

DAVID G. ARGALL
29TH SENATORIAL DISTRICT

SENATE BOX 203029
THE STATE CAPITOL
HARRISBURG, PA 17120-3029
(717) 787-2637
FAX (717) 783-8857

HAMBURG (610) 562-3411
MAHANAY CITY (570) 773-0891
POTTSVILLE (570) 621-3400
SPRING TOWNSHIP 1(677) 327-4255
TAMAQUA (570) 668-1240



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WEBSITE: senatorargall.com
EMAIL: dargal@pesen.gov
TOLL FREE: 1-877-327-4255

February 12, 2021

Pennsylvania Public Utility Commission
Ms. Rosemary Chiavetta, Secretary
Commonwealth Keystone Building
2nd Floor, Room N201

Dear Secretary Chiavetta:

Please accept this letter as my formal comments in the docket M-2020-3023323. As a prime sponsor of the bipartisan legislation which was incorporated into the Commonwealth’s Fiscal Code and which is the subject of this matter, I have worked extensively to ensure that this legislation does that which is intended—to ensure that Pennsylvania electric distributors will purchase their Tier II credits from within the Commonwealth, supporting Pennsylvania-based Tier II credits and putting us in line with many of our neighboring states. In addition, “closing the borders” ensures that our in-state ratepayers are supporting jobs, investment, and tax revenue here in Pennsylvania.

The Pennsylvania Joint Legislative Air and Water Pollution Control and Conservation Committee examined this issue in a June 2020 report and recommended: “limiting participation in Tier II of the [AEPS] program to in-state resources to increase credit value.”¹ Along with my colleagues Senator Lisa Boscola (D-18), Senator Wayne Langerholc (R-35), Senator Steve Santarsiero (D-10), Senator Pat Stefano (R-32), Senator John Yudichak (I-14), Senator Scott Hutchinson (R-21), and Senator Joe Pittman (R-41), I introduced Senate Bill 1305 of 2020 with the intent “to limit participation in Tier II of the Pennsylvania Alternative Energy Portfolio Standards (AEPS) program to energy sources originating in Pennsylvania.”² The language in Section 14 of Act 114 of 2020 remains substantially the same as what was proposed in SB 1305.³

In 2017, the Pennsylvania Public Utility Commission (Commission) was tasked with implementing Section 11.1 of Act 40 of 2017 amending the Administrative Code by adding Section 2804 to amend the Alternative Energy Portfolio Standards Act (AEPS Act) establishing geographical limits on solar photovoltaic (solar PV) systems. Section 14 of Act 114 of 2020, which amends the Fiscal Code at Article XVII-E by adding Section 1799.10-E, similarly establishes geographical

¹ *The Coal Refuse Reclamation to Energy Industry and Carbon Trading Markets*, JLCC (June 2020), <http://jcc.legis.state.pa.us/resources/ftp/documents/Reports/JLCC%20-%20Coal%20Refuse%20Reclamation%20Report%20-%202020.pdf>

² Sens. Argall & Boscola, Senate Co-Sponsorship Memorandum, Closing AEPS Tier II Border (June 25, 2020)

³ SB 1305, <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&sInd=0&body=s&type=b&bn=1305>

limits on Alternative Energy Sources (AESs) that qualify as Tier II resources under the AEPS Act. With limited exceptions, the language of these sections is nearly identical.

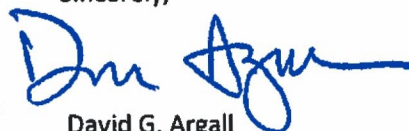
In enacting this language in Act 114 of 2020, the General Assembly was clearly aware of the Commission's order implementing Act 40 of 2017. The co-sponsorship memorandum for SB 1305 specifically states that "a similar effort was undertaken in 2017 with the passage of Act 40." The Commission's actions in implementing the provisions of Section 14 in this docket are therefore appropriately guided by its Final Implementation Order (FIO) for Act 40. The intent of this section was similarly to "close the borders" for Tier II AESs consistent with those for solar PV systems following the design utilized by a number of our neighboring states to promote economic development.

Therefore, please see the following points addressing implementation of this legislation.

- The Commission's interpretation of the language "[a] certification originating within the geographical boundaries of this Commonwealth. . ." in Act 114 "as meaning a facility located within Pennsylvania having received an AEPS Act Tier II certification" follows both the legislative intent and Commission precedent that guided consideration of Act 114. This statute is not intended to "grandfather" any out-of-state facilities certified before November 23, 2020, to generate Tier II AEPS credits, except for those Tier II AECs subject to "existing contracts" used for AEPS compliance during the limited period for which they are specifically "grandfathered" in Act 114. To allow any Tier II AESs not located in Pennsylvania, including out-of-state AESs located in a transmission zone extending into the Commonwealth, does nothing to "close the borders."
- Regarding "grandfathering" of existing contracts, language was added to further emphasize that existing contracts shall be allowed to sunset, however "only until the current term of the contract terminates." Once those contracts sunset, they will not be renewed if the Tier II AES is not within the geographical boundaries of the Commonwealth.
- With respect to how banked AECs from out-of-state Tier II AESs will be categorized and permitted to fulfill the AEPS Tier II requirement, the intent of Act 114 is that out-of-state AESs will no longer qualify to meet the compliance requirements of Tier II of the AEPS; however, out-of-state Tier II AESs could still be eligible for selling AECs created prior to November 23, 2020 if the AES were registered for AEPS prior to that date.
- Following the enactment of Act 114 of 2020, Pennsylvania remains on track to meet future AEPS Tier II requirements in 2023 and beyond. The legislature anticipated that "closing the border" will produce Tier II AEC pricing sufficient to incentivize additional in-state Tier II generation. Particularly, waste coal resources, which have recently been operating significantly below their historic base load capacity, are capable of generating sufficient Tier II AECs to meet future compliance obligations. Additional in-state Tier II resources that had not previously participated in AEPS may register for the program. There are also out-of-state banked Tier II AECs and future AECs currently under contract, which can also be used for AEPS compliance as permitted in Act 114.

I support the proposed Temporary Implementation Order (TIO) adopted by the Commission on January 14, 2021, as it relates to implementing Section 14 of Act 114 of 2020. The Commission should issue a final order in this docket consistent with this TIO to fulfill the legislative intent of closing the AEPS Tier II border. Please feel free to contact me should you have any questions regarding this legislation, or its specific legislative intent. Thank you for your consideration of these comments on this important matter.

Sincerely,



David G. Argall
State Senator
29th Senatorial District