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

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|  | Public Meeting held December 6, 2018 |
| Commissioners Present: |  |

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| Gladys M. Brown, Chairman |  |
| Andrew G. Place, Vice Chairman |  |
| Norman J. Kennard |  |
| David W. Sweet |  |
| John F. Coleman, Jr. |  |

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| Petition by NRG Retail Affiliates to Certify Electric Production Reported From MCI Solar Farm, LLC from November 1, 2017 as Eligible to Meet Their Tier I Solar Photovoltaic Share Alternative Energy Credits Requirements Consistent with Existing Contracts | P-2018-3004077 |
| Petition of NRG Retail Affiliates to Extend 90‑Day True‑up Period to Demonstrate Compliance with AEPS Current Program Year (June 2017 – May 2018) Pending Resolution of the NRG Certification Petition | P‑2018‑3004075 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Now before the Pennsylvania Public Utility Commission (Commission) for consideration is the Petition of Energy Plus Holdings, LLC (EPH), Reliant Energy Northeast, LLC (REN), Green Mountain Energy Company (GMEC), Independence Energy Group, LLC d/b/a Cirro Energy (Cirro) (collectively, NRG Retail Affiliates), requesting that the electric production from November 1, 2017 through Alternative Energy Portfolio Standards (AEPS) Act reporting year 2027 from MC1 Solar Farm, LLC (MC 1 Solar) be qualified as satisfying the Tier I Solar photovoltaic shares alternative energy credit (SAECs) obligations of NRG Retail Affiliates pursuant to contracts entered into prior to October 30, 2017 (Contract Petition). For the reasons expressed below, we will grant, in part, and deny, in part, the Contract Petition.

Also, before the Commission is the Petition of the NRG Retail Affiliates for an extension of the 90‑day time period set forth in 52 Pa. Code § 75.61(e) to demonstrate compliance with the current AEPS program year pending resolution of their Contract Petition (Extension Petition). As well as a Petition to withdraw the Extension Petition, we will grant the NRG Retail Affiliates request to withdraw the Extension Petition.

**Background**

Section 11.1 of Act 40 of 2017 (Act 40)[[1]](#footnote-1) amends the Administrative Code (Adm. Code), 71 P.S. §§ 1 *et seq*., by adding Section 2804 to the Adm. Code, 71 P.S. § 714, that amends the Alternative Energy Portfolio Standards Act (AEPS Act), 73 P.S. §§ 1648.1 – 1648.8, 66 Pa. C.S. § 2814, by establishing geographical limits on solar photovoltaic (solar PV) systems that qualify for the solar PV share requirement in Section 3 of the AEPS Act, 73 P.S. § 1648.3(b)(2). Act 40 became effective on October 30, 2017.

On December 21, 2017, the Commission adopted a Tentative Implementation Order (TIO) at the above referenced Docket seeking comments on proposed interpretations and implementation of Section 2804 of the Adm. Code.[[2]](#footnote-2) In addition to the TIO, Chairman Gladys M. Brown and Vice Chairman Andrew G. Place issued a joint statement that presented supplemental interpretations of Section 2804(2)(i) and 2804(2)(ii) of the Adm. Code, as well as the status of banked solar PV alternative energy

credits (SRECs) for comment. Written comments were to be submitted within 30 days of the publication of the TIO in the *Pennsylvania Bulletin*, February 5, 2018.[[3]](#footnote-3)

On April 19, 2018, upon consideration of the comments, the Commission adopted the Joint Motion of Chairman Gladys M. Brown and Vice Chairman Andrew G. Place setting forth the Commission’s interpretation and implementation of Act 40. On May 3, 2018, the Act 40 Final Implementation Order (FIO) was entered. On May 16, 2018, the Commission issued a Secretarial Letter providing additional procedural information regarding the Section 2804(2)(ii) of the Adm. Code, 71 P.S. § 714(2)(ii), contract approval process.

Various petitions for reconsideration/clarification and an application for stay were filed in response to the Act 40 FIO – some of which requested clarification regarding the Commission’s implementation of Section 2804(2)(ii).[[4]](#footnote-4) In response, the Commission entered an Opinion and Order August 2, 2018 clarifying its interpretation and implementation of Section 2804(2) of the Administrative Code, 71 P.S. § 714(2).[[5]](#footnote-5)

Accordingly, we provided the following clarification as to the Implementation of Section 2804(2)(ii) as set forth below.

In the FIO, we stated the following regarding Sections 2804(2)(i) and (2)(ii):

For the reasons expressed in Section F.2. above, 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.

FIO at 26. We went on to state that “we interpret this section to only permit out of state facilities that are (a) already certified as AEPS Tier I Solar Photovoltaic and that (b) have entered into a contract with a Pennsylvania EDC or EGS serving Pennsylvania customers, for the sale of solar credits, to maintain certification until the expiration of the contract.” FIO at 26-27. We further stated that “this maintained certification should only be applicable to the amount of credits contractually committed to by an out of state certified facility to an EDC or EGS.” FIO at 27.

In addition, the Act 40 FIO addressed two issues related to 2804(2)(ii). First, the Commission determined that the credits produced from any out‑of‑state solar facility that was certified by the AEPS Administrator prior to November 1, 2017 would retain the “SUN” designation; thus, continuing to allow those SAECs to remain eligible for use towards the AEPS Act solar share compliance requirements and which may be banked for subsequent use, consistent with the AEPS banking rules. Credits produced from these out‑of‑state solar facilities after November 1, 2017, are to be re‑designated with an “NSTI” designation in the PJM Generation Attributes Tracking System (GATS) making these credits eligible only for the non‑solar Tier I compliance requirements. FIO at 29‑30.

On May 16, 2018, The Commission issued a Secretarial Letter regarding Petitions that may be filed pursuant to the FIO, which seek to have these now-designated NSTI credits, to be considered as eligible for compliance towards the AEPS Act solar share compliance requirements, stating that:

Contracts may include those directly entered into between an out-of-state certified Tier I solar facility and an EDC or EGS; and/or a trail of contracts between an out-of-state certified Tier I solar facility, one or more intermediaries such as but not limited to wholesale default service participants or solar AEC aggregators, and an EDC or EGS which directly exhibits that a committed quantity of solar AEC output from the certified generation facility is being utilized to facilitate an EDC’s or EGS’s Tier I solar Alternative Energy Portfolio Standards obligations.

May 16, 2018, Secretarial Letter at Docket No. M‑2017‑2631527, n.3.

We provided further clarification as to the implementation of Section 2804(2)(ii) as follows:

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 October 30, 2017, and within the chain of production of the solar AECs supplying those contracts may file a petition. Such Petitions may seek to have the AECs covered by the contracts with the EGS, EDC or their wholesale supplier certified for use by the EGS or EDC for compliance with the AEPS Act solar PV share 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 solar PV share requirement pursuant to Section 2804(2)(ii).

Act 40 Clarification order at 17.

The Alternative Energy Credit Program Administrator began designating all solar PV credits generated on or after November 1, 2017, by out‑of‑state solar facilities, with “NSTI” in GATS, making them eligible only for the non-solar requirements of Tier l. FIO at 29-30. For those facilities that meet certain contractual conditions as indicated below, the Commission provided an option to file petitions to approve certain NSTI designated out-of-state solar PV credits as eligible to be used by an EGS or EDC to satisfy their Tier I solar share requirements. Act 40 Clarification order at 18.

**A. Extension Petition**

On August 14, 2018, the NRG Retail Affiliates filed a Petition requesting an extension to the 90‑day true‑up period to demonstrate compliance with the AEPS Act June 2017 to May 2018 compliance year pending resolution of its Act 40 Petition to certify out‑of‑state solar production, which was docketed at P‑2018‑3004075. In support of its Extension Petition, the NRG Retail Affiliates note that Section 75.61(e) of the Commission’s regulations, 52 Pa. Code § 75.61(e), requires EGSs to demonstrate their compliance with the AEPS Act requirements by September 1, 2018. The NRG Retail Affiliates assert that the resolution of the Contract Petition will allow them to elect to satisfy their Tier I solar photovoltaic share requirement by reliance on solar production from an out‑of‑state facility. Extension Petition at 1-2.

The NRG Retail Affiliates further state that the delay in the ability of them to finalize this decision is not due to any action on the part of the EGSs, but due to the change in law that occurred, effective October 30, 2017, and the ten months that have passed when the Commission provided final direction on how EGSs could qualify solar production from out‑of‑state facilities. The NRG Retail Affiliates assert that they acted expeditiously to prepare this petition as well as the Contract Petition. Finally, the NRG Retail Affiliates states that until the Commission acts on their Contract Petition, they do not have approval to use the out‑of‑state solar production for compliance. For these reasons, the NRG Retail Affiliates request that the Commission enter an order either granting the Contract Petition or, if necessary, the Extension Petition as expeditiously as possible prior to September 1, 2018. Extension Petition at 2-3. No party filed an Answer to the Extension Petition.

The NRG Retail Affiliates, however, filed a letter at Docket No. P‑2018‑3004075 on August 17, 2018, stating that the NRG Retail Affiliates are withdrawing the Extension Petition and request that the Secretary mark the Docket at P‑2018‑3004075 closed. In support of their request, the NRG Retail Affiliates stated that since filing the Extension Petition, they have undertaken alternative business arrangements obviating the need for action on the Extension Petition prior to September 1, 2018. No party filed an objection to the request by the NRG Retail Affiliates to withdraw their Extension Petition.

In a contested proceeding, the withdrawal of pleadings is governed by 52 Pa. Code § 5.94, whereas in an uncontested proceeding, the withdrawal of pleadings is governed by 52 Pa. Code § 1.82. As the instant matter is uncontested, 52 Pa. Code § 1.82 is applicable in determining whether to grant the NRG Retail Affiliates’ request to withdraw the Extension Petition. Under 52 Pa. Code § 1.82, “[a] party that desires to … withdraw a submittal or pleading, shall file a petition for leave to withdraw the appropriate document.” A matter subject to a petition to withdraw may be stricken “by the Commission or by the presiding officer” if no party objects within 10 days of the service of the petition. *Id*. A petition to withdraw will be denied if the Commission “determines that the public interest requires continuation of the proceedings.” *Id*.

The NRG Retail Affiliates filed their letter[[6]](#footnote-6) on August 17, 2018, requesting that their Extension Petition be withdrawn. No objections were made. As such, the matter may be stricken by the Commission. In addition, we note that the public interest will not be harmed by the granting of the NRG Retail Affiliates’ request as the NRG Retail Affiliates indicated that they have undertaken alternative business arrangements to meet their June 2017 – May 2018 AEPS Act compliance year obligations, making its request moot. Accordingly, a continuation of the Extension Petition proceedings is not required. Further, it is in the public interest to strike a matter in which the need to extend the deadline to meet the AEPS Act compliance obligations is moot. For these reasons, we conclude that good cause has been shown to grant the NRG Retail Affiliates’ request to withdraw their Petition to Extend 90‑Day True‑up Period to Demonstrate Compliance

with the AEPS Act Current Program Year (June 2017 – May 2018) Pending Resolution of the NRG Certification Petition.

**B. Contract Petition**

Each of the NRG Retail Affiliates is a Pennsylvania licensed Electric Generation Supplier (EGS). Contract Petition ¶11. NRG Power Marketing LLC (Energy Manager) is a Delaware limited liability company registered to do business in the Commonwealth and is engaged in the purchase and sale of energy, gas, financial products and renewable energy credits. Energy Manager is not engaged in electric generation services and is not a Pennsylvania licensed entity. Contract Petition ¶12. MC 1 Solar is a North Carolina limited liability company in North Carolina that produces electricity from solar photovoltaic panels. MC 1 Solar is a wholly owned subsidiary of NRG Energy, Inc. and received certification from the alternative energy credit program administrator on September 21, 2016 permitting its electric output to be qualified to satisfy the Tier I solar share requirements and was assigned a certification number of PA‑27047‑SUN‑1. On October 7, 2016, MC 1 Solar was registered on the PJM GATS registry where credits are issued, traced and traded. With the retagging that occurred effective November 1, 2017, MC 1 Solar’s certification number has changed to PA‑27047‑NSTI‑1. Extension Petition ¶13.

MC 1 Solar and Energy Manager entered into an Agreement for the Purchase and Sale of Solar Renewable Energy Certificates on July 15, 2016 (SAEC Purchase Agreement). Pursuant to that agreement, Energy Manager is contractually obligated to purchase specific SAECs from MC 1 Solar beginning with the 2017 AEPS program year through the 2027 AEPS program year. The NRG Retail Affiliates assert that the SAEC Purchase Agreement makes clear that the solar output to be purchased by Energy Manager is for the purpose of satisfying the AEPS Act Tier I solar requirements. Contract Petition ¶14. The NRG Retail Affiliates state that the SAEC Purchase Agreement between MC 1 Solar and Energy Manager predates the October 30, 2017 effective date of Act 40, and that there have been no amendments or changes to the SAEC Purchase Agreement since it was executed on July 26, 2016. Contract Petition ¶17.

To meet their AEPS Act obligations, each of the NRG Retail Affiliates have entered into Energy Management Services Agreements (Services Agreements) with Energy Manager whereby Energy Manager agrees to acquire the required Alternative Energy Credits (AECs) for each NRG Retail Affiliate. Each of these Service Agreements were entered into prior to October 30, 2017 and none of the contracts have been modified since October 30, 2017. The term of each Service Agreement was for a period of one year, to be extended for successive one‑year terms unless terminated by either party. None of these Service Agreements have been terminated. Contract Petition ¶18.

The NRG Retail Affiliates state that prior to Act 40, the contractually committed SAECs that Energy Manager purchased from MC 1 Solar were provided to the NRG Retail Affiliates to satisfy their Pennsylvania AEPS Act requirements. The NRG Retail Affiliates note that while MC 1 Solar is also registered in GATS as providing Illinois and Virginia qualifying solar renewable energy credits, this is the last compliance year that alternative energy suppliers will be required to retire credits in Illinois and none of the NRG Retail Affiliates have an obligation in Virginia. The NRG Retail Affiliates assert that it is intended that – upon Commission approval of the Contract Petition – the solar output that Energy Manager is contractually obligated to purchase from MC 1 Solar will be transferred to the NRG Retail Affiliates for purposes of satisfying their AEPS Act Tier I Solar obligations. Contract Petition ¶19.

In the Petition, the NRG Retail Affiliates request that the contractually specified quantities and delivery dates of the electric production from MC 1 Solar for the program year June 2017-May 2018 through the 2027 AEPS program year be approved for use by the NRG Retail Affiliates to satisfy their AEPS Act Tier I Solar obligations pursuant to

Section 2804(2)(ii) of the Administrative Code (Adm. Code), 71 P.S. § 714(2)(ii). The agreements[[7]](#footnote-7) supporting this request are examined in the sections that follow.

**1. Contract between MC 1 Solar and Energy Manager**

In support of its Petition, the NRG Retail Affiliates provided a copy of an agreement between MC 1 Solar and Energy Manager for the purchase and sale of SRECs. Contract Petition Attachment D. This agreement was entered into by the parties on July 15, 2016 and specifies the quantity of credits for each AEPS Act vintage year to be supplied by MC 1 Solar to Energy Manager at a certain price. The NRG Retail Affiliates submit that, pursuant to this agreement, Energy Manager is contractually obligated to purchase specific SRECs from MC 1 Solar beginning with the 2017 AEPS program year through the 2027 AEPS program year. Contract Petition ¶14. The NRG Retail Affiliates aver that the agreement makes clear that the solar output to be purchased by Energy Manager is for satisfying their AEPS Act Tier I Solar requirements. Contract Petition ¶17. Therefore, they submit that authorization for Energy Manager to utilize the electric production of MC 1 Solar for satisfying the AEPS Solar obligations is consistent with MC 1 Solar’s certification by Pennsylvania’s AEC Program Administrator to produce qualifying solar credits. Contract Petition ¶15.

We agree that MC 1 Solar was certified as a Pennsylvania AEPS-eligible resource prior to October 30, 2017, the Act 40 effective date, and that it has a contract with Energy Manager, an intermediary, to the NRG Retail Affiliates. We agree that both parties entered into the contract prior to the effective date of Act 40. In the Act 40 Clarification Order we stated the following:

[A]ll contracts with EGSs, EDCs and/or their wholesale suppliers, as well as any other entity holding contracts entered into prior to October 30, 2017, and within the chain of production of the solar AECs supplying those contracts may file a petition. Such Petitions may seek to have the AECs covered by the contracts with the EGS, EDC or their wholesale supplier certified for use by the EGS or EDC for compliance with the AEPS Act solar PV share 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 solar PV share requirement pursuant to Section 2804(2)(ii).

Act 40 Clarification Order at 17.

We find that the NRG Retail Affiliates have demonstrated that this SAEC Purchase Agreement between MC 1 Solar and Energy Manager is in the “chain of production” of solar AECs supplying the contracts between Energy Manager and the NRG Retail Affiliates. We, however, find that the Services Agreements between Energy Manager and the NRG Retail Affiliates control what AECs generated by MC 1 Solar may be used for compliance with the AEPS Act Tier I Solar PV share requirements. As we stated in the Act 40 Clarification Order, “in order to qualify under Section 2804(2)(ii), the sale and purchase of a solar PV credit 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. Act 40 Clarification Order at 16. We further stated that “in the FIO, Section 2804(2)(ii) only applies to the amount of credits committed to by an out‑of‑state certified facility to an EDC or EGS. *Id*. (citing FIO at 17). Accordingly, we will now address each Services Agreement between Energy Manager and the NRG Retail Affiliates to determine what AECs generated by MC 1 Solar after October 30, 2017, may be used by each NRG Retail Affiliate for their AEPS Act Tier I Solar PV share requirements.

**2. Contracts between NRG Retail Affiliates and Energy Manager**

As Pennsylvania licensed EGSs, each of the NRG Retail Affiliates must acquire and retire sufficient credits from qualifying solar facilities to comply with their AEPS Act Tier I Solar PV obligations for each AEPS reporting period. The NRG Energy Affiliates submit that to meet these obligations, each of the NRG Retail Affiliates entered into Services Agreements with Energy Manager whereby Energy Manager agreed to acquire the required Renewable Energy Credits for each EGS. The NRG Retail Affiliates submit that each Services Agreement was entered into prior to the October 30, 2017 effective date of Act 40 and none of the contracts have been modified since. Additionally, the NRG Retail Affiliates state that the term of each agreement is for a period of one year, to be extended for successive one-year terms unless terminated by either party. Contract Petition ¶18.

Further, the NRG Retail Affiliates state that prior to the effective date of Act 40, the contractually committed SRECs that Energy Manager purchased from MC 1 Solar were provided to the NRG Retail Affiliates to satisfy their AEPS Solar obligations. As such, the NRG Retail Affiliates submit that, upon approval of this Petition, the solar output the Energy Manager is contractually obligated to purchase from MC 1 Solar will be transferred to the NRG Retail Affiliates for use in satisfying their AEPS Solar obligations. Contract Petition ¶19.

In our review of the contracts between the NRG Retail Affiliates and Energy Manager, we concur that the original contracts were entered into prior to the effective date of Act 40. However, since the contracts renew annually for one-year terms, we find that only the last of each of the contract renewals prior to the effective date of Act 40 is appropriate to review for potential approval of credits for use to satisfy the NRG Retail Affiliates’ AEPS Tier I Solar PV share requirements.

Section 2804(3) of the Adm. Code, 71 P.S. § 714(3), states that “[t]his section shall apply to contracts entered into or **renewed** on or after the effective date of this section.” (Emphasis added.) In the FIO, the Commission stated the following:

[W]e adopt the Tentative Order proposal to interpret this subsection of the Adm. Code as limiting the eligibility of systems certified under the contract exception in Subsection 2804(2)(ii), 71 P.S. § 714(2)(ii), to the duration of the contract entered into by the EDC or EGS for the sale and purchase of AECs when it was entered into prior to October 30, 2017. We further state that an EDC or EGS cannot extend the eligibility of the SRECs through a renewal of the original contract or subsequent contracts.

FIO at 29. As the NRG Retail Affiliates acknowledge, the term of each Services Agreement is for a period of one year, to be extended for successive one‑year terms unless terminated by either party. Contract Petition ¶18.

As the NRG Retail Affiliates admit, each of the Services Agreements are one‑year contracts that renew each year for another year. Accordingly, any renewal of the Services Agreements occurring after October 30, 2017, must comply with Section 2804(1) of the Adm. Code, 71 P.S. § 714(1), in that they must be for AECs generated by solar photovoltaic facilities meeting the requirements set forth in Subsections 2804(1)(i), (ii), (iii) of the Adm. Code, 71 P.S. § 714(1)(i), (ii), (iii). As the MC 1 Solar facility is out‑of‑state and does not meet these requirements, AECs generated by MC 1 Solar after the first Services Agreement renewal occurring after October 30, 2017, will not be eligible to be used by that NRG Retail Affiliate to meet its AEPS Act Tier I Solar PV share requirements.

Based on the foregoing, we find that, NSTI credits generated by MC 1 Solar and transferred to the NRG Retail Affiliate via the last annual contract renewal prior to the effective date of Act 40 with Energy Manager, are eligible to be used to meet its AEPS Act Tier I Solar PV share obligations of the NRG Retail Affiliate. We find that the contract between MC 1 Solar and Energy Manager is not controlling as neither MC 1 Solar nor Energy Manager are an EGS serving load in Pennsylvania. As the NRG Retail Affiliates admit, Energy Manager is not engaged in electric generation services and is not a Pennsylvania licensed entity. Contract Petition ¶12. As we found in the Act 40 Clarification Order:

[O]ne megawatt hour of electricity from a solar PV can only become an AEPS Act AEC, if it is in the end used to establish, verify and monitor compliance with the AEPS Act. Otherwise, it is simply a product that can be bought and sold for any state renewable energy standard requirement or for any purpose by any person or entity that does no have a requirement to purchase such energy under such standards.

Act 40 Clarification Order at 14.

While the NRG Retail Affiliates attempt to imply that the contract between MC 1 Solar and Energy Manager only involved Pennsylvania SAECs, we find this implication unpersuasive. Specifically, the NRG Retail Affiliates note that while MC 1 Solar is registered in GATS as providing Illinois and Virginia qualifying solar RECs, this is the last compliance year that alternative energy suppliers will be required to retire credits in Illinois and none of the NRG Retail Affiliates have an obligation in Virginia. Contract Petition ¶19. We find, however, that this implied assertion is not dispositive in this matter. None of the NRG Retail Affiliates are party to this SAEC Purchase Agreement between MC 1 Solar and Energy Manager. As such its terms and conditions do not apply to the NRG Retail Affiliates, which only have one‑year Services Agreements with Energy Manager that renew every year.

In addition, we note that the combined total eligible NSTI credits shall not exceed the lesser of the amount generated by MC 1 Solar or the amounts specified in the agreement between MC 1 Solar and Energy Manager, for each vintage year. Specific dispositions regarding each of the NRG Retail Affiliates’ contracts are given in the following sections of this Order.

**3. Contract between EPH and Energy Manager**

EPH and Energy Manager executed a Services Agreement that became effective as of September 30, 2011. The agreement is for the purchase and sale of Energy, Gas, Financial Products, Renewable Energy Credits and Emissions Credits. The agreement does not specify a specific amount of Renewable Energy credits to be supplied annually. The initial term of this agreement was for one (1) year, thereafter extending for successive one-year terms, unless terminated by either party. Accordingly, the most recent term of this Services Agreement that began prior to October 30, 2017, the effective date of Act 40, was from September 30, 2017 through September 29, 2018. Contract Petition Attach. E.

We find that in accordance with Section 2804(2)(ii) of the Adm. Code and the Commission’s Implementation Orders, the applicable term of the agreement between EPH and Energy Manager is the one‑year term which began on September 30, 2017 and ended on September 29, 2018. Therefore, we find that NSTI credits from MC 1 Solar, issued by GATS for generation from November 2017 through the month of September 2018, and transferred to Energy Manager under the SAEC Purchase Agreement are eligible to be used by EPH for its AEPS Act Tier I Solar PV share compliance. The number of credits deemed eligible by the order shall not exceed the lesser of the annual amount generated by MC 1 Solar, Certification Number PA‑27047‑NSTI‑1, or the annual amounts specified in the SAEC Purchase Agreement between MC 1 Solar and Energy Manager. We deny the request of EPH for use of the credits generated by MC 1 Solar beyond September 2018 for compliance with its AEPS Act Tier I Solar PV share obligations. The approved credits would be eligible to meet the AEPS Act Tier I solar PV share requirements in accordance with 52 Pa. Code § 75.69 (relating to the banking of alternative energy credits). We note, however, that EPH may use credits generated by MC 1 Solar after September 2018 for its compliance with its AEPS Act Tier I non-solar obligations.

**4. Contract between REN and Energy Manager**

REN and Energy Manager executed a Services Agreement that became effective as of December 1, 2011. The agreement is for the purchase and sale of Energy, Gas, Financial Products and Renewable Energy Credits. The agreement does not specify a specific amount of Renewable Energy Credits to be supplied annually. The initial term of this agreement was for one (1) year, thereafter extending for successive one-year terms, unless terminated by either party. Accordingly, the most recent term of this

Services Agreement that began prior to October 30, 2017, the effective date of Act 40, was from December 1, 2016 through November 30, 2017. Contract Petition Attach. F.

We find that in accordance with Section 2804(2)(ii) of the Adm. Code and the Commission’s Implementation Orders, the applicable term of the agreement between REN and Energy Manager is the one‑year term which began on December 1, 2016 and ended on November 30, 2017. Therefore, we find that NSTI credits from MC 1 Solar, issued by GATS for generation for the month of November 2017, and transferred to Energy Manager under the SAEC Purchase Agreement are eligible to be used by REN for its AEPS Act Tier I Solar PV share compliance. The number of credits deemed eligible by the order shall not exceed the lesser of the annual amount generated by MC 1 Solar, Certification Number PA-27047-NSTI-1, or the annual amounts specified in the SAEC Purchase Agreement between MC 1 Solar and Energy Manager. We deny the request of REN for use of the credits generated by MC 1 Solar beyond November 2017 for compliance with its AEPS Act Tier I Solar PV share obligations. The approved credits would be eligible to meet the AEPS Act Tier I solar PV share requirements in accordance with 52 Pa. Code § 75.69 (relating to the banking of alternative energy credits). We note, however, that REN may use credits generated by MC 1 Solar after November 2017 for its compliance with its AEPS Act Tier I non-solar obligations.

**5. Contract between GMEC and Energy Manager**

GMEC and Energy Manager executed a Services Agreement that became effective as of November 30, 2011. The initial term ended on April 19, 2012, thereafter extending for successive one-year terms, unless terminated by either party. The agreement is for the purchase and sale of Texas RECs, other REC products and/or carbon offsets. The agreement does not specify a specific amount of Renewable Energy credits to be supplied annually. Accordingly, the most recent term of this Services Agreement that began prior to October 30, 2017, the effective date of Act 40, was from April 19, 2017 through April 18, 2018. Contract Petition Attach. G.

We find that in accordance with Section 2804(2)(ii) of the Adm. Code and the Commission’s Implementation Orders, the applicable term of the agreement between GMEC and Energy Manager is the one‑year term which began on April 19, 2017 and ended on April 18, 2018. Therefore, we find that NSTI credits from MC 1 Solar, issued by GATS for generation from November 2017 through the month of April 2018, and transferred to Energy Manager under the SAEC Purchase Agreement are eligible to be used by GMEC for its AEPS Act Tier I Solar PV share compliance. The number of credits deemed eligible by the order shall not exceed the lesser of the annual amount generated by MC 1 Solar, Certification Number PA-27047-NSTI-1, or the annual amounts specified in the SAEC Purchase Agreement between MC 1 Solar and Energy Manager. We deny the request of GMEC for use of the credits generated by MC 1 Solar beyond April 2018 for compliance with its AEPS Act Tier I Solar PV share obligations. The approved credits would be eligible to meet the AEPS Act Tier I solar PV share requirements in accordance with 52 Pa. Code § 75.69 (relating to the banking of alternative energy credits). We note, however, that GMEC may use credits generated by MC 1 Solar after April 2018 for its compliance with its AEPS Act Tier I non-solar obligations.

**6. Contract between Cirro and Energy Manager**

Cirro and Energy Manager executed a Services Agreement that became effective as of April 1, 2014. The agreement is for the purchase and sale of Energy, Gas, Financial Products and Renewable Energy Credits. The agreement does not specify a specific amount of Renewable Energy credits to be supplied annually. The initial term of this agreement was for one (1) year, thereafter extending for successive one-year terms, unless terminated by either party. Accordingly, the most recent term of this Services Agreement that began prior to October 30, 2017, the effective date of Act 40, was from April 1, 2017 through March 31, 2018. Contract Petition Attach. H.

We find that in accordance with Section 2804(2)(ii) of the Adm. Code and the Commission’s Implementation Orders, the applicable term of the agreement between Cirro and Energy Manager is the one‑year term which began on April 1, 2017 and ended on March 31, 2018. Therefore, we find that NSTI credits from MC 1 Solar, issued by GATS for generation from November 2017 through the month of March 2018, and transferred to Energy Manager under the SAEC Purchase Agreement are eligible to be used by Cirro for its AEPS Act Tier I Solar PV share compliance. The number of credits deemed eligible by the order shall not exceed the lesser of the annual amount generated by MC 1 Solar, Certification Number PA-27047-NSTI-1, or the annual amounts specified in the SAEC Purchase Agreement between MC 1 Solar and Energy Manager. We deny the request of Cirro for use of the credits generated by MC 1 Solar beyond March 2018 for compliance with its AEPS Act Tier I Solar PV share obligations. The approved credits would be eligible to meet the AEPS Act Tier I solar PV share requirements in accordance with 52 Pa. Code § 75.69 (relating to the banking of alternative energy credits). We note, however, that Cirro may use credits generated by MC 1 Solar after March 2018 for its compliance with its AEPS Act Tier I non-solar obligations.

**Conclusion**

For the reasons expressed in this Opinion and Order we conclude that good cause has been shown to grant the NRG Retail Affiliates’ request to withdraw their Petition to Extend 90‑Day True‑up Period to Demonstrate Compliance with the AEPS Act Current Program Year (June 2017 – May 2018) Pending Resolution of the NRG Certification Petition.

For the reasons expressed in this Opinion and Order we will also grant, in part, and deny, in part, the Petition filed by NRG Retail Affiliates to utilize electric production from MC 1 Solar, Certification Number PA-27047-NSTI-1, from November 1, 2017 as eligible to meet the NRG Retail Affiliates’ AEPS Act Tier I Solar PV share requirements. The number of credits approved by this order shall not exceed the lesser of the annual amount generated by MC 1 Solar or the annual amounts specified in the SAEC Purchase Agreement between MC 1 Solar and Energy Manager. The approved credits would be eligible to meet the AEPS Act Tier I solar PV share requirements in accordance with 52 Pa. Code § 75.69 (relating to the banking of alternative energy credits); **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition of NRG Retail Affiliates, Energy Plus Holdings, LLC, Reliant Energy Northeast, LLC, Green Mountain Energy Company, and Independence Energy Group doing business as Cirro Energy Services Inc., at Docket No. P‑2018‑3004075, to extend the 90‑day true‑up period to demonstrate compliance with the AEPS Act program year June 2017 – May 2018 pending resolution of their Act 40 Petition at Docket No. P‑2018‑3004077 to certify out‑of‑state solar production is marked withdrawn.

2. That the Petition of NRG Retail Affiliates, Energy Plus Holdings, LLC, Reliant Energy Northeast, LLC, Green Mountain Energy Company, and Independence Energy Group doing business as Cirro Energy Services Inc., at Docket No. P‑2018‑3004077, to approve the electric production reported from MCI1 Solar Farm, LLC, from November 1, 2017 as eligible to meet their Tier 1 solar photovoltaic shares alternate energy credits requirements consistent with existing contracts, is granted in part, and denied in part, consistent with this Opinion and Order.

3. That Energy Plus Holdings, LLC, may use alternative energy credits generated by MCI Solar Farm, LLC, with a Pennsylvania Certification Number PA‑27047‑NSTI‑1, from November 2017 through the month of September 2018, to satisfy its Alternative Energy Portfolio Standards Act Tier I solar photovoltaic share obligations in accordance with this Opinion and Order.

4. That Reliant Energy Northeast, LLC, may use alternative energy credits generated by MCI Solar Farm, LLC, with a Pennsylvania Certification Number PA‑27047‑NSTI‑1, in November 2017 to satisfy its Alternative Energy Portfolio Standards Act Tier I solar photovoltaic share obligations in accordance with this Opinion and Order.

5. That Green Mountain Energy Company may use alternative energy credits generated by MCI Solar Farm, LLC, with a Pennsylvania Certification Number PA‑27047‑NSTI‑1, from November 2017 through the month of April 2018, to satisfy its Alternative Energy Portfolio Standards Act Tier I solar photovoltaic share obligations in accordance with this Opinion and Order.

6. That Independence Energy Group, LLC d/b/a Cirro Energy, may use alternative energy credits generated by MCI Solar Farm, LLC, with a Pennsylvania Certification Number PA‑27047‑NSTI‑1, from November 2017 through the month of March 2018, to satisfy its Alternative Energy Portfolio Standards Act Tier I solar photovoltaic share obligations in accordance with this Opinion and Order.

7. That a copy of this Opinion and Order be served on NRG Retail Affiliates, Energy Plus Holdings, LLC, Reliant Energy Northeast, LLC, Green Mountain Energy Company, and Independence Energy Group doing business as Cirro Energy Services Inc.

8. That the proceedings at Docket Nos.P‑2018‑3004075 and P-2018-3004077 be marked closed.

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: December 6, 2018

ORDER ENTERED: December 6, 2018

1. Act 40 of Oct. 30, 2017, P.L. 379, No. 40 (“Act 40”). [↑](#footnote-ref-1)
2. *See Implementation of Act 40 of 2017*, Tentative Implementation Order at Docket No. M‑2017‑2631527 (entered December 21, 2017). [↑](#footnote-ref-2)
3. The TIO was published in the *Pennsylvania Bulletin* on January 6, 2018 at 48 Pa. B. 111. [↑](#footnote-ref-3)
4. *See, e.g*., *In the Matter of Implementation of Act 40 of 2017, Docket No. M-2017-2631527, Petition of*

   *Exelon Generation Company. LLC and Constellation New Energy. Inc. For Clarification And/or*

   *Reconsideration of the Commission’s Final Implementation*, at 6-10. [↑](#footnote-ref-4)
5. *Implementation of Act 40 of 2017*, Opinion and Order, Docket No. M-2017-2631527, (entered August 2, 2018) (Act 40

   Clarification Order). [↑](#footnote-ref-5)
6. We will treat the letter filed by the NRG Retail Affiliates as a Petition to withdraw. [↑](#footnote-ref-6)
7. Contract Petition Attachments D-H. [↑](#footnote-ref-7)