



Brian K. Stallman
Vice President, Development

DUKE ENERGY RENEWABLES
139 EAST FOURTH STREET
CINCINNATI, OHIO 45202

513 287-2026
Brian.Stallman@duke-energy.com

February 1, 2018

Via UPS

Pennsylvania Public Utility Commission
Attn: Secretary
400 North Street
Harrisburg, PA 17120

RECEIVED

FEB - 1 2018

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Comments on Proposed Implementation of Act 40 of 2017,
PUC Docket No. M-2017-2631527

Dear Commissioners:

Duke Energy Renewables, Inc. ("Duke Energy"), a leader in developing innovative wind and solar energy solutions for customers across the country, welcomes this opportunity to provide comments concerning the proposed implementation of Section 11.1 of Pennsylvania Act 40 of 2017, relating to eligibility for renewable energy credits under the Pennsylvania Alternative Energy Portfolio Standards ("AEPS") Act, 73 P.S. §§ 1648.1 *et seq.*

Since 2007, Duke Energy has invested more than \$5 billion to grow its portfolio of wind and solar power projects. The company's growing portfolio of commercial renewable assets includes 21 wind farms and 63 solar farms in operation in 14 states, totaling more than 2,900 megawatts in electric-generating capacity. Duke Energy owns and operates two windfarms in Pennsylvania, the 69 MW Laurel Hill facility located in Lycoming County and the 70 MW North Allegheny facility located in Blair and Cambria Counties. In addition, the company has entered into contracts with numerous buyers for the sale of Pennsylvania certified solar renewable energy credits ("RECs") from its out of state facilities.

Duke Energy supports the Commission's proposed interpretation of "a certification originating within the geographical boundaries of this Commonwealth" in Section 2804(2)(i) contained in the Tentative Implementation Order issued December 21, 2017, which takes the position that facilities receiving a certification from the Program Administrator prior to the effective date of Act 40 (October 30, 2017) would be grandfathered and would continue to qualify to generate energy and SRECs eligible to be used by EDCs and EGSs to meet the solar PV share requirement. However, we oppose the supplemental interpretation suggested in the

Joint Statement of the Chairman and Vice Chairman issued the same day which would purport to require a facility to be physically located within the Commonwealth in order to be exempted under Section 2804(2)(i) and thereby continue to receive the solar certifications. It would appear that such an exemption would be unnecessary to preserve the certification of in-state Pennsylvania facilities under the Act, which by the very nature of the newly added Section 2804(1) preserved the ability of directly connected in-state facilities, including retail (behind the meter), distribution and transmission level facilities to be eligible to meet compliance requirements under the Act. Instead, the exemption under 2804(2)(i) appears to have been crafted to grandfather currently certified out-of-state facilities that, without the exemption, would be rendered ineligible for continued certification by the passage of Section 2804. The exemption to grandfather the currently certified facilities would still achieve the intent of closing the borders on a going-forward basis, but would provide an equitable cushion to help alleviate the impact to owners of existing out of state facilities that were developed and received certification in accordance with then existing Pennsylvania law, and but for the exemption would otherwise be rendered ineligible for continued certification.

Numerous factors are taken into consideration when the decision is made to invest capital in renewable energy projects, including the Renewable Portfolio Standards of the state, SREC prices, and requirements for obtaining the necessary certifications to be compliant with the applicable standards. During the time period between 2013 and 2016, Duke Energy made the decision to invest a significant amount of capital in solar facilities located within the PJM footprint in North Carolina based on the fact that the SRECs generated by these facilities would be eligible for compliance in accordance with Section 4 of the AEPS Act, 73 P.S. § 1648.4, which states "For purposes of compliance with this act, alternative energy sources located in the PJM Interconnection, L.L.C. regional transmission organization (PJM) or its successor service territory shall be eligible to fulfill compliance obligations of all Pennsylvania electric distribution companies and electric generation suppliers."

The Joint Statement suggests that the intent of the legislation was to encourage in-state solar development, support the environment, and increase SREC prices by closing the borders. While this may be the case, the legislature appears to have also been cognizant of the impact of closing the borders on existing out-of-state facilities and therefore included an exemption in Section 2804(2)(i) to help alleviate the impact to owners of existing out of state facilities, while still achieving its objectives in a more equitable manner.

Duke Energy believes that the Joint Statement's suggested interpretation would cause undue financial harm to owners of existing facilities, that fully complied with the AEPS requirements prior to enactment of Act 40, by changing the rules midstream and would jeopardize existing investments and executory contracts for the purchase and sale of SRECs.

If the Commission, in its wisdom determines that the carve-out included in Section 2804(2)(i) was intended to benefit some subset of in-state generating facilities not meeting the qualifications listed in Section 2804(1) and does not apply to previously certified out-of-state facilities, Duke would support the interpretation of 2804(2)(ii) as permitting out of state

facilities previously granted a solar certification to fulfill contracts in place for the sale of SRECs prior to the effective date until expiration of the contract. The additional carve-out in Section 2804(2)(ii) appears to be recognition by the Pennsylvania legislature of the sanctity of contract entered into between willing counterparties in reliance on existing Pennsylvania law at the time of the execution of the contract and seeks to preserve the status quo of the contract as of such date. Consistent with that principle, Section 2804(2)(ii) should be interpreted as applying to any existing contract committing the parties to the production and sale of Pennsylvania SRECs, and not be confined (as suggested in the Joint Statement) to some subset of contracts entered into between the generating facility and specific classification of parties. The fact is that such contracts come in a variety of forms, and all such existing contracts should be honored.

Duke Energy has committed to making significant investments in renewable energy and continues to evaluate potential projects in Pennsylvania and across the United States to grow its portfolio. As a developer and investor, it concerns us to see potential legislative changes enacted which impact existing facilities and which render previously qualifying facilities ineligible overnight and potentially subjecting those existing assets to substantial negative financial implications. Based in the foregoing, Duke Energy hereby respectfully submits these comments for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'BK Stallman', written in a cursive style.

Brian K. Stallman

UPS CampusShip: View/Print Label

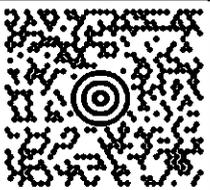
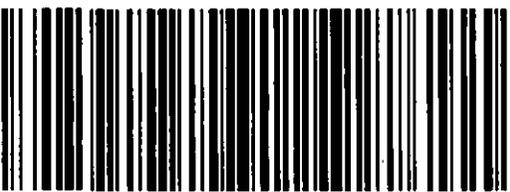
1. **Ensure there are no other shipping or tracking labels attached to your package.** Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
 2. **Fold the printed label at the solid line below.** Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.
 3. **GETTING YOUR SHIPMENT TO UPS Customers with a Daily Pickup**
Your driver will pickup your shipment(s) as usual.
- Customers without a Daily Pickup**
Take your package to any location of The UPS Store®, UPS Access Point(TM) location, UPS Drop Box, UPS Customer Center, Staples® or Authorized Shipping Outlet near you. Items sent via UPS Return Services(SM) (including via Ground) are also accepted at Drop Boxes. To find the location nearest you, please visit the Resources area of CampusShip and select UPS Locations.
Schedule a same day or future day Pickup to have a UPS driver pickup all your CampusShip packages.
Hand the package to any UPS driver in your area.

UPS Access Point™
THE UPS STORE
407 VINE ST
CINCINNATI, OH 45202

UPS Access Point™
WOOD'S HARDWARE CINCINNATI
125 E 9TH ST
CINCINNATI, OH 45202

UPS Access Point™
L&S MARKET
1548 ELM ST
CINCINNATI, OH 45202

FOLD HERE

SUSAN MILLER 513-287-2019 DUKE ENERGY 139 E. 4TH STREET CINCINNATI OH 45202	0.0 LBS LTR	1 OF 1
SHIP TO: SECRETARY PENNSYLVANIA PUC 400 NORTH STREET HARRISBURG PA 17120-0200		
	PA 171 9-20 	
UPS NEXT DAY AIR		
TRACKING #: 1Z Y4Y 417 01 9901 0864	1 	
BILLING: P/P		
NT ALIAS: R201/DCS4/75748/OPFSUPP/33001		
<small>CS 20.0.27 WNTNV50 97.0A 01/2018</small>		