

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120

**Petition of Williams Companies, Inc. for
Declaratory Order**

**Public Meeting held August 1, 2024
3041485-LAW
Docket No. M-2022-3041485**

MOTION OF VICE CHAIR KIMBERLY BARROW

On June 26, 2023, Williams Companies, Inc. (Williams) filed a Petition for Declaratory Order (Petition) that sought a determination that Williams' behind-the-meter solar photovoltaic systems qualify for the generation of Solar Alternative Energy Credits under the Alternative Energy Portfolio Standards Act (AEPS Act), 73 P.S. § 1648.1, *et seq.* According to the Petition, Williams' system would consist of two solar photovoltaic systems of 11 MWac each, too large to net meter.¹

In general, the AEPS Act only allows "alternative energy systems" to qualify to create credits of any type.² An "alternative energy system" is defined as 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."³ The AEPS Act creates two specific exceptions for resources that may create credits and be connected directly to load, customer-generators and demand-side management.⁴

Williams contends that Act 40 of 2017 modified this general rule, and now allows non-customer-generator solar facilities to create Solar Alternative Energy Credits even if directly connected to load, rather than being connected to the distribution system. However, Williams relies only on an ambiguous portion of Act 40, and Williams' interpretation does not give full effect to all of its provisions.

Act 40 of 2017 states, in relevant part:

Section 2804. Alternative Energy Portfolio Standards.--The following shall apply:

(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

¹ 73 P.S. § 1648.2 (definition of customer-generator).

² 73 P.S. § 1648.3(e)(3).

³ 73 P.S. § 1648.2 (definition of alternative energy system).

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

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." (emphasis added)

By its text alone, Section 2804 is unclear and ambiguous⁵ as to whether it creates a new *sufficient* condition for the interconnection set up of qualified systems or whether it only creates a further *necessary* condition to be qualified to create SRECs. But read in full context and combined with legislative history, the best reading of Section 2804 is that it adds the new necessary condition that a project qualified for SRECs must be located in Pennsylvania, but that all other necessary conditions existing under the AEPS Act still remain.

The best evidence of this interpretation is the introductory clause of Section 2804, which Williams all but reads out of Act 40. That is, Section 2804 clearly states “Notwithstanding Section 4 of the AEPS Act”. This indicates that the AEPS Act is being modified as to Section 4, and Section 4 alone.

Pennsylvania law treats the term “notwithstanding” as providing express indication that the new law is intended to preempt the referenced law, essentially meaning “regardless” of what the other law provides. *Pleasant Hills Const. Co. v. Pub. Auditorium Auth.*, 784 A.2d 1277, 1282 (Pa. 2001). Typically, ‘notwithstanding’ is used to broadly preempt other law. *Abington Heights Sch. Dist. v. Pennsylvania Lab. Rels. Bd.*, 274 A.3d 775 (Pa. Cmwlth. 2022) (unreported) (listing cases). In the present case however, the General Assembly chose to preempt just one provision of the AEPS Act, not the entire structure. The Commission must give effect to that choice.

Section 4 of the AEPS Act relates solely to the location of the facilities that may be qualified to produce AEPS credits, so long as they fulfill all the other requirements to produce credits. The original version of Section 4, unmodified by Act 40, states that any resource located within the PJM region may qualify to produce credits under the AEPS Act. By modifying Section 4 alone, Act 40 limited those resources who could create credits to those who were interconnected to the Pennsylvania grid itself. In order to modify the general rule that “alternative energy systems” must be connected to a distribution system, the law would have needed to displace section 2 (definitions) or section 3 (qualifications) of the AEPS Act, or the AEPS Act as a whole, but the General Assembly did not do that. Act 40 did not seek to expand the types of interconnections that could qualify for credits. It only sought to limit geographic qualification.

⁵ “A statute is ambiguous or unclear if its language is subject to two or more reasonable interpretations.” *Bethenergy Mines Inc. v. Com., Dep't of Env't Prot.*, 676 A.2d 711, 715 (Pa. Cmwlth. 1996) (citing 1 Pa.C.S. § 1921).

This interpretation is further supported by extensive references in legislative history. In the co-sponsorship memo of the introducing senators, they said,

Pennsylvania remains at a competitive disadvantage when compared to our neighboring states. Pennsylvania currently allows out-of-state systems to sell SRECs in the Commonwealth.

Our legislation will essentially “close the borders” of the Commonwealth on SREC purchases, similar to many neighboring states. Electric distributors will have to purchase their credits from within the Commonwealth, thereby limiting the available supply of these SRECs. Our legislation would protect Pennsylvania-based solar and put us in line with many of our neighboring states.⁶

Likewise, when the Commission interpreted Act 40, legislators involved in its passage, as well as the Governor, filed comments with the Commission indicating that the purpose of this section of Act 40 was to “close the borders”. The Governor’s comments in particular were repeatedly clear that the “clear purpose” of Section 2804 was to amend “the Administrative Code to establish geographical limits on solar photovoltaic systems that qualify for the solar share requirement of the Alternative Energy Portfolio Standards (AEPS) Act.”⁷ No mention was made of any expansion of the interconnection requirements in order to be qualified to create SRECs. The sole purpose of the section was to provide geographic limitation.

THEREFORE, I MOVE THAT:

1. The Petition for Reconsideration is denied.
2. The Law Bureau prepare an Opinion and Order consistent with this Motion.

August 1, 2024


Kimberly Barrow, Vice Chair

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<https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20170&cosponId=21236>

⁷ February 5, 2018, comments of the Pennsylvania Department of Environmental Protection, Docket No. M-2017-2631527 (with accompanying letter by Governor Wolf, endorsing the comments).