

**W. Craig Williams**  
Assistant General Counsel  
2301 Market Street / S23-1  
Philadelphia, PA 19103

Direct Dial: 215-841-5974

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**VIA eFILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Pursuant to the Commission's December 21, 2017 Tentative Implementation Order in the above-referenced docket, enclosed please find the **Comments of PECO Energy Company on the Tentative Implementation Order**.

Please do not hesitate to contact me if you have any questions.

Very truly yours,



W. Craig Williams

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**IMPLEMENTATION OF ACT 40 OF 2017** : **DOCKET NO. M-2017-2631527**  
:

**COMMENTS OF PECO ENERGY COMPANY  
ON THE TENTATIVE IMPLEMENTATION ORDER**

PECO Energy Company (“PECO” or the “Company”) submits these Comments in response to the Pennsylvania Public Utility Commission’s (the “Commission’s”) December 21, 2017 Tentative Implementation Order inviting interested parties to submit written comments on the Commission’s proposed interpretation and implementation of Section 11.1 of Act 40.<sup>1</sup> PECO’s Comments also respond to the Joint Statement of Chairman Gladys M. Brown and Vice Chairman Andrew G. Place which issued supplemental interpretations of Section 11.1 and requested comments on the status of “banked” solar alternative energy credits (“SAECs”).<sup>2</sup>

PECO appreciates the opportunity to share its perspective on the implementation of Act 40 as it applies to the solar photovoltaic (“solar PV”) requirements of the Alternative Energy Portfolio Standards Act (“AEPS Act”). After describing PECO’s compliance with the solar PV requirements of the AEPS Act, the Company’s Comments address two key implementation issues: (1) the continued eligibility of SAECs for AEPS compliance procured by electric distribution companies (“EDCs”) under existing contracts; and (2) the status of SAECs banked by EDCs in accordance with the AEPS Act and the Commission’s current regulations.

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<sup>1</sup> Tentative Implementation Order, *Implementation of Act 40 of 2017*, Docket No. M-2017-2631527 (Order entered Dec. 21, 2017) (“Tentative Order”).

<sup>2</sup> Joint Statement of Chairman Gladys M. Brown & Vice Chairman Andrew G. Place, *Implementation of Act 40 of 2017*, Docket No. M-2017-2631527 (Dec. 21, 2017) (“Joint Statement”).

## I. PECO'S COMPLIANCE WITH AEPS REQUIREMENTS

Under the AEPS Act, PECO is required to procure AECs from Tier I resources equal to 6.5% of the electricity it sells to retail customers in Pennsylvania, including an amount of AECs from solar PV systems equal to 0.34% of PECO's default service retail electricity sales.<sup>3</sup> These percentage requirements increase through 2020, with the Tier I requirement increasing to 8% and the solar PV requirement (as a subset of the Tier I requirement) increasing to 0.5%.<sup>4</sup>

PECO took early action to comply with the AEPS Act's solar PV requirements when it was under no obligation to procure SAECs for compliance. In 2009, the Commission approved PECO's proposed voluntary competitive procurement of up to 8,000 SAECs annually over ten years to satisfy a portion of PECO's future solar requirements under the Act and to support the early development of solar projects.<sup>5</sup> PECO subsequently entered into Commission-approved ten-year contracts for the SAEC output of several solar facilities, with a majority of the contracted SAECs generated by solar facilities in Pennsylvania. All of PECO's current SAEC contracts expire in 2020.

At present, PECO's "full requirements" default service suppliers (selected through PECO's Commission-approved default service procurements) are responsible for furnishing

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<sup>3</sup> 73 P.S. § 1648.3(b) (establishing Tier I and solar PV requirements). Tier I resources include solar PV and solar thermal energy, wind power, low-impact hydropower, geothermal energy, biologically derived methane gas, fuel cells, biomass energy, and coal mine methane. *See* 73 P.S. § 1648.2.

<sup>4</sup> 73 P.S. § 1648.3(b)(2).

<sup>5</sup> *Petition of PECO Energy Company for Approval to Procure Solar Alternative Energy Credits*, Docket No. P-2009-2094494 (Order entered August 28, 2009). PECO also took early action to address the non-solar Tier I requirements of the AEPS Act and received Commission approval in 2007 to voluntarily procure up to 450,000 non-solar Tier I AECs for future AEPS compliance through a competitive request for proposals process. *Petition of PECO Energy Company for Approval of (1) A Process to Procure Alternative Energy Credits During the AEPS Banking Period and (2) A Section 1307 Surcharge and Tariff to Recover AEPS Credits*, Docket No. P-00072260 (Order entered December 26, 2007).

SAECs (and AECs) corresponding to the amount of default service load that they serve.<sup>6</sup> SAECs (and AECs) obtained by PECO through its prior AEPS competitive procurements are used to reduce each supplier's obligations. SAECs may be banked for future allocations, and the Commission has also authorized PECO to procure or sell additional SAECs through "balancing" procurements.<sup>7</sup> PECO has been fully compliant with all AEPS requirements under these arrangements, and the costs of SAEC procurements are recovered through PECO's Generation Supply Adjustment ("GSA") charge with all other default generation service and AEPS costs.<sup>8</sup>

## II. COMMENTS ON THE INTERPRETATION AND IMPLEMENTATION OF ACT 40

### A. EDC Contracts For The Purchase And Sale Of SAECs Executed Prior To Act 40 Remain Valid Under Both The Tentative Order And The Joint Statement

Section 11.1 of Act 40, which became law on October 31, 2017, added Section 2804 to Article XXVIII of the Administrative Code. Section 2804(2) provides as follows:

(2) Nothing under this section or section 4 of the [AEPS 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."

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<sup>6</sup> See Opinion and Order, *Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2017 Through May 31, 2021 (DSP IV)*, Docket No. P-2016-2534980 (Dec. 8, 2016), pp. 10-16 (describing PECO's approved default service procurement plan, including PECO's plan for AEPS compliance).

<sup>7</sup> See, e.g., *Petition of PECO Energy Company for Approval to Procure Tier II Alternative Energy Credits and Additional Tier I and Solar Alternative Energy Credits*, Docket No. P-2010-2210975 (Order entered February 14, 2011); *Petition of PECO Energy Company for Approval to Procure Tier II Alternative Energy Credits Through Independent Brokers*, Docket No. P-2014-2408725 (Order entered April 23, 2014).

<sup>8</sup> On October 12, 2012, the Commission approved a proposal by PECO to eliminate the AEPS Surcharge and incorporate all of its AEPS compliance costs into the GSA. See *Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P-2012-2283641 (Order entered October 12, 2012).

(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.<sup>9</sup>

Under the Tentative Order, solar PV systems (whether in-state or out-of-state) that were certified<sup>10</sup> as a Pennsylvania alternative energy source (“AES”) under the AEPS Act prior to October 31, 2017, remain certified under Section 2804(2)(i) and are able to provide eligible SAECs for EDC AEPS compliance.<sup>11</sup> Under the Joint Statement’s interpretation of Section 2804(2)(i) and 2804(2)(ii), out-of-state solar PV systems certified as AESs can only provide SAECs for compliance during the term of an existing contract to deliver SAECs to a Pennsylvania EDC that was executed prior to October 31, 2017.

Under either interpretation, SAECs delivered under contract to an EDC from solar PV facilities that were AES-certified prior to October 31, 2017 will continue to be able to be used by PECO and similarly situated EDCs for AEPS compliance. PECO’s SAEC contracts meet these requirements, and PECO believes that result properly respects the rights of both EDCs and SAEC suppliers and avoids the cost of incurring additional replacement SAECs (which would ultimately be borne by default service customers as a cost of AEPS compliance). The Commission should ensure that any Final Implementation Order in this proceeding clearly provides that all SAECs delivered under existing contracts between EDCs and solar PV facilities certified prior to October 31, 2017, shall remain eligible for AEPS compliance.

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<sup>9</sup> Act 40, § 11.1

<sup>10</sup> PECO uses the terms “certify” and “certification” with regard to solar PV systems in these Comments for consistency with the Tentative Order and Joint Statement. The Company notes that the AEPS Act (73 P.S. § 1648.3(e)) and current regulations (52 Pa. Code § 75.62) use the terms “qualify” and “qualification” with regard to alternative energy sources.

<sup>11</sup> Tentative Order, pp. 5-6.

**B. Banked SAECs Generated By An AES-Certified Solar PV System Should Remain Eligible For AEPS Compliance**

Under the AEPS Act and the Commission's AEPS regulations, an EDC may bank SAECs certified in one AEPS reporting period for use in either or both of the two immediately following AEPS reporting periods.<sup>12</sup> While the Tentative Order concludes that a banked SAEC will be eligible for use for AEPS compliance if the SAEC was generated during the period in which a solar PV system was certified as a solar AES,<sup>13</sup> the Joint Statement does not clearly state that banked SAECs from such systems will be eligible if the systems are no longer certified.

PECO firmly believes that if an SAEC has been generated by a previously certified AES solar PV system and banked by an EDC, the SAEC should not lose its eligibility for AEPS compliance as a result of a later change in the certified status of the solar PV system under the requirements of Act 40. As with any change in the AEPS eligibility of SAECs under existing contracts, revoking the eligibility of SAECs that were already purchased and banked by EDCs could increase costs for default service customers (who would ultimately bear the cost of any replacement SAECs) and could subject EDCs to increased risk of AEPS Act non-compliance if insufficient replacement SAECs were available to replace banked credits. In the Final Implementation Order, the Commission should clearly state that SAECs from certified AES solar PV systems banked by EDCs in accordance with the AEPS Act and the Commission's current regulations will not lose their eligibility for AEPS compliance.

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<sup>12</sup> See 73 P.S. § 1648.3; 52 Pa. Code § 75.69.

<sup>13</sup> Tentative Order, pp. 7-8.

### III. CONCLUSION

PECO appreciates the opportunity the Commission has provided to offer these Comments and looks forward to working with the Commission and interested stakeholders on the implementation of Act 40's new requirements.

Respectfully submitted,



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Romulo L. Diaz, Jr. (Pa. No. 88795)

Jack R. Garfinkle, (Pa. No. 81892)

W. Craig Williams (Pa. No. 306405)

PECO Energy Company

2301 Market Street

P.O. Box 8699

Philadelphia, PA 19103

E-mail: [craig.williams@exeloncorp.com](mailto:craig.williams@exeloncorp.com)

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