



**PA Chamber**<sup>TM</sup>  
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PA PUC  
SECRETARY'S BUREAU

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Feb. 2, 2018

**RE: Implementation of Act 40 of 2017; M-2017-2631527**

I am writing on behalf of the members of the Pennsylvania Chamber of Business and Industry (PA Chamber), the largest, broad-based business advocacy organization in the Commonwealth, in response to the Pennsylvania Public Utility Commission's (PUC) Tentative Implementation Order (M-2017-2631527) as discussed at the Dec. 21, 2017 public meeting and published for public comment in the Jan. 6, 2018 edition of the Pennsylvania Bulletin (48 Pa.B. 111).

The PA Chamber supports the interpretation of Act 40 of 2017 as written in the Tentative Implementation Order – in particular, the interpretation of the Act's language in 2804(2)(i): "a certification originating within the geographical boundaries of the Commonwealth" to mean systems certified by the PUC, even if that system is physically located outside the geographic borders of the state of Pennsylvania.

The PA Chamber does not support the revised interpretation offered by Chairman Brown and Commissioner Place that would restrict eligibility for projects solely to projects confined within the state of Pennsylvania. Companies have contracted with projects located out of state for the express purpose of complying with the Alternative Energy Portfolio Standards. Rendering these projects ineligible for the photovoltaic share requirement of AEPS, as the interpretive language in Chairman and Commissioner's statement would do, may represent an impairment of existing contracts. In addition, such an outcome would also conflict with the plain language of 2804(3) of Act 40, which reads, "This section shall apply to contracts entered into or renewed on or after the effective date of this section."

While agencies should always attempt to interpret and implement statutes with consideration to legislative intent, it is difficult in this situation to characterize precisely what legislative intent was. The language was adopted into an administrative code as part of the budget resolution. Hearings were not held this session on this particular policy in legislative committees, and floor debate was extremely limited. One could reasonably presume a legislator's intent for voting on Act 40 had as much to do with resolving the budget impasse as it did with forwarding any particular outcome related to energy policy. To the extent the issue of "closing the borders" was raised in past legislative sessions in committee hearings or introduced legislation, it bears mentioning that a considerable number of legislators in the House and Senate have retired or pursued different public office. Given the composition of the legislature has considerably changed from recent previous sessions, any one policy explored (but never enacted) by previous General Assemblies should not have much sway on the PUC's interpretation and implementation of Act 40.

The language of Act 40 related to solar projects discusses which projects are eligible for complying with the photovoltaic share requirement; only projects with a certification originating from the PUC can satisfy this requirement, and the PUC has certified projects located outside the bounds of the state as eligible for compliance with AEPS. The plain language of Act 40 does not render these certifications null and void,

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Pennsylvania Public Utility Commission  
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nor is there enough legislative history to make a definitive case regarding legislative intent. For these reasons, the PA Chamber urges the PUC to take a strict textual view of this matter and adopt the Tentative Implementation Order as proposed, and not adopt the interpretations of the language as outlined in the Chairman and Commissioner's statement.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Sunday", with a stylized flourish extending to the right.

Kevin Sunday  
Director, Government Affairs



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