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February 5, 2018

VIA E-FILED

Ms. Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
2nd Floor, Room-N201
400 North Street
Harrisburg, PA 17120

**Re: Implementation of Act 40 of 2017
Docket No. M-2017-2631527**

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Comments in the above-referenced proceeding.

Upon receipt, if you have any questions regarding the information contained in this filing, please contact the undersigned or Audrey Waldock at 412-393-6334 or awaldock@duqlight.com.

Sincerely,

A handwritten signature in blue ink that reads "Shelby A. Linton-Keddie".

Shelby A. Linton-Keddie
Manager, State Regulatory Strategy
And Senior Legal Counsel

Enclosure

C: Kriss Brown, Esquire (w/ enc.)
Darren Gill (w/ enc.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Act 40 of 2017

: Docket No. M-2015-2631527

**COMMENTS OF
DUQUESNE LIGHT COMPANY**

I. INTRODUCTION

On October 30, 2017, Governor Wolf signed into law changes to the Administrative Code, Act 40 of 2017, 1 P.S. §§ 1 *et seq.*, which, in part, amends Section 4 of the Alternative Energy Portfolio Standards (“AEPS”) Act, 73 P.S. §§ 1648.1 *et seq.*, to establish geographical limits on solar photovoltaic (“solar PV”) systems that qualify for the solar PV share requirement going forward. Additionally, the law specifically grandfathers both granted Pennsylvania certifications and binding contracts for the sale and purchase of alternative energy credits derived from solar photovoltaic energy sources (solar renewable alternative energy portfolio credits, or “SRECs”) in effect at the time of passage. The Pennsylvania Public Utility Commission (“PUC” or “Commission”) has responsibility for implementing the relevant provisions of Act 40 as contained within Section 11.1 of Act 40, as the Commission implements the AEPS Act.

To that end, at the Public Meeting of December 21, 2017 the Commission issued a *Tentative Implementation Order* (“TIO”), setting forth its interpretation of the relevant provisions in Act 40. Concurrently, Chairman Gladys Brown and Vice Chairman Andrew Place issued a Joint Statement at the above captioned docket, seeking further comment on the Commission’s

tentative interpretation of Section 2804 and the treatment of banked SRECs, since the issue of banked SRECs is not addressed by Act 40.¹

The TIO was published in the *Pennsylvania Bulletin* on January 6, 2018. See 48 Pa. B. 111. Pursuant to the TIO, interested parties had thirty (30) days from the date of publication in the *Pennsylvania Bulletin* to file comments, *i.e.*, on or before February 4, 2018. In response, and consistent with this direction, Duquesne Light Company (“Duquesne Light” or “Company”) hereby submits comments for the Commission’s consideration.

II. COMMENTS

As explained *supra*, on October 30, 2017, Act 40 of 2017 was signed into law and became effective immediately. As further explained, part of Act 40 “closes the borders” for solar renewable alternative energy portfolio credits² going forward. However, Act 40 also contains specific grandfathering of granted certifications and binding contracts in effect at the time the Act was signed into law, and importantly omits any discussion of the treatment of banked credits. As a result, and in order to clear up ambiguities for both solar producers and load serving entities (EDCs and EGSs) that have the responsibility to obtain alternative energy credits for the load they serve, the Commission issued the December 21, 2017 *TIO* for comment.

Before explaining the impact of Section 11.1 of Act 40, a discussion of Section 1648.4 of the AEPS Act is necessary. Section 1648.4 provides that energy derived from alternative energy sources (“AESs”) located outside the geographical boundaries of the Commonwealth but within

¹ See *Joint Statement of Chairman Gladys M. Brown & Vice Chairman Andrew G. Place, re Implementation of Act 40 of 2017*, Docket No. M-2017-2631527, (Dec. 21, 2017).

² Note that this term, “solar renewable alternative energy portfolio credit” is undefined in Act 40. As such, “the Commission proposes to interpret this term as identifying SRECs eligible to meet the APES Act solar PV share requirements found in Section 3(b)(2) of the AEPS Act.” TIO at 3 (internal citations omitted). Duquesne Light agrees with this interpretation.

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 electric distribution companies (“EDCs”) or electric generation suppliers (“EGSs”) located within the service territory of the same RTO. Section 1648.4 also provides that AESs located in the PJM Interconnection, L.L.C. (“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.

Act 40 amends Section 4 of the AEPS Act, 73 P.S. § 1648.4, by creating a new Section, 2804. This new section establishes that, as of October 30, 2017, the date the Act was signed into law, energy derived from AESs inside the geographical boundaries of Pennsylvania will be the only eligible sources to meet the Solar PV compliance requirements under the AEPS Act. Specifically, Section 2804(a) states that:

- (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.”
 - (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.

In addition, the language of Act 40 further states, in Section 2804(2), that “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 solar photovoltaic energy generator as a qualifying alternative energy source eligible to meet the solar photovoltaic share of this Commonwealth’s alternative energy portfolio compliance requirements under the “Alternative Energy Portfolio Standards Act.”
- (ii) Certification of a solar photovoltaic system with a binding written contract for the sale and purchase of alternative energy credits derived from solar photovoltaic energy sources entered into prior to the effective date of this Section.

Duquesne Light is a public utility as the term is defined under Section 102 of the Public Utility Code, 66 Pa.C.S. § 102, and is certificated by the Commission to provide electric distribution service in portions of Allegheny County and Beaver County in Pennsylvania. Further, the Company is a default service provider as defined under Chapter 28 of the Public Utility Code, *see* 66 Pa. C.S. § 2803, and, as a result, is a load serving entity (“LSE”) and has responsibility to comply with AEPS. As an EDC with responsibility to obtain AECs for the load served as a default service provider, the implementation of Section 2804 will impact Duquesne Light’s requirement to obtain and retire renewable energy credits (“RECs”), including ensuring that the solar renewable alternative energy portfolio credits (“SRECs”) submitted to the Company are eligible to be used to meet the solar PV share requirement.

In its *TIO*, the Commission is seeking comment on its interpretation of the language of Act as it pertains to the eligibility and exemptions for systems as articulated in the Act. In addition, a Joint Statement of Chairman Gladys M. Brown and Vice Chairman Andrew G. Place presents an alternative interpretation of system eligibility, as well as the status and treatment of

banked SRECs for comment. Duquesne Light appreciates the opportunity to provide comments in this proceeding and offers the following for the Commission's consideration.

A. Interpretation of Language in Section 2804(1)

Section 2804(1) outlines the qualifications of Pennsylvania-located systems that will be eligible to meet the PV share of AEPS requirements as of the date of the Act. Accordingly, the Commission issues the following interpretations of Sections (1)(i),(ii), and (iii) as eligible to qualify to generate energy and SRECs for the solar PV requirements:

- Solar PV systems physically connected to a PA EDC customer's internal electric system, such as a roof mounted solar PV array;
- Solar PV systems physically interconnected to an EDC's distribution system;
- Solar PV systems physically connected to a PA electric cooperative's or municipal electric system's distribution network; and
- Solar PV systems physically connected to PA EDC's transmission system within the EDC's service territory, including utility scale solar PV systems operating under PJM rules as a wholesale generator.

TIO at 3-4.

In addition, as noted by the Commission, Section 2804(1) only modifies Section 4 of the AEPS Act and only refers to the solar PV share requirement. As a result, "as solar PV has been and still is a Tier I AES that was eligible to meet the Tier I non-solar PV share requirements, the Commission proposes to interpret this section as permitting any solar PV system meeting the geographic requirements of Section 4, 73 P.S. §1648.4, as continuing to be eligible to generate Tier I AECs eligible to be used to meet the Tier I non-solar PV share requirements of the AEPS Act." *TIO* at 3. Consistent with this interpretation, the Commission further proposes to have the Alternative Energy Credit Program Administrator ("AEC Program Administrator") work with

PJM-GATS to modify the Pennsylvania certification number it assigns to solar PV systems to differentiate their eligibility.³

As proposed, Duquesne Light agrees with the Commission's interpretations regarding the characteristics of facilities eligible to generate energy and SRECs for LSEs after October 30, 2017, and that Act 40 only makes changes to Solar PV eligibility going forward, thus not otherwise changing existing requirements for Tier I non-solar PV. In addition, the Company believes that the proposed naming process for PA certified systems registered in PJM-GATS is necessary and will be adequate once the AEC Administrator and the facilities are able to make necessary technical changes to accommodate the proposed numbering format.

What is unclear, however, is whether these new requirements are effective during the AEPS compliance year ending May 31, 2018, or whether these restrictions begin with the reporting year ending May 31, 2019. To that end, the Company requests that the Commission specify the Act's applicability in any Final Order issued in this proceeding.

B. Interpretation of Language in Section 2804(2)

In addition to specifically listing the qualities necessary for eligibility as an AES to meet the solar PV share going forward, Act 40 provides for two categories of exemptions:

- (1) ...Certifications originating within the geographical boundaries of this Commonwealth granted prior to the effective date of this section of a solar photovoltaic energy generator as a qualifying alternative energy source eligible to meet the solar photovoltaic share of this Commonwealth's alternative energy portfolio compliance requirements under the "Alternative Energy Portfolio Standards Act; and

³ Specifically, the Commission proposes that solar PV systems that were certified as a Pennsylvania AES in accordance with 52 Pa. Code §§ 75.62, 75.63 & 75.64, prior to October 30, 2017, will be identified by the following certification number format: PA-NNNNNN-SUN-I, whereas solar PV systems that only qualify to generate Tier I non-solar AECs would be assigned a certification number in this format: PA-NNNNNN=NSTI-I. See *TIO* at 6.

- (2) Certification of a solar photovoltaic system with a binding written contract for the sale and purchase of AECs derived from solar PV energy sources entered into prior to the effective date of this section.

In its TIO, the Commission interprets Section 2804(2)(i) to mean facilities that were certified as qualified Pennsylvania solar PV with the AES Administrator prior to October 30, 2017, the effective date of amended Section 2804, will be qualified to generate energy and SRECs eligible to meet solar PV share requirements going forward. *TIO* at 5. As aptly noted by Chairman Brown and Vice Chairman Place, this interpretation focuses on the origin of the certification, *i.e.* from the PA AEC Administrator, as opposed to the location of the facility, and reflects a strict textual review. *See* Joint Statement at 2.

As a result, the Joint Statement of Chairman Gladys M. Brown and Vice Chairman Andrew G. Place, posits that such interpretation “may fail to achieve the potential intentions of the General Assembly to foster economic development in the state, to support environmental stewardship, and to instill electric reliability.” Joint Statement at 2. The Company respectfully disagrees.

Section 1921(a) of the Statutory Construction Act, 1 Pa. C.S. § 1921(a), provides that the object of all statutory interpretation is to determine the General Assembly’s intent based on the express words used in the statute. In making that determination, courts and agencies must apply the express words in the statute and cannot ignore them. *See* 1 Pa. C.S. § 1921(b). When the words of statute may not be viewed as explicit, courts and agencies may consider other matters such as the occasion and necessity for the statute, the object to be obtained, the consequences of a particular interpretation and administrative interpretations. 1 Pa. C.S. 1921(c)(2). Unless a statute falls under strict construction rules, all statutory provisions “shall be liberally construed to effect their objects and promote justice.” *See* 1 Pa C.S. § 1928(c).

With these principles in mind, Duquesne Light asserts that the interpretation provided in the TIO is reasonable when the added language in Act 40 is read in its entirety. When the words are clear, as they are here (by only referring to certifications originating in Pennsylvania, regardless of location of the facility), one does not need to look for “potential intentions” of the General Assembly. Furthermore, having an exception for only certified systems located in PA prior to October 30, 2017 would not be necessary when Section 2804(1) clearly would allow these systems to be eligible to deliver SRECs going forward, as they are located in PA.

By allowing the grandfathering of facilities that are Pennsylvania certified prior to October 30, 2017 to provide solar RECs to AEPS for compliance, the Commission recognizes the words used in the statute, as well as the fact that LSEs and suppliers will need a period of time to adjust to the new requirements. By allowing certifications that are currently in place to continue to provide SRECs, both EDCs and EGSs will be able to retire AECs for the period ending May 31, 2018 without disrupting the industry and, ultimately, increasing ratepayers’ cost for this transition.

In addition to grandfathering Pennsylvania certified facilities that were granted certification prior to October 30, 2017, the Commission’s proposal to allow SRECs to be used where there is an existing binding contract entered into prior to October 30, 2017, will allow a more orderly transition to occur with retirement of AECs, especially as the Act was effective midway through the compliance year that ends on May 31, 2018.

The Commission specifically sought comment on whether applications that had been submitted to the AEC Administrator prior to October 30, 2017 but not approved should be grandfathered in as solar PV AES eligible. Currently, Commission regulations allow for the program administrator to have 30 days from the date a complete AES application is received to

provide written notice as to whether the system qualifies as an AEPS Act AES. Moreover, if a meter or inverter reading is included with the application, 52 Pa. Code 75.63(i) allows, but does not require, AESs to begin earning alternative energy credits on the date the application is filed.

The Company notes that the exemption only applies to those systems with Pennsylvania certifications “granted” prior to the effective date of the section, October 30, 2017. To that end, the Company believes systems that had applications submitted but not granted by October 30, 2017 are not eligible for the exemption.

Similar to the new Section 2804(2)(i) regarding continuation of eligibility for a certified facility, Section 2804(2)(ii) contemplates applying a similar concept to systems with binding contracts entered into prior to the effective date. The Commission further limits this section by proposing that the AECs generated during the contract period are eligible only during the initial contract period. Once the contract period ends, the credits generated are not eligible unless the facility was certified prior to October 30, 2017 or otherwise meets the requirements of Section 2804(1). With this proposal, over time, all facilities that were not granted Pennsylvania certification before October 30, 2017 and do not otherwise qualify under Section 2804(1) will not be able to provide eligible SRECs. Duquesne Light likewise finds this proposal reasonable and would note that to do otherwise could lead to disruptions in the marketplace, erode confidence in the Commonwealth’s business climate, and needlessly raise rates for Pennsylvania ratepayers.

Finally, Duquesne Light takes issue with arguments that state or imply that the Commission’s interpretations of Act 40 nullify the intent of the Act, which seeks to close the border going forward for Solar PV and, in so doing, incentivize solar development in Pennsylvania. By continuing to allow companies that have committed to entering the renewable market and to have access to the Commonwealth’s marketplace through valid Pennsylvania

certification or written binding contracts, the Commonwealth is affirming its commitment to reaching its alternative energy goals.

C. The Treatment of Banked SRECs

The language in Act 40 is silent as to how to handle the SRECs that have been produced and held by suppliers for use in future years, thus “banked” until the supplier needs additional SRECs to meet its contractual obligations. In their Joint Statement, Commissioners Brown and Place requested comment on how these SRECs should be handled. Absent any language in Act 40 stating otherwise (since it does not exist), it is logical and least disruptive to the market for SRECs generated by a PA certificated facility prior to October 30, 2017 or provided pursuant to a binding written contract prior to October 30, 2017 to be eligible for retirement under the rules that exist today. While it is possible that it will take one or two reporting years before all banked SRECs are fully retired, the alternative would be market disruptive, would not recognize those credits produced from eligible facilities or under existing contracts in effect prior to the Act, and is inconsistent with current practice that was unchanged by Act 40. By its omission, the Commission is without legislative authority to simply declare banked SRECs unusable, despite any arguments of intent suggesting otherwise.

III. CONCLUSION

Duquesne Light appreciates the work undertaken by the Commission to implement Act 40 to ensure a smooth and orderly transition within the marketplace and to conform to both the letter and spirit of the law. The Company respectfully requests that the Commission consider the comments and recommendations included herein as it moves forward with this proceeding.

Respectfully submitted,



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