AEPS Act, Act 40 of 2017, and the Commission’s Final Implementation Order related to Act 40 of 2017,¹ its planned two solar PV projects should qualify to generate SRECs since they will be physically connected to an EDC customer’s internal electric system. Petition ¶¶ 14-16.

DISCUSSION

We note that any issues we do not specifically address herein have been duly considered and will be denied without further discussion. It is well settled that the Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. Pub. Util. Comm’n*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. Pub. Util. Comm’n*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

A. Legal Standards

Section 331(f) of the Public Utility Code governs declaratory orders and provides that the Commission “may issue a declaratory order to terminate a controversy or remove uncertainty.” 66 Pa.C.S. § 331(f). The issuance of a declaratory order is within the Commission’s discretion and is not a matter of right. *Petition of Philadelphia Gas Works for Establishment of Interim Rate Procedures and for a Declaratory Order*, Docket No. P-00001831 (Order entered August 17, 2000), 2000 Pa. PUC LEXIS 51. The Commission’s regulations require petitions for the issuance of a declaratory order to

¹ *Implementation of Act 40 of 2017*, Docket No. M-2017-2631527 (Order entered April 19, 2018) (*Final Implementation Order*)).

terminate a controversy or remove uncertainty to state clearly and concisely the controversy or uncertainty which is the subject of the petition; cite the statutory provision or other authority involved; include a complete statement of the facts and grounds prompting the petition; and include a full disclosure of the interest of the petition. 52 Pa. Code § 5.42(a). The Commission will issue a declaratory order only when there is no outstanding issue of material fact. *Petition of the Pennsylvania State University for a Declaratory Order*, Docket No. P-2007-2001828 (Order entered April 9, 2008), 2008 Pa. PUC LEXIS 171. As such, the Commission may decline to grant a petition for a declaratory order where there are outstanding issues of fact and the controversy could not be terminated, or uncertainty eliminated, by the issuance of a declaratory order. *See Pa. Power Company v. Township of Pine*, 926 A.2d 1241 (Pa. Cmwlth. 2007).

A petitioner—that is, the proponent of a rule or order—bears the burden of proof. 66 Pa.C.S. § 332(a). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa. Cmwlth. 1990). Additionally, the Commission’s decision must be supported by substantial evidence in the record. More than a mere trace of evidence or a suspicion of the existence of a fact ought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980).

B. Disposition

Upon review, issuing a declaratory order is appropriate here because there are no outstanding issues of material fact. Furthermore, a Commission determination on the Petition will remove uncertainty on the question of whether a solar PV system that is not connected to an EDC’s distribution system or a transmission system would qualify to generate SRECs under the AEPS Act.

Williams has presented the Commission with a question of first impression regarding solar PV systems that are not directly interconnected with an EDC’s

distribution system, or a transmission system operated by an RTO. Despite not being directly interconnected with either a distribution or transmission system, Williams contends that its solar PV systems are eligible for SRECs.

In support of its position, Williams points to Act 40 of 2017 which provides, in relevant part:

(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 photovoltaic share of this Commonwealth’s compliance requirements under the “Alternative Energy Portfolio Standards Act” and to qualify for solar renewable alternative energy portfolio credits, each solar photovoltaic system 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.”

71 P.S. § 714 (Alternative energy portfolio standards (Adm. Code § 2804)). Williams contends that, pursuant to the plain language of Section 2804, there are two scenarios where solar PV systems will qualify to generate SRECs: (1) a solar PV generation source that directly delivers its power to an EDC’s retail customer, and (2) a solar PV generation source that directly delivers its power to the distribution system of an EDC, which has an obligation to meet the AEPS Act compliance requirements.

Additionally, Williams contends that its reading of Act 40 of 2017 is supported by the Commission’s *Final Implementation Order*, where Williams submits that the Commission noted that solar PV systems that directly deliver power to an EDC’s retail customer would be eligible for SRECs. Petition at ¶¶20-23 (citing *Final Implementation Order* at 6). Williams contends that neither Act 40 of 2017 nor the Commission’s *Final*

Implementation Order requires a solar PV system to be directly interconnected to an EDC's distribution system. Further, Williams submits that neither Act 40 nor the *Final Implementation Order* contain language requiring a net-metering arrangement for customer-connected solar PV projects to qualify to generate SRECs. Petition ¶¶ 20, 25-26.

1. Williams' Solar PV Systems Do Not Qualify for SRECs

William's Petition presents an issue that requires applying the principles of statutory construction. The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. 1 Pa.C.S. § 1921(a). Generally, the best indication of the general assembly's intent may be found in the plain language of the statute. The Commission is cognizant of the plain reading of Section 2804(1) of Act 40 of 2017 identifying "alternative energy sources eligible to meet the photovoltaic share. . . under the [AEPS] Act" as "[d]irectly delivering the electricity it generates to a retail customer[.]" 71 P.S. § 714 (1)(i). However, when different statutes relate to the same the things, they are considered to be in *pari materia* and must be construed together, if possible, as one statute. 1 Pa.C.S. § 1932(a) and (b). As such, Act 40 of 2017 must be read together with the AEPS Act as they relate to the same things. *See* 1 Pa.C.S. § 1932. Moreover, when dealing with conflicting general and specific statutory provisions, one must construe the provisions in a manner that gives effect to both. If the provisions are irreconcilable, the special provision is interpreted as an exception to the general provision. 1 Pa.C.S. § 1933. Dispositive to this issue is how the AEPS Act defines an alternative energy system:

A facility or energy system that uses a form of alternative energy source to generate electricity *and delivers the electricity it generates to the distribution system of an electric distribution company or to the transmission system operated by a regional transmission organization.*

73 P.S. § 1648.2 (Alternative energy system) (emphasis added). Act 40 of 2017 only acknowledges that alternative energy sources that deliver electricity to retail customers are eligible for SRECs. However, the plain language of the AEPS Act clearly requires such alternative energy sources to also be connected to the distribution system of an EDC or transmission system operated by an RTO to qualify to generate SRECs.

The definition of alternative energy system in the AEPS Act is controlling because the AEPS Act contemplates that all alternative energy sources that qualify for alternative energy credits (AECs) and/or SRECs will deliver some portion of the electricity it generates to the distribution system of an EDC or the RTO's transmission system. The General Assembly directed within the AEPS Act that:

(2) The commission shall approve an independent entity to serve as the alternative energy credits program administrator. The administrator shall have those powers and duties assigned by commission regulations. Such powers and duties shall include, but not be limited to, the following:

(i) To create and administer an alternative energy credits certification, tracking and reporting program. This program should include, at a minimum, a process for qualifying *alternative energy systems* and determining the manner credits can be created, accounted for, transferred and retired.

* * *

(3) All qualifying *alternative energy systems* must include a qualifying meter to record the cumulative electric production to verify the advanced energy credit value. Qualifying meters will be approved by the commission as defined in paragraph (4).

(4)(i) An electric distribution company or electric generation supplier shall comply with the applicable requirements of this section by purchasing sufficient alternative energy credits and submitting documentation of compliance to the program administrator.

(ii) For purposes of this subsection, one alternative energy credit shall represent one megawatt hour of *qualified alternative electric generation*, whether self-generated, purchased along with the electric commodity or separately through a tradable instrument and otherwise meeting the requirements of commission regulations and the program administrator.

73 P.S. § 1648.3(e) (relating to alternative energy credits) (emphasis added).

Accordingly, Section 3 of the AEPS Act, 73 P.S. § 1648.3, only allows for the qualification of alternative energy systems to generate AECs. As defined in the AEPS Act, alternative energy systems are facilities or energy systems that use a form of alternative energy source to generate electricity and *delivers electricity to the distribution system of an EDC* or the transmission system operated by an RTO. While the Williams' proposed solar PV systems clearly generate electricity from an alternative energy source, as defined in the AEPS Act,² they do not deliver any of the electricity generated to the distribution system of an EDC or a transmission system operated by an RTO. Thus, these proposed systems do not meet the definition of an alternative energy system, and pursuant to Section 3 of the AEPS Act, 73 P.S. § 1648.3, cannot be certified to generate credits based on the electricity they generate.

Furthermore, we find it significant that the AEPS Act only references electricity EDCs and EGSs sell to customers. Section 3 of the AEPS Act specifically states that:

(a) General Compliance and Cost Recovery.

- (1) From the effective date of this act through and including the 15th year after enactment of this act and each year thereafter, the electric energy sold by an electric distribution company or electric generation supplier to retail electric customers in this Commonwealth shall be comprised of electricity generated from alternative energy sources and in the percentage amounts as described under subsection (b) and (c).

² Section 2 of the AEPS Act defines solar photovoltaic or other solar electric energy as an alternative energy source. 73 P.S. § 1648.2 (relating to definitions).

73 P.S. § 1648.3. If the electricity from an alternative energy source is not delivered to an EDC's distribution system or to a transmission system operated by an RTO that electricity is not available to either an EDC or EGS to use to sell to a retail customer. As such, an EDC or EGS cannot purchase that electricity, either in wholesale or through retail net metering, and sell it to its retail customers to meet the requirements of the AEPS Act contained in subsections (b) or (c), 73 P.S. § 1648(b) (relating to Tier I and solar photovoltaic shares), (c) (relating to Tier II share).

Where an alternative energy source delivers generation only to a consumer, it is apparent that to qualify for SRECs, the alternative generation source must operate in connection with an EDC's distribution system or an RTO's transmission system to address the delivery of any excess generation produced by the alternative energy source that is not consumed by the direct consumer of the alternative energy source. Without Williams' solar PV systems being directly interconnected with the EDC's distribution system or the RTO's transmission system, Williams has not presented an alternative energy system that can qualify to generate SRECs.

The AEPS Act contemplates a situation where an alternative energy source is connected to an EDC customer and qualifies as an alternative energy system to generate AECs. Such systems are defined as customer-generators, which are "nonutility owner or operator of a net metered distributed generation system with a nameplate capacity ... not larger than 3,000 kilowatts at other customer service locations...." 73 P.S. § 1648.2 (definition of customer-generator). Customer-generators qualify for net metering, which is defined as "[t]he means of measuring the difference between the electricity supplied by an electric utility and the electricity generated by a customer-generator when any portion of the electricity generated by the *alternative energy generating system* is used to offset part or all of the customer-generator's requirements for electricity." 73 P.S. § 1648.2 (definition of net metering) (emphasis added). Significantly, this definition refers to alternative energy systems, not alternative energy sources. As discussed above, such

alternative energy systems must use an alternative energy source to generate electricity and deliver that electricity to the distribution system of an EDC or the transmission system of an RTO. Here, Williams has not demonstrated that it qualifies as a customer-generator and cannot qualify to generate SRECs under that provision of the AEPS Act.

The above analysis is the only way to read both the AEPS Act and Act 40 to give effect to both provisions. *See* 1 Pa.C.S. § 1933. Significantly, Act 40 only exempts Section 4 of the AEPS Act, 73 P.S. § 1648.4 (relating to portfolio requirements in other states), from its provisions. Section 4 of the AEPS Act relates to the geographic boundaries for qualifying alternative energy systems. Section 4 of the AEPS Act states, in relevant part that:

Energy derived from alternative energy sources inside the geographical boundaries of this Commonwealth shall be eligible to meet the compliance requirements under this act. Energy derived from alternative energy sources located outside the geographical boundaries of this Commonwealth but within the service territory of a regional transmission organization that manages the transmission system in any part of this Commonwealth shall only be eligible to meet the compliance requirements of electric distribution companies or electric generation suppliers located within the service territory of the same regional transmission organization. For purposes of compliance with this act, alternative energy sources located in the PJM Interconnection, L.L.C. regional transmission organization (PJM) or its successor service territory shall be eligible to fulfill compliance obligations of all Pennsylvania electric distribution companies and electric generation suppliers. Energy derived from alternative energy sources located outside the service territory of a regional transmission organization that manages the transmission system in any part of this Commonwealth shall not be eligible to meet the compliance requirements of this act.

73 P.S. § 1648.4. Whereas Act 40 states in relevant part that:

(1) Notwithstanding section 4 of the [AEPS Act] ... in order to qualify as an alternative energy source eligible to meet the photovoltaic share of this Commonwealth's compliance requirements under the [AEPS Act] and to

qualify for solar renewable alternative energy portfolio credits, each solar photovoltaic system 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 [AEPS 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.

71 P.S. § 714(1). Both Section 4 of the AEPS Act and Act 40 relate to the geographic location of an alternative energy source and Act 40 only modifies where solar PV alternative energy sources can be located to qualify to generate alternative energy credits, it does not modify any other provision of the AEPS Act. Act 40 does not modify the definition of alternative energy system or any provisions in Section 3 of the AEPS Act.

The reference in Section 1 of Act 40, 71 P.S. § 714(1)(i), to an alternative energy source that delivers its electricity directly to a retail customer of an EDC recognizes the existence of qualifying customer-generators and their ability to net meter under the AEPS Act. To read this provision otherwise would modify the definition of alternative energy system and the provisions in Section 3 of the AEPS Act, which Act 40 did not explicitly address. Accordingly, as discussed above, to give effect to all provisions of both the AEPS Act and Act 40, the reference in Act 40 to alternative energy systems that directly deliver electricity it generates to retail customers of an EDC is a reference to customer-generators who net meter. Williams has not demonstrated that it is a customer-generator as defined in the AEPS Act.

When reading the Commission's *Final Implementation Order* in conjunction with the AEPS Act and Act 40 of 2017, it is apparent that a solar PV system that is not interconnected with an EDC's distribution system or an RTO's transmission cannot qualify for SRECs. The *Final Implementation Order* did not address that facts presented by Williams and did not contemplate a solar PV system simply supplying electricity to an EDC customer without there being a direct interconnection to the EDC's distribution system or RTO's transmission system. We did not state within the *Final Implementation Order* that a solar PV system may supply all of its generation to the EDC customer without an interconnection providing delivery of excess generation back to the EDC's distribution system or an RTO's transmission system. To read the Commission's *Final Implementation Order* as broadly as Williams is requesting here would contradict the AEPS Act's definition of an alternative energy system. Accordingly, Williams' reliance on the Commission's *Final Implementation Order* is misplaced and does not support qualifying its solar PV system for SRECs under the AEPS Act where the solar PV system is not connected to the EDC's system or the RTO's transmission system for delivery of excess generation.

2. Williams' Solar PV Systems Qualify as Demand-Side Management

While Williams' proposed solar PV systems does not qualify for generating SRECs since it is not connected to an EDC's distribution system or an RTO's transmission system for delivery of excess generation, they do qualify as a demand-side management resource capable of receiving Tier II AECs. The AEPS Act defines a demand-side management resource as:

the management of customer consumption of electricity or the demand for electricity through the implementation of:

- (i) energy efficiency technologies, management practices or other strategies in residential, commercial, institutional or government customers that reduce electricity consumption by those customers;

(ii) load management or demand response technologies, management practices or other strategies in residential, commercial, industrial, institutional and government customers that shift electric load from periods of higher demand to periods of lower demand[.]

73 P.S. § 1648.2 (definition of Demand-side management).

The AEPS Act further defines demand-side management as a Tier II energy source. *Id.* (definition of Tier II alternative energy source). Given the nature of demand-side management resources not generating power for transmission back to an EDC's distribution system or RTO's transmission system, the General Assembly tasked the Commission with promulgating regulations to measure and certify AECs for each MWh of electricity conserved by qualified demand-side management resources. *See* 73 P.S. § 1648.3(e)(10)-(11). As such, the Commission's regulations provide in relevant part:

An alternative energy credit may be certified by the Commission for each MWh of electricity conserved by qualified alternative energy systems *or demand side management* on or after November 30, 2004.

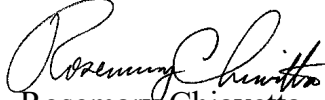
52 Pa. Code § 75.63(b) (emphasis added).

As Williams has presented its proposed solar PV systems as only being able to generate electricity for its own consumption, and thereby only able to reduce its load on the grid, the reduced electric consumption of the compressor stations resulting from the solar PV systems connected to the compressor stations may only qualify as demand-side management and would be eligible to generate Tier II AECs; **THEREFORE,**

IT IS ORDERED:

1. That Williams Companies, Inc.'s Petition for Declaratory Order is denied in part and granted in part.
2. That Williams Companies, Inc.'s proposed solar photovoltaic systems that do not deliver any electricity to the electric distribution company's distribution system or the regional transmission organization's transmission system does not meet the definition of an alternative energy system and thus does not qualify for generating Solar Alternative Energy Credits under the Alternative Energy Portfolio Standards Act.
3. That the reduced electric consumption by Williams Companies, Inc. due to the proposed solar photovoltaic systems may qualify as demand-side management and would be eligible to generate Tier II alternative energy source under the Alternative Energy Portfolio Standards Act.
4. That a copy of this Order shall be served upon the Office of Small Business Advocate; the Office of Consumer Advocate; InClima, Inc and the Commission's Bureau of Investigation and Enforcement.
5. That this docket shall be closed.

BY THE COMMISSION,


Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: April 4, 2024

ORDER ENTERED: April 4, 2024