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April 19, 2024

VIA ELECTRONIC FILING

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
400 North Street
Harrisburg, PA 17120

Re: Petition of Williams Companies, Inc. for a Declaratory Order
Docket No. P-2023-3041485

Dear Rosemary Chiavetta:

Enclosed for filing please find the Petition for Reconsideration of Williams Companies Inc. in the above-captioned matter. Copies have been served in accordance with the attached Certificate of Service.

Thank you, and please feel free to contact me if you have any questions or concerns.

Best regards,
STEVENS & LEE



Michael A. Gruin, Esq.

Enclosures

cc: Kim Hafner, Director, Office of Special Assistants (via email)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Williams Companies, Inc. for	:	
a Declaratory Order	:	
	:	Docket No. P-2023-3041485
	:	
	:	

**WILLIAMS COMPANIES, INC.
PETITION FOR RECONSIDERATION**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to Section 703(f) of the Public Utility Code, 66 Pa. C.S.A. § 703(f), and 52 Pa. Code § 5.572, Williams Companies, Inc. (“Williams” or the “Company”) files this Petition for Reconsideration of the April 4, 2024 Opinion and Order (“Order”) issued in the above-captioned proceeding. Williams appreciates the hard work of the Commission and its staff in analyzing the complicated issues involved with this matter of first impression. However, with this Petition, Williams is hereby requesting that the Commission reconsider its findings that solar photovoltaic systems that do not deliver any electricity to the electric distribution company’s (“EDC”) distribution system or the regional transmission organization’s transmission system, but deliver electricity to a retail customer of an EDC, do not qualify to generate Solar Alternative Energy Credits (“SRECs”) under the Alternative Energy Portfolio Standards Act (“AEPS”) Act, 73 P.S. §§ 1648.1 *et seq.* As set forth below, reconsideration and revision of the Order is justified because the Order contains several incorrect statutory interpretations that have never been articulated before, that are contrary the plain language of Act 40 of 2017, and that would unlawfully limit the qualification to produce SRECs if they are not corrected.

I. INTRODUCTION AND BACKGROUND

1. On June 26, 2023, Williams filed a Petition requesting issuance of a Declaratory Order to determine whether Williams' planned two 11 megawatts (MWs) solar photovoltaic (PV) energy projects that are not directly connected to a distribution system of an electric distribution company (EDC) or a transmission system operated by a regional transmission organization (RTO) qualify to generate SRECs under the AEPS Act.

2. Williams' Petition explained that its subsidiary Transcontinental Gas Pipe Line Company, LLC ("Transco") is planning to construct two large solar photovoltaic ("PV") energy projects to provide electricity to two of its natural gas compressor stations in Pennsylvania.

3. Both of the compressor stations at issue receive electricity service from PPL Electric Utilities ("PPL"), and Transco is the customer of record of PPL at both locations.

4. Each of the projects is expected to be approximately 11 MWac in size. In each case, the solar arrays will be located on land adjacent to the compressor station and will be physically connected to the compressor station's existing internal electric system.

5. Power from the solar arrays will flow directly into the compressor stations' internal electric systems 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.

6. Williams' Petition attached overviews of the solar projects, including photographs showing the overhead views and the side views of the compressor stations'

internal electric systems, indicating where the physical connection from the solar PV systems will occur.

7. Williams' Petition requested that the Commission confirm that Transco's planned solar energy projects qualify to generate SRECs under the AEPS Act because the planned projects will be physically connected to an EDC's customer's internal electric system, even if none of the electricity generated by the solar facilities will flow to the EDC's distribution system.

8. In its April 4, 2024 Order, the Commission noted that the issue presented by Williams' Petition was one of first impression.¹

9. After analyzing William's arguments and the language of the AEPS Act and Act 40 of 2017, the Commission determined that solar photovoltaic systems must deliver electricity to the distribution system of an EDC or a transmission system operated by an RTO in order to qualify to generate SRECs, notwithstanding the plain language of Act 40 of 2017 which says that Solar PV systems that deliver electricity to a retail customer of an EDC qualify to generate SRECS.²

10. The Commission's Order also holds that if the owner of an alternative energy system is not qualified as a "customer generator" under the AEPS Act, the system cannot qualify to generate SRECs under the AEPS Act, if the alternative energy system is not directly connected to the EDC's distribution system or an RTO.³

11. The Commission's Order also concluded that solar PV systems that generate electricity only for the owner's own consumption may qualify for demand-side

¹Order, at p. 4

² Order, at p. 8

³ Order, at pp. 9-12

management and would be eligible to generate Tier II alternative energy credits under the AEPS Act.⁴

II. LEGAL STANDARDS

12. Section 703(g) of the Public Utility Code, 66 Pa. C.S.A § 703(g), authorizes the Commission to reopen the record in a proceeding to clarify or reconsider a prior Order.

13. Section 5.572 of the Commission’s regulations, 52 Pa. Code § 5.572, sets forth the procedure for seeking clarification or reconsideration of an Order.

14. The well-established standards for granting reconsideration or clarification of a prior Commission Order are set forth in *Duick v. PG&W*, 56 Pa. P.U.C. 553 (1982)(“*Duick*”):

A petition for reconsideration, under the provisions of 66 Pa. C.S. §703(g), may properly raise any matters designed to convince the commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part.....What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error. (*Duick*, at 59).

15. Furthermore, a petition for reconsideration is properly before the Commission where it pleads newly discovered evidence, alleges errors of law, or a change in circumstances. *Pa. PUC v. Jackson Sewer Corporation*, 96 Pa.PUC 386, 2001 WL1789367 (Order entered November 13, 2001).

16. In this case, Williams respectfully submits that the Commission’s Order includes an incorrect analysis of the interplay between AEPS Act and Act 40, fails to

⁴ Order, at pp. 13-14. Williams is not seeking reconsideration of this holding regarding the eligibility to generate Tier II AECs

consider important language in the AEPS Act, and raises new issues related to customer-generators that require reconsideration and revision.

17. Specifically,
 - a. The Order incorrectly relied on the AEPS Act’s definition of “alternative energy system” to justify negating the plain language of Act 40 of 2017. The Order’s conclusion that 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 AECs and/or SRECs will deliver some portion of the electricity it generates to the distribution system of an EDC or RTO” is not supported by the plain language of the AEPS Act and is directly contradicted by Act 40, and under the rules of statutory construction, the language of Act 40 must prevail.
 - b. The Order relies on an incorrect analysis on pages 8-9 which assumes that EDCs and EGSs purchase renewable energy to meet their AEPS requirements, and therefore if electricity from an alternative energy sources is not connected to the EDC or RTO, it is not available to EDCs or EGSs to sell to a retail customer. This analysis is incorrect because EDCs and EGSs do not sell physical electricity from alternative energy sources in order to meet their AEPS obligations; rather, EDCs and EGSs purchase and retire alternative energy credits to meet their AEPS obligations, and
 - c. The Order incorrectly conflates net-metering with the generation of SRECs. The Order’s analysis on this point is not supported by the plain language of the AEPS Act, and it represents a new and novel interpretation of the AEPS Act and Act 40 that would limit the ability to generate SRECs to only to customers that qualify as customer-generators.

III. ARGUMENT

- A. The definition of “Alternative Energy System” in the AEPS Act does not negate the plain language of Act 40 of 2017, and the Commission overlooked the fact that if the two statutes cannot be reconciled, Act 40 of 2017 must prevail because it added a specific new provision and it was the later enacted statute.**

18. Williams’ Petition sought confirmation that its proposed solar PV systems should qualify to generate SRECs based on the plain language of Act 40 of 2017, which on its face does not require that solar PV systems to directly interconnect to the EDC’s distribution system or RTO in order to qualify to generate SRECs.

19. The April 4, 2024 Order’s primary basis for rejecting Williams’ Petition is that 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 RTO. However, this conclusion is not supported by the plain language of the AEPS Act and is directly contradicted by Act 40 of 2017.

20. The Order is correct that the AEPS Act general definition of “alternative energy system” includes the phrase “delivers the electricity to the distribution system of an electric distribution company or to the transmission system operated by a regional transmission organization”.⁵

21. However, the Commission’s Order fails to consider that Act 40 of 2017 established a targeted new set of rules for only one type of alternative energy source,

⁵ See 73 P.S. §1648.3

namely, solar photovoltaic systems, as opposed to new rules that are applicable for all alternative energy sources.

22. In enacting the new rules applicable solely to solar photovoltaic systems, Act 40 added language regarding the qualification to generate SRECs that is different from the definition of “alternative energy system” in one key respect – it added language that revised eligibility to include systems that directly deliver electricity to a “retail customer” of an EDC. This new language was a clear modification to the provisions of the AEPS Act by the General Assembly, and the “delivery to a retail customer” provision had never previously appeared in the AEPS Act.

23. The clear new “retail customer” language cannot simply be ignored.

When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit. 1 Pa.C.S. § 1921(b). “When interpreting provisions of a statute, and the language of the statute is clear and unambiguous, a court need go no further to discern the legislature's intent.... Further, the plain words of the statute may not be ignored.” *Pennsylvania Power Co. v. Public Utility Commission*, 932 A.2d 300 (Pa. Cmwlth. 2007), citing *Elite Indus., Inc. v. Pennsylvania Pub. Util. Comm'n*, 574 Pa. 476, 482, 832 A.2d 428, 431 (2003).

24. In order to justify negating the clear “delivery to retail customer” language in Act 40, the Commission’s Order relies on the rule of statutory construction (1 Pa.C.S. § 1933) which states that when dealing with conflicting general and specific provisions in the same statute or different statutes, one must construe the provisions in a

manner that gives effect to both, or if the provisions are irreconcilable, the special provision is interpreted as an exception to the general provision.⁶

25. However, the Commission did not apply the cited rule of construction correctly, and instead interpreted the two statutes in a way that gives no effect whatsoever to the new “retail customer” language in Act 40.

26. Act 40 of 2017 was very targeted in nature, and only added the “retail customer” language in connection with revising the eligibility for one alternative energy source, i.e. solar photovoltaic. By contrast, the “alternative energy system” language relied upon by the Commission’s Order is general in scope, as it appears in the general definitions section that is applicable to the entire AEPS Act (73 P.S. §1648.2).

27. Because the language in Act 40 of 2017 is targeted and specific, the rules of statutory interpretation require that the specific provision prevails “unless the general provision shall be enacted later and it shall be the manifest intention of the General Assembly that such general provision shall prevail.” *See*, 1 Pa.C.S. § 1933.

28. Here, the general provision (the definition of “alternative energy system”) was clearly not enacted later than Act 40 of 2017. The definition of “alternative energy system” appeared in the original AEPS Act enacted in 2004. The “retail customer” language was added by Act 40 in 2017.

29. Similarly, to the extent that the definition of “alternative energy system” cannot be reconciled with the new “retail customer” language of Act 40, another rule of

⁶ “Whenever a general provision in a statute shall be in conflict with a special provision in the same or another statute, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions is irreconcilable, the special provisions shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted later and it shall be the manifest intention of the General Assembly that such general provision shall prevail.” 1 Pa.C.S. § 1933

statutory construction, 1 Pa.C.S. §1936, also requires that the statute latest in date of final enactment shall prevail.⁷

30. Because the rule of statutory construction relied upon by the Commission was not applied correctly, reconsideration is warranted in order to correct the error and give the proper effect to the relevant language in Act 40 of 2017 which revises the eligibility to generate SRECS to include systems that deliver electricity to a “retail customer” of an EDC.

B. The Order incorrectly concludes that an alternative energy source must be connected to an EDC distribution system or RTO transmission system in order for EDCs and EGSs to use that alternative energy source to comply with the AEPS Act.

31. The Order’s analysis on pages 8-9 incorrectly assumes that EDCs and EGSs purchase renewable energy to meet their AEPS requirements, and therefore if electricity from an alternative energy source is not connected to the EDC or RTO, that electricity is not available to an EDC or EGS to sell to a retail customer.

32. This analysis represents a new interpretation of the AEPS Act that is flawed, because EDCs and EGSs do not buy or sell physical electricity from alternative energy sources in order to meet their AEPS obligations; rather, EDCs and EGSs purchase and retire AECs to meet their AEPS obligations. *See* 72 P.S. 1648.3(e)(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.”) (emphasis added).

⁷ § 1936. Irreconcilable statutes passed by different General Assemblies.
“Whenever the provisions of two or more statutes enacted finally by different General Assemblies are irreconcilable, the statute latest in date of final enactment shall prevail.”

33. The above-referenced analysis was a critical underpinning for the Order’s holding that a solar PV system must deliver electricity to an EDC’s distribution system or RTO in order to qualify for SRECs, despite the plain language of Act 40, which also permits the solar PV system to delivery electricity to the retail customer of an EDC.

34. Because the analysis is clearly not accurate and misstates the method by which EGSs and EDCs meet the requirements of the AEPS Act, reconsideration of the Order is warranted to correct the mistake.

C. In order to justify its holding, the Order incorrectly conflates net-metering with the generation of SRECs, and adds a requirement to be a customer-generator in order to qualify to generate SRECS that does not exist in the AEPS Act or Act 40 of 2017.

35. Pages 9-12 of the Order includes an analysis of the AEPS Act’s definition of customer-generator, and concludes that Act 40’s reference to alternative energy systems that directly deliver electricity to retail customers of an EDC “is a reference to customer-generators who net-meter”.⁸

36. The Order also concludes that “Williams has not demonstrated that it qualifies as a customer-generator and cannot qualify to generate SRECs under that provision of the AEPS Act”.⁹

37. These holdings in the Order represent a significant new interpretation of the AEPS Act, that would require customers to be net-metered in order to qualify to generate SRECs.

38. These holdings in the Order incorrectly insert net-metering into the interpretation of Act 40 of 2017, even though Act 40 makes no reference at all to net-metering or customer-generators.

⁸ Order, at p. 11

⁹ Order, at p. 10

39. Net-metering and eligibility to generate SRECs are two completely separate and independent concepts under the AEPS Act.

40. The AEPS Act contains no language which limits the ability of a customer to net-meter if their system is not registered to generate SRECs or AECs.

41. Similarly, neither the AEPS Act nor Act 40 contain any language which limits the ability of a system to be qualified to generate SRECs if the system is not operated by a net-metering customer-generator.

42. Furthermore, the Commission's *Final Implementation Order* for Act 40, which was issued on May 3, 2018 in Docket No. M-2017-2631527, makes no mention of a requirement to be a customer-generator in order to qualify to generate SRECs under the AEPS Act or Act 40 of 2017.

43. The *Final Implementation Order* states that physically connecting a solar PV system to an EDC's customer's internal electric system is an alternative to physically interconnecting to the EDC's distribution system in order to qualify to generate SRECs, but it contains no language requiring a net-metering arrangement in order for a customer-connected solar PV project to qualify to generate SRECs.

44. The April 4, 2024 Order's new requirement to have customer-generator status in order to qualify to generate SREC's would materially limit the universe of customers who are eligible to generate SRECs under Act 40.

45. Only systems with a nameplate capacity of less than 3MW, and in certain limited circumstances, 5MW, can qualify as customer generators under the AEPS Act's definition of "customer generator".

46. If the Commission's interpretation is not revised, the eligibility to generate SRECs would be limited to solar PV systems of that size.

47. Such a limitation appears nowhere in Act 40 or the Commission's Final Implementation Order.

48. Under the interpretation included in the April 4, 2024 Order, a customer who owns an onsite 6 MW solar system that delivers some excess electricity to the EDC would not qualify to generate SRECs, because that customer cannot qualify as a customer-generator.

49. This potentially significant reinterpretation of Act 40 and revision to the policies stated in the Final Implementation Order appear not to have been considered by the Commission in its April 4, 2024 Order, and therefore justify reconsideration of the Order.

IV. CONCLUSION

As the Commission noted in its April 4, 2024 Order, Williams' Petition raised a question of first impression, but that question is easily answerable by looking at the clear language of Act 40 of 2017. The language of Act 40 of 2017 allows solar PV systems that deliver electricity to a retail customer of an EDC to qualify to generate SRECs. In holding that 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 do not qualify to generate SRECs under AEPS Act, the Commission relied on flawed interpretations of the AEPS Act and Act 40 which are contrary to Pennsylvania's rules of statutory construction, and articulated a new interpretation of Act 40 that would improperly limit its application to only customer-generators. These interpretations, which form the sole basis for the Commission's denial of William's Petition, have never been seen before, and no party has been given an opportunity to review or respond to them. For these reasons and the other reasons explained above,

Williams respectfully submits that reconsideration of the April 4, 2024 Order is warranted to allow the Commission to examine the responsive arguments raised herein and to correct the interpretations that are contrary to law and the rules of statutory construction.

Respectfully submitted,

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INC.*

DATE: April 19, 2024

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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a Declaratory Order	:	
	:	Docket No. P-2023-3041485
	:	
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Petition for Reconsideration upon the party listed below, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

VIA FIRST CLASS US MAIL

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Michael A. Gruin

DATED: April 19, 2024