IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Williams Companies, Inc.,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1232 C.D. 2024
	:	Argued: September 10, 2025
Pennsylvania Public	:	
Utility Commission,	:	
	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE STACY WALLACE, Judge
HONORABLE MATTHEW S. WOLF, Judge

OPINION BY JUDGE WOJCIK FILED: August 19, 2026

In this case of first impression, Williams, Inc. (Williams) petitions for review the August 21, 2024 order of the Pennsylvania Public Utility Commission (PUC) denying reconsideration and upholding its prior determination that Williams' proposed solar photovoltaic systems, which bypass the electric distribution company's (EDC) distribution system and the regional transmission organization's (RTO) transmission system, do not meet the definition of an "alternative energy system" and thus do not qualify for "solar renewable energy credits" (solar credits) under the Alternative Energy Portfolio Standards Act (AEPS Act)[1] as amended by Section 2804 of The Administrative Code of 1929 (Act 40).[2] Williams contends that the PUC erred and/or abused its discretion by denying reconsideration and concluding that its proposed solar photovoltaic systems, which will directly deliver electricity generated to Williams' natural gas compressor stations, do not qualify for solar credits. Upon concluding that the PUCs interpretation of Act 40 was erroneous, we reverse.

I. Background

Williams is an energy company with a primary focus on natural gas infrastructure. Williams owns a subsidiary, Transcontinental Gas Pipe Line Company, LLC (Transco), that operates the Transco natural gas pipeline, a major interstate pipeline system that transports approximately 15% of the nation's natural gas. Transco operates multiple natural gas compressor stations along the pipeline, which demand energy. Williams plans to construct two large solar photovoltaic systems, using solar arrays with a nameplate capacity of approximately 11 megawatts each,[3] to provide electricity to two of Transco's natural gas compressor stations located in Wyoming and Columbia Counties, Pennsylvania. The compressor stations receive electricity from PPL Electric Utilities (PPL), an EDC; Transco is the retail customer of record at both locations. For each project, the solar arrays will be located on land adjacent to the compressor station and be physically

[1] Act of November 30, 2004, P.L. 1672, *as amended*, 73 P.S. §§1648.1-1648.8.

[2] Act of April 9, 1929, P.L. 177, added by the Act of October 30, 2017, P.L. 379, 71 P.S. §714.

[3] This nameplate capacity is too large to net meter. *See* Section 2 of the AEPS Act, 73 P.S. §1648.2 (definition of "customer-generator"); R.R. at 50a.

connected to the compressor station's existing internal electric system. The solar energy generated will flow directly into Transco's compressor stations' internal electric systems to support the stations' operations. Williams expects the entirety of the solar generation to be consumed by the compressor stations, which will reduce reliance on PPL for electricity.

On June 26, 2023, Williams filed a Petition for Declaratory Order with the PUC seeking a declaration that Williams' proposed solar photovoltaic systems would qualify for solar credits under the AEPS Act. Reproduced Record (R.R.) at 1a-7a. In support, Williams relied on the language of Act 40 that a solar photovoltaic system that "directly deliver[s] the electricity it generates to a retail customer of an [EDC]," even if not interconnected to the grid, would qualify.[4] *Id*. at 4a (quoting Act 40, 71 P.S. §714). The PUC determined that Williams' proposed solar photovoltaic systems were ineligible for solar credits. Williams filed a Petition for Reconsideration, which the PUC granted pending further review. Ultimately, the PUC rejected Williams' interpretation and concluded that the projects did not qualify based on lack of connection to the grid. The PUC reasoned that when Act 40 is read in *pari materia* with the AEPS Act, "alternative energy systems," including solar photovoltaic systems, must be connected to an EDC's distribution system or an RTO's transmission system to qualify for solar credits. Thus, by decision dated August 21, 2024, the PUC denied reconsideration and upheld its determination that

[4] Interconnection is the physical connection to the grid; delivery is the transfer of electricity to a retail customer or the grid.

Williams' proposed solar photovoltaic systems are ineligible for solar credits.[5] This appeal now follows.[6]

II. Issue

The sole issue for our review is whether Williams' proposed solar photovoltaic systems, which will directly deliver the electricity to a PPL retail customer, without grid interconnection, qualify for solar credits under the AEPS Act.

III. Discussion

A. Contentions

Williams argues that the PUC erred in concluding that its proposed solar photovoltaic systems are not eligible for solar credits under the AEPS Act. According to Williams, the clear and unambiguous language of Act 40 specifies that a solar photovoltaic system qualifies for solar credits under the AEPS Act if it "[d]irectly deliver[s] the electricity it generates *to a retail customer* of an [EDC]." 71 P.S. §714(1)(i) (emphasis added). The proposed solar photovoltaic systems here will directly deliver the electricity generated to Transco's compressor stations. Transco is a retail customer of an EDC – PPL. Thus, Williams maintains that the proposed systems should qualify for solar credits under the AEPS Act. According

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[5] The PUC noted that the reduced electric consumption by Williams due to the proposed solar photovoltaic systems may qualify as demand-side management and would be eligible to generate Tier II alternative energy source under the AEPS Act. PUC Opinion, 8/21/24, at 20; R.R. at 69a.

[6] We review the PUC's denial of reconsideration for abuse of discretion. *Executive Transportation Company, Inc. v. Pennsylvania Public Utility Commission*, 138 A.3d 145, 148 (Pa. Cmwlth. 2016); *J.A.M. Cab Company, Inc. v. Pennsylvania Public Utility Commission*, 572 A.2d 1317, 1318 (Pa. Cmwlth. 1990). "An abuse of discretion occurs if the agency decision demonstrates bad faith, fraud, capricious action or an abuse of power." *J.A.M. Cab*, 535 A.2d at 1246.

to Williams, the PUC's contrary interpretation disregards Act 40's plain statutory text and undermines the General Assembly's intent to encourage in-state solar development.

The PUC counters that Williams' interpretation completely disregards other interconnection requirements embedded within the AEPS Act. When Act 40 and the AEPS Act are read together, the PUC asserts that an ambiguity arises based on the definition of "alternative energy system," which requires grid connection. The PUC advances that interconnection remains a prerequisite for solar credits, and Act 40 did not alter or eliminate this requirement or create a standalone eligibility pathway for solar credits. The PUC contends that Williams' interpretation would effectively result in an implied repeal of Sections 2 and 3 of the AEPS Act, 73 P.S. §§1648.2, 1648.3, which is not favored under the law, by eliminating the requirement that qualifying systems deliver electricity to the grid. Such a reading would allow any solar facility serving only its own load to earn solar credits, which is contrary to the AEPS Act's structure and intent. Because Williams' proposed solar photovoltaic systems will not interconnect with an EDC or RTO, they fail to meet the statutory definition of an "alternative energy system" and cannot qualify for solar credits under the AEPS Act.

B. Analysis

The parties' conflicting arguments as to the meaning of Act 40 "presents a question of statutory construction, which is a pure question of law over which our standard of review is *de novo* and our scope of review is plenary." *Pennsylvania State Police v. Grove*, 161 A.3d 877, 891-92 (Pa. 2017). When interpreting a statute, we are guided by the tenets set forth in the Statutory

Construction Act of 1972 (SCA), 1 Pa. C.S. §§1501-1991. Under the SCA, our paramount "objective 'is to ascertain and effectuate the General Assembly's intent.'" *Grove*, 161 A.3d at 892 (quoting Section 1921(a) of the SCA, 1 Pa. C.S. §1921(a)). "[A] statute's plain language is generally the best indicator of legislative intent." *Commonwealth v. H.D.*, 247 A.3d 1062, 1065 (Pa. 2021). "When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa. C.S. §1921(b); *see* H.D. 247 A.3d at 1065; *Smith v. Ivy Lee Real Estate, LLC*, 165 A.3d 93, 96 (Pa. Cmwlth. 2017). "Every statute shall be construed, if possible, to give effect to all its provisions." 1 Pa. C.S. §1921(a).

However, "if the words of a statute are not explicit but are unclear or ambiguous, we resort to considerations other than the plain language to discern legislative intent." *Mercury Trucking, Inc. v. Pennsylvania Public Utility Commission*, 55 A.3d 1056, 1068 (Pa. 2012); *accord* 1 Pa. C.S. §1921(c). Among the matters we may consider are: the occasion and necessity for the statute; the circumstances under which the statute was enacted; the mischief to be remedied; the object to be attained; the consequences of a particular interpretation; the contemporaneous legislative history; and the legislative and administrative interpretations of such statute. 1 Pa. C.S. §1921(c); *see Mercury Trucking*, 55 A.3d at 1068.

In addition, we follow "the precept that the General Assembly does not intend a result that is absurd, impossible of execution, or unreasonable." *Mercury Trucking*, 55 A.3d at 1068 (citation and quotation omitted); *accord* Section 1922 of the SCA, 1 Pa. C.S. §1922. The General Assembly does not intend to violate the Pennsylvania Constitution, and it intends to favor the public interest as against any private interest. *Mercury Trucking*, 55 A.3d at 1068 (citing 1 Pa. C.S. §1922(3), (5)). The General Assembly also "intends the entire statute to be effective and certain." 1 Pa. C.S. §1922(2).

Further, "statutes which relate to the same persons or things are in *pari materia* and must be construed together as one statute." *Mercury Trucking*, 55 A.3d at 1067 (citation and quotation omitted); *accord* Section 1932 of the SCA, 1 Pa. C.S. §1932; *Hommrich v. Public Utility Commission*, 344 A.3d 121, 134 (Pa. Cmwlth. 2025) (holding statutes relating to the same things "must be construed together, if possible, as one statute"). "If and to the extent to which the relevant statutes are irreconcilable, the legislative act latest in date of final enactment . . . prevail[s]." *Mercury Trucking*, 55 A.3d at 1067 (citing 1 Pa. C.S. §§ 1935, 1936). Finally,

> [a]n amendment to a provision of an act is "construed as merging into the original statute, becom[ing] a part thereof, and replac[ing] the part amended, and the remainder of the original statute and the amendment shall be read together and viewed as one statute passed at one time." 1 Pa.C.S. §1953. The "portions of the statute which were not altered by the amendment shall be construed as effective from the time of their original enactment." *Id*.

Mercury Trucking, 55 A.3d at 1067. With these tenets in mind, we examine the AEPS Act and Act 40.

In 2004, the General Assembly enacted the AEPS Act requiring EDCs and electric generation suppliers (EGSs) to obtain a certain percentage of their electricity from "alternative energy sources." Section 2 of the AEPS Act defines and divides "alternative energy sources" into two tiers – Tier I and Tier II – each with different types of energy and compliance requirements. Section 2 of the AEPS Act, 73 P.S. §§1648.2; *see* Section 3(b) and (c) of the AEPS Act, 73 P.S. §1648.3(b)-

(c). Tier I is defined as "[e]nergy derived from: (1) *Solar photovoltaic* and solar thermal energy[;] (2) Wind power[;] (3) Low-impact hydropower[;] (4) Geothermal energy[;] (5) Biologically derived methane gas[;] (6) Fuel cells[;] (7) Biomass energy[; and] (8) Coal mine methane." 73 P.S. §1648.2 (emphasis added). Tier II alternative energy sources are derived from "(1) Waste coal[;] (2) Distributed generation systems[;] (3) Demand-side management[;] (4) Large-scale hydropower[;] (5) Municipal solid waste[;] (6) Generation of electricity utilizing by-products of the pulping process and wood manufacturing process, including bark, wood chips, sawdust and lignin in spent pulping liquors[; and] (7) Integrated combined coal gasification technology." *Id.* These alternative energy sources are alternatives to conventional fossil fuels.

Section 2 of the AEPS Act refers to the physical infrastructure used to generate, store, and deliver alternative energy sources as "alternative energy systems." 73 P.S. §1648.2. Specifically, Section 2 of the AEPS Act defines "alternative energy system" as:

> A facility or energy system that uses a form of alternative energy source to generate electricity *and* delivers the electricity it generates to the distribution system of an [EDC] or to the transmission system operated by a [RTO].

Id. (emphasis added). Delivery to an EDC or RTO presumes interconnection to the grid.

Section 3 of the AEPS Act requires EDCs and EGSs to include a certain percentage of electricity generated from alternative energy sources in their supply portfolios. *See* Section 3 of the AEPS Act, 73 P.S. §1648.3. It sets specific tiered requirements for renewable energy credits. *Id*. Specifically, Section 3(b) of the AEPS Act requires that an increasing percentage of electric energy "*sold by an*

[*EDC*] or [EGS] *to retail electric customers"* must be generated from Tier I alternative energy sources, which includes solar photovoltaic energy. 73 P.S. §1648.3(b)(1). Section 3(c) of the AEPS Act similarly requires that an increasing percentage of electric energy "*sold by an* [*EDC*] or [EGS] *to retail electric customers*" must be generated from Tier II alternative energy sources. 73 P.S. §1648.3(c).

A "retail electric customer" refers to:

> A direct purchaser of electric power. The term excludes an occupant of a building or facility where the owners/operators manage the internal distribution system serving such building or facility and supply electric power and other related power services to occupants of the building or facility; where such owners/operators are direct purchasers of electric power; and where the occupants are not direct purchasers.

Section 2803 of the Public Utility Code, 66 Pa. C.S. §2803; *see* Section 2 of the AEPS Act, 73 P.S. §1648.2. Section 3(e) of the AEPS Act provides the framework for the alternative energy credits program for qualifying alternative energy systems. Section 3(e) of the AEPS Act, 73 P.S. §1648.3.

As originally enacted, under Section 4 of the AEPS Act, energy from alternative energy sources were eligible for compliance if the energy was generated within Pennsylvania or the service territory of an RTO that operated in Pennsylvania (e.g., Pennsylvania-New Jersey-Maryland (PJM) Interconnection). This permitted an out-of-state alternative energy source to qualify so long as it was within the PJM RTO.

However, on October 30, 2017, the General Assembly amended the AEPS Act by enacting Act 40. Act 40, which took effect immediately, imposes stricter geographic qualifications for solar photovoltaic systems. Under Act 40, solar credits used to meet Pennsylvania's Tier I solar requirements must come from solar photovoltaic systems that satisfy specific interconnection *or* delivery criteria within Pennsylvania. 71 P.S. §714. Specifically, Act 40 established the following qualifications:

> (1) Notwithstanding [S]ection 4 of the [AEPS Act,] in order to qualify as an *alternative energy source* eligible to meet the photovoltaic share of this Commonwealth's compliance requirements under the [AEPS Act] and to qualify for solar renewable alternative energy portfolio credits, each *solar photovoltaic system* must do one of the following:
>
> > (i) *Directly deliver the electricity it generates to a retail customer of an* [*EDC*] *or to the distribution system operated by an* [*EDC*] *operating within this Commonwealth and currently obligated to meet the compliance requirements contained under the* [*AEPS Act.*]
> >
> > (ii) Be directly connected to the electric system of an electric cooperative or municipal electric system operating within this Commonwealth.
> >
> > (iii) Connect directly to the electric transmission system at a location that is within the service territory of an [EDC] operating within this Commonwealth.
>
> (2) Nothing under this section or [S]ection 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 [AEPS Act.]

> (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.
>
> (3) This section shall apply to contracts entered into or renewed on or after the effective date of this section.
>
> (4) As used in this section, the following words and phrases shall have the meanings given to them in this section unless the context clearly indicates otherwise:
>
> "Alternative energy source." As the term "alternative energy sources" is defined in [S]ection 2 of the [AEPS Act].
>
> "[EDC]." As defined in [S]ection 2 of the [AEPS Act].

Id. (italicized emphasis added; bolded emphasis removed). The legislative history of Act 40 reflects an intent to promote in-state solar development and prevent out-of-state solar projects from qualifying for Pennsylvania credits.

In short, Act 40 establishes three qualifying pathways for solar systems: (i) direct delivery to a retail customer of an EDC; (ii) interconnection with a cooperative or municipal system; or (iii) connection to the transmission system within a Pennsylvania EDC's territory. 71 P.S. §714(1). Subsections (ii) and (iii) expressly require grid interconnection; subsection (i) does not. *Id*. Subsection (i) qualifies a solar photovoltaic system that "directly delivers the electricity it generates to a retail customer of an EDC." 71 P.S. §714(1)(i). Subsection (i) does not mandate delivery through the grid when the recipient is a retail customer of an EDC. *See id*.

By its plain terms, Act 40 establishes an independent pathway for solar credit eligibility based on direct delivery. Although the AEPS Act's definition of an "alternative energy system," requires interconnection to the grid, there is no language in the AEPS Act that precludes a solar photovoltaic system from qualifying based on direct delivery as set forth in Act 40. This means that a Pennsylvania company that is a retail customer of a Pennsylvania EDC and installs a behind-the-meter solar system to serve its own load satisfies the "direct delivery" requirement by delivering electricity to itself. A physical interconnection to the grid is not required under subsection (i). This interpretation fulfills the plain language of Act 40 and aligns with the legislative intent to promote in-state solar development.

Even if ambiguity or conflict exists between the AEPS Act and Act 40 regarding grid connection, the legislative intent to expand in-state solar participation favors Williams' reading. 1 Pa. C.S. §1921(c). In addition, Act 40, as the latest legislative act, prevails over any conflicting provisions of the AEPS Act. *See Mercury Trucking*, 55 A.3d at 1067; 1 Pa. C.S. §§1935, 1936. This interpretation harmonizes Act 40 and the AEPS Act by allowing Act 40 to add a new compliance pathway for direct delivery without displacing the AEPS Act's interconnection-based framework. Contrary to the PUC's position, accepting the plain language of Act 40 does not produce an absurd result. Rather, it simply creates an additional compliance avenue that advances renewable energy goals and reduces grid demand.

IV. Conclusion

For these reasons, we conclude that the PUC's August 21, 2024 order denying reconsideration and upholding its determination that Williams' solar photovoltaic systems were not eligible for solar credits constituted an abuse of discretion. We hold that Act 40 permits solar photovoltaic systems that directly deliver electricity to a retail customer of an EDC to qualify for solar credits, even without grid interconnection. As a result, Williams is entitled to declaration that its proposed solar photovoltaic systems would qualify for solar credits under the AEPS Act as amended by Act 40. Accordingly, we reverse the PUC's order.

MICHAEL H. WOJCIK, Judge

Judge McCullough concurs in result only.
Judge Fizzano Cannon did not participate in the decision of this case.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Williams Companies, Inc., Petitioner	:	
v.	:	No. 1232 C.D. 2024
Pennsylvania Public Utility Commission, Respondent	:	

<u>O R D E R</u>

AND NOW, this 19th day of August, 2026, the order of the Pennsylvania Public Utility Commission, dated the August 21, 2024, is **REVERSED**. We **DECLARE** that Williams Companies, Inc.'s proposed solar photovoltaic systems, as described herein, would qualify to generate solar renewable energy credits under the Alternative Energy Portfolio Standards Act (AEPS Act)[1] as amended by Section 2804 of The Administrative Code of 1929 (Act 40)[2] if they directly deliver electricity to a retail customer of an electric distribution company.

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MICHAEL H. WOJCIK, Judge

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[1] Act of November 30, 2004, P.L. 1672, *as amended*, 73 P.S. §§1648.1-1648.8.

[2] Act of April 9, 1929, P.L. 177, added by the Act of October 30, 2017, P.L. 379, 71 P.S. §714.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
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HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE STACY WALLACE, Judge
HONORABLE MATTHEW S. WOLF, Judge

DISSENTING OPINION BY
PRESIDENT JUDGE COHN JUBELIRER FILED: August 19, 2026

The Majority holds that Section 2804 of The Administrative Code of 1929 (Act 40)[1] creates an independent avenue for solar photovoltaic systems that are not interconnected to the electric grid to generate solar renewable energy credits under the Alternative Energy Portfolio Standards Act (AEPS Act).[2] Consequently, the Majority reverses a Pennsylvania Public Utility Commission (Commission) decision that two solar photovoltaic systems proposed by Williams Companies, Inc. (Williams) that bypass the electric grid cannot generate solar renewable energy credits. Because I believe the Majority misinterprets Act 40 and reshapes the

[1] Act of April 9, 1929, P.L. 177, *as amended*, added by the Act of October 30, 2017, P.L. 379, No. 40, 71 P.S. § 714.

[2] Act of November 30, 2004, P.L. 1672, *as amended*, 73 P.S. §§ 1648.1–1648.8.

alternative energy credit scheme established by the General Assembly in the AEPS Act, which requires interconnection with the electric grid, I respectfully dissent.

The General Assembly enacted the AEPS Act after "recogniz[ing] the need for environmentally cleaner alternatives to fossil fuel energy production" in the Commonwealth. *Hommrich v. Pa. Pub. Util. Comm'n*, 231 A.3d 1027, 1033 (Pa. Cmwlth. 2020). To accomplish this goal, Section 3(a)(1) of the AEPS Act requires that "electricity generated from alternative energy sources," such as solar photovoltaic energy, comprise a certain percentage of "the electric energy sold by an electric distribution company or electric generation supplier to retail electric customers." 73 P.S. § 1648.3(a)(1). To ensure compliance with this requirement, Section 3(e)(4)(i) of the AEPS Act mandates that electric distribution companies and electric generation suppliers "purchas[e] sufficient alternative energy credits and submit[] documentation of compliance to the program administrator." 73 P.S. § 1648.3(e)(4)(i); *see also* Section 2 of the AEPS Act, 73 P.S. § 1648.2 (defining "alternative energy credit" as "[a] tradable instrument that is used to establish, verify and monitor compliance with [the AEPS Act]"). For purposes of Section 3(e)(4), one alternative energy credit equals "one megawatt hour of qualified alternative electric generation." 73 P.S. § 1648.3(e)(4)(ii); *see also* 73 P.S. § 1648.2 ("A unit of credit shall equal one megawatt hour of electricity from an alternative energy source."). Alternative energy credits can be either "self-generated" or "purchased along with the electric commodity or separately through a tradable instrument." 73 P.S. § 1648.3(e)(4)(ii).

Initially, the AEPS Act did not specify who owned the alternative energy credits generated by alternative energy sources. *ARIPPA v. Pa. Pub. Util. Comm'n*, 966 A.2d 1204, 1207 (Pa. Cmwlth. 2009). In 2007, the General Assembly amended the AEPS Act to provide that unless a contract explicitly assigns the credit differently, "the owner of the alternative energy system or a customer-generator owns any and all alternative energy credits associated with or created by the production of electric energy by such facility or customer." 73 P.S. § 1648.3(e)(12).[3] The AEPS Act defines "alternative energy system" as "[a] facility or energy system that uses a form of alternative energy source to generate electricity and delivers the electricity it generates to the distribution system of an electric distribution company or to the transmission system operated by a regional transmission organization." 73 P.S. § 1648.2. In turn, "customer-generator" is defined as

> A nonutility owner or operator of a net metered distributed generation system[4] with a nameplate capacity of not greater than 50 kilowatts if installed at a residential service or not larger than 3,000 kilowatts at other customer service locations, except for customers whose systems are above three megawatts and up to five megawatts who make their systems available to operate in parallel with the electric utility during grid emergencies as defined by the regional transmission organization or where a microgrid is in place for the primary or secondary purpose of maintaining critical infrastructure, such as homeland security assignments, emergency services facilities, hospitals, traffic signals, wastewater treatment plants or telecommunications facilities, provided that technical rules for operating generators interconnected with facilities of an electric distribution company, electric cooperative or municipal electric system have been promulgated by the Institute of Electrical and Electronic Engineers and the . . . Commission.

Id. To qualify as an alternative energy system or customer-generator, the generation system must interconnect with the electric grid in some manner. *See id.*; *see also Hommrich v. Pa. Pub. Util. Comm'n*, 344 A.3d 121, 127 (Pa. Cmwlth. 2025).

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[3] Section 3(e)(12) was added by Section 2 of the Act of July 17, 2007, P.L. 114.

[4] "Net metering" is "[t]he means of measuring the difference between the electricity supplied by an electric utility and the electricity generated by a customer-generator when any portion of the electricity generated by the alternative energy generating system is used to offset part or all of the customer-generator's requirements for electricity." 73 P.S. § 1648.2.

Accordingly, the AEPS Act contemplates that only alternative energy sources owned by alternative energy systems or customer-generators—both of which must be **interconnected to the electric grid** in some manner—qualify to generate alternative energy credits. *See* 73 P.S. §§ 1648.2, 1648.3(e)(12). Once alternative energy credits are generated, "the owner or customer shall be entitled to sell, transfer or take any other action to which a legal owner of property is entitled to take with respect to the credits." 73 P.S. § 1648.3(e)(12); *see also* 73 P.S. § 1648.2 ("The alternative energy credit shall remain the property of the alternative energy system until the alternative energy credit is voluntarily transferred by the alternative energy system.").

Also in 2007, the General Assembly amended Section 4 of AEPS Act to expand where an alternative energy source must be located to generate the alternative energy credits necessary to satisfy the Commonwealth's alternative energy portfolio requirements. Section 4 of the AEPS Act establishes three distinct geographic options for an alternative energy source to qualify to generate alternative energy credits:

> [1] Energy derived from alternative energy sources inside the geographical boundaries of this Commonwealth shall be eligible to meet the compliance requirements under [the AEPS A]ct. [2] Energy derived from alternative energy sources located outside the geographical boundaries of this Commonwealth but within the service territory of a regional transmission organization that manages the transmission system in any part of this Commonwealth shall only be eligible to meet the compliance requirements of electric distribution companies or electric generation suppliers located within the service territory of the same regional transmission organization. [3] For purposes of compliance with [the AEPS A]ct, 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.

73 P.S. § 1648.4. "Energy derived from alternative energy sources located outside the service territory of a regional transmission organization that manages the transmission system in any part of this Commonwealth shall not be eligible to meet the compliance requirements of [the AEPS A]ct." *Id.*

A decade later, the General Assembly enacted Act 40. Act 40 **amended Section 4** of the AEPS Act to impose stricter geographic requirements for solar photovoltaic systems to qualify to generate alternative energy credits. Relevantly, Act 40 provides:

> (1) **Notwithstanding [S]ection 4 of the [AEPS Act]**, in order to qualify as an alternative energy source eligible to meet the photovoltaic share of this Commonwealth's compliance requirements under the [AEPS Act] and to qualify for solar renewable alternative energy portfolio credits, each solar photovoltaic system must do one of the following:
>
>> (i) Directly deliver the electricity it generates to a retail customer of an electric distribution company or to the distribution system operated by an electric distribution company operating **within this Commonwealth** and currently obligated to meet the compliance requirements contained under the [AEPS Act.]
>>
>> (ii) Be directly connected to the electric system of an electric cooperative or municipal electric system operating **within this Commonwealth**.
>>
>> (iii) Connect directly to the electric transmission system at a location that is within the service territory of an electric distribution company operating **within this Commonwealth**.

71 P.S. § 714(1) (emphasis added).

As the Majority observes, Act 40 "imposes stricter geographic qualifications for solar photovoltaic systems," intending "to promote in-state solar development and prevent out-of-state solar projects from qualifying for Pennsylvania credits." *Williams Companies, Inc. v. Pa. Pub. Util. Comm'n*, ___ A.3d ___, ___ (Pa.

Cmwlth. 2026), slip op. at 9, 11. But the Majority takes Act 40 **much further**. The Majority concludes that the provision "[d]irectly deliver the electricity it generates to a retail customer of an electric distribution company" creates "an independent pathway" for solar photovoltaic systems that are **not interconnected to the electric grid** to generate alternative energy credits. *Id.*, slip op. at 10-12. The Majority therefore interprets Act 40 as **not merely imposing stricter geographic requirements** for solar photovoltaic systems to generate alternative energy credits but as a sweeping amendment to the alternative energy credit scheme created by the AEPS Act. The Majority misinterprets Act 40.

By stating "[n]otwithstanding [S]ection 4 of the [AEPS Act]," Act 40 preempts **only Section 4** of the AEPS Act and does so to the extent Section 4 governs **where** solar photovoltaic systems must be **located** to generate alternative energy credits. As our Supreme Court has explained, "the use of 'notwithstanding'" is "an unambiguous expression of the General Assembly's intent to distinguish the law applicable to the circumstances addressed **within the 'notwithstanding' clause** from the law applicable to the circumstances that follow that clause." *City of Johnstown v. Workers' Comp. Appeal Bd. (Sevanick)*, 255 A.3d 214, 222 (Pa. 2021) (emphasis added); *see also Pleasant Hills Constr. Co., Inc. v. Pub. Auditorium Auth.*, 784 A.2d 1277, 1283 (Pa. 2001) (concluding that a "notwithstanding" clause is "clear," means "regardless," and preempts the law mentioned in the clause). Therefore, Act 40 only amends Section 4 of the AEPS Act to impose stricter in-state requirements for solar photovoltaic systems to generate alternative energy credits. By its **plain language**, Act 40 does not amend any other provision of the AEPS Act, including Sections 2 and 3 of the AEPS Act.

Moreover, Act 40 is consistent with the alternative energy credit scheme created by Sections 2 and 3 of the AEPS Act. Relevantly, Act 40 provides that a solar photovoltaic system qualifies to generate alternative energy credits if the system "[d]irectly deliver[s] the electricity it generates to a retail customer of an electric distribution company or to the distribution system operated by an electric distribution company." 71 P.S. § 714(1)(i). Under Sections 2 and 3 of AEPS Act, alternative energy sources owned by alternative energy systems or customer-generators, which are **interconnected with the electric grid**, may generate alternative energy credits. 73 P.S. §§ 1648.2, 1648.3(e)(12). An alternative energy system "delivers the electricity it generates to the distribution system of an electric distribution company," whereas a customer-generator delivers the electricity it generates to a retail customer of an electric distribution company, i.e., the customer-generator, "to offset part or all of the customer-generator's requirements for electricity" by net metering. 73 P.S. § 1648.2. Accordingly, under Act 40, a solar photovoltaic system qualifies to generate alternative energy credits if the system is a customer-generator (i.e., "[d]irectly deliver[s] the electricity it generates to a retail customer of an electric distribution company") or an alternative energy system (i.e., "[d]irectly deliver[s] the electricity it generates . . . to the distribution system operated by an electric distribution company"). 71 P.S. § 714(1)(i); 73 P.S. §§ 1648.2, 1648.3(e)(12). Therefore, contrary to the Majority's conclusion, Act 40 did not create an independent avenue for solar photovoltaic systems to generate alternative energy credits but aligns with the alternative energy credit scheme created by the AEPS Act, including the interconnection requirement.

It is a fundamental principle of statutory construction that, "consistent with [the] overarching goal of construing statutes to fulfill the intent of the General

Assembly, [courts] are **obliged** to construe [two statutes] in harmony, if possible, so as to give effect to both." *In re Borough of Downingtown*, 161 A.3d 844, 871 (Pa. 2017) (emphasis added). "It is only when the provisions of two statutory enactments are irreconcilable that it is necessary to resort to other statutory construction principles," *id.*, such as a later enacted statute prevails over an earlier statute, Section 1936 of the Statutory Construction Act of 1972, 1 Pa.C.S. § 1936 ("Whenever the provisions of two or more statutes enacted finally by different General Assemblies are irreconcilable, the statute latest in date of final enactment shall prevail."). The Concurrence criticizes the Dissent for harmonizing Act 40 and Section 2 of the AEPS Act "without resolving which prevails." *Williams*, ___ A.3d at ___ (Dumas, J., concurring), slip op. at 3. The Concurrence then concludes that Act 40 and Section 2 of the AEPS Act "irreconcilably conflict, so Act 40 prevails as the new statute." *Id.* at ___, slip op. at 4. Respectfully, however, I do **not believe** that Act 40 and Section 2 of the AEPS Act are irreconcilable for the above reasons. If I am correct, and Act 40 and Section 2 of the AEPS Act do not irreconcilably conflict, the Court **must harmonize** these provisions such that the one does **not prevail** over the other. *See Borough of Downingtown*, 161 A.3d at 871.

It is laudable to "advance[] renewable energy goals and reduce[] grid demand." *Williams*, ___ A.3d at ___ (Majority), slip op. at 12. But this Court cannot disregard the letter of Act 40 "under the pretext of pursuing its spirit" as "the statutory language is clear and unambiguous in setting forth the intent of the General Assembly." *See Commonwealth v. Green*, 291 A.3d 317, 327 (Pa. 2023) (citation omitted); *see also* Section 1921(b) of the Statutory Construction Act of 1972, 1 Pa.C.S. § 1921(b). By including the "notwithstanding" clause, the text of Act 40 shows the General Assembly's intent to preempt **only** Section 4 of the AEPS Act, requiring that solar photovoltaic systems be located within the Commonwealth to generate alternative energy credits. 71 P.S. § 714; *see also City of Johnstown*, 255 A.3d at 222. Moreover, **the text** of Act 40 is **consistent** with the alternative energy credit scheme established by Sections 2 and 3 of the AEPS Act. Accordingly, the Court cannot construe Act 40 as amending any other provision of the AEPS Act to pursue the goal of promoting renewable energy.

Based on the foregoing, I would affirm the Commission because the Commission correctly concluded that Williams' proposed solar photovoltaic systems are ineligible to generate solar renewable energy credits under Act 40 or the AEPS Act as the proposed systems will not interconnect with the electric grid. Because I believe the Majority misinterprets Act 40 and reshapes the alternative energy credit scheme in this Commonwealth in reversing the Commission, and the Concurrence is mistaken that Act 40 and Section 2 of the AEPS Act cannot be harmonized, I respectfully dissent.

____

RENÉE COHN JUBELIRER, President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Williams Companies, Inc.,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 1232 C.D. 2024
	:	Argued: September 10, 2025
Pennsylvania Public	:	
Utility Commission,	:	
	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE STACY WALLACE, Judge
HONORABLE MATTHEW S. WOLF, Judge

CONCURRING OPINION BY
JUDGE DUMAS **FILED: August 19, 2026**

I concur in the result. By creating a pathway for direct delivery in Subsection (1)(i), Act 40[1] necessarily modified how Sections 2 and 3 of the Alternative Energy Portfolio Standards Act (AEPS Act)[2] apply to solar photovoltaic systems, even though Act 40's "notwithstanding" clause derogates only Section 4.

I.

The AEPS Act governs solar credit eligibility through three sections. Section 2 lists definitions, and Section 3 uses those definitions to identify what entities are eligible for credits. 73 P.S. §§ 1648.2 to .3 (collectively, Eligibility

[1] Act of April 9, 1929, P.L. 177, added by the Act of October 30, 2017, P.L. 379, No. 40, 71 P.S. § 714(1)(i). For convenience, I refer to unconsolidated statutes "only by their Purdon's citation." *Herold v. Univ. of Pittsburgh*, 329 A.3d 1159, 1166 n.1 (Pa. 2025).

[2] Act of November 30, 2004, P.L. 1672, *as amended*, 73 P.S. §§ 1648.1 to 1648.8.

Sections). Among other requirements, qualifying entities must deliver their electricity to the grid. *Id.* § 1648.2 (defining an "alternative energy system" to be "[a] facility or energy system that uses a form of alternative energy source to generate electricity and delivers the electricity it generates to the distribution system of an electric distribution company or to the transmission system operated by a regional transmission organization").

Section 4 addresses where qualifying entities must be located. *Id.* § 1648.4 (Geography Section). The Geography Section originally allowed entities outside Pennsylvania to qualify for credits, and the General Assembly later narrowed that geographic scope.

The General Assembly then enacted Act 40, which modifies certain eligibility requirements for solar photovoltaic systems.[3] Under Act 40, a solar photovoltaic system qualifies for credits by satisfying one of three requirements. 71 P.S. § 714(1)(i)-(iii). Subsections (1)(ii) and (1)(iii) require that system to connect directly to a cooperative or municipal electric system or to the transmission system. *Id.* Subsection (1)(i) does not; it permits that system to qualify by directly delivering "the electricity it generates to a retail customer of an electric distribution company or," alternatively, to that company's distribution system. *Id.* § 714(1)(i). To impose these requirements, the General Assembly used a "notwithstanding [the Geography Section]" clause, leaving the Geography Section unrepealed and unamended. *Id.* § 714(1).

A notwithstanding clause is "an unambiguous expression of the General

[3] To be clear, Act 40 merely modifies eligibility requirements for solar photovoltaic systems, which are but one form of alternative energy. Act 40 does not alter the eligibility requirements of other species of alternative energy systems. For that reason, the dissent's concern that the majority's interpretation of Act 40 would gut the broad purpose of the AEPS Act is misplaced. *Williams Cos. v. Pa. Pub. Util. Comm'n*, ___ A.3d ___, ___ (Pa. Cmwlth. 2026) (*en banc*) (Cohn Jubelirer, P.J., dissenting), slip op. at 1-2.

Assembly's intent to distinguish the law applicable to the circumstances addressed within the 'notwithstanding' clause from the law applicable to the circumstances that follow that clause." *City of Johnstown v. Workers' Comp. Appeal Bd. (Sevanick)*, 255 A.3d 214, 221 (Pa. 2021) (*Sevanick*). Such a clause derogates the provision it names where the new and named statutes conflict. *Pleasant Hills Constr. Co. v. Pub. Auditorium Auth.*, 784 A.2d 1277, 1282 (Pa. 2001) (*Pleasant*); *accord Gilbert v. S. Whitehall Twp.*, 341 A.3d 212, 219-20 (Pa. Cmwlth. 2025) (holding that a clause naming only one subsection did not derogate an unnamed section). A notwithstanding clause may also "produce[] contradiction of some applications of a broadly framed provision." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 126-27 (2012) (*Reading Law*).[4] If the provisions of two statutes irreconcilably conflict, then "the legislative act latest in date of final enactment is to prevail." *Mercury Trucking, Inc. v. Pa. Pub. Util. Comm'n*, 55 A.3d 1056, 1067 (Pa. 2012) (*Mercury*) (citations omitted).

II.

Neither the majority nor the dissent sufficiently addresses the conflict between Subsection (1)(i) and Section 2. The dissent harmonizes the two without resolving which prevails; the majority acknowledges Section 2's delivery requirement without addressing its preclusive language.

[4] "A dependent phrase that begins with *notwithstanding* indicates that the main clause that it introduces or follows derogates from the provision to which it refers. . . . [A] *notwithstanding* often produces contradiction of some applications of a broadly framed provision[.]" *Reading Law* 126-27 (emphases in original); *see generally Nat'l Lab. Rels. Bd. v. SW Gen., Inc.*, 580 U.S. 288, 302 (2017) ("A 'notwithstanding' clause does not naturally give rise to such an inference; it just shows which of two or more provisions prevails in the event of a conflict. Such a clause confirms rather than constrains breadth. Singling out one potential conflict might suggest that Congress thought the conflict was particularly difficult to resolve, or was quite likely to arise. But doing so generally does not imply anything about other, unaddressed conflicts, much less that they should be resolved in the *opposite* manner." (emphasis in original)).

I respectfully disagree with the majority's premise that "no language in the AEPS Act . . . precludes a solar photovoltaic system from qualifying [for credits] based on direct delivery as set forth in Act 40."[5] Such language exists in Section 2, which requires an alternative energy system to deliver the electricity it generates to the grid. *See* 73 P.S. § 1648.2.[6] A system that directly delivers to a retail customer, as Williams's systems deliver to Transco, bypasses the grid. Thus, Section 2 of the AEPS Act would preclude Williams's systems from qualifying.

But Act 40 expressly provides that "each solar photovoltaic system must do one of the following: (i) [d]irectly deliver the electricity it generates to a retail customer of an electric distribution company . . . ." 71 P.S. § 714(1), (1)(i). If Section 2's delivery requirement applied to Act 40's Subsection (1)(i), then no system could qualify by directly delivering to a retail customer, and Subsection (1)(i)'s clause permitting it would be surplusage. *See* 71 P.S. § 714(1)(i); 1 Pa.C.S. § 1921(a). Act 40's Subsection (1)(i) and the AEPS Act's Section 2 definition of "alternative energy system" irreconcilably conflict, so Act 40 prevails as the newer statute. *Mercury*, 55 A.3d at 1067. That conflict must be interpreted as an expansion, perhaps an unintentional one, of the "alternative energy system" definition and, thus, in Williams's favor.[7]

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[5] *Williams Cos. v. Pa. Pub. Util. Comm'n*, ___ A.3d ___, ___ (Pa. Cmwlth. 2026) (*en banc*), slip op. at 11-12.

[6] To briefly restate, an "alternative energy system" must deliver "the electricity it generates to the distribution system of an electric distribution company or to the transmission system operated by a regional transmission organization." 73 P.S. § 1648.2.

[7] Very simply, the AEPS Act requires that alternative energy systems deliver to the grid. Act 40's Subsection (1)(i) provides that a solar photovoltaic system directly deliver to a retail customer, *i.e.*, no delivery to the grid. It is not obvious why the General Assembly used Act 40 instead of amending the AEPS Act, but because our "judicial task is to read words," "[b]etter to live with the mystery than to rewrite the statute." *FS Credit Opportunities Corp. v. SABA Cap. Master Fund, Ltd.*, 146 S. Ct. 1546, 1557 n.5 (2026); *Montgomery v. Caribe Transp. II, LLC*, 608 U.S. 219, 229 (2026).

I also respectfully disagree with the dissent's reading of the "notwithstanding [the Geography Section]" clause as affirmatively preempting the Geography Section. Per the dissent, that preemption is limited to the portions of the Geography Section addressing where qualifying solar photovoltaic systems must be located. Under the dissent's reading, the Eligibility Sections are not preempted and continue to define what entities qualify for credits. The dissent applies Subsection (1)(i)'s "directly deliver" language to the frameworks set in the Eligibility Sections and concludes that Williams's solar photovoltaic systems are ineligible.[8]

In my view, the dissent's reading preempts the Geography Section's provision for in-state sources. That provision does not conflict with Act 40, because both permit Pennsylvania solar photovoltaic systems to qualify. 73 P.S. § 1648.4; 71 P.S. § 714(1). So, Act 40's "notwithstanding" clause derogates the Geography Section only to the extent the two conflict, and the Geography Section otherwise controls. *See Pleasant*, 784 A.2d at 1282.

Nor can I adopt the dissent's harmonization. The dissent reasons that by "its plain language, Act 40 does not amend any other provision of the AEPS Act, including Sections 2 and 3 of the AEPS Act."[9] Act 40 need not amend the AEPS Act for Subsection (1)(i) to conflict with the Eligibility Sections, including the Section 2 definition of "alternative energy system." I discern no textual support for the dissent's suggestion that direct delivery under Subsection (1)(i) is limited to customer-generators, nor is that a reasonable interpretation of the statutory language.[10] *See* 73 P.S. § 1648.2; 71 P.S. § 714(1)(i).

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[8] *Williams Cos. v. Pa. Pub. Util. Comm'n*, ___ A.3d ___, ___ (Pa. Cmwlth. 2026) (*en banc*) (Cohn Jubelirer, P.J., dissenting), slip op. at 6-9.

[9] *Williams Cos. v. Pa. Pub. Util. Comm'n*, ___ A.3d ___, ___ (Pa. Cmwlth. 2026) (*en banc*) (Cohn Jubelirer, P.J., dissenting), slip op. at 6 (emphasis omitted).

[10] *Williams Cos. v. Pa. Pub. Util. Comm'n*, ___ A.3d ___, ___ (Pa. Cmwlth. 2026) (*en banc*) (Cohn Jubelirer, P.J., dissenting), slip op. at 7.

Accordingly, I concur in the result.

LORI A. DUMAS, Judge

Judge Wallace joins.