UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southern Maryland Electric Cooperative, Inc.	)	
	)	Docket No. _____
Choptank Electric Cooperative, Inc.	)	
	)	
	)	

NOTICE OF PETITION FOR DECLARATORY ORDER

(August _ _, 2016)

Take notice that on August 23, 2016, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2016), Southern Maryland Electric Cooperative, Inc. (SMECO) and Choptank Electric Cooperative, Inc. (CEC) (collectively, the Cooperatives), filed a petition for a declaratory order requesting that the Commission review regulations promulgated by the Public Service Commission of Maryland (MD PSC) regarding community solar energy generation systems (CSEGSs) and to issue a declaratory order finding that the MD PSC's CSEGS regulations do not comply with federal law, including the Public Utility Regulatory Policies Act (PURPA) and the Federal Power Act (FPA).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at http://www.ferc.gov. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

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with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern time on _____, 2016.

Nathaniel J. Davis, Sr.
Deputy Secretary

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Southern Maryland Electric Cooperative, Inc. Choptank Electric Cooperative, Inc.	)))	Docket No. _____

PETITION FOR DECLARATORY ORDER OF
SOUTHERN MARYLAND ELECTRIC COOPERATIVE, INC.
AND CHOPTANK ELECTRIC COOPERATIVE, INC.

Pursuant to Rule 207(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission"),[1] Southern Maryland Electric Cooperative, Inc. ("SMECO") and Choptank Electric Cooperative, Inc. ("CEC") (collectively, the "Cooperatives"), hereby respectfully petition the Commission to review regulations promulgated by the Public Service Commission of Maryland ("MD PSC") regarding community solar energy generation systems ("CSEGSs") and to issue a declaratory order finding that the MD PSC's CSEGS regulations do not comply with federal law, including the Public Utility Regulatory Policies Act ("PURPA") and the Federal Power Act ("FPA").[2]

I. INTRODUCTION AND BACKGROUND

The CSEGS regulations were promulgated to implement a CSEGS pilot program, as required by Maryland law.[3] Under the Maryland statute, the MD PSC must establish a CSEGS pilot program.[4] A "subscriber" to a CSEGS will receive credit for "virtual net excess generation" up to 200% of the subscriber's baseline annual usage.[5] The statute requires that any

[1] 18 C.F.R. § 385.207(a)(2)(2016).
[2] Community Solar Energy Generation Systems, MD. CODE REGS. §§ 20.62.01.00-20.62.05.20 (2016) ("CSEGS Regulations"). The CSEGS Regulations, as adopted by the MD PSC, are attached hereto as Exhibit A.
[3] MD. CODE ANN., Public Utilities Article § 7-306.2. This statute is attached hereto as Exhibit B.
[4] *Id.* at § 7-306.2(d).
[5] *Id.* at § 7-306.2(d)(6).

unsubscribed energy generated by any CSEGS that is not owned by an electric company "shall be purchased under the electric company's process for purchasing the output from qualifying facilities at the amount it would have cost the electric company to procure the energy."[6]

Consistent with the Maryland CSEGS statute, the CSEGS regulations promulgated by the MD PSC provide for "virtual net metering" for, and wholesale power sales by, entities that could be considered Qualifying Facilities ("QFs").[7] The CSEGS arrangements involve "virtual net metering" in the sense that electric companies would be required to provide full retail rate credits to CSEGS subscribers, as if the solar facilities were located behind subscribers' retail meters. However, the physical reality is that the CSEGS arrangements as envisioned under the Maryland statute and CSEGS regulations involve a solar generation facility at one location, and subscribers' retail meters at various other locations, with electric company-owned delivery facilities in between the solar facility and retail meters. Consequently, the net metering does not simply involve inflows and outflows across a retail customer's meter; rather, all energy flows from CSEGSs involve a third-party electric delivery system (*e.g.*, the Cooperatives' electric distribution systems).

Under the CSEGS regulations, as promulgated by the MD PSC, the cost of electric company purchases of excess or unsubscribed energy from the CSEGS does not precisely align with the express requirements of Maryland statute. This gap between the CSEGS regulations and the Maryland statute also causes the CSEGS regulations to run afoul of PURPA and FPA directives, as discussed below.

Virtual net metering and sales of electric energy by QFs are governed by PURPA, and the proper administration of PURPA requires this Commission, as necessary, to enforce PURPA

[6] *Id.* at § 7-306.2(d)(7).
[7] CSEGS Regulations, *supra* note 2.

principles.[8] In all circumstances, any regulations implemented by the MD PSC must be consistent with PURPA and other federal law. In this case, the CSEGS regulations as adopted by the MD PSC fail to acknowledge the relevance of PURPA's requirements despite the fact that the Cooperatives highlighted the applicability of PURPA and other federal statutes in their Comments and Testimony during the MD PSC's consideration of the CSEGS regulations.[9] Specifically, the fact that the CSEGS regulations require Maryland-based electric companies to purchase energy from CSEGSs, for resale to others, exposes those transactions to federal regulation. To the extent that CSEGSs qualify as QFs under PURPA, the pricing of the energy purchased in such transactions may be subject to state regulation, but such pricing must remain consistent with this Commission's regulations applicable to QFs. Moreover, if any CSEGS is not a QF, then the CSEGS regulations directing the level of prices to be paid for wholesale sales of energy by CSEGSs to electric companies (for resale to retail customers) violate the FPA because only this Commission has jurisdiction over the rates for such sales. As approved, the CSEGS regulations not only fail to address these issues, but also include language that raises questions about the applicability of the federal standards. In the *Maryland Register*, the CSEGS regulations claim, in a prefatory comment, that "[t]here is no corresponding federal standard to this proposed action."[10] The CSEGS regulations, as adopted, leave the Cooperatives in a position of potentially violating PURPA, the FPA, or both, if the Cooperatives opt to participate in the CSEGS Pilot.

[8] 18 C.F.R. Part 292, Subparts A-F.

[9] *Comments of the Southern Maryland Electric Cooperative, Inc. and Choptank Electric Cooperative, Inc. on Proposed Regulations*, Revisions to COMAR 20.62 – Community Solar Generating Systems, Maryland Public Service Commission, Docket No. RM 56 (May 27, 2016) ("May 27 Comments"). The May 27 Comments are attached hereto as Exhibit C.

[10] *Subtitle 62 COMMUNITY SOLAR ENERGY GENERATION SYSTEMS,* 43 Md. Reg. 554 (Apr. 29, 2016).

The Cooperatives have reasonably pursued available avenues under the MD PSC's prescribed processes in an effort to convince the MD PSC that revisions must be made to the CSEGS regulations before they may be implemented. On December 4, 2015, the Cooperatives provided Comments on initial proposed CSEGS regulations.[11] On February 10, 2016, the Cooperatives provided a second set of Comments on the CSEGS regulations.[12] On April 29, 2016, final proposed CSEGS regulations were published in the *Maryland Register*.[13] On May 27, 2016, the Cooperatives submitted Comments with the MD PSC reiterating that, while the Cooperatives generally support such CSEGS regulations, such regulations must be consistent with federal law.[14] Section 20.62.02.07 of the proposed CSEGS regulations was particularly problematic, especially the following subsections:[15]

> *Section 20.62.02.07A – An electric company shall pay a subscriber a dollar amount of excess generation as reasonably adjusted to exclude the distribution, transmission, and noncommodity portion of the customer[']s bill unless the electric company records subscriber credits as kilowatt hours.*
>
> *Section 20.62.02.07B – An electric company that serves electric retail choice customers shall pay the subscriber for kilowatt hours of excess generation at the lesser of the subscriber[']s retail supply rate or the Standard Offer Service rate in effect at the time of payment.*

On June 14, 2016, the MD PSC held a hearing on the proposed CSEGS regulations. At that hearing, the Cooperatives provided testimony on the PURPA and FPA issues addressed in their

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[11] *Comments of Southern Maryland Electric Cooperative and Choptank Electric Cooperative on Community Solar Energy Regulations*, Maryland Public Service Commission, RM56 (Dec. 4, 2015). These Comments are attached hereto as Exhibit D.

[12] *Supplemental Comments of Southern Maryland Electric Cooperative and Choptank Electric Cooperative on Revised Community Solar Energy Regulations*, RM56 (Feb. 10, 2016). These Comments are attached hereto as Exhibit E.

[13] *Subtitle 62 COMMUNITY SOLAR ENERGY GENERATION SYSTEMS*, *supra* note 10.

[14] May 27 Comments, *supra* note 9.

[15] *Subtitle 62 COMMUNITY SOLAR ENERGY GENERATION SYSTEMS*, *supra* note 10 at 556; (adopted in MD. CODE REGS. § 20.62.02.07A-B).

earlier Comments and addressed now in this Petition.[16] The Cooperatives' testimony highlighted several discrete problems in the proposed CSEGS regulations and recommended modest language changes that would, arguably, square the CSEGS regulations with the FPA and PURPA.[17] The CSEGS regulations became effective July 18, 2016.[18] The final regulations did not include any of the changes recommended by the Cooperatives.

At this point, the Cooperatives have exhausted their options relative to PURPA and FPA issues under the MD PSC's procedures, and are compelled to seek a declaratory order from this Commission to address the shortfalls in the CSEGS regulations as concerns PURPA and FPA issues. Accordingly, the Cooperatives respectfully request that the Commission initiate review of the CSEGS regulations adopted by the MD PSC and prescribe revisions to those rules so that the rules fully and unquestionably comply with PURPA and other applicable federal laws, and to ensure that entities that opt to participate in the CSEGS Pilot are complying with federal law.

Specifically, the Cooperatives respectfully request that the Commission determine: (i) to the extent that CSEGS regulations require Maryland electric companies to purchase energy from CSEGS at a particular price, Maryland regulations are preempted by federal law unless such CSEGSs are QFs under PURPA; and (ii) CSEGS regulations that require payment to CSEGSs at prices higher than avoided costs violate, and are preempted by, PURPA.

[16] Testimony of Southern Maryland Electric Cooperative, Inc. and Choptank Electric Cooperative, Inc. before the Maryland Public Service Commission, CSEGS Regulations, pp. 1153-1160 (June 14, 2016). The hearing transcript is attached hereto as Exhibit F.
[17] *Id.*
[18] CSEGS Regulations, *supra* note 2.

II. COMMUNICATIONS

Please address all notices and communications regarding this Petition to the following persons, who are also designated for service in this proceeding:[19]

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[19] Petitioners respectfully request waiver of Rule 203(b)(3) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.203(b)(3), to permit more than two people to be included on the official service list on their behalf in this proceeding.

III. PETITION FOR DECLARATORY ORDER

A. To The Extent that CSEGS Regulations Require Maryland Electric Companies to Purchase Energy From CSEGSs At A Particular Price, Maryland Regulations Are Preempted By Federal Law Unless Such CSEGSs Are QFs Under PURPA.

Under the FPA, the Commission has exclusive jurisdiction to regulate the rates, terms, and conditions of wholesale sales of electric energy in interstate commerce by public utilities.[20] A wholesale sale means a "sale of electric energy to any person for resale."[21] The U.S. Supreme Court recently affirmed the Commission's exclusive authority in this area.[22] However, certain zones of regulatory authority belong to states, not the Commission.[23] An example of this state authority lies under Section 210 of PURPA.[24] Under PURPA Section 210, states have the authority, subject to certain standards prescribed by federal law, to establish rates for wholesale sales of electricity if the generator is a QF.[25] State regulatory authorities and unregulated electric utilities are required to abide by the Commission's PURPA regulations.[26] The FPA preemption

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[20] 16 U.S.C. §§ 824(a)-(b) (indicating that FERC's regulation of transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce is necessary and in the public interest); *see also Entergy Servs., Inc.*, 120 FERC ¶ 61,020, P 28 (2007); *Niagara Mohawk Power Corp.*, 100 FERC ¶ 61,019, P 17 (2002); *Pa. Power & Light Co.*, 23 FERC ¶ 61,006, p. 61,018, *reh'g denied*, 23 FERC ¶ 61,325 (1983).

[21] 16 U.S.C. § 824(d).

[22] *Hughes vs. Talen Energy Mktg., LLC*, 136 S. Ct. 1288, 1297-98 ("*Hughes*")(concluding that "Maryland's program sets an interstate wholesale rate, contravening the FPA's division of authority between state and federal regulators . . . States may not seek to achieve ends, however legitimate, through regulatory means that intrude on FERC's authority over interstate wholesale rates, as Maryland has done here.").

[23] 16 U.S.C. § 824(a).

[24] 16 U.S.C. § 824a-3 (2016); *see generally* 16 U.S.C. §§ 2601, *et seq.* (2016); 18 C.F.R. § 292.304; *see generally* 18 C.F.R. §§ 292.301 *et seq.* (2016).

[25] *Cal. Pub. Utils. Comm'n.*, 133 FERC ¶ 61,059, P 5 (2010) (clarifying that a state Commission may determine avoided cost rates for QF); *see also Fla. Power & Light Co.*, 29 FERC ¶ 61,140, p. 61292 (1984) ("This Commission has also adopted the policy of considering as just and reasonable under the FPA, rates for sales of electric energy for resale from small power production facilities between 30 to 80 megawatts in capacity, set by State commissions in compliance with section 210 of PURPA . . . [S]ection 210 of PURPA and the Conference Report on PURPA expressly indicat[e] that the rates for small power production facilities that have [between 30 and 80 megawatts capacity] are to be set in accordance with the requirements of section 210 of PURPA, the rules for which were prescribed by this Commission and implemented by State regulatory authority or nonregulated utilities"); *Res. Recovery, Dade Cnty, Inc.*, 19 FERC ¶ 61,188, p. 61,360 (1982) ("State commission rates set in compliance with Section 210 of PURPA and this Commission's rules thereunder shall be considered to be just and reasonable rates under the Federal Power Act").

[26] *See, e.g.*, Policy Statement Regarding the Commission's Enforcement Role Under Section 210 of the Public Utility Regulatory Policies Act of 1978, 23 FERC ¶ 61,304, p. 61,644 ("Sections 210(g) and (h) of PURPA provide

concerns are addressed in this Section III.A. Concerns about the MD PSC's application of the avoided cost standards under PURPA are addressed in Section III.B., below.

Here, the Cooperatives' concern regarding federal preemption arises in the instance where a CSEGS produces energy above its subscribers' electricity requirements and the electric company must, in some way, compensate the CSEGS, or CSEGS subscribers, for the surplus generation. Under the Maryland CSEGS statute, an electric company must "use" that excess CSEGS-produced energy.[27] In order to "use" such excess generation, an electric utility must own, or have title to, that power. Any "use" of such generation means a sale of that electric energy to others – *i.e.*, a resale. By virtue of the requirement to "use" the energy, and the corresponding obligation to take title, an electric company's purchase of excess CSEGS-produced energy amounts to a wholesale sale under the FPA.

As they were adopted in the CSEGS regulations, the eligibility criteria for CSEGS projects imply that facilities that could meet the qualifications for QF status under PURPA may qualify as a CSEGS under Maryland law. However, neither the Maryland CSEGS statute nor the CSEGS regulations contain an express requirement that a CSEGS must be a QF in order to require an electric company to "use" the CSEGS's excess generation. In consideration of the federal regulations impacting the CSEGS Pilot, the CSEGS regulations must be revised to reflect that a CSEGS must be a QF under PURPA in order to receive compensation from a utility for excess generation at the rate prescribed by the MD PSC and if that rate is made consistent with PURPA's avoided cost standards as discussed below.

. . . review and enforcement mechanisms . . . to ensure that State regulatory authorities and non-regulated electric utilities undertake implementation of the Commission regulations.") ("Policy Statement").

[27] MD. CODE ANN., *supra* note 3, at § 7-306.2(d)(8).

In their May 27 Comments, the Cooperatives proposed adding the following language to Section 20.62.02.07 ("Section .07"): "A condition precedent for any compensation to subscribers for excess generation under the Pilot is that the subscriber organization has satisfied the necessary requirements for Qualifying Facility status under the Public Utility Regulatory Policies Act."[28] This language would explicitly require that a CSEGS must be a QF in order to "sell" excess generation to a Maryland electric company at MD PSC-prescribed rates. This additional language in the CSEGS regulations, combined with additional language changes below, would help bring the CSEGS regulations into compliance with relevant federal law. The Cooperatives respectfully request that the Commission find and conclude that these changes are necessary to allow the CSEGS regulations to comply with federal law, including PURPA and the FPA.

B. CSEGS Regulations That Require Payment To CSEGSs At Prices Higher Than Avoided Costs Violate, And Are Preempted By, PURPA.

In Section III.A. of this Petition, the Cooperatives established that although the CSEGS regulations do not specifically indicate that a CSEGS must be a QF in order to participate in the program, the types of projects contemplated by the CSEGS statute should be able to qualify as QFs under PURPA.[29] Such status is necessary to avoid preemption under the FPA with respect to "sales" by CSEGSs to Maryland electric companies. Assuming that this change is made, and all CSEGSs are QFs, the next step is to ensure that the sales by the QFs to electric companies are priced correctly by the MD PSC under the avoided cost standards of PURPA.[30] For reasons discussed below, the Cooperatives urge the Commission to find that further changes to the CSEGS regulations are necessary to ensure compliance with the PURPA avoided cost standards.

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[28] May 27 Comments, *supra* note 9, at 21.
[29] 16 U.S.C. § 824a-3 (2016).
[30] *Cal. Pub. Utils. Comm'n.*, *supra* note 25, at P 24 (indicating that states are permitted latitude in establishing an implementation plan for Section 210 of PURPA as long as those plans are consistent with Commission regulations) (citing *Am. REF-FUEL Co. of Hempstead*, 47 FERC ¶ 61,161, p. 61,533 (1989); *Signal Shasta*, 41 FERC ¶ 61,120, p. 61,295; *see also LG&E Westmoreland Hopewell*, 62 FERC ¶ 61,098, p. 61,712 (1993)).

Section 20.62.02.07A ("Section .07A") of the CSEGS regulations states that "[a]n electric company shall pay a subscriber a dollar amount of excess generation as reasonably adjusted to exclude the distribution, transmission, and non-commodity portion of the customer's bill *unless the electric company records subscriber credits as kilowatt hours*."[31] The concluding language of this provision is problematic because it injects ambiguity into the standard applied for electric company purchases of excess generation from CSEGSs that are QFs.

The Commission's regulations require state regulatory authorities to set QF compensation at an amount equal to the avoided cost of the purchasing utility.[32] Avoided costs are defined as the "incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the [QF] . . . such utility would generate itself or purchase from another source."[33] In addition, FERC regulations differentiate between two types of QF arrangements: purchases "as available" and purchases "pursuant to a legally enforceable obligation."[34] Purchases "as available" mean that electric companies purchase energy from the QFs as that energy is available from the QFs, and the "rates for those purchases will be based upon the purchasing utility's avoided costs calculated *at the time of delivery*."[35] Purchases pursuant to a legally enforceable obligation mean purchases of set amounts of energy and capacity pursuant to a pre-arranged obligation to purchase, and "the rates for such purchases shall, at the option of the [QF] exercised prior to the beginning of the specified term, be based on either: (i) [t]he avoided

[31] CSEGS Regulations, *supra* note 2, at § 20.62.02.07A (emphasis added).
[32] 18 C.F.R. § 292.304(a); *see also* 133 FERC ¶ 61,059, P 5 (2010) (indicating that rates for wholesale sales involving QFs must not exceed the avoided cost of the purchasing utility).
[33] 18 C.F.R. § 292.101(b)(6); *see also* 18 C.F.R. § 292.304(a)(1)-(2) (indicating that wholesale rates must be "just and reasonable to the electric consumer of the electric utility and in the public interest and not discriminate against qualifying cogeneration and small power production facilities . . . [N]othing in [FERC's regulations] requires any electric utility to pay more than the avoided costs for purchases").
[34] *Id.* at § 292.304(d)
[35] *Id.* (emphasis added).

costs calculated at the time of delivery; or (ii) [t]he avoided costs calculated at the time the obligation is incurred."[36]

Here, CSEGS sales of energy to electric companies will be made on an "as available" basis – *i.e.*, whenever CSEGS energy output exceeds the energy needs of the CSEGS's subscribers. The final clause of Section .07A – which sets payments potentially at a level other than the actual avoided costs at the time of delivery – creates an exception to the avoided cost standard under PURPA. As such, the CSEGS regulations are incongruent with, and violate, federal regulations. In this instance, purchases from CSEGSs are "as available" because certain factors, namely hourly output and demand, are only known as the CSEGS is generating; the CSEGS has no firm commitment to deliver any energy to an electric company. Notwithstanding the "as available" nature of the purchases, the MD PSC's CSEGS regulations require that the electric company purchase any CSEGS generation in excess of CSEGS subscribers' use at the full retail rate, with the exception that any annual excess generation above annual kilowatt-hour consumption shall be purchased at the full standard offer service ("SOS") rate, which may exceed the electric company's avoided costs at the time of delivery.

The Cooperatives note also that, although the CSEGS regulations impermissibly stray from the PURPA avoided cost standards, the Maryland CSEGS statute does not. Maryland's Public Utilities Article § 7-306.2(d)(7) stipulates that "unsubscribed energy generated by a community solar energy generating system that is not owned by an electric company shall be purchased under the electric company's process for purchasing the output from [QFs] *at the amount it would have cost the electric company to procure the energy*."[37] The Maryland statute defines "unsubscribed energy" as "any [CSEGS] output in terms of kilowatt-hours that is not

[36] *Id.*
[37] MD. CODE ANN., *supra* note 3, at § 7-306.2(d)(7)(emphasis added).

allocated to any subscriber."[38] The excess generation at issue in Section .07A is not capable of being allocated to a subscriber under the CSEGS statute or regulations. Excess generation, while undefined in the CSEGS statute, is described in the CSEGS regulations as including credits that cannot be carried over and applied to a subscriber.[39] Excess generation constitutes a portion of "unsubscribed energy." Therefore, the CSEGS statute indicates that the purchase price for excess generation must be the price it would have cost the utility to purchase the energy; in other words, excess generation must be purchased at avoided cost. The CSEGS regulations promulgated by the MD PSC, however, do not necessarily align with Maryland's own CSEGs statute or, as relevant to this Petition, PURPA.

To ensure compliance with PURPA (and Maryland's own CSEGS statute), the Cooperatives respectfully request that the Commission find that the following revised language, if included in Section .07A of the CSEGS regulations (proposed revisions in italics), would allow the CSEGS regulations to comply with the PURPA avoided cost standard: "An electric company shall pay a subscriber, *or otherwise reflect on a subscriber's bill*, a dollar amount of excess generation as reasonably adjusted to exclude the distribution, transmission, and non-commodity portion of the customer's bill *and reflect the electric company's avoided costs calculated at the time of delivery of the energy from the CSEGS*."

To ensure that the CSEGS regulations accurately reflect the language in FERC's PURPA regulations, the Cooperatives suggest deleting Section .07B from the CSEGS regulations because it is unnecessary.[40] Section .07B states "[a]n electric company that serves electric retail choice customers shall pay the subscriber for kilowatt hours of excess generation *at the lesser of the*

[38] *Id.* at § 7-306.2(a)(8).
[39] CSEGS Regulations, *supra* note 2, at § 20.62.02.04G.
[40] *Id.* at § 20.62.02.07B.

subscriber's retail supply rate or the Standard Offer Service rate in effect at the time of payment."[41] However, if retained, the language in italics should be replaced with ". . . based on the electric company's avoided costs calculated at the time of delivery of the energy from the CSEGS."

As indicated in the Cooperatives' May 27 Comments, the MD PSC has authority to modify the proposed regulations to reflect the modifications described above.[42] Therefore, the MD PSC remains able to correct the jurisdictional issue in the CSEGS regulations to reflect the applicability of federal law. The Cooperatives, therefore, respectfully urge this Commission to find that the above changes to the CSEGS regulations are necessary to ensure compliance with federal law.

These changes to the CSEGS regulations are important and necessary for several reasons. First, any gap that exists between payments required for QF sales to electric companies and the level of payments required under PURPA could be expanded considerably over time. If the Commission were to allow stated-required payments to QFs to become unmoored from avoided cost standards, the Commission loses a rational basis for towing the QF payment boat back into the docks. The Cooperatives are concerned that, if Maryland's pro-solar initiatives are not firmly grounded in the avoided cost standard, any Cooperatives' payments to CSEGS will result in unfair cross-subsidies among the Cooperatives' customers. Second, the CSEGS program is a pilot program. Setting the rules properly at this early stage of CSEGS initiatives in Maryland is necessary to ensure that the CSEGS concept is properly and fairly evaluated. A QF payment structure that is unfairly balanced in favor of CSEGS, to the detriment of the Cooperatives' and electric companies' customers, would prejudice the evaluation and could result in permanent

[41] *Id.* (emphasis added).
[42] MD. CODE ANN., *supra* note 3, at § 7-306.2(e)(2).

arrangements that are not economic. Finally, the avoided cost standard is rooted in principles of fairness among QFs, the electric companies that purchase QF output, and electric company consumers that ultimately reimburse the electric company for QF payments. Fair payments to QFs promote the efficient development of QFs; payments to QFs that are too high unfairly prejudice the electric company and its consumers; payments to QFs that are too low (*i.e.*, below actual avoided costs at the time of the purchase) unfairly prejudice QFs. The Cooperatives seek only to ensure that this balance is maintained during the course of the CSEGS Pilot and, if it becomes permanent, beyond the Pilot. Nothing more; nothing less.

When the Cooperatives raised this issue with the MD PSC in their May 27 Comments, Maryland Solar United Neighborhoods ("MD SUN") responded with Supplemental Comments suggesting that the MD PSC could adopt regulations requiring utility purchases of excess generation at a rate that exceeded the utility's avoided costs. In support of their argument, MD SUN cited to *Consol. Edison Co. v. Pub. Serv. Comm'n.*, 472 N.E.2d 981 (N.Y. 1984) ("*ConEd*"), in which the New York Court of Appeals held that the New York Public Service Commission ("NY PSC") could "require a utility to offer to purchase power from Federal [QFs] at a minimum rate of 6 cents per kilowatt hour in accordance with [New York] law.[43] In upholding the NY PSC's "six cents rule," the New York Court of Appeals indicated that the "language of PURPA and its legislative history indicate that the PURPA avoided-cost rate is only the maximum in the context of the *Federal* Government's role in encouraging alternate power production."[44]

Although New York implemented the "six cents rule" as affirmed in *ConEd*, that case has no bearing on the outcome of this proceeding. Because *ConEd* is a New York court opinion, it

[43] *ConEd*, 472 N.E.2d 981 at 987.
[44] *Id.* at 985.

lacks precedential value in the State of Maryland. Furthermore, *ConEd* cannot have persuasive appeal. Other state courts' opinions on this issue disagree with New York's perspective. For example, in *Kan. City Power & Light Co. v. Kan. Corp. Comm'n.*, 676 P.2d 764 (Kan. 1985), the Court held that the Kansas Corporation Commission could not establish rates for purchases from cogenerators that exceeded the value of avoided costs.

IV. PRAYER FOR RELIEF

Rule 207(a)(2) of the Rules of Practice and Procedure of the Commission permits a party to "file a petition when seeking . . . [a] declaratory order or rule to terminate a controversy or remove uncertainty."[45] The Commission has issued declaratory orders before in cases where a state's actions conflicted with federal laws regarding wholesale sales of electricity for resale at the retail level. For example, in *Midwest Power Systems,* 78 FERC ¶ 61,067, the Commission issued a declaratory order indicating that the Iowa Utilities Board's orders to implement an Iowa alternative energy statute were "preempted [by federal law] to the extent that they require rates to QFs in excess of the purchasing utilities' avoided cost, and to the extent that they set rates for the wholesale sales of electric energy by public utilities."[46] The Commission reached the same conclusion in *Conn. Light & Power Co.*, 70 FERC ¶ 61,012, when it issued a declaratory order indicating that a Connecticut Municipal Rate Statute "which regulates rates for the sale of power by a resources recovery facility owned or operated by or for the benefit of a municipality to an electric utility" is preempted by federal law insofar as it may require rates for sales by QFs or public utilities at rates in excess of avoided cost.[47]

[45] 18 C.F.R. § 385.207(a)(2) (2016).
[46] *Midwest Power Sys.*, 78 FERC ¶ 61,067, 10.
[47] *Conn. Light & Power Co.*, 70 FERC ¶ 61,012, p. 61,027.

The Cooperatives have reasonably pursued avenues to convince the MD PSC that the MD PSC must revise its CSEGS regulations to correct shortfalls regarding PURPA and FPA issues. Despite these efforts, the MD PSC enacted the CSEGS regulations, effective July 18, 2016, in a manner that is inconsistent with the FPA and PURPA. Because a state utilities commission is not "free to ignore the requirements of PURPA or the Commission's regulations," the Cooperatives respectfully request that the Commission review the adopted CSEGS regulations and declare that they must be revised in order to appropriately reflect principles of PURPA and other applicable federal laws. [48]

For the foregoing reasons, the Cooperatives respectfully petition the Commission to issue a declaratory order finding that the MD PSC CSEGS regulations violate federal law, as follows: (i) to the extent that the CSEGS regulations require Maryland electric companies to purchase energy from CSEGSs at a particular price, Maryland regulations are preempted by federal law unless those CSEGSs are QFs under PURPA; and (ii) CSEGS regulations that require payment to CSEGSs at prices higher than the utility's avoided costs violate, and are preempted by, PURPA.

[48] *See, e.g., JD Wind 1, LLC*, 130 FERC ¶ 61,127, P. 24.

V. CONCLUSION

WHEREFORE, the Cooperatives request that the Commission issue a Declaratory Order that confirms that the CSEGS regulations, as enacted by the MD PSC, conflict with certain provisions of the FPA and PURPA, and find that the changes recommended by the Cooperatives would adequately resolve the conflict.

Respectfully submitted,

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Filed: August 23, 2016

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically served the foregoing document on the respondent, the Maryland Public Service Commission.

Dated at Washington, DC this 23rd day of August, 2016.

/s/ Robert A. Weishaar, Jr.

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EXHIBIT A

COMAR 20.62.01

This document is current through the 8/5/2016 issue of the Maryland Register

Code of Maryland Regulations **>** ***TITLE 20. PUBLIC SERVICE COMMISSION*** **>** ***SUBTITLE 62. COMMUNITY SOLAR ENERGY GENERATION SYSTEMS*** **>** ***CHAPTER 01. GENERAL***

.00

Statutory Authority

Authority:

Public Utilities Article, §§ 2-113, *2-121*, *7-306*, *7-306.1*, and *7-306.2*, Annotated Code of Maryland

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Code of Maryland Regulations **>** ***TITLE 20. PUBLIC SERVICE COMMISSION*** **>** ***SUBTITLE 62. COMMUNITY SOLAR ENERGY GENERATION SYSTEMS*** **>** ***CHAPTER 01. GENERAL***

.01 Scope.

This subtitle is applicable to electric companies and subscriber organizations in service territories where customers have the ability to subscribe to a community solar energy generation system under a pilot program approved by the Commission.

End of Document

COMAR 20.62.01.02

This document is current through the 8/5/2016 issue of the Maryland Register

.02 Definitions.

A. In this subtitle the following terms have the meanings indicated.

B. Terms Defined.

(1) Agent.

(a) "Agent" means a person who conducts marketing or sales activities, or both, on behalf of a subscriber organization. Agent includes an employee, a representative, an independent contractor and a vendor.

(b) "Agent" includes subcontractors, employees, vendors and representatives not directly under contract with the subscriber organization that conducts marketing or sales activities on behalf of the subscriber organization.

(c) "Agent" does not include a member of a neighborhood association, church, nonprofit organization, or other community organization that is a subscriber organization when the member is conducting marketing or sales activities on behalf of the subscriber organization to fellow members and is not receiving any compensation for those marketing or sales activities.

(2) "Baseline annual usage" has the meaning stated in *Public Utilities Article, § 7-306.2*, Annotated Code of Maryland.

(3) "Brownfield" means one of the following:

(a) A former industrial or commercial site identified by federal or State laws or regulations as contaminated or polluted;

(b) A closed landfill regulated by the Maryland Department of the Environment; or

(c) "Mined lands" as defined in *COMAR 26.21.01.01B*.

(4) "Commission" means the Public Service Commission of Maryland.

(5) "Community solar energy generating system" has the meaning stated in *Public Utilities Article, § 7-306.2*, Annotated Code of Maryland.

(6) "Consent" means an agreement with an action communicated by the following:

(a) A written document with customer signature; or

(b) An electronic document with electronic signature.

(7) "Consumer" or "customer" means a retail electric customer account holder of a regulated electric company.

(8) "Contract summary" means a summary of the material terms and conditions of a community solar pilot program subscriber contract on a form provided by the Commission.

(9) "CSEGS" means a community solar energy generating system.

(10) "Electric company" has the meaning stated in *Public Utilities Article, § 1-101*, Annotated Code of Maryland.

(11) "Electronic transaction" means a standardized data protocol or electronic transmission medium that has been accepted by the Commission for use in Maryland.

(12) "Low income" means a subscriber whose gross annual household income is at or below 175 percent of the federal poverty level for the year of subscription or who is certified as eligible for any federal, state, or local assistance program that limits participation to households whose income is at or below 175 percent of the federal poverty limit.

(13) "Moderate income" means a subscriber whose gross annual household income is at or below 80 percent of the median income for Maryland for the year of subscription.

(14) "Personally identifiable information" means information that can be used to distinguish or trace an individuals identity, either alone or when combined with other personal or identifying information that is linked or capable of being linked to a specific individual.

(15) "Program" has the meaning stated in *Public Utilities Article, § 7-306.2*, Annotated Code of Maryland.

(16) "Public event" means an event open to the public where subscriptions to a community solar energy generation system are marketed or sold.

(17) "Security deposit" means any payment of money given to a subscriber organization by a subscriber in order to protect the subscriber organization against nonpayment of future subscription fees, but does not include escrowed prepaid subscription fees.

(18) "Subscriber" has the meaning stated in *Public Utilities Article, § 7-306.2*, Annotated Code of Maryland.

(19) "Subscriber organization" has the meaning stated in *Public Utilities Article, § 7-306.2*, Annotated Code of Maryland.

(20) "Subscription" has the meaning stated in *Public Utilities Article, § 7-306.2*, Annotated Code of Maryland.

(21) "Unsubscribed energy" has the meaning stated in *Public Utilities Article, § 7-306.2*, Annotated Code of Maryland.

(22) "Utility" means an electric company as defined in *Public Utilities Article, § 1-101*, Annotated Code of Maryland.

(23) "Virtual net energy metering" has the meaning stated in *Public Utilities Article, § 7-306.2*, Annotated Code of Maryland.

COMAR 20.62.01.03

This document is current through the 8/5/2016 issue of the Maryland Register

.03 Electric Company Compliance Plan.

A. An electric company shall file a plan and relevant tariffs for compliance with this subtitle within 45 days after this regulation becomes effective.

B. A municipal electric company or electric cooperative electing to participate in the pilot program shall file a plan and related tariffs for compliance with this subtitle within 45 days after notifying the Commission of that election.

COMAR 20.62.01.04

This document is current through the 8/5/2016 issue of the Maryland Register

Code of Maryland Regulations **>** ***TITLE 20. PUBLIC SERVICE COMMISSION*** **>** ***SUBTITLE 62. COMMUNITY SOLAR ENERGY GENERATION SYSTEMS*** **>** ***CHAPTER 01. GENERAL***

.04 Waiver.

The Commission may waive a regulation in this subtitle for good cause shown.

End of Document

COMAR 20.62.02

This document is current through the 8/5/2016 issue of the Maryland Register

Code of Maryland Regulations **>** ***TITLE 20. PUBLIC SERVICE COMMISSION*** **>** ***SUBTITLE 62. COMMUNITY SOLAR ENERGY GENERATION SYSTEMS*** **>** ***CHAPTER 02. PILOT PROGRAM***

.00

Statutory Authority

Authority:

Public Utilities Article, §§ 2-113, *2-121*, *7-306*, *7-306.1*, and *7-306.2*, Annotated Code of Maryland

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.01 Pilot Program Structure.

A. Each electric company shall establish a program to accept and administer community solar energy generating system projects for a period of 3 years from the earlier of:

(1) The first date of application of a subscriber organization to operate a community solar energy generating system after the effective date of this subtitle; or

(2) 6 months from the effective date of this subtitle.

B. An electric company shall apply bill credits and excess generation to subscribers bills in accordance with applicable tariffs.

C. An electric company shall pay subscriber organizations for unsubscribed energy in accordance with applicable tariffs.

D. An electric company shall maintain program data and records as directed by the Commission.

COMAR 20.62.02.02

This document is current through the 8/5/2016 issue of the Maryland Register

.02 Program Generation Capacity.

A. Capacity Limit.

(1) Statewide Capacity.

(a) Subject to § A(1)(b) of this regulation, an electric company may not accept pilot program project applications after the Statewide capacity of pilot projects has exceeded 1.5 percent of the 2015 Maryland peak demand in MW as measured by the sum of the nameplate capacity of each projects inverter.

(b) An electric company shall accept an additional 0.15 percent of 2015 capacity for projects serving the LMI category if an electric utility has reached full capacity available to projects in the LMI category.

(2) Annual Cap. The following percentages of 2015 Maryland peak demand will set annual program capacity:

(a) First year -- 0.6 percent.

(b) Second year -- 0.6 percent.

(c) Third year -- 0.3 percent.

(3) Program Categories. An electric company shall accept pilot projects in each of the following categories up to the annual and program capacity limits according to the percentages shown in each of the following paragraphs:

(a) Small, Brownfield and Other Category (Small) -- 30 percent.

(i) Projects up to and including 500 kW.

(ii) Projects installed on rooftops, parking lots, roadways or parking structures.

(iii) Projects installed on brownfield locations.

(iv) Projects serving more than 51 percent of kWh output to Low or Moderate income customers.

(b) Open Category (Open) -- 40 percent -- Projects of any size up to 2 MW.

(c) Low and Moderate Income Category (LMI) -- 30 percent -- Projects serving more than 30 percent of kWh output to Low or Moderate income customers of which Low Income subscribers receive a minimum of 10 percent of kWh output.

(d) Projects which qualify for the Small or LMI category may use capacity from the Open category after the electric company has accepted projects up to the limit of its respective categories.

(e) An electric company may accept an LMI project using LMI capacity as described in § A(2) of this regulation from subsequent program years if the capacity in the current year has been fully allocated.

(4) Electric Company Program Capacity Limits.

(a) Subject to the annual and category limits established in this regulation, an electric company shall accept pilot program applications up to 1.5 percent of its 2015 Maryland peak demand.

(b) An electric company may accept project applications after it has accepted 1.5 percent of its 2015 peak demand in MW as measured by the sum of the nameplate capacity of each projects inverter.

(c) An electric company may cease accepting project applications according to the annual percentages listed in Regulation .02A(2) as applied to that companys 2015 peak demand.

(d) An electric company shall allocate annual capacity according to the program category percentages listed in § A(3) of this regulation.

(e) An electric company shall notify the Commission if it intends to accept project applications beyond the level described in § A(4)(a) of this regulation.

(f) An electric company shall combine the capacity of the Small and Open categories if the capacity allocated to the "Open" category is 500 kW or less.

(5) Unused Annual Capacity. Electric company capacity in each year which remains unused by projects shall be added to the capacity of the following year such that the total Statewide capacity does not exceed the limit in § A of this regulation.

(6) Unused Category Capacity. If a category listed in § A(3) of this regulation has unused capacity at the end of the second year of the program, the unused capacity shall be allocated on a pro-rata basis to the other categories for the third year of the program.

B. Each electric company shall maintain a list of accepted projects and total pilot program capacity in its service territory.

C. Each electric company shall provide the list in B of this regulation to the Commission on the first business day after June 30 and December 31 of each year until the pilot is closed.

D. The Commission may direct electric companies to close the program to new applications if the total Statewide net-metered generation exceeds the limit described in *Public Utilities Article, § 7-306(d)*, Annotated Code of Maryland.

End of Document

COMAR 20.62.02.03

This document is current through the 8/5/2016 issue of the Maryland Register

.03 Number of Accounts per Project.

A. A subscriber organization may subscribe up to 350 accounts per CSEGS unless the electric company in the projects service territory has developed an automated billing function for the program.

B. A subscriber organization may subscribe as many accounts as needed to match the CSEGSs capacity if the electric company serving the CSEGS has developed an automated billing function for the program.

C. An electric company may require a subscriber organization to maintain a minimum average subscription size of 2 kW per customer for an individual CSEGS during the pilot program.

COMAR 20.62.02.04

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.04 Subscription Credits.

A. Subscriber List.

(1) A subscriber organization shall provide the electric company with a document indicating the proportion of a community solar energy generating systems output that shall be applied to each subscribers bill.

(2) A subscriber organization shall provide at least monthly subscriber list updates to the electric company.

(3) An electric company shall apply credits using the most recently updated subscriber list provided by the subscriber organization.

B. An electric company shall determine the amount of kilowatt hours to be credited to each subscriber by multiplying the subscribers most recent generation proportion from § A of this regulation by the metered output of the community solar energy generating system.

C. Application of Subscription Credits.

(1) Unless otherwise directed by the Commission, an electric company may choose to apply the appropriate kilowatt-hour credit from § B of this regulation to each subscribers bill as either a reduction in metered kilowatt-hour use or a dollar credit to the subscribers billed amount.

(2) An electric company shall choose the same method for all subscribers in a project.

D. If the electric company chooses to apply the credit from § C of this regulation as a dollar amount, the electric company shall apply a credit no less than the value to the subscriber of the credit had it been applied to the subscribers bill as a reduction in metered kilowatt hours.

E. An electric company shall retain a record of a pilot projects kilowatt hours applied to each subscribers account for a period of 3 years.

F. Subscription credits shall carry over to the next months bill until the earlier date on which:

(1) The subscribers account is closed; or

(2) The subscribers last meter reading prior to the month of April.

G. Subscriber credits that are not carried over under F of this regulation shall be handled as excess generation.

COMAR 20.62.02.05

This document is current through the 8/5/2016 issue of the Maryland Register

.05 Subscription Limitations.

A. A subscriber may not subscribe for an amount of energy that exceeds 200 percent of the value of the subscribers baseline annual usage including all subscriptions and any net metered generation.

B. Multiple Subscriptions.

(1) A customer may purchase multiple subscriptions from one or more CSEGS.

(2) A subscribers total subscribed credits shall comply with § A of this regulation.

C. A subscriber may participate in net metering as described in *Public Utilities Article, § 7-306*, Annotated Code of Maryland, such that the total of all net-metered generation and subscribed energy does not exceed 200 percent of the value of the subscribers baseline annual usage.

COMAR 20.62.02.06

This document is current through the 8/5/2016 issue of the Maryland Register

Code of Maryland Regulations **>** ***TITLE 20. PUBLIC SERVICE COMMISSION*** **>** ***SUBTITLE 62. COMMUNITY SOLAR ENERGY GENERATION SYSTEMS*** **>** ***CHAPTER 02. PILOT PROGRAM***

.06 Credit Payments.

An electric company may not refund generation credits to customers except as electric bill credits or as payment for excess generation.

End of Document

COMAR 20.62.02.07

This document is current through the 8/5/2016 issue of the Maryland Register

.07 Excess Generation.

A. An electric company shall pay a subscriber a dollar amount of excess generation as reasonably adjusted to exclude the distribution, transmission, and noncommodity portion of the customers bill unless the electric company records subscriber credits as kilowatt hours.

B. An electric company that serves electric retail choice customers shall pay the subscriber for kilowatt hours of excess generation at the lesser of the subscribers retail supply rate or the Standard Offer Service rate in effect at the time of payment.

C. An electric company that does not provide Standard Offer Service shall pay a subscriber for kilowatt hours of excess generation at the electric companys avoided cost of generation.

D. An electric company may pay a subscriber an amount of excess generation as a bill credit if the amount of payment is less than $25.

E. An electric company shall make a determination to apply § A, B, or C of this regulation in accordance with the type of subscription credits used for the subscriber according to Regulation .04 of this chapter.

COMAR 20.62.02.08

This document is current through the 8/5/2016 issue of the Maryland Register

.08 Unsubscribed Energy.

An electric company shall file tariffs to pay a subscriber organization for unsubscribed energy in accordance with *Public Utilities Article, § 7-306.2(d)(7)*, Annotated Code of Maryland.

COMAR 20.62.02.09

This document is current through the 8/5/2016 issue of the Maryland Register

.09 Utility Cost Recovery.

A. An electric company shall receive full and timely cost recovery of program credit costs.

B. An electric company may not establish a separate surcharge, fee, or rate for recovery of any program costs, including credit and administrative costs.

C. An electric company may include program credit costs in existing rate adjustments for distribution rates or as a revenue or cost component for transmission or commodity rates as accepted by the Commission.

COMAR 20.62.02.10

This document is current through the 8/5/2016 issue of the Maryland Register

.10 Program Sunset.

A. Electric company tariffs requiring payments or credits from an electric company to subscribers in effect during the program shall remain in effect for subscribers for the earlier of 25 years from the date of the end of the program or until the subscribers contract with its subscriber organization has ended.

B. An electric company shall continue to facilitate the operation of a subscriber organization that was established during the program for a period of 25 years after the program has ended.

C. A subscriber organization may continue to operate a community solar energy generating system that was established during the program for a period of 25 years after the program has ended.

D. A subscriber organization may create, exchange, and trade subscriptions up to the full project capacity for a community solar energy generating system that was established during the program for a period of 25 years after the program has ended

COMAR 20.62.02.11

This document is current through the 8/5/2016 issue of the Maryland Register

.11 Billing Accuracy.

A. The Commission may establish standards for billing accuracy to apply to subscriber credits and billing revenue.

B. The Commission may direct an electric company to develop additional automated billing and crediting features in order to improve billing accuracy for the program.

COMAR 20.62.03

This document is current through the 8/5/2016 issue of the Maryland Register

Code of Maryland Regulations **>** ***TITLE 20. PUBLIC SERVICE COMMISSION*** **>** ***SUBTITLE 62. COMMUNITY SOLAR ENERGY GENERATION SYSTEMS*** **>** ***CHAPTER 03. PILOT PROGRAM ADMINISTRATION***

.00

Statutory Authority

Authority:

Public Utilities Article, §§ 2-113, *2-121*, *7-306*, *7-306.1*, and *7-306.2*, Annotated Code of Maryland

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Code of Maryland Regulations **>** ***TITLE 20. PUBLIC SERVICE COMMISSION*** **>** ***SUBTITLE 62. COMMUNITY SOLAR ENERGY GENERATION SYSTEMS*** **>** ***CHAPTER 03. PILOT PROGRAM ADMINISTRATION***

.01 Customer Eligibility.

A. CSEGS Location.

(1) A customer may subscribe to a community solar energy generating system that is located in the same electric company service territory as the customer.

(2) The location of a CSEGS for the purpose of customer eligibility shall be determined by the physical location of the electric meter of the CSEGS.

B. All rate classes are eligible to subscribe to a community solar energy generating system.

C. Subscribers served by retail electricity suppliers and subscribers served by Standard Offer Service may subscribe to the same community solar energy generating system.

End of Document

COMAR 20.62.03.02

This document is current through the 8/5/2016 issue of the Maryland Register

.02 Subscriber Organization Requirements.

A. A subscriber organization shall apply with the Commission for admission to the program on forms authorized by the Commission.

B. The Commission shall assign each successful applicant a CSEGS identification number.

C. An electric company that participates as a subscriber organization may not recover CSEGS project costs through base distribution rates.

COMAR 20.62.03.03

This document is current through the 8/5/2016 issue of the Maryland Register

.03 Pilot Project Application Process.

A. An applicant that has been granted admission to the pilot program by the Commission that wishes to construct and operate a community solar energy generating system under this pilot program shall apply to the electric company serving the location of the system.

B. Project Application Procedure.

(1) An electric company shall establish a project application procedure in compliance with these regulations and Commission Orders.

(2) An electric company shall develop its project application procedure in a manner designed to encourage achievement of program goals, timely project development, and equitable allocation of the electric companys project capacity.

(3) An electric company shall develop tariffed terms and conditions to administer the pilot program queue for filing with the Commission.

C. An electric company shall assign each project an identification number unique to the electric companys service territory for the purpose of identification.

D. Low and Moderate Income Verification.

(1) The Commission may establish alternate means aside from income verification or participation in the Maryland Office of Home Energy Programs assistance programs to verify the status of Low and Moderate Income subscribers.

(2) An operator of a low-income multi-family dwelling unit may apply to the Commission to qualify as a low-income subscriber for the purposes of the pilot program.

(3) A subscriber organization shall certify to the electric company in writing that the subscriber organization has verified the eligibility of all LMI subscribers needed to qualify for the program prior to receiving permission to operate from the electric company.

COMAR 20.62.03.04

This document is current through the 8/5/2016 issue of the Maryland Register

.04 Pilot Program Queue.

A. Electric Company Application Process.

(1) An electric company shall process applications filed under Regulation .03 of this chapter in the order in which the electric company receives the application.

(2) Within 5 business days of receipt, the electric company shall acknowledge receipt of the application and notify the subscriber organization whether the application is complete.

(3) If the application is incomplete, the electric company shall provide a written list detailing all information that must be provided to complete the application.

(4) A subscriber organization receiving notice of an incomplete application as described in § A(3) of this regulation shall revise and submit the required information within 10 business days after receipt of the list of incomplete information.

(5) The electric company shall notify a subscriber organization within 5 business days of receipt of a revised application whether the application is complete or incomplete.

(6) An electric company shall grant an extension of time to provide such information upon reasonable request from the subscriber organization.

(7) The electric company shall reject an application that is not submitted in accordance with this section.

B. Pilot Queue Order.

(1) An electric company shall maintain a pilot program queue consisting of a list of pilot project applications in order of the date of receipt by the electric company of the application unless otherwise modified by § B(2) of this regulation.

(2) An electric company shall file with the Commission, a tariffed procedure to prioritize multiple applications that are received:

(a) On a single business day; or

(b) In a manner that exceeds the available program capacity or category capacity in a short period of time.

(3) In order to apply for capacity in an electric companys pilot program queue, a CSEGS shall provide the following to the electric company upon application:

(a) An executed interconnection agreement;

(b) Proof of application for all applicable permits; and

(c) Proof of site control.

(4) An electric company shall accept the following as proof of site control:

(a) Evidence of property ownership;

(b) An executed lease agreement; or

(c) A signed option to purchase or lease.

(5) The Commission may establish additional conditions limiting the number of projects for which any single subscriber organization or its affiliates may apply in:

(a) The Statewide program; or

(b) A single utility service territory.

C. Operation Deadline.

(1) If a project fails to begin operating within 12 months of submission of a completed application by the subscriber organization, the electric company shall remove the project from the electric companys pilot program queue unless the subscriber organization of the project provides to the electric company an additional deposit of $50 per kW to maintain its position within the pilot program queue.

(2) If a project fails to begin operating within 18 months of application, the electric company shall remove the project from the electric companys pilot program queue.

(3) The electric company shall extend the operation deadline on a day-for-day basis for the following reasons:

(a) If the subscriber organization attests and provides evidence to the electric company that a projects readiness to begin operating depends only upon receipt of permission to operate from the electric company; or

(b) If the subscriber organization attests and provides evidence to the electric company that a governmental permit or approval for the project was subject to a legal challenge during the reservation period, and the legal challenge remains pending.

(4) Projects in the LMI category are exempt from queue deposits.

(5) An electric company shall return the CSEGS deposit upon commencement of operation unless the electric company has removed the project from the queue.

(6) If a project has been removed from the queue by the electric company, the queue deposit shall be forfeited.

(7) An electric company shall forward forfeited queue deposits to the Commission.

D. An electric company shall provide daily updated information on its website about the current status of its pilot program queue including the following information:

(1) Name of the applicant;

(2) Service address of the project;

(3) Inverter nameplate capacity of the project;

(4) Application date;

(5) Interconnection application status;

(6) Expected date of first operation;

(7) Project identification number;

(8) CSEGS identification number; and

(9) Remaining available capacity by year in each program category.

E. If the electric company closes its pilot program queue, it shall state the reason for closing in the same location as the information provided in § D of this regulation.

F. An electric company that operates as a subscriber organization shall apply to the Commission for permission to enter each of its own projects into the electric companys pilot program queue.

COMAR 20.62.03.04

End of Document

COMAR 20.62.03.05

This document is current through the 8/5/2016 issue of the Maryland Register

Code of Maryland Regulations **>** ***TITLE 20. PUBLIC SERVICE COMMISSION*** **>** ***SUBTITLE 62. COMMUNITY SOLAR ENERGY GENERATION SYSTEMS*** **>** ***CHAPTER 03. PILOT PROGRAM ADMINISTRATION***

.05 Data Communication.

All subscriber organizations and utilities shall use the uniform electronic transaction processes approved by the Commission.

End of Document

COMAR 20.62.03.06

This document is current through the 8/5/2016 issue of the Maryland Register

.06 Renewable Energy Credit Ownership.

A. Subscribers are not customer-generators under *Public Utilities Article, § 7-306(g)(5)*, Annotated Code of Maryland.

B. Subscriber organizations shall own and have title to all renewable energy attributes or renewable credits associated with community energy generating facilities for which they have applied.

COMAR 20.62.03.07

This document is current through the 8/5/2016 issue of the Maryland Register

.07 Conversion of Existing Solar Facilities.

A. Eligibility.

(1) For purposes of this regulation, "existing" means a solar generating system that commenced operation prior to May 15, 2016.

(2) Any project that commences operation on or after May 15, 2016, is not considered to be a conversion for purposes of this program.

B. A subscriber organization may apply to convert all or a portion of an existing solar generating system with a total capacity of 500 kilowatts or less to a CSEGS.

C. A subscriber organization may apply to convert all or a portion of an existing solar generating system to a CSEGS up to and including a capacity of 2 megawatts after the first year of the program has ended in a service territory whose CSEGS program capacity is 5 megawatts or less.

COMAR 20.62.03.08

This document is current through the 8/5/2016 issue of the Maryland Register

.08 Project Location.

A. Colocation.

(1) An electric company may not accept a CSEGS project of 500 kW or greater that is proposed to be located on the same or adjacent property as an existing or proposed CSEGS project owned by the same subscriber organization or affiliate of 500 kW or greater in its service territory.

(2) Parcels that are subdivided after May 12, 2015, shall be considered as a single parcel for the purposes of these regulations unless a subscriber organization demonstrates to the Commission that the subdivision was not for the purposes of program queue eligibility.

(3) An electric company shall notify the Commission of a CSEGS application that is proposed to be constructed within 1 mile of an existing solar facility in its service territory.

B. One or more subscriber organizations may not construct multiple facilities on a single parcel of property.

C. Projects that are constructed in the following locations are exempt from § A of this regulation:

(1) On the rooftops of buildings;

(2) In areas that are zoned for industrial use and are covered by a recorded subdivision plat;

(3) Of a combined capacity not exceeding 6 MW on brownfield locations;

(4) Over parking lots or roadways; or,

(5) On multi-level parking structures.

D. A project that is converted from an existing solar facility is not subject to § A of this regulation.

COMAR 20.62.04

This document is current through the 8/5/2016 issue of the Maryland Register

Code of Maryland Regulations **>** ***TITLE 20. PUBLIC SERVICE COMMISSION*** **>** ***SUBTITLE 62. COMMUNITY SOLAR ENERGY GENERATION SYSTEMS*** **>** ***CHAPTER 04. PILOT PROGRAM STUDY***

.00

Statutory Authority

Authority:

Public Utilities Article, §§ 2-113, *2-121*, *7-306*, *7-306.1*, and *7-306.2*, Annotated Code of Maryland

History

Administrative History

Effective date:
July 18, 2016 (43:14 Md. R. 781)

End of Document

COMAR 20.62.04.01

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.01 CSEGS Study.

An electric company shall provide the Commission with data necessary to monitor the program status, impact on operations, and other information upon request.

COMAR 20.62.04.02

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.02 Utility Data.

A. An electric company shall make reasonable attempts to assist pilot program applicants with identifying means to locate and operate community energy generation facilities in a manner that minimizes adverse effects or maximizes distribution system benefits at locations identified by applicants.

B. Project Information.

(1) A utility shall designate a contact person, and provide contact information on its website and for the Commissions website for submission of all project application requests, and from whom information on the project application request process and the utilitys electric distribution system can be obtained.

(2) The information provided by the utility on its website shall include studies and other materials useful to an understanding of the feasibility of interconnecting a CSEGS on the utility electric distribution system, except to the extent providing the materials would violate security requirements or confidentiality agreements or be contrary to law.

(3) In appropriate circumstances, the utility may require an applicant to execute an appropriate confidentiality agreement prior to release or access to confidential or restricted information.

C. An electric company shall monitor and review its distribution system to determine any adverse or beneficial effects resulting from each installed community solar energy generating system.

D. An electric company shall maintain for the duration of the pilot, the following customer information for each project operating during the pilot subscriber data, including:

(1) Customer class;

(2) Annual usage;

(3) Average bill; and

(4) Peak demand.

E. Commission Staff shall report annually on electric companies billing accuracy, interconnection complaints, and consumer complaints related to the program.

COMAR 20.62.04.03

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.03 Subscriber Organization Data.

A. A subscriber organization shall maintain for the duration of the pilot program, the following information for each project operating during the pilot program:

(1) Ownership information;

(2) Technical and managerial expertise;

(3) Business address;

(4) Project design details, including:

(a) Project location/service territory;

(b) A/C output capacity;

(c) Equipment list; and

(d) Interconnection requirements;

(5) Subscriber data as directed by the Commission, including:

(a) Household income;

(b) Credit rating; and

(c) Other data; and

(6) Subscription information, including:

(a) Rates;

(b) Fees; and

(c) Terms and conditions.

B. A subscriber organization shall provide the information in § A of this regulation to the Commission upon request.

C. A subscriber organization shall provide to the Commission, in a timely manner, information requested by the Commission concerning the operation of a community solar energy generating system.

COMAR 20.62.05

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Code of Maryland Regulations **>** ***TITLE 20. PUBLIC SERVICE COMMISSION*** **>** ***SUBTITLE 62. COMMUNITY SOLAR ENERGY GENERATION SYSTEMS*** **>** ***CHAPTER 05. CONSUMER PROTECTION***

.00

Statutory Authority

Authority:

Public Utilities Article, §§ 2-113, *2-121*, *7-306*, *7-306.1*, and *7-306.2*, Annotated Code of Maryland

History

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Effective date:
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End of Document

COMAR 20.62.05.01

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.01 Scope.

A. This chapter applies to transactions between CSEGS subscriber organizations and customers that are subscribing to a community solar energy generation system under a pilot program approved by the Commission.

B. Regulations .08, .09, .14, .16, .17, .18, and .20 of this chapter do not apply to nonresidential customers.

COMAR 20.62.05.02

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.02 Unauthorized Subscriptions.

A. No person shall subscribe a customer to a community solar energy generation system without the customers consent.

B. A subscriber organization may not add a new charge for a new service, existing service, or service option without first obtaining consent from the customer, verifiable to the same extent and using the same methods specified under Regulation .08 of this chapter.

COMAR 20.62.05.03

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.03 Advertising and Solicitations.

A. Advertising Permitted.

(1) A subscriber organization may advertise its services.

(2) A subscriber organization may not engage in a marketing or trade practice that is unfair, false, misleading, or deceptive.

B. Marketing Disclosures.

(1) A subscriber organizations marketing or solicitation information shall include the subscriber organizations Maryland approval number in a clear and conspicuous manner.

(2) If a subscription price is quoted, the following are required:

(a) A statement that the subscription price quoted is only for the specified product or services provided by the subscriber organization, and the subscription price quoted does not include any tax, commodity, utility distribution or transmission charge, or other utility fee or charge;

(b) A statement that the subscriber organizations price is not regulated by the Commission; and

(c) Any projected savings presented to a potential subscriber shall include a comparison that projects future electricity rates increasing at not more than 1 percent per year.

C. Internet Advertising. If a subscriber organization maintains a website, the subscriber organization shall post on the Internet readily understandable information about its services, prices, and any other mandated disclosures.

D. Telephone Solicitation.

(1) A subscriber organization soliciting customers by telephone shall comply with all applicable State and federal law, including the Maryland Telephone Solicitations Act, *Commercial Law Article, §§ 14-2201--14-2205*, Annotated Code of Maryland.

(2) A subscriber organization may not conduct a residential customer telephone solicitation before 8 a.m. or after 9 p.m.

COMAR 20.62.05.04

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.04 Creditworthiness.

A subscriber organization shall apply uniform income, security deposit, and credit standards for the purpose of making a decision as to whether to offer a subscription to customers within a given class, provided that the subscriber organization may apply separate sets of uniform standards for the purpose of promoting participation by low-income and moderate income retail electric customers.

COMAR 20.62.05.05

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.05 Geographic Marketing.

A. A subscriber organization may market services on a geographic basis.

B. A subscriber organization is not required to offer services throughout an electric companys entire service territory.

C. A subscriber organization may not refuse to provide service to a customer based on the economic character of a geographic area or the collective credit reputation of the area.

COMAR 20.62.05.06

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.06 Discrimination Prohibited.

A. A subscriber organization may not discriminate against any customer, based wholly or partly, on race, color, creed, national origin, or gender of an applicant for service or for any arbitrary, capricious, or unfairly discriminatory reason.

B. A subscriber organization may not refuse to provide service to a customer except by the application of standards that are reasonably related to the subscriber organizations economic and business purposes.

End of Document

COMAR 20.62.05.07

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.07 Required Disclosures.

A. Contract Summary.

(1) Either prior to or at the same time as a contract for a subscription to a CSEGS is executed, a subscriber organization shall present the customer with a completed Contract Summary Disclosure using a form that is approved by the Commission.

(2) The customer shall initial a copy of the Contract Summary Disclosure to acknowledge receipt of the Contract Summary, and:

(a) If a subscription contract is completed through the Internet, the completed Contract Summary shall be:

(i) Available online and made available for download by the customer at the time of contracting; and

(ii) Transmitted to the customer by the subscriber organization by mail or by email if the customer consents to receipt of email disclosures; and

(b) Whether a subscription contract is completed in person or electronically, a subscriber organization shall allow the subscriber to retain a signed version of the executed contract and an initialed version of the Contract Summary Disclosure form.

B. Notice of Subscription.

(1) A subscriber organization shall provide notice of subscription of a customer to a utility in a format consistent with Commission Orders.

(2) A customer entering into an agreement with a subscriber organization shall receive written notice of enrollment from the subscriber organization and the electric company.

(3) Notice of enrollment under § B(1) of this regulation shall include the following:

(a) Customer name;

(b) Customer service address;

(c) Billing name;

(d) Billing address;

(e) Utility name;

(f) Utility account number;

(g) Subscriber organization name;

(h) Subscriber organization account number; and

(i) Effective date of the enrollment.

COMAR 20.62.05.07

End of Document

COMAR 20.62.05.08

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.08 Contracts for Customer Subscription in a Community Solar Energy Generation System.

A. Minimum Contract Requirements.

(1) A subscribing organizations subscription contract shall contain all material terms and conditions, including:

(a) A plain language disclosure of the subscription, including:

(i) The terms under which the pricing will be calculated over the life of the contract and a good faith estimate of the subscription price expressed as a flat monthly rate or on a per-kilowatt-hour basis; and

(ii) Whether any charges may increase during the course of service, and, if so, how much advance notice is provided to the subscriber;

(b) Contract provisions regulating the disposition or transfer of a subscription to the CSEGS, as well as the costs or potential costs associated with such a disposition or transfer;

(c) All nonrecurring (one-time) charges;

(d) All recurring (monthly, yearly) charges;

(e) A statement of contract duration, including the initial time period and any rollover provision;

(f) Terms and conditions for early termination, including:

(i) Any penalties that the subscriber organization may charge to the subscriber; and

(ii) The process for unsubscribing and any associated costs;

(g) If a security deposit is required:

(i) The amount of the security deposit;

(ii) A description of when and under what circumstances the security deposit will be returned;

(iii) A description of how the security deposit may be used; and

(iv) A description of how the security deposit will be protected;

(h) A description of any fee or charge and the circumstances under which a customer may incur a fee or charge;

(i) A statement that the subscriber organization may terminate the contract early, including:

(i) Circumstances under which early cancellation by the subscriber organization may occur;

(ii) Manner in which the subscriber organization shall notify the customer of the early cancellation of the contract;

(iii) Duration of the notice period before early cancellation; and

(iv) Remedies available to the customer if early cancellation occurs;

(j) A statement that the customer may terminate the contract early, including:

(i) Circumstances under which early cancellation by the customer may occur;

(ii) Manner in which the customer shall notify the subscriber organization of the early cancellation of the contract;

(iii) Duration of the notice period before early cancellation;

(iv) Remedies available to the subscriber organization if early cancellation occurs; and

(v) Amount of any early cancellation fee;

(k) A statement describing contract renewal procedures, if any;

(l) A dispute procedure;

(m) The Commissions toll-free number and Internet address;

(n) A notice that the contract does not include utility charges;

(o) A billing procedure description;

(p) The data privacy policies of the subscriber organization;

(q) A description of any compensation to be paid for underperformance;

(r) Evidence of insurance;

(s) A long-term maintenance plan;

(t) Current production projections and a description of the methodology used to develop production projections;

(u) Contact information for the subscriber organization for questions and complaints;

(v) A statement that the subscriber organization and electric company do not make representations or warranties concerning the tax implications of any bill credits provided to the subscriber;

(w) The method of providing notice to the subscribers when the CSEGS is out of service for more than 3 business days, including notice of:

(i) The estimated duration of the outage; and

(ii) The estimated production that will be lost due to the outage;

(x) An explanation of how unsubscribed production of the CSEGS will be allocated; and

(y) Any other terms and conditions of service.

(2) A residential customer may downsize the allocation of solar kilowatt hours under an existing CSEGS Subscription.

(3) A subscriber organization may charge or collect no more than a reasonable fee for the downsizing of a subscribers allocation.

B. Methods of Contracting.

(1) A subscriber organization may not subscribe a residential customer using a process that does not require the customers consent.

(2) A subscriber organization that contracts with a customer by means of the Internet shall:

(a) Confirm the identity of the person making the contract;

(b) Comply with applicable Maryland and federal law; and

(c) Take appropriate steps to safeguard customer privacy.

(3) A subscriber organization that sends a contract over the Internet to a valid email address of the contracting customer is considered to have complied with § B(2)(a) of this regulation.

C. Evergreen Contracts.

(1) A subscriber organization shall provide a customer with a notice of the pending renewal of an evergreen contract 30 days before the automatic renewal is scheduled to occur.

(2) The subscriber organization notice required under § C(1) of this regulation shall:

(a) Provide a clearly stated and highlighted notice to a customer of any changes in the material terms and conditions of the agreement; and

(b) Inform the customer how to terminate the contract without penalty.

COMAR 20.62.05.09

This document is current through the 8/5/2016 issue of the Maryland Register

.09 Share Transfers and Portability.

A. A CSEGS Subscription may be transferred or assigned to a CSEGS subscriber organization or to any person or entity who qualifies to be a subscriber in the CSEGS.

B. A CSEGS subscriber who desires to transfer or assign all or part of his subscription to the CSEGS subscriber organization, in its own name, or to become unsubscribed shall notify the CSEGS subscriber organization and the transfer of the subscription to the CSEGS subscriber organization shall be effective upon such notification, unless the CSEGS subscriber specifies a later effective date.

C. A CSEGS subscriber who desires to transfer or assign all or part of his subscription to another eligible customer desiring to purchase a subscription may do so only in compliance with the terms and conditions of the subscription and will be effective in accordance therewith.

D. The CSEGS subscriber organization and the electric company shall jointly verify that each CSEGS subscriber is eligible to be a subscriber in the CSEGS under *Public Utilities Article, § 7-306.2*, Annotated Code of Maryland. Changes in the subscriber rolls of the CSEGS, including the effective date of changes, shall be communicated by the CSEGS subscriber organization to the electric company, in written or electronic form, as soon as practicable but no less than 30 days.

E. Prices paid for subscriptions in a CSEGS may not be subject to regulation by the Commission.

F. A subscriber that moves to a premise located within the service territory served by the CSEGS may change the premises to which the CSEGS electricity generation shall be attributed to the new premise, and a subscriber organization may not charge an unreasonable transfer fee to such a customer.

COMAR 20.62.05.10

This document is current through the 8/5/2016 issue of the Maryland Register

.10 Disclosure of Subscriber Information.

A. Except as provided in COMAR 20.62.04 and B of this regulation, a subscriber organization may not disclose energy usage or personally identifiable information about a subscriber, or a subscribers billing, payment, and credit information, without the subscribers consent.

B. A subscriber organization may disclose a subscribers billing, payment, and credit information for the sole purpose of facilitating billing, bill collection, and credit reporting.

C. A subscriber organization shall provide a customer with a copy of the subscriber organizations customer information privacy policy.

D. A subscriber organization shall treat information received from prospective customers, including those who do not subscribe, in accordance with §§ A and C of this regulation.

COMAR 20.62.05.11

This document is current through the 8/5/2016 issue of the Maryland Register

.11 Escrow of Prepaid Subscription Fees.

Subscriber funds collected by the CSEGS subscriber organization in advance of commercial operation of the CSEGS shall be held in an escrow account in a manner approved by the Commission. The escrow shall be maintained by its terms until such time as the CSEGS commences commercial operation as certified by the electric companys acceptance of energy from the CSEGS.

COMAR 20.62.05.12

This document is current through the 8/5/2016 issue of the Maryland Register

.12 Notice of Contract Expiration or Cancellation.

A. A CSEGS subscriber organization shall provide the customer with notice at least 30 days before expiration or cancellation of a subscription contract.

B. Contents of Notice. The subscriber organizations expiration or cancellation notice required under § A of this regulation shall include:

(1) Final bill payment instructions; and

(2) The toll-free telephone number and the website address of the subscriber organization and the Commission.

C. Early Cancellation.

(1) Notice of early cancellation by the subscriber organization shall comply with B of this regulation.

(2) Early Cancellation Fee.

(a) A subscriber organization may impose a reasonable early cancellation fee if a customer cancels the contract before the expiration date.

(b) A subscriber organization may deduct a cancellation fee from a customer deposit.

(3) Except as provided in a tariff regarding subscriber organization default, an electric company may remove a customer from subscriber organization services only if directed by a subscriber organization, subject to applicable bankruptcy law.

(4) When a subscriber organization contracts with a customer, the newly contracting subscriber organization shall notify the customer that the customer may incur early cancellation penalties under a current subscriber organization contract.

COMAR 20.62.05.13

This document is current through the 8/5/2016 issue of the Maryland Register

.13 Assignment of Subscription Contract.

A. At least 30 days prior to the effective date of any assignment or transfer of a subscription contract from one subscriber organization to another, the subscriber organizations shall jointly provide written notice of the assignment or transfer to the customers of the subscriber organization, the Commission, the electric company, and the Office of Peoples Counsel.

(1) Notice to Customer. The subscriber organizations shall jointly send notice to the customer informing them of the assignment or transfer. The letter shall include:

(a) A description of the transaction in clear and concise language including the effective date of the assignment or transfer;

(b) Customer service contact information for the assignee; and

(c) A statement that the terms and conditions of the customers contract at the time of assignment shall remain the same for the remainder of the contract term.

(2) The subscriber organizations shall file a notice with the Commission, with a copy to the Office of Peoples Counsel and the electric company, of the assignment or transfer of the customer contracts and include a copy of the letter sent to customers.

B. Upon request by the Commission, the assignee shall be responsible for providing documents and records related to the assigned contracts. Records shall be maintained for a period of 3 years or until the contracts are expired, whichever is longer.

COMAR 20.62.05.14

This document is current through the 8/5/2016 issue of the Maryland Register

.14 Subscription Disputes.

A. A customer alleging a violation of this subtitle may file a dispute with the Commissions Office of External Relations.

B. Upon proof of the allegations, the customers remedy through the Office of External Relations is limited to a refund of any overcharge and any fees or penalties paid by the customer as a result of the unauthorized subscription or other violation.

C. This subtitle does not limit:

(1) The authority of the Commission under Public Utilities Article, Annotated Code of Maryland;

(2) The authority of the Attorney General to investigate violations of consumer protection or other legal requirements; or

(3) The ability of a customer to pursue other relief against a subscriber organization or other party.

COMAR 20.62.05.15

This document is current through the 8/5/2016 issue of the Maryland Register

.15 Subscriber Organizations Responsible for the Actions of Its Agents.

A. A subscriber organization may use an agent to conduct marketing or sales activities.

B. A subscriber organization is responsible for any fraudulent, deceptive, or other unlawful marketing performed by its agent while marketing or selling subscriptions on behalf the subscriber organization.

COMAR 20.62.05.16

This document is current through the 8/5/2016 issue of the Maryland Register

.16 Agent Qualifications and Standards.

A. A subscriber organization shall develop standards and qualifications for individuals it chooses to hire as its agents. A subscriber organization may not hire an individual that fails to meet its standards.

B. A subscriber organization may not permit a person to conduct door-to-door activities until it has obtained and reviewed a criminal history record in the same manner as provided in *COMAR 20.53.08*.

C. When a subscriber organization contracts with an independent contractor or vendor to perform door-to-door activities, the subscriber organization shall document that the contractor or vendor has performed criminal background investigations on an agent in accordance with this regulation and with the standards set by the subscriber organization. A subscriber organization may satisfy this requirement by obtaining from the independent contractor or vendor a written statement affirming that the criminal background check was performed by them or under their supervision in accordance with this regulation and with standards set by the subscriber organization and presented in writing.

D. A subscriber organization shall periodically audit whether the background checks completed by its independent contractor or vendor have been completed in accordance with this regulation.

COMAR 20.62.05.17

This document is current through the 8/5/2016 issue of the Maryland Register

.17 Agent Training.

A. A subscriber organization shall ensure the training of its agents on the following subjects:

(1) Local, State and federal laws and regulations that govern marketing, telemarketing, consumer protection, and door-to-door sales as applicable to the types of marketing and jurisdiction in which the agent shall engage or operate;

(2) Responsible and ethical sales practices;

(3) The subscriber organizations products and services;

(4) The subscriber organizations rates, rate structures, and payment options;

(5) The customers right to rescind and cancel contracts;

(6) The applicability of an early termination fee for contract cancellation when the subscriber organization has one;

(7) The necessity of adhering to the script and knowledge of the contents of the script if one is used;

(8) The proper completion of transaction documents;

(9) The subscriber organizations Contract Summary Disclosure;

(10) Information about how customers may contact the subscriber organization to obtain information about billing, disputes, and complaints; and

(11) The confidentiality and protection of customer information.

B. A subscriber organization shall document the training of an agent and maintain a record of the training for 3 years from the date the training was completed.

C. A subscriber organization shall make training materials and training records available to the Commission and the Office of Peoples Counsel upon request. Any such material shall be treated as confidential.

D. When a subscriber organization contracts with an independent contractor to perform marketing or sales activities on the subscriber organizations behalf, the subscriber organization shall confirm that the contractor or vendor has provided subscriber organization-approved training to agents and independent contractors in accordance with this section.

E. The subscriber organization shall monitor telephonic and door-to-door marketing and sales calls to:

(1) Evaluate the subscriber organizations training program; and

(2) Ensure that agents are providing accurate and complete information, complying with applicable rules and regulations and providing courteous service to customers.

COMAR 20.62.05.18

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.18 Agent Identification and Misrepresentation.

A. A subscriber organization shall issue an identification badge to agents to be worn and prominently displayed when conducting door-to-door activities or appearing at public events on behalf of a subscriber organization. The badge shall:

(1) Accurately identify the subscriber organization, its trade name, and its logo;

(2) Display the agents photograph;

(3) Display the agents full name; and

(4) Display a customer service phone number for the subscriber organization.

B. Upon first contact with a customer, an agent shall:

(1) Identify the subscriber organization that he represents; and

(2) State that he is not working for and is independent of the customers local distribution company or another subscriber organization.

C. When conducting door-to-door activities or appearing at a public event, an agent may not wear apparel or accessories or carry equipment that contains branding elements, including a logo that suggests a relationship that does not exist with a utility, government agency, or another subscriber organization.

D. A subscriber organization may not use the name, bills, marketing materials, or consumer education materials of another.

E. A subscriber organization or subscriber organization agent may not say or suggest to a customer that a utility customer is required to choose a CSEGS subscriber organization.

COMAR 20.62.05.19

This document is current through the 8/5/2016 issue of the Maryland Register

.19 Door-to-Door Sales.

A. A subscriber organization and its agents shall comply with the Maryland Door-to-Door Sales Act, local government ordinances regarding door-to-door marketing and sales activities, and any other applicable consumer protection law.

B. A subscriber organizations agent shall:

(1) Prominently display an identification badge; and

(2) Offer a business card or other material that lists:

(a) The subscriber organizations name and contact information, including telephone number;

(b) The Maryland approval number of the subscriber organizations CSEGS project; and

(c) The agents name and any other identification numbers provided to the sales agent by the subscriber organization or agent.

C. A subscriber organization shall establish a policy that requires an agent to terminate contact with a customer if the customer is incapable of understanding and responding to the information being conveyed by the agent.

D. When an agent completes a transaction with a customer, the agent shall provide a copy of each document that the customer signed or initialed relating to the transaction. A copy of these documents shall be provided to the customer before the agent and the customer leave each others presence.

E. An agent shall immediately leave a residence when requested to do so by a customer or the owner or an occupant of the premises, or if the customer does not express an interest in what the agent is attempting to sell.

COMAR 20.62.05.20

This document is current through the 8/5/2016 issue of the Maryland Register

.20 Notifications Regarding Door-to-Door Activity.

A. When a subscriber organization engages in door-to-door activity, the subscriber organization shall notify OER no later than the morning of the day that the activity begins. The notification shall include general, nonproprietary information about the activity, the period involved, and a general description of the geographical area.

B. A subscriber organization shall provide the utility with general, nonproprietary information about the door-to-door activity that caused the subscriber organization to provide notice to the Commission. The subscriber organization shall provide this general information to the utility no later than the morning of the day that the sales and marketing activities begin. The utility shall use this information only for acquainting its customer service representatives with sales and marketing activity occurring in its service territory so that they may address customer inquiries knowledgably. A utility may not use the information for other purposes.

EXHIBIT B

Md. PUBLIC UTILITIES Code Ann. § 7-306.2

Statutes current through July 1, 2016.

Annotated Code of Maryland > ***PUBLIC UTILITIES*** > ***DIVISION I. PUBLIC SERVICES AND UTILITIES*** > ***TITLE 7. GAS, ELECTRIC, AND WATER COMPANIES*** > ***SUBTITLE 3. CONSUMER RELATIONS***

§ *7-306.2*. Community Solar Energy Generating Systems Pilot Program

(a) Definitions. --

(1) In this section the following words have the meanings indicated.

(2) "Baseline annual usage" means:

(i) a subscriber's accumulated electricity use in kilowatt-hours for the 12 months before the subscriber's most recent subscription; or

(ii) for a subscriber that does not have a record of 12 months of electricity use at the time of the subscriber's most recent subscription, an estimate of the subscriber's accumulated 12 months of electricity use in kilowatt-hours, determined in a manner the Commission approves.

(3) "Community solar energy generating system" means a solar energy system that:

(i) is connected to the electric distribution grid serving the State;

(ii) is located in the same electric service territory as its subscribers;

(iii) is attached to the electric meter of a subscriber or is a separate facility with its own electric meter;

(iv) credits its generated electricity, or the value of its generated electricity, to the bills of the subscribers to that system through virtual net energy metering;

(v) has at least two subscribers;

(vi) does not have subscriptions larger than 200 kilowatts constituting more than 60% of its subscriptions;

(vii) has a generating capacity that does not exceed 2 megawatts as measured by the alternating current rating of the system's inverter; and

(viii) may be owned by any person.

(4) "Program" means the Community Solar Energy Generating Systems Pilot Program.

(5) "Subscriber" means a retail customer of an electric company that:

(i) holds a subscription to a community solar energy generating system; and

(ii) has identified one or more individual meters or accounts to which the subscription shall be attributed.

(6) "Subscriber organization" means:

(i) a person that owns or operates a community solar energy generating system; or

(ii) the collective group of subscribers of a community solar energy generating system.

(7) "Subscription" means the portion of the electricity generated by a community solar energy generating system that is credited to a subscriber.

(8) "Unsubscribed energy" means any community solar energy generating system output in kilowatt-hours that is not allocated to any subscriber.

(9) "Virtual net energy metering" means measurement of the difference between the kilowatt-hours or value of electricity that is supplied by an electric company and the kilowatt-hours or value of electricity attributable to a subscription to a community solar energy generating system and fed back to the electric grid over the subscriber's billing period, as calculated under the tariffs established under subsection (e)(2) of this section.

(b) Legislative findings. -- The General Assembly finds that:

(1) community solar energy generating systems:

(i) provide residents and businesses, including those that lease property, increased access to local solar electricity while encouraging private investment in solar resources;

(ii) enhance continued diversification of the State's energy resource mix to achieve the State's renewable energy portfolio standard and Greenhouse Gas Emissions Reduction Act goals; and

(iii) provide electric companies and ratepayers the opportunity to realize the many benefits associated with distributed energy; and

(2) it is in the public interest that the State enable the development and deployment of energy generation from community solar energy generating systems in order to:

(i) allow renters and low-income and moderate-income retail electric customers to own an interest in a community solar energy generating system;

(ii) facilitate market entry for all potential subscribers while giving priority to subscribers who are the most sensitive to market barriers; and

(iii) encourage developers to promote participation by renters and low-income and moderate-income retail electric customers.

(c) Status of community solar energy generating system. --A community solar energy generating system, including a subscriber or subscriber organization associated with the community solar energy generating system, is not:

(1) an electric company;

(2) an electricity supplier; or

(3) a generating station.

(d) Commission to establish pilot program. --

(1)

(i) The Commission shall establish a pilot program for a Community Solar Energy Generating System Program.

(ii) The structure of the pilot program is as provided in this subsection.

(2) All rate classes may participate in the pilot program.

(3) Subscribers served by electric standard offer service and electricity suppliers may hold subscriptions to the same community solar energy generating system.

(4) A subscriber organization shall:

(i) determine how to allocate subscriptions to subscribers; and

(ii) notify an electric company and, if applicable, a relevant electricity supplier about the regulations the Commission adopts under subsection (e) of this section.

(5) An electric company shall use the tariff structure under subsection (e)(2) of this section to provide each subscriber with the credits.

(6) A subscriber may not receive credit for virtual net excess generation that exceeds 200% of the subscriber's baseline annual usage.

(7) Any unsubscribed energy generated by a community solar energy generating system that is not owned by an electric company shall be purchased under the electric company's process for purchasing the output from qualifying facilities at the amount it would have cost the electric company to procure the energy.

(8) An electric company shall use energy generated from a community solar energy generating system to offset purchases from wholesale electricity suppliers for standard offer service.

(9) All costs associated with small generator interconnection standards under *COMAR 20.50.09* are the responsibility of the subscriber organization.

(10) A subscriber organization may petition an electric company to coordinate the interconnection and commencement of operations of a community solar energy generating system after the Commission adopts regulations required under subsection (e) of this section.

(11) A subscriber organization may contract with a third party for the third party to finance, build, own, or operate a community solar energy generating system.

(12) A municipal utility or cooperative utility may participate in the pilot program.

(13) Equipment for a community solar energy generating system may not be built on contiguous parcels of land unless the equipment is installed only on building rooftops.

(14) The pilot program shall:

(i) begin on the earlier of:

1. the date of submission of the first petition of a subscriber organization under paragraph (10) of this subsection after the Commission adopts the regulations required under subsection (e) of this section; or

2. 6 months after the Commission adopts those regulations; and

(ii) end 3 years after the beginning date.

(15) The Commission shall limit the pilot program in such a way that the Commission may conduct a meaningful study of the pilot program and its results, including:

(i) the appropriate number of community solar energy generating systems to be included in the pilot program;

(ii) the appropriate amount of generating capacity of the community solar energy generating systems to be included in the pilot program; and

(iii) a variety of appropriate geographical areas in the State for locating community solar energy generating systems to be included in the pilot program.

(e) Regulations. -- On or before May 15, 2016, the Commission shall adopt regulations to implement this section, including regulations for:

(1) consumer protection;

(2) a tariff structure for an electric company to provide a subscriber with the kilowatt-hours or value of the subscriber's subscription, as the Commission determines;

(3) a calculation for virtual net energy metering as the Commission determines;

(4) a protocol for electric companies, electricity suppliers, and subscriber organizations to communicate the information necessary to calculate and provide the monthly electric bill credits and yearly net excess generation payments required by this section; and

(5) a protocol for a subscriber organization to coordinate with an electric company for the interconnection and commencement of operations of a community solar energy generating system.

(f) Continuation of contracts and systems entered during pilot program. --

(1) Subject to regulations or orders of the Commission, a contract relating to a community solar energy generating system or subscriber organization that is entered into during the pilot program shall remain in effect according to the terms of the contract, including after the termination of the pilot program.

(2) After termination of the pilot program, in accordance with the operational and billing requirements in subsection (d) of this section:

(i) a subscriber organization may continue the operation of a community solar energy generating system that began operation during the pilot program, including the creation and trading of subscriptions; and

(ii) in accordance with the tariffs established under subsection (e)(2) of this section, an electric company shall continue to facilitate the operation of a community solar energy generating system that began operation during the pilot program.

(g) Net metering project limitations. --The cumulative installed nameplate capacity under the pilot program shall count toward the overall limitation of 1,500 megawatts for all net metering projects in § 7-306(d) of this subtitle.

History

2015, chs. 346, 347.

Annotations

Notes

EDITOR'S NOTE. --

Section 2, chs. 346 and 347, Acts 2015, provides that:

"(a) The Public Service Commission, in consultation with the Maryland Energy Administration, shall convene a stakeholder workgroup to study the value and costs of the pilot program established under *§ 7-306.1 of the Public Utilities Article*, as enacted by Section 1 of this Act and make recommendations to the Commission on the advisability of establishing a permanent program.

"(b) In conducting the study, the workgroup shall identify and examine:

"(1) a framework for valuation of the costs and benefits related to community solar and virtual net energy metering;

"(2) the costs and benefits of community solar energy generating systems to participating subscribers and to nonsubscriber ratepayers;

"(3) an appropriate credit mechanism and operational structure that allows a community renewable solar energy generating system to minimize administrative costs to an electric company, electric supplier, or subscriber organization;

"(4) the benefits to and the technical and cost impacts of community solar programs and virtual net energy metering on an electric company's distribution grid;

"(5) issues, benefits, and concerns related to the participation of electric companies, including investor-owned utilities, in community solar programs and projects, including owners and operators of the projects;

"(6) whether and how community solar projects or virtual net energy metering have a substantially different technical impact on the distribution system than traditional net energy metering;

"(7) identification of any impacts on the standard offer service procurement process;

"(8) a review of community solar programs and cost-benefit studies in other states;

"(9) whether and how community solar programs can help reduce the cost of compliance with the renewable energy portfolio standard;

"(10) how community solar energy generating systems can impact locational marginal prices in Maryland;

"(11) the impacts of the pilot program on energy costs, reliability, and equitable cost allocation for ratepayers;

"(12) how community solar project developers can increase participation by low- and moderate-income retail electric customers in community solar projects;

"(13) the progress of the community solar energy generating pilot program under *§ 7-306.1 of the Public Utilities Article*, as enacted by Section 1 of this Act, in attracting low- and moderate-income retail electric customers;

"(14) whether community solar energy generating systems are an overall net benefit in helping Maryland achieve its distributed generation and renewable goals;

"(15) any other matters the workgroup considers relevant; and

"(16) any additional factors the Public Service Commission considers appropriate.

"(c) On or before July 1, 2019, the Public Service Commission shall report its findings and recommendations, based on the study conducted under this section, to the Senate Finance Committee and the House Economic Matters Committee in accordance with § 2-1246 of the State Government Article."

Section 3, chs. 346 and 347, Acts 2015, provides that "the Public Service Commission shall notify the General Assembly and Department of Legislative Services when the pilot program begins in accordance with *§ 7-306.1(d)(14) of the Public Utilities Article*, as enacted by this Act."

Section 4, chs. 346 and 347, Acts 2015, provides that the acts shall take effect July 1, 2015.

Chapters 161, 346, and 347, Acts 2015, added § 7-306.1 of this article. None of the chapters referred to the others, and effect has been given to all. The section added by chs. 346, and 347 was redesignated as § ***7-306.2*** of this article.

Research References & Practice Aids

USER NOTE:

For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.

End of Document

EXHIBIT C

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May 27, 2016

VIA ELECTRONIC FILING AND HAND DELIVERY

David J. Collins
Executive Secretary
Maryland Public Service Commission
6 St. Paul Street, 16th Floor
Baltimore, MD 21202

Re: RM 56: Comments of the Southern Maryland Electric Cooperative and Choptank Electric Cooperative on Community Solar Energy Regulations

Dear Mr. Collins:

Attached for filing please find the written comments of the Southern Maryland Electric Cooperative and Choptank Electric Cooperative in response to the Commission's proposed regulations for Community Solar Generation Systems published in the Maryland Register on April 29, 2016. Please do not hesitate to contact me if you have any questions.

Sincerely,

Todd R. Chason /DLB

Todd R. Chason

TRC

Enclosure

BEFORE THE
PUBLIC SERVICE COMMISSION OF MARYLAND

Revisions to COMAR 20.62 – Community Solar Generating Systems	* * * * *	**Docket RM 56**

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COMMENTS OF
SOUTHERN MARYLAND ELECTRIC COOPERATIVE, INC. AND
CHOPTANK ELECTRIC COOPERATIVE, INC.
ON PROPOSED REGULATIONS

Southern Maryland Electric Cooperative, Inc. (SMECO) and Choptank Electric Cooperative, Inc. (CEC) (collectively the "Cooperatives") submit these comments in response to the community solar energy generation systems ("CSEGS") regulations published April 29, 2016 in the *Maryland Register*, Volume 43, Issue.

EXECUTIVE SUMMARY

Energy initiatives do not exist in a vacuum; they must operate within the complex web of federal and state laws and regulations. The proposed CSEGS regulations are based on the faulty premise that "There is no corresponding federal standard to this proposed action." In fact, there are federal statutes and federal regulations that are implicated by these regulations. Significant changes are required to bring the regulations into compliance and insulate them from legal challenges.

First, the regulations effectively provide for net metering for CSEGS participants without directly acknowledging this fact in *.04 Subscription Credits* subparts C and D. However, allowing the generation associated with a facility to be used to offset the electric energy provided to the customer by the utility is the very definition of net metering. The PSC specifically

recognizes that this provision is net metering in *.05 Subscription Limitations* part C. In addition to net metering, the PSC also allows for virtual storage and banking service in section F of the subscription credits. These two features – net metering and banking through virtual storage – specifically implicate the amendment to the PURPA Section 111 standard 11 for net metering. The importance of this statutory provision is discussed in detail below.

Second, CSEGS fall under PURPA as qualifying facilities ("QFs"). The Public Utility Regulatory Policies Act ("PURPA") requires the Federal Energy Regulatory Commission ("FERC") to promulgate rules for carrying out the purposes of PURPA. Those FERC regulations are contained in PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION. The regulations provide for both the purchase of power from QFs and the sale of power to QFs from utilities subject to the jurisdiction of the PSC. In both regards, these CSEGS regulations must be consistent with the specific FERC regulations applicable to the CSEGS as a QF.

In the Cooperatives' December comments on the proposed regulations, the applicability of PURPA requirements to these regulations was specifically noted. Yet the proposed regulations do not acknowledge PURPA's applicability; nor have necessary changes been made to comply with the statutory provisions of PURPA or the FERC regulations. To the extent a CSEGS is not a QF, state regulations directing the level of prices to be paid for wholesale sales by CSEGS to electric companies (for subsequent resale to retail customers) violate the Federal Power Act ("FPA") because only FERC has jurisdiction over the rates for such sales. These federal requirements under PURPA and the FPA are not discretionary. Failure to comply with

these requirements results in a set of CSEGS regulations that cause the Cooperatives great concern and cause us to strongly consider whether it is prudent to participate in the pilot.

Third, the requirement that electric companies credit CSEGS subscribers at the full retail rate means that electric companies will be required to provide delivery services for energy from CSEGS to CSEGS subscribers without receiving compensation for that service. While the proposed regulations, at *.09 Utility Cost Recovery*, purport to provide "full and timely cost recovery of program credit costs," the proposed regulations also impose certain limitations on rate recovery mechanisms. If, and to the extent, any gaps exist in electric companies' ability to fully recover program credit costs, the imposition of program credits costs on electric companies would be confiscatory.

Finally, because the proposed CSEGS regulations directly impact the electric rates of the Cooperatives' members, the result must meet the standards that such rates are just and reasonable and not unduly discriminatory. When rates result in unequal treatment for customers who cause the same costs there is undue discrimination that must be cured. Net metering with banking creates undue discrimination between CSEGS participants and customers who do not participate, as noted by the Cooperatives in their initial comments by noting that "proposing to pay a retail rate credit to subscribers will result in non-participants subsidizing participants in a way that is both unfair and unnecessary." In subsequent comments on the proposed December draft of the regulations the Cooperatives noted that "The December draft of the regulations provided a subscription rate equal to the retail rate, affording community solar exactly the same treatment net metering receives, despite being remotely located from the end user." Both of these comments were designed to address the undue discrimination inherent in the proposal CSEGS regulations.

The following sections detail the major concerns the Cooperatives have with the proposed regulations and indicate the changes required in the proposed regulations to make them consistent with PURPA, FERC regulations implementing Section 210 of PURPA, and the FPA. The comments also explain the changes needed to conform the regulations to established and accepted economic theory and allow the Cooperatives a reasonable opportunity to participate for the benefit of their customers. These comments are organized in sections as follows:

I. 20.62.02.04 SUBSCRIPTION CREDITS;

II. 20.62.02.05 SUBSCRIPTION LIMITATIONS;

III. 20.62.02.09 UTILITY COST RECOVERY; and

IV. CONCLUSIONS.

I. 20.62.02.04 SUBSCRIPTION CREDITS

A. The Proposed Subscription Credit Levels Are Not Equitable, To Consumers Or The Cooperatives.

There is no basis in rate theory, power delivery engineering, system planning, utility operations, power delivery cost causation or applicable utility law that justifies the proposed full retail credit for customers participating in the CSEGS. CSEGS subscribers require and use the delivery system of the Cooperatives and cause the utility to incur costs for that delivery. The Cooperatives have noted that PURPA provides statutory guidance as to the purpose of provisions in Section 111- Consideration and Determination Respecting Certain Ratemaking Standards. Standard 11 of that section is the Net Metering Standard employed in the proposed regulations.[1] That standard is also applicable to the provision of virtual storage through the banking provision of the regulations.

[1] *See* 16 U.S.C. § 2621(d)(11).

In both Section 2 (Findings) and Section 101 (Purposes), PURPA states that any adoption of a standard under Section 111 must further the applicable purposes of the Act. Specifically the findings note that the reason for the statute is in part to provide "equitable retail rates for electric consumers."[2] The proposed regulations do not and cannot satisfy that standard for the Cooperatives' customers. In both sets of comments, the Cooperatives emphasized this point that the resulting rates are not equitable. In its most recent base rate case, Case No. 9294, SMECO sponsored the testimony of H. Edwin Overcast that included the unrefuted evidence that net metering of generation on the customer premises does not produce equitable rates and in fact the results demonstrate that net metering for SMECO results in undue discrimination as explained in detail below. If net metering on the customer premises cannot produce equitable rates, it is impossible for net metering for generation remote from the consumer and requiring delivery facilities, the cost of which is recovered in retail rates, to result in equitable rates for consumers. In fact, even if net metering for on-site distributed generation resulted in reasonable rates, net metering for a remote facility providing energy to a consumer could not result in reasonable rates because the remote consumer must rely on the total delivery system to access the energy subscription.

Current rates of the Cooperatives are based on a rate design in which the rate to recover the fixed cost of providing power delivery services to customers who use the service consists of (a) a customer charge that does not cover full customer costs and (b) a flat per kWh energy charge to recover the fixed delivery costs of the system that are caused by customer demand not energy consumption. It is important to note that the power delivery system is designed, constructed and operated to provide safe and reliable service to all customer-members and to serve their expected maximum demand on the delivery system. This is a fundamental element of

[2] *Id.* § 2601(1).

the obligation to serve. When two customers are expected to have the same maximum demand based on the particular end-use services used, the utility will provide those two customers with the same distribution facilities. Once installed, those facilities will meet the expected delivery demand on the system whenever it occurs. The costs to serve these customers will be the same because rates are based on the average cost of all these considerations as it relates to a class of customers who use the same components of the system. Since two customers have the same average cost- customer and demand- a fair and equitable rate would charge each customer the same bill for delivery service. When all demand costs and some of the customer costs are recovered in a per-kWh charge, the customer who uses the most kWhs pays more for the service than the lower use customer even for identical demands on the system. Thus, within a class of customers, higher use customers subsidize lower use customers and higher load factor customers subsidize lower load factor customers under the two-part rate.

The explicit result of net metering with banking for the Cooperatives is to create a class of lower load factor, partial requirements customers who use the same peak demand as higher load factor customers in the class because there is no solar output available for class or individual customer peak demands on the delivery system. With the same demand and far less kWh use (potentially even zero kWh use annually under the proposed regulations), solar DG customers will pay far less than the cost of serving them, without providing any monetized off-setting benefits for other customers. To illustrate this point Table 1 below compares two customers (a solar customer and a non-solar customer) with nearly equal maximum demands who have the same delivery service requirements and on average the same delivery costs under the regular rate provision of the current SMECO rates effective March 1 of this year.

TABLE 1 Regular Residential Rate

	Customer A (Solar)	Customer B (Non-Solar)
Customer NCP	13.74	12.96
Time of NCP (Mo/Day/Hour)	1/8/14/7AM	3/28/14/8AM
kWh billed	24,292	25,160
Customer NCP Coincident with Class	13.33 kW	7.29 kW
Time of Class NCP (Mo/Day/Hour)	1/30/14/7AM	1/30/14/7AM
Load Factor NCP	20.2%	22.2%
Load Factor Class NCP	20.8%	39.4%
Unit Demand Cost From SMECO Cost Study	$1,124.52	$614.98
Unit Customer Costs - Annual	$596.52	$596.52
Total Cost to Serve - Annual	$1,721.04	$1,211.50
Billed Revenue (Base Rate)	$1,167.30	$1,204.94
Revenue as % of Costs	67.83%	99.46%

Customer A is a partial requirements solar PV customer and customer B is a full-requirements non-solar customer. The load data are based on SMECO load research information and represent the actual annual use and maximum demands for the customers in 2014. The costs are taken from the unit costs in the filed cost of service study from the recently completed SMECO rate case, and the revenue is based on the rates effective currently excluding the SOS costs. Since the SOS costs are largely incurred and based on a kWh charge, there is no need to include those costs in the analysis because they are matched dollar for dollar.[3] The next to last line of the table demonstrates that the full requirements, non-solar customer pays more for essentially the same delivery service than the partial requirements, solar net metered customer with banking. The difference as a percent of class average cost is not trivial. In fact, the full-

[3] The dollar for dollar matching is based on average cost. At some point it will be necessary to time differentiate these costs because energy cost vary both seasonally and diurnally as does the consumption of these customers. For example, all electric residential customers tend to use more energy off-peak than other customers.

requirements customer pays about 1.47 times as much of the cost to serve as the solar customer under the standard residential rate. The solar customer is over $500 more expensive to serve annually based on the peak load coincident with the residential class peak and yet provides a substantially lower portion of those costs than the full-requirements customer. This is a perfect example of the undue discrimination created by net metering of roof-top solar. With CSEGS the subscriber would get the same benefit as the roof-top customer and still uses the system for all of the delivery of energy not just a part of that delivery like the roof top solar DG customer. Simply, the CSEGS customer saves no delivery costs and actually uses the delivery system in the same way that the customer used the delivery system before taking a CSEGS subscription assuming the customer does not oversubscribe capacity. For delivery the only difference is the CSEGS customer pays for a smaller share of the costs the customer caused and, in fact, continues to cause based on the net metering provisions of the proposed regulations. The result is not reasonable as required under PURPA and creates a level of undue discrimination that does not meet state or federal standards for utility rate making. CSEGS with full net metering cannot result in reasonable rates for all customers as required for approval of net metering.

The situation is even more pronounced if the solar customer is able to produce more energy than its annual consumption and pays no energy component of the distribution rate at all. Under the CSEGS regulations as drafted, the 200% of annual energy subscription limit would allow this solar DG customer to add enough capacity from CSEGS to zero out kWh use and pay SMECO only $114 annually for all of the delivery service the customer uses. This is almost $500 less annually than the full customer costs alone and, in the case of the solar DG customer in Table 1 above, an annual subsidy of over $1100 in fixed distribution-related costs not counting the added cost of the excess delivery capacity used to receive the output of this oversized

capacity subscription for delivery to other customers. In the case of CSEGS the customer uses the full delivery service given that the delivery system must carry the subscription kWhs from the CSEGS meter to the meter of the subscriber. In addition, the distribution system must be sized to receive the total output of subscription kWhs that, in the case of 200% of annual consumption, would be far larger than the portion of the delivery system used to move the load kWhs to the subscriber.

Since the peak load occurs at the hour ending 7:00 AM (before sunrise in Maryland during the winter peak months) there is no possibility of any avoided delivery costs for the Cooperatives. As proposed the regulations implicitly assume that any solar DG avoids delivery costs on a kWh for kWh basis at the full rate. Since that is not physically possible, the resulting rate impacts do not meet the purpose of PURPA for equitable rates for Cooperative customers. As noted by the Cooperatives in their initial comments, net metering with banking "results in non-participating customers subsidizing community solar subscribers, and fails to recognize subscriber's use of the electric distribution system."[4] It also creates the prohibited undue discrimination between customers with the same delivery service costs and permits customers who oversize their systems to impose additional delivery system costs on other customers who must pay for added facilities to accept even larger demands on the delivery system than the delivery demand when the exported power must be delivered across the system to other customers as all of the excess capacity must be delivered elsewhere.

In addition to not causing customers who impose costs on the system to pay those costs through net metering with banking for CSEGS, the regulations allow these customers to acquire enough solar DG to actually impose even more costs on the system through the ability to contract

[4] Comments of Southern Maryland Electric Cooperative and Choptank Electric Cooperative on Community Solar Energy Regulations, RM 56, at 4 (Dec. 4, 2015) ("December 4 Comments").

for solar DG at levels that will actually increase the delivery infrastructure requirements to serve owners of the CSEGS capacity to purchase up to 200% of the historic annual use of energy. Since solar DG operates at about an 18% annual capacity factor for an optimally designed, fixed axis solar DG installation in Maryland, this means that a customer using 25,000 kWh per year could acquire enough capacity to produce 50,000 kWh per year. Using that 18% annual capacity factor, the installed kW ownership for the customer could be up to almost 32 kW of capacity. That is more than twice the expected kW demand for the customer's non-coincident peak load demand. It also means that, at cool temperatures in the spring and fall, the solar DG output increases above rated capacity by approximately 0.4-0.5% per degree centigrade that ambient temperature is below 25 degrees C (about 77 degrees F). Thus, 7 degrees C (about 44 degrees F) would increase output by between 7.2 and 9%. That would be between about 34 kW and 34.6 kW. This demand on delivery capacity is far greater than load demand of a customer using 25,000 kWh per year. Not only do the regulations permit the customer to avoid any payment for delivery capacity in that case, but they also impose added cost for delivery capacity in the system to accommodate excess demands at a zero capacity price. Paying zero for capacity used as a result of no diversity in the delivery of excess generation capacity cannot produce equitable rates and only exacerbates the undue discrimination caused by the proposed regulations.

Before completing the discussion of equitable rates, it should be noted that, by measuring the output for the customer at the CSEGS meter and delivering the power at the customer's meter, the one-for-one credit explicitly ignores the losses on the delivery system that physically cannot be saved by CSEGS and, in some instances, such as low load periods, actually increase. Further, when CSEGS is in excess of load the excess generation has the effect of increasing losses on the utility system. These facts add to the subsidy being paid to the subscriber by other

non-participant customers through delivery rates in terms of increased losses borne by non-CSEGS customers in SOS costs.

In addition to the losses borne by non-participants, non-participants must also pay for the fuel arbitrage resulting from the banking provision. The fuel arbitrage arises because excess power is delivered in lower load periods with lower marginal costs and used to offset kWh consumed in higher marginal cost periods when loads are larger than can be served by the customer's CSEGS subscription. A simple example clarifies this point. In the winter, the highest load hours for customers are early morning and early evening hours. The highest CSEGS generation occurs during the mid-day low load hours. Thus, the solar DG is backing out high cost kWh consumed when solar does not operate and delivering the power in lower cost hours, creating arbitrage for the CSEGS participant and raising SOS costs for non-participants. In the summer, the same pattern repeats itself as the maximum solar output occurs in mid-day hours as loads begin to rise and reduces but does not eliminate loads in the highest cost peak hours. This means that, even in the summer, excess generation occurs in lower marginal cost hours and backs out kWh actually consumed in the peak load hours when the CSEGS share of generation is inadequate to serve the customer's full load.

These actual circumstances result in rates that are not equitable for consumers and go well beyond that to include levels of subsidy that constitute undue discrimination between customers who use the system the same as non-participants, non-DG customers who pay far more for the same service than do CSEGS participants as a result of kWh rates recovering fixed demand costs. The proposed regulations do not meet the equitable rates provision of PURPA. Further, allowing net metering with banking also results in undue discrimination even for rooftop solar DG as demonstrated above. The CSEGS participants must actually use the delivery system

to access their subscription kWhs making the undue discrimination even more problematic from an equitable rates mandate for those customers.

B. The Proposed Subscription Credit Levels Violate Federal Law.

For the reasons discussed below, the proposed regulations as they apply to "excess generation" produced by CSEGSs require modest, but important, revisions to ensure they conform with federal laws, namely: (1) FERC's directive that, as concerns wholesale sales of electric energy and capacity, states may only set compensation for QF sales to electric companies and may do so only under PURPA; and (2) PURPA's requirement that compensation for a small power producer QF be capped at an electric company's "avoided cost". The revisions requested herein are consistent with the letter and spirit of the CSEGS Pilot statute and should be incorporated only if CSEGSs are, in fact, QFs. As explained below, only if the CSEGSs are QFs does the Maryland Commission have authority to establish the terms of compensation for any excess generation from a CSEGS.

To be clear, the preemption concern raised here arises only in a situation where a CSEGS produces energy above its subscribers' electricity requirements and the electric company must, in some way, compensate the project, or its subscribers, for the "excess generation." In order to carry out the statutory obligation to "use energy generated from" a CSEGS, an electric company must first own, or have title to, the energy. By virtue of the requirement to "use" in the CSEGS Pilot statute, and the complementary obligation to take title, an electric company is purchasing the output from a CSEGS, which amounts to a wholesale sale under the FPA.

In such a scenario, FERC's exclusive jurisdiction over the interstate sale of wholesale electricity is clearly implicated. If a CSEGS produces excess generation that an electric

company must both purchase and use, it amounts to a FERC-jurisdictional sale.[5] The FERC has exclusive jurisdiction to regulate the rates, terms and conditions of sale for resale of electric energy in interstate commerce by public utilities. While Congress has authorized a role for states in setting wholesale rates under PURPA if the generator is a QF, Congress has not authorized other opportunities for states to set rates for wholesale transactions. As such, Maryland's CSEGS Pilot must fit squarely within the PURPA requirements in order to avoid pre-emption.[6]

The FPA and Section 210 of PURPA limit states' authority to establish compensation for electricity for small-scale renewable energy systems. Because the CSEGS Pilot statute requires electric companies to "use" any excess generation, the FPA requires market participants to conduct such wholesale sales under FERC jurisdiction. Under the FPA, only FERC can establish the rates, terms and conditions for a wholesale sale and, accordingly, any sale of excess generation from a CSEGS to an electric company would require FERC approval unless the sale were to occur under the limited exemption that exists under PURPA for small power producers that are QFs. Thus, it must be presumed that CSEGSs that seek compensation by electric companies for excess generation are, in fact, QFs under PURPA.

Such a distinction is critically important to the Pilot functioning in tandem with federal requirements. FERC has found that state utility commissions are not engaging in impermissible wholesale rate-setting when the generators at issue are QFs under PURPA. The constraint that FERC regulations and precedent place on state commissions, however, is that the compensation scheme devised by the state must not exceed the avoided cost of the purchasing utility. In short,

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[5] *See, e.g., California Public Utilities Commission*, 132 FERC ¶ 61,047 at P 64 (2010) [hereinafter "CPUC Declaratory Order"], order granting clarification, 133 FERC ¶ 61,059 (2010), order denying reh'g, 134 FERC ¶ 61,044 (2011).

[6] *See id.*, at 215-16.

PURPA provides a limited exception to the FPA's broad pre-emption of state action, but such action under PURPA must be consistent with PURPA requirements.

The underlying CSEGS statute appears to be generally sensitive to the jurisdictional tension that exists between the federal scheme and the state-mandated Pilot by linking compensation for any excess generation to an electric company's approach to purchasing the output from qualifying facilities under PURPA (i.e., "avoided cost"). The statute prescribes that "an electric company shall use energy generated from a community solar energy generating system to offset purchases from wholesale electricity suppliers for standard offer service."[7] This approach aligns with the need, under PURPA, that compensation must not be more than the electric company's avoided cost during those instances in which the community solar facility is generating power beyond the subscribers' needs. Similarly, the statute provides that "any unsubscribed energy generated by a community solar energy generating system that is not owned by an electric company shall be purchased under the electric company's process for purchasing the output from qualifying facilities at the amount it would have cost the electric company to procure the energy."[8] Again, the framers of the legislation appear to have understood that the Pilot could implicate PURPA when the energy produced by the system is beyond the subscribers' needs. The statute, therefore, tied the compensation during such circumstances to the PURPA approach of compensation "at the amount it would have cost the electric company to produce the energy," that is, at the utility's avoided cost at the time the energy is produced by the CSEGS.

To be clear, the statute does not impose on the CSEGS a requirement to be a QF, but, to the extent that Maryland electric companies must compensate CSEGS projects for excess

[7] *See* Md. Code Ann., Public Utilities Art., § 7-306.2(d)(8).
[8] Md. Code Ann., Public Utilities Art., § 7-306.2(d)(7).

generation, a CSEGS must be a QF under PURPA in order to avoid preemption under the FPA. FERC has held that state commission's authority to set compensation for wholesale rates under PURPA depends on a resource being a QF.[9]

While no express requirement in the underlying statute exists for a CSEGS to be a QF in order to participate in the Pilot, the types of projects contemplated by the CSEGS statute certainly would qualify under PURPA to be a QF. The FERC regulations implementing PURPA provide that, except for certain hydroelectric small power production facilities, a small power production facility is a QF if it is, generally speaking, less than 80 MW and meets the fuel use criteria, which includes renewable resources like solar. Under the Pilot, eligible projects must have a generating capacity of not more than 2 MWs, which is well below the 80 MW limit under PURPA. CSEGSs with a net power production more than 1 MW must simply self-certify to the FERC that they satisfy PURPA criteria for a small power production facility. Those CSEGS systems with a net power production of 1 MW or less need not make such a filing. For these resources, FERC regulations denote that they are QFs, dependent only on whether the facility meets the technical criteria for QF status, and not dependent on the facility having made a self-certification filing with FERC.

Moreover, the FERC regulations implementing PURPA impose certain requirements on the treatment of energy and capacity from QFs. Of relevance in establishing CSEGS regulations are the provisions of Subpart C—Arrangements Between Electric Utilities and Qualifying Cogeneration and Small Power Production Facilities Under Section 210 of the Public Utility Regulatory Policies Act of 1978, 18 C.F.R. § 292.304 (Rates for purchases), and 18 C.F.R. § 292.305 (Rates for sales). Under 18 C.F.R. § 292.304, the regulations provide that rates for purchases must be "*just and reasonable to the electric consumer of the electric utility* and in the

[9] CPUC Declaratory Order, 132 FERC at P 64.

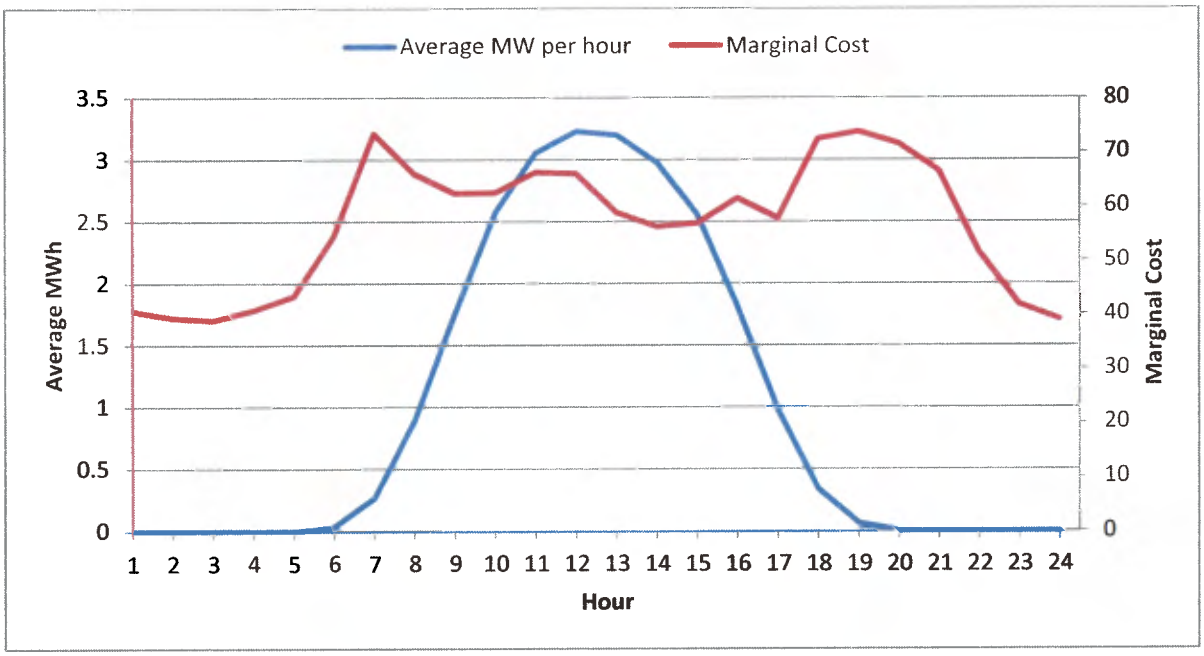
public interest and not discriminate against qualifying cogeneration and small power production facilities."[10] This is another specific requirement that rates be just and reasonable for all consumers including those that do not participate in CSEGS. As demonstrated above, the proposed regulations do not meet this requirement.

The FERC notes that under these regulations no utility may be required to pay more than avoided costs for purchases under the regulations. In the case of CSEGSs, the avoided cost for the Cooperatives is something less than the SOS rate. It is less than the SOS rate for several reasons. First, more of the solar DG (rooftop or CSEGS) is produced in lower marginal cost hours. Chart 1 below compares solar DG annual average hourly production from a fixed axis facility in the SMECO service area and the annual average hourly location marginal prices ("LMP") for SMECO in 2014. It should be noted that using annual averages actually overstates the avoided LMP costs in the highest hours and provides a more favorable view of solar DG economics than actually occurs in real time.

[10] 18 C.F.R. § 292.304 (emphasis added).

Chart 1

Comparison of SMECO Solar Production and Hourly LMP Prices



As Chart 1 illustrates the solar output in the highest annual average marginal cost hours is either zero or a small percentage of the maximum output in higher cost hours. In addition, Chart 1 illustrates that solar DG output is rising as costs decline and is at or near maximum output in the lowest cost hours. Further, if looking solely at the residential class load shape, the solar production does not match the hourly load shape which looks more like the marginal cost load shape in Chart 1. Taken together, this means that banked kWhs occur in low marginal cost periods and are used to back out a significant portion of kWhs in high marginal cost periods. Based on this analysis, the avoided energy cost for solar DG would be about $0.057 per kWh in 2014 compared to the SOS price of over nine cents per kWh. This shortfall between the avoided costs of energy and the full rate for energy is made up entirely from full requirements customers and is an added subsidy for CSEGS. This additional subsidy worsens the undue discrimination existing in distribution rates by adding to the reasons the CSEGS regulations do not result in just

and reasonable rates for consumers when full requirements customers pay more for energy as a result of CSEGS.

The FERC regulations also distinguish between two types of QF arrangements. In § 292.304 Rates for purchases part d., the FERC sets forth standards for "Purchases 'as available' or pursuant to a legally enforceable obligation." Purchases from CSEGS are the very definition of an "as available" purchase. CSEGS output is "as available" because neither the hourly output nor the hourly loads of customers are known with certainty and the energy purchased by the utility is actually only known after the fact. Nevertheless, the Maryland Commission's proposed regulations require that the utility purchase all generation in excess of the customer's usage at the full retail rate with the exception that any annual excess generation above annual kWh use be purchased at the full SOS rate, which also may exceed avoided costs. Neither of these provisions in the proposed regulations is consistent with PURPA or the regulations promulgated to implement PURPA.

The FERC regulations, at 18 C.F.R. § 292.304(d), establish a provision associated with the requirement that purchases not exceed avoided costs. Specifically, the regulations specify that, with respect to purchases on an "as available" basis,[11] the QF has the option "To provide energy as the qualifying facility determines such energy to be available for such purchases, in which case the rates for such purchases shall be based on the *purchasing utility's avoided costs calculated at the time of delivery.*" Thus, the provision of "as available" energy from CSEGSs is capped at the avoided costs when the purchase occurs and that number is the PJM LMP in the hour when the power is sold to the Cooperatives in the case of SMECO and the per kWh energy charge Choptank pays for the power it purchases from Old Dominion Electric Cooperative. In

[11] 18 C.F.R. § 292.304(d) (emphasis added).

either case, the value is not the full retail rate but is properly a wholesale rate as noted by the Cooperatives in their December comments:

> In regard to the credit for power supply from a community solar, the product being provided is energy. The credit should reflect payment for the value of energy produced and provided at the interconnection point. The comparable arrangement is the negotiated price for output from a solar farm in a PPA deal. This is what SMECO pays for the comparable product from the developed solar farms in its service territory. There is no payment for generation capacity, ancillary services, or administrative costs because none of that is provided. CEC currently pays its avoided cost of power rate for generation from a developed solar farm in its service territory.[12]

The PSC in drafting its regulations failed to note that, under the FERC regulations, avoided costs may also be defined as a market price and that market price determination specifically applies to utilities in the PJM market. Thus there is a specific measure of the market value for both Cooperatives based on the Cooperatives' power supply agreements, which are based on avoided energy costs that are less than even the SOS rate. The latest SMECO wholesale supply power purchase agreement ("PPA") price is less than the current SOS rate and effectively becomes the market-based cap for purchases of "as available' generation from the CSEGS participants or for any excess generation. Further, it is likely that the actual avoided cost of the excess generation should be even lower than the PPA because the PPA is a legally enforceable contract and not an "as available" type of purchase arrangement.

The FERC regulations also provide for the rates to be paid by QFs in 18 C.F.R. § 292.305 Rates for sales. That section of the regulations provide for three general principles as follows for rates for sales:

[12] December 4 Comments at 8.

- Shall be just and reasonable and in the public interest; and
- Shall not discriminate against any qualifying facility in comparison to rates for sales to other customers served by the electric utility.
- Rates for sales which are based on accurate data and *consistent system wide costing principles shall not be considered to discriminate against any qualifying facility to the extent that such rates apply to the utility's other customers with similar load or other cost related characteristics.* (Emphasis added.)

To the extent that the provision of SOS to CSEGS owners may be considered a sale of power to a QF, the provisions of 18 C.F.R. § 292.305 and the principles specified in that section will apply.[13] The first of these obligations has been discussed above. Namely the resulting rates must be just and reasonable. As proposed, the CSEGS rates under the proposed regulations cannot be just and reasonable. The rates result in CSEGS participants being subsidized for the use of the delivery system without which their subscription cannot be delivered. This cannot qualify as a just and reasonable reflection of cost causation, as shown above for the two residential customers. Only by applying the full delivery rate to each kWh of CSEGS subscription delivery would the rates for participants match the provision that rates be based on system wide costing principles in a way that participants pay rates that match those of other customers with similar load or cost characteristics in compliance with the FERC regulations. In short, the PSC draft regulations cannot comply with the purpose or the implementation of the FERC regulations associated with sales to QFs under the CSEGS program.

In light of the federal statutory scheme under the FPA and PURPA, Commission regulations implementing the CSEGS Pilot must be narrowly tailored to ensure that they are consistent with FERC's requirements. First, the CSEGS must be a QF in order to be compensated by an electric company for excess generation. To ensure that the Pilot conforms to the FERC's requirements, the Cooperatives recommend that the regulations make explicit the

[13] *See* 18 C.F.R. § 292.303(b) ("Each electric utility shall sell to any qualifying facility, in accordance with §292.305, unless exempted by §292.312, energy and capacity as requested by the qualifying facility.").

requirement that, in order for the subscriber to be compensated for any excess generation, the CSEGS must be a QF under FERC's regulations. Such a clarification provides the Commission with better assurance that the Pilot complies with federal-state jurisdictional requirements. This can be accomplished by adding the following additional subsection as clarification to *.07, Excess Generation*:

> A condition precedent for any compensation to subscribers for excess generation under the Pilot is that the subscriber organization has satisfied the necessary requirements for Qualifying Facility status under the Public Utility Regulatory Policies Act.

Second, the CSEGS must be afforded compensation for such excess generation at the purchasing electric company's actual avoided cost at the time of purchase. The language in the proposed regulations does not closely follow the Maryland authorizing statute's language regarding electric companies' purchases and use of CSEGS energy and, thus, does not necessarily ensure that PURPA's "avoided cost" mandate is followed for "as available" purchases. The language at *.07A, Excess Generation* provides:

> A. An electric company shall pay a subscriber a dollar amount of excess generation as reasonably adjusted to exclude the distribution, transmission, and non-commodity portion of the customer's bill *unless the electric company records subscriber credits as kilowatt hours.*

The language in plain text above correctly captures a potentially compliant approach to the avoided cost methodology, which would serve as the compensation to a subscriber for any excess generation. The language in italics - "unless the electric company records subscriber credits" – suggests, however, that the avoided cost approach would not be required in all instances. In this respect, the provision of the proposed regulation is at odds with FERC's PURPA regulations. The Cooperatives propose the following clarification to Section .07A to

ensure that the Commission's regulatory approach for compensation of CSEGS excess generation is consistent with PURPA requirements:

> A. An electric company shall pay a subscriber, or otherwise reflect on a subscriber's bill, a dollar amount of excess generation as reasonably adjusted to exclude the distribution, transmission, and non-commodity portion of the customer's bill and reflect the electric company's avoided costs calculated at the time of the delivery of the energy from the CSEGS.

Of additional concern, *.07B, Excess Generation*, provides:

> B. An electric company that serves electric retail choice customers shall pay the subscriber for kilowatt hours of excess generation *at the lesser of the subscriber's retail supply rate or the Standard Offer Service rate in effect at the time of payment.*

The italicized language in Section .07B is potentially problematic because it does not match precisely the language in FERC's PURPA regulations. With the changes that SMECO proposes to Section .07A, the language in Section .07B may be unnecessary. If retained, the italicized language should be deleted, and replaced with ". . . based on the electric company's avoided costs calculated at the time of the delivery of the energy from the CSEGS."

The Maryland authorizing statute affords the Commission the discretion to modify the proposed regulation as recommended above. Specifically, the statute directs the Commission to adopt regulations to implement the statute, including with respect to "a tariff structure for an electric company to provide a subscriber with the kilowatt-hours or value of the subscriber's subscriptions, as the Commission determines." Consequently, under Maryland law, the Commission has authority to correct the jurisdictional overstep in the proposed regulations. Such changes to the proposed regulations are necessary to ensure that the regulations do not run afoul of FPA and PURPA requirements.

II. 20.62.02.05 SUBSCRIPTION LIMITATIONS

The Cooperatives have consistently opposed using 200% of annual energy consumption as the upper limit of the capacity subscription limit opting instead for a 100% limit. As expressed in prior comments, "the Cooperatives continue to believe that such a high limit encourages oversizing of subscriptions."[14] As noted above, this oversizing of subscriptions has significant cost ramifications for the costs and reliability of its distribution system. This is particularly the case where the solar DG exceeds its nameplate kW rating because of mild weather. At 9% more than nameplate capacity a 500 kW CSEGS facility would send out about 545 kW of capacity. Accepting and delivering this capacity has implications for distribution system costs and for potential tax liabilities for the customer using its CSEGS investment to create a taxable return on that investment. This would require the utility to provide tax records for the customer beyond those records required under the current proposed regulations since the dividend check on this investment would likely be in the thousands of dollars. This represents an added cost not even contemplated in the regulations. It is nevertheless a viable concern for the utilities related to their reporting obligations. This goes well beyond the net metering concept and the intent of the legislation that established the net metering standard under PURPA.

It is also useful to note that even the model regulations for CSEGS developed by the Interstate Renewable Energy Council ("IREC") do not recommend as high a level of participation as 200%. Instead, it recommends a far more reasonable and economically efficient level of 120% of energy. Thus, the Cooperatives' proposal of a 100% cap on capacity is reasonable and provides for a better sharing of renewable capacity among all customers. Using 200% as the upper limit is highly regressive on an income basis as only high income customers would be able to reasonably afford such a large commitment to the CSEGS subscription.

[14] *Id.* at 9.

III. 20.62.02.09 UTILITY COST RECOVERY

The Commission's regulations allow for timely cost recovery of the program credit costs presumably through the SOS rate for SMECO or through the Power Cost Adjustment provision for CEC. In the absence of a surcharge, fee or rate for recovery of the incremental costs of the CSEGS program, there is no reasonable way to recover these costs in a timely fashion. As proposed, the current provision is essentially confiscatory because the only opportunity for recovery would be through a rate case. Given the duration of the pilot and the significant uncertainty about the costs to be incurred, it is unreasonable to believe that the Cooperatives could develop and file a rate case with the costs that must be included in delivery rates being known for a test year much before the experiment is over. Further, the inclusion of the costs associated with CSEGS being included in general rates represents a departure from cost causation and a further subsidy for CSEGS inconsistent with both law and regulations related to reasonable rates for electric consumers. The Cooperatives noted this inconsistency in their comments on the draft regulations and stated:

> As drafted, utilities are entitled to "full and timely cost recover of pilot program credit costs," but are not permitted to do so by "establish[ing] a separate surcharge, fee, or rate." The result is an inconsistency that will in practice deny utilities cost recovery in a timely fashion.[15]

The Cooperatives' views have not been reflected in the draft regulations and, in practice, the costs associated with the CSEGS programs will go unrecovered and amounts to confiscation of the equity of the Cooperative's member owners. It is unlikely that the proposed regulations as written would result in costs that are trivial based on the potential number of manual billings and the detailed record keeping and reporting requirements imposed by CSEGS participation. The

[15] *Id.*

solution suggested in prior comments by the Cooperatives represents the only reasonable approach to addressing a process that results in reasonable rates namely:

> An electric company shall fully and timely recover pilot program costs by an appropriate mechanism proposed by the electric company and accepted by the Commission.

By adding this provision to the proposed regulations there is a process for Commission oversight while at the same time permitting full and timely cost recovery for the Cooperatives.

In the absence of such a provision, and as proposed in the regulations, the Cooperatives would be in a position of providing delivery service, whether from the CSEGS to the subscriber or from the CSEGS to the system, and incurring substantial Pilot administration costs, with no compensation for the costs of providing that service. Such an outcome would be confiscatory.[16]

The Cooperatives reiterate and emphasize that nothing in the statutory framework for the CSEGS pilot program mandates or requires that the CSEGS retail customer subscriber receive a credit equal to the full retail rate. Consequently, the Commission may correct the regulations relative to the CSEGS pilot program to align with the Commission's responsibilities elsewhere in the Public Utilities Article to ensure rates that are "just and reasonable."

IV. CONCLUSIONS

The Cooperatives urge the Commission to take the time necessary to modify its proposed regulations for CSEGS to comply with the changes proposed above. SMECO and CEC have been strong supporters of community solar, knowing that it makes solar-generated electricity available to a much wider range of consumers than alternative forms of solar generation. The

[16] *See, e.g., Monongahela Power Co. v. Schriber*, 322 F.Supp. 2d 902 (S.D. Ohio, 2004)("[The utility] cannot, consistent with the Constitution, be required to provide such service and in return receive a rate which is confiscatory, that is, a rate that does not permit recovery of actual costs together with a fair return."); *see also Belt Transmission Co. v. Public Service Commission*, 206 Md. 533 (1955); *Hagerstown v. Public Service Commission*, 217 Md. 101 (1958); *Chesapeake & Potomac Telephone Company v. Public Service Commission*, 230 Md. 395 (1962).

changes SMECO and CEC propose would eliminate any conflict with federal law, ensure the rates and costs associated with the Commission's regulations are fair to both utilities and their distribution customers, and stimulate the development of community solar generation in the State.

Respectfully submitted,

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EXHIBIT D

ML#: 179146
12/4/2015

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December 4, 2015

VIA ELECTRONIC FILING AND HAND DELIVERY

FILED
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PUBLIC SERVICE COMM
OF MARYLAND

David J. Collins
Executive Secretary
Maryland Public Service Commission
6 St. Paul Street, 16th Floor
Baltimore, MD 21202

Re: RM 56: Comments of the Southern Maryland Electric Cooperative and Choptank Electric Cooperative on Community Solar Energy Regulations

Dear Mr. Collins:

Attached for filing please find the written comments of the Southern Maryland Electric Cooperative and Choptank Electric Cooperative in response to the Commission's proposed regulations for Community Solar Generation Systems. Please do not hesitate to contact me if you have any questions.

Sincerely,

Todd R. Chason / DWB

Todd R. Chason

TRC

Enclosure

ML#: 179146
12/4/2015

BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND

Revisions to COMAR 20.62 – Community Solar Generating Systems	*	Administrative Docket RM 56

* * * * * * * * * * * * *

COMMENTS OF THE SOUTHERN MARYLAND ELECTRIC COOPERATIVE AND CHOPTANK ELECTRIC COOPERATIVE ON COMMUNITY SOLAR ENERGY REGULATIONS

The Southern Maryland Electric Cooperative ("SMECO") and Choptank Electric Cooperative ("CEC") (collectively the "Cooperatives"), hereby provide comments on the Commission's proposed regulations for Community Solar Energy Generation Systems.

Introduction

The Cooperatives are excited to see community solar's promise realized in Maryland, but the draft regulations are fatally flawed in several respects. In summary, the pilot has the potential for immediate, exponential growth to proportions the program is unequipped to handle. This sets the pilot up for failure with significant disappointment for customers, developers, utilities, and other stakeholders alike. Moreover, proposing to pay a retail rate credit to subscribers will result in non-participants subsidizing participants in a way that is both unfair and unnecessary. The time has passed where solar needs to be artificially propped up in this fashion. The Cooperatives firmly believe that economical projects can be developed receiving credits in an amount representing the avoided cost of power (commodity).

The desire to expeditiously establish community solar in Maryland is understandable. Community solar allows dissemination of this important technology to interested customers who

lack the rooftops or acreage needed to take advantage of current offerings. The Cooperatives are particularly sensitive to this instinct, as community solar is reminiscent of the cooperative structure that led to rural electrification starting in the 1930s, when neighbors banded together to plan, fund, build, maintain, and operate the necessary infrastructure. Additionally, stakeholders are facing the pressure borne out of uncertainty over the potential reduction in the Investment Tax Credit at the end of 2016.

But however understandable these impulses are, the Commission must insist on a community solar program with an appropriate scope that permits a smooth introduction and scaling, as well as a rate structure that fairly compensates subscribers while respecting cost causation principles to avoid one group of customers subsidizing another. It is crucial to remember that SB 398 established community solar as a pilot. The General Assembly intended that the Commission first establish and study community solar on a small scale to determine whether a full program should move forward. The regulations ultimately adopted must recognize this, and by doing so the Commission will make it more likely – not less – that community solar will succeed in Maryland.

Comments

1. 20.62.02.02 Program Generation Capacity

The draft regulations require utilities to accept project applications "until the statewide capacity of pilot projects has exceeded 300 MWs…" There is no requirement that these projects be spread out over the pilot's three-year lifespan, nor by utility territory, nor by project size. This effectively unbounded approach does not allow for any programmatic ramp up for stakeholders, particularly utilities, which could doom community solar in Maryland before it has even had an opportunity for success. The Commission should reject this approach and instead put into place reasonable annual and per service territory limits.

A 300 MW cap is very large. To put this quantity in perspective, 300 MWs would exceed the total installed capacity for solar in Maryland to date. Put another way, 300 MWs represents approximately 2070 acres of solar arrays.[1] Because SB 398 sets the maximum community solar project size at 2 MWs, that would mean that 300 MWs would translate to a minimum of 150 projects, and likely many, many more because most projects will not be as large as 2 MWs.[2] Consequently, on day one electric companies could face multiple MWs of projects with thousands of subscribers and no opportunity to prepare for manual billing, much less put automation in place. An adequate ramp-up period would ensure all parties would benefit from a "lessons learned" experience.

MEA's original program overview recommended annual caps on total capacity and number of systems with some additional flexibility built in to allow the Commission to adjust to changing circumstances, *i.e.*, excessive or disappointing participation. Although SMECO recommended cap adjustments to simplify and moderate early program progression, the overall concept of a managed rollout was sound. The Commission should revert to such an approach, modified as SMECO and CEC suggested in their August 7, 2015 comments to Commission Staff and MEA:

> Instead of focusing on the total number of megawatts for the size of particular projects, the Commission should initially seek a practical number of projects, and numbers of subscribers, which will allow developers and utilities to work through the inevitable issues any new program creates. Fifty systems in the first year of the pilot are likely too many, as administrative processes and billing systems are just being established. One, perhaps preferable, option is to establish an appropriate number of community solar systems for each utility territory. Additionally, it may be wise to establish a minimum number of service

[1] *Land-Use Requirements for Solar Power Plants in the United States*, National Renewable Energy Laboratory, 7 (June 2013).

[2] Under the proposed regulations, effective June 2017, any entity can petition the Commission to raise this already large cap. COMAR 20.62.02.02A(2).

> subscribers per project. Projects with very few subscribers may produce significant administrative costs that outweigh the project's overall benefits.

The key to a workable pilot scope are reasonable targets in the early months. After the initial scaling period when appropriate billing systems are in place, all parties will likely be capable of handling significantly more projects. But until such time, an overly ambitious program is likely to disappoint all parties and diminish the prospects for community solar in Maryland for years to come. It is also worth remembering that cost curves for solar technology continue to decline with scale and improved technical advances; it is thus prudent with this perspective in mind to allow a graduated pace of installation.

Accordingly, the Cooperatives recommend a limit of three projects with a maximum total of six MWs within their service territories during the first year. For the remaining two years, the Cooperatives would be prepared to handle their pro rata statewide portion of 300 MWs statewide.

2. 20.62.02.04 Subscription Credits

The draft regulations effectively require that rate credits paid to subscribers equal a full retail rate:

> D. If the electric company chooses to apply the [kilowatt-hour] credit . . . as a dollar amount, the electric company shall apply a credit no less than the value to the subscriber of the credit had it been applied to the subscriber's bill as a reduction in metered kilowatt-hours.

This approach results in non-participating customers subsidizing community solar subscribers, and fails to recognize subscriber's use of the electric distribution system.

The purpose of the credit is to pay the owners/subscribers for the value of the product provided by the community solar facility. That product is the energy produced by the community solar facility. There is no transmission or distribution function being provided by the community solar facility, nor is there a change in the system transmission and distribution requirements due

to a facility. Indeed, these systems use the distribution system paid for by others. From the distribution perspective, community solar is fundamentally different from rooftop/behind-the-meter solar. No matter how proximately located, community solar still uses the grid to move electricity from the facility to its customer, just like any other power plant.[3]

As the Cooperatives have noted throughout the working group process, the peak demand on most of their distribution systems, including associated distribution substations and feeders, occurs on cold winter mornings when there is no generation produced by solar facilities. In order to ensure safe and reliable service to all of their customers, the Cooperatives design their system to serve the total load that is connected to the system without differentiation between solar and non-solar customers. Solar customers, both net metering and community solar subscribers, remain dependent on the Cooperatives' transmission and distribution system to provide essential services. With respect to the Cooperatives' investment in their systems necessary to serve all of their customers, this includes transmission circuits that connect substations to the supply points, substations and substation transformer upgrades, distribution circuits, and existing circuit upgrades, along with the local transformers that supply service class voltage to homes and businesses. In addition, the Cooperatives' infrastructure is required to supply reactive VAR support to all solar and non-solar customer members alike to maintain system stability and allow inductive loads to operate. Without this stated VAR support, their entire systems would cease to operate.

Community solar by its very nature differs from rooftop solar. Community solar requires the utility distribution system to deliver the energy from the facility to the customers participating in the project. While that delivery may not occur physically, the act of crediting the

[3] Additionally, community solar is not being asked to pay wheeling costs, as a merchant generator or all solar generators should.

power to a participant account assumes that the power is being delivered to the participant account regardless of whether or not its physical source actually originates from the community solar facility.

The increased penetration of solar customers on the electric system is not a driving factor that influences the design of the system. This is because the Cooperatives must always stand ready to serve all of their customers and customers who rely on solar systems. An intermittent resource like solar cannot always meet their electricity needs at times that directly correlate to peak demand periods. This is true for a number of reasons, including weather and the time of day in which customers are most dependent on electricity. For example, during summer months, there are frequent periods of excessive cloud cover and/or rain. During such times, solar output is reduced, but the customers' needs (*e.g.*, air-conditioning load) is not necessarily reduced, as the outside ambient temperature could still be very high. In the winter months, on the other hand, the peaks of the Cooperatives frequently occur in the early morning hours or late evening hours when no solar generation occurs. In other words, the customer load curve does not have the same variability and does not typically follow the dynamic output of the solar system. During extreme heat conditions, or during extreme cold periods, many heat pump or air conditioning systems are running at an 80-100 percent load factor (*i.e.*, are running nearly all the time) in order to keep up with the heating/cooling loss/gain of the structure. The Cooperatives must be able to meet the needs of all of its customers during these times.

Accordingly, when the Cooperatives design their distribution systems as part of the system planning process, they cannot simply assume that solar customers will not contribute to peak demand. They must design their systems in a manner that ensures their ability to continue to provide safe and reliable service at all times. If the system was designed using the assumption

that solar-generating customer-members would be responsible for meeting their own supply requirements during system peak load periods, then in those instances where solar supply is not available, the Cooperatives would not be able to provide service when called upon to do so.

Consequently, there should be no transmission or distribution component in the credit to subscribers. As stated earlier, community solar provides no transmission or distribution function, so there is no basis for a payment/credit. Simply said, there are no avoided transmission or distribution costs associated with solar PV. The result of the proposed credit feature in the draft regulations is to cause non-solar PV customers to subsidize solar customers and sends artificial/distorted price signals. Such a subsidy is inconsistent with cooperative principles under which we operate, inconsistent with the avoided cost principles in the Public Utility Regulatory Policies Act ("PURPA") and, as SMECO has demonstrated in its recent rate case filing, results in undue discrimination among customers. During the working group process some have suggested that the installation of solar would result in some reduction in required investment in transmission or distribution infrastructure. The discussion above explains that is not the case. And even if there were some change in the required transmission or distribution investment, that benefit should not accrue only to community solar subscribers. There are other factors that cause variations in costs that are averaged over an entire class of customers. The age of distribution plant used to serve different groups of customers varies, but customers share the average cost of the distribution system. The same applies regarding differences between customers in more urban versus more rural locations, where the density of customers affects the amount of plant required per customer. The practice has been to average out the cost variations across an entire class for rate purposes.

In regard to the credit for power supply from a community solar, the product being provided is energy. The credit should reflect payment for the value of energy produced and provided at the interconnection point. The comparable arrangement is the negotiated price for output from a solar farm in a PPA deal. This is what SMECO pays for the comparable product from the developed solar farms in its service territory. There is no payment for generation capacity, ancillary services, or administrative costs because none of that is provided. CEC currently pays its avoided cost of power rate for generation from a developed solar farm in its service territory.

To replicate this structure for community solar, for SMECO the credit should be the energy portion of procuring Standard Offer Services ("SOS") because of the electricity the community solar facility is generating. Since this amount represents the cost of energy delivered to SMECO, it is the best estimate of true avoided costs. CEC's calculation would be based on set pricing from the Old Dominion Electric Cooperative ("ODEC"), CEC's wholesale power provider, applied to monthly generation of the community solar facility. As discussed above, reductions in costs for generation capacity and ancillary services should be shared among each customer class to all customers through the impact on the SOS rates (energy, generation, transmission, and ancillary products). Again, other customers impact the cost incurred for these requirements by their varying contribution to peak loads and their load factors.

Accordingly, SMECO recommends that all customers receive a credit rate equal to the energy portion of SOS for electricity generated by the community facility each month. CEC recommends that all its members receive a credit rate determined by its avoided cost of power from ODEC.

3. 20.62.02.05 Subscription Limitations

The draft regulations permit subscription ownership up to 200% of a subscriber's baseline annual usage. This adopts the ceiling imposed in Md. Public Utilities Article § 7-306.1(d)(7). The Cooperatives continue to believe that such a high limit encourages oversizing of subscriptions. This concern is mitigated if the Commission ultimately adopts Staff's proposal on net excess generation whereby payments "exclude the distribution, transmission, and non-commodity portion of the customer's bill." However, even with this economic disincentive, 200% is unnecessarily high. Thus, the Cooperatives urge the Commission to lower the ceiling to not more than 100% of historic usage. Moreover, if excess generation ultimately receives more generous compensation, effectively removing the economic disincentive to oversize, the Commission should further decrease subscription limits, likely to not more than 100% of historic usage.

4. 20.62.02.09 Utility Cost Recovery

As drafted, utilities are entitled to "full and timely cost recover of pilot program credit costs," but are not permitted to do so by "establish[ing] a separate surcharge, fee, or rate." The result is an inconsistency that will in practice deny utilities cost recovery in a timely fashion.

Again remembering that community solar is a pilot at this time, having a separate charge on customer's bills increases transparency and will best allow stakeholders and the Commission to gauge costs and benefits from the consumer perspective.

The Commission need not decide whether to allow a separate surcharge or fee at this time. The Cooperatives only request that the Commission include flexibility in the regulations so that the option exists if it becomes necessary and appropriate as determined by the Commission at the request of the Cooperatives. The Cooperatives propose the following language to accomplish this goal:

B. An electric company shall recover pilot program costs by an appropriate mechanism proposed by the electric company and accepted by the Commission.

5. 20.62.03.01B Customer Eligibility

CEC recommends excluding leased light services from eligibility in the pilot program.

6. 20.62.03.05 Data Communication

CEC has further reviewed the process of implementing the CSEGS pilot with its billing software provider. It is likely CEC will require additional time beyond May 2016 to accomplish the necessary billing requirements.

7. 20.62.04.02A Utility Data

Chapter 04 of the proposed regulations establishes the study parameters for community solar. However, with respect to the electric companies, the proposal goes well beyond reasonable cooperation. Section .02 imposes numerous onerous – and in some instances flawed – obligations to not simply "provide the Commission with data necessary to monitor the program status, impact on operations, and other information upon request," but also to continuously identify potential system locations based on unproven, speculative benefits that may not exist. There has been no indication from the solar industry that this is necessary – or would even be useful – suggesting this requirement would impose an undue administrative burden on the Cooperatives without any corresponding benefit to developers. Accordingly, Section .02 should be stricken in its entirety.

8. 20.26.05 Consumer Protection

SMECO is concerned that the consumer protection provisions of the proposed regulations are overbroad, impose unnecessary barriers to projects, and could stifle the pilot. However,

consumer protection is likely a subject that will be more comprehensively covered by other stakeholders.

Conclusion

For the reasons set forth above, the Cooperatives respectfully request that the Commission revise the draft community solar regulations to appropriately address scope and rate credit issues, as well as design concerns involving surcharges and utility data.

Respectfully submitted,

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EXHIBIT E

ML#: 183197
2/10/2016

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February 10, 2016

VIA ELECTRONIC FILING AND HAND DELIVERY

David J. Collins
Executive Secretary
Maryland Public Service Commission
6 St. Paul Street, 16th Floor
Baltimore, MD 21202

Re: RM 56: Supplemental Comments of the Southern Maryland Electric Cooperative and Choptank Electric Cooperative on Revised Proposed Community Solar Energy Regulations

Dear Mr. Collins:

Attached for filing please find the written supplemental comments of the Southern Maryland Electric Cooperative and Choptank Electric Cooperative in response to the Commission's revised proposed regulations for Community Solar Generation Systems. Please do not hesitate to contact me if you have any questions.

Sincerely,

Todd R. Chason/DCB

Todd R. Chason

TRC

Enclosure

BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND

Revisions to COMAR 20.62 – Community Solar Generating Systems	*	Administrative Docket RM 56

* * * * * * * * * * * * * *

SUPPLEMENTAL COMMENTS OF THE SOUTHERN MARYLAND ELECTRIC COOPERATIVE AND CHOPTANK ELECTRIC COOPERATIVE ON REVISED COMMUNITY SOLAR ENERGY REGULATIONS

The Southern Maryland Electric Cooperative ("SMECO") and Choptank Electric Cooperative ("CEC") (collectively the "Cooperatives"), hereby provide supplemental comments on the revised proposed regulations for Community Solar Energy Generation Systems.

Introduction

Prior to the December rule making session the Cooperatives provided comments on community solar, expressing significant concerns about both program scope and the subscription credit rates. For program scope, the Cooperatives expressed that an unbounded 300 MW pilot program without annual or territory caps could overwhelm billing systems and result in the pilot's failure. Following several additional working group meetings and calls, the Cooperatives are pleased that appropriate caps are now included in the revised regulations. This was an important fix crucial to program success.

Unfortunately, the Cooperatives' second major concern, subscription credits, remains an issue. The December draft of the regulations provided a subscription rate equal to the retail rate, affording community solar exactly the same treatment net metering receives, despite being remotely located from the end user. Many participants, including the Cooperatives, objected to

awarding a retail rate because this will result in non-participating members paying the difference. The Cooperatives instead urged the Commission to set the credit rate as equivalent to Standard Offer Service prices, which is the value provided by avoiding SOS power purchasing. This approach properly recognizes that community solar must use the distribution system to move power from the remote solar facility to the community solar subscriber. An SOS credit rate also recognizes that solar does not offset the Cooperatives' peak demand, which occurs at times when solar facilities are not producing power.

In a partial attempt to address these concerns, the revised regulations adopt a new scheme whereby subscribers still receive the full retail rate credit, but for certain subscribers the utility would receive 25% of the distribution charge back from the subscriber organization. The remaining 75% of the distribution, along with all other bill charges (*e.g.*, EmPOWER, environmental surcharge, etc.), would still be socialized to the non-participating customers.

Unfortunately, this revised proposal suffers from the same fundamental deficiency. For most community solar projects, non-participating customers will bear the entire burden of paying the distribution costs being avoided by subscribers. Any comparison between community solar and net metering facilities (*e.g.*, rooftop solar) breaks down factually when you consider distribution system impacts. Although rooftop solar may at times allow customers to avoid the grid, no one can argue that this is true at any time for community solar subscribers. Community solar facilities are remotely located, sometimes many miles away from the subscriber's load. Energy must travel from the community solar facilities – over the distribution facilities – to each subscriber's home or business. The distribution facilities are necessary to make possible the physical flow of energy. Subscribers should pay for this system use the same as any other customer must.

The Commission should reject the fiction embodied in the regulations and pay community solar subscribers what their product is worth: the avoided cost of the power produced.

More detailed comments on capacity, rate credits and other program design issues are set forth below.

Comments

1. 20.62.02.02 Program Generation Capacity

The revised regulations cap projects by utility territory (not more than 2% of peak load for 2015) and by year (0.5% in year one and 0.7% and 0.8% in years two and three, respectively). For SMECO this will mean a maximum of 18.4 MWs over the course of the pilot, and a maximum of about 4.5 MWs in the first year as systems are being developed. For Choptank this will mean 4.8 MWs for the three years, and about 1 MW in the first year.

These limits appropriately allow for programmatic ramp up for stakeholders, particularly utilities. Initially, the utilities will be using manual billing, which is labor-intensive, and it will take time and resources to ultimately automate billing if the pilot is successful. These revised limits appropriately address the Cooperatives' concerns about project capacity, and we urge the Commission to adopt these caps.

2. 20.62.02.04 Subscription Credits

The revised community solar regulations reflect a limited attempt to allocate to community solar participants part of the difference between the SOS and the full retail rate. Under this new scheme, community solar customers would still receive the full retail rate credit as originally proposed by Staff in December. However, for certain subscribers the utility would receive 25% of the distribution charge back from the subscriber organization. This 25% would

come from the subscriber and/or the subscriber organization. The remaining 75% of the distribution, along with all other bill charges (*e.g.*, EmPOWER, environmental surcharge, etc.), would still be socialized to the non-participating customers. The subscriber organization charge would not apply to LMI and small (>500kW) projects, which currently comprise 50 percent of the projects to be built annually.

The Cooperatives appreciate the Staff's attempt to move the credit closer to a fair rate, but ultimately the revised proposal falls far short. This will lead to inequitable results. A cooperative member may currently contract with a retail supplier to buy a portion of his electricity from a renewable source. Under the revised regulations, his next-door neighbor could subscribe to the same solar farm and pay 3-4 c/kWh less for the exact same product.

The Cooperatives will not repeat the arguments against a retail rate from their December comments. It suffices to say that Community solar is different than net metering. There is at least an argument for allowing net metered projects to avoid paying distribution costs. Although net metered customers use the grid when the panels are not producing, during the day when production is occurring that electricity is not flowing through the grid. The same is simply not true for community solar, no matter how much some may wish it were. Paying more than the SOS rate is unfair to non-participants and does not properly allocate system costs among the users of the grid.

Accordingly, SMECO again recommends that all customers receive a credit rate equal to the avoided cost of SOS for electricity generated by the community facility each month. CEC again recommends that all its members receive a credit rate determined by its avoided cost of power from ODEC.

3. 20.62.02.05 Subscription Limitations

The revised regulations do not address the Cooperative's concern about ownership up to 200% of a subscriber's baseline annual usage. SMECO and CEC urge the Commission to lower the ceiling to not more than 100% of historic usage. Moreover, as noted before, if excess generation ultimately receives more generous compensation, effectively removing the economic disincentive to oversize, the Commission should further decrease subscription limits below 100% of historic usage.

4. 20.62.02.09 Utility Cost Recovery

The December draft provided that, while utilities are entitled to timely cost recovery, it prohibited the use of surcharges and fees. The revised regulations have addressed the Cooperative's concerns on cost recovery by entirely removing this section. SMECO and Choptank appreciate this revision and request that the Commission adopt this approach. It was not necessary to repeat that utilities are entitled to "full and timely cost recover of pilot program credit costs," and the regulations should not expressly prohibit "establish[ing] a separate surcharge, fee, or rate." This gives the Commission appropriate flexibility in the regulations if it becomes necessary and appropriate as determined by Commission at the request of the Cooperatives.

5. 20.62.03.01B Customer Eligibility

The revised regulations have not addressed CEC's comment recommending the exclusion of leased light services from eligibility in the pilot program.

6. 20.62.03.05 Data Communication

As noted before, CEC notes that it is likely CEC will require additional time beyond May 2016 to accomplish the necessary billing requirements.

7. 20.62.04.02A Utility Data

Chapter 04 of the proposed regulations establishes the study parameters for community solar. The revised regulations have scaled back on the obligations being imposed on utilities. However, the Cooperatives are still concerned about the obligation to "identify[] means to locate and operate . . . facilities." 20.62.04.02A. First, during the very lengthy working group discussions the solar industry has not been expressing a need for this information. Thus, it is unclear why this provision is even necessary. Additionally, while the Cooperatives are obviously expert with regard to operating their system, they are ill-equipped to provide what amounts to development advice to the solar industry. The information required in .02B, which requires posting of areas of known interconnection limitations, should be adequate.

Accordingly, the Commission should further scale back the information required under this section.

8. 20.26.05 Consumer Protection

SMECO again leaves the issues surrounding consumer protections to other stakeholders.

9. Virtual Aggregate Net Metering

A revision to COMAR 20.50.10.07 has been included as part of this rule making, adding counties as a customer-generator eligible for meter aggregation. Although SMECO recognizes that the Commission has issued letter orders to this effect, it is not clear that the General Assembly granted authority for this change. Senate Bill 355 (2010) introduced the concept of virtual aggregate net metering, expressly referencing not-for-profits and municipalities as eligible customer-generators, but not including counties. SB 355 p. 7 lns. 32-34 and p. 8, lns. 1-6. This grant of authority does not include counties, nor does it appear to give the Commission authority to expand beyond the categories mentioned.

For these reasons, the Commission should reject the proposed changes to COMAR 20.50.10.

Conclusion

For the reasons set forth above, the Cooperatives respectfully request that the Commission further revise the community solar regulations to appropriately set the rate credits and other concerns expressed here.

Respectfully submitted,

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EXHIBIT F

VOLUME VI

BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND

- - - - - - - - - - - - - - - -:

REVISIONS TO COMAR 20.62 - :

COMMUNITY SOLAR ENERGY : RM 56

GENERATION SYSTEMS :

- - - - - - - - - - - - - - - -:

RULE-MAKING SESSION

William Donald Schaefer Tower

6 St. Paul Street

16th Floor Hearing Room

Baltimore, Maryland 21202

Tuesday, June 14, 2016 - 10:00 a.m.

BEFORE: W. KEVIN HUGHES, Chairman

HAROLD WILLIAMS, Commissioner

ANNE E. HOSKINS, Commissioner

JEANETTE M. MILLS, Commissioner

MICHAEL T. RICHARD, Commissioner

Reported by:

Linda A. Crockett, Notary Public

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Senior Commission Advisor

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P R O C E E D I N G S

(10:00 a.m.)

CHAIRMAN HUGHES: Good morning, everyone, welcome to the Maryland Public Service Commission's Rule-Making 56. At this rule-making we will consider whether to finally adopt revisions to COMAR 20.62, the community solar energy generation systems.

Let me start by reminding everyone that this rule-making is a result of Chapter 346 of the 2015 session, and as part of that legislation the General Assembly gave the Commission a mandate to adopt regulations on or before May 15, 2016. So we are a little behind that schedule, but not a lot. And it is my hope that we can finally adopt these regulations today so we will be close to meeting the May 15, 2016 statutory requirement.

What we are going to do is first we will hear from the Commission Staff, Ms. Garofalo and Mr. VanderHeyden, who will provide for us a few recommendations on some non-substantive changes to the regulations for us to consider adopting today as well as any comments they would

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like to make regarding other filings we have received.

Then what I would like to do is ask anyone who wishes to come up to make a short presentation, I'll ask you to try to limit your presentation to about five minutes. We have everyone's written filings and we have reviewed them, and I think what we will do is start with the investor-owned utilities, then we will move to the co-ops and municipals, if anyone wishes to be heard. Then the solar advocacy groups, followed by the Office of People's Counsel and other government groups that want to be heard, and finally any individuals. With that, Ms. Garofalo.

MS. GAROFALO: Good morning. Annette Garofalo on behalf of Commission Staff. With me is Philip VanderHeyden, director of the Commission's electricity division.

Staff has reviewed the proposed regulation as published and the comments filed by interested persons with regard to these regulations. No comments were filed with regard to proposed revisions to COMAR 20.32.01 and Staff

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recommends these revisions be adopted as published.

Potomac Edison noted its objection to the amendments to COMAR 20.50.10.07B because these were not discussed in the working group. However, these minor regulatory changes were discussed in the rule-making session and Staff recommends COMAR 20.50.10.07B be adopted as published.

With regard to COMAR 20.62, the main reason we are here today, Staff's comments discuss each parties' filed comments and Staff's recommendation regarding each proposed amendment and the reason for that amendment. The proposed regulations are intended to give shape to the community solar generation pilot program envisioned by the General Assembly and are the product of a lengthy and involved working group process and extended consideration by the Commission.

Staff recommends the following changes which we consider to be non-substantive. With regard to COMAR 20.62.02.02A(3)(c), Staff recommends that a dash be inserted after 30

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percent. I don't know if you want me to halt after each of these?

CHAIRMAN HUGHES: Just give us a few seconds to look at where the changes are being made. Mr. Kucskar is going to do that for us.

MS. GAROFALO: With regard to 20.62.02.05A, Staff recommends annual baseline energy be replaced with baseline annual usage. And that same change be made in COMAR 20.62.02.05C where baseline annual usage would replace historic annual energy use.

With regard to COMAR 20.62.03.08A(1) kilowatt should replace megawatt.

CHAIRMAN HUGHES: And that was, my understanding, just a typo?

MS. GAROFALO: I think so. And with regard to COMAR 20.62.03.08B, Staff recommends that that be renumbered as COMAR 20.62.03.08A(4). And also in that same section COMAR 20.62.03.08C and D, that those be renumbered as COMAR 20.62.03.08B and C. We think that those also were typos in the process of the preparation for publication.

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Finally, COMAR 20.62.05.07A(2)(a)(ii), subscription organization should be replaced by subscriber organization. Those are all of Staff's recommended edits. Staff recommends with those edits COMAR 20.62 be adopted as published. Staff supports OPC's recommendation that Staff continue its working group and address the cost and benefits of community solar as well as implementation details of the pilot program.

Staff also notes the 2015 peak load contribution for each utility will be posted on the Commission's website when this year's ten-year plan is complete, which should be I think no later than September 1. No further comments. We're available for questions.

CHAIRMAN HUGHES: Any questions for our Staff? Thank you very much for your presentation. We greatly appreciate it.

Mr. VanderHeyden, if we could ask you and Mr. Kucskar to stay at the table. We only have four chairs for presenters but we'll see how it goes. I'd like you to be there in case we have questions. Why don't we then go to anyone who

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wishes to speak on the proposed regulations before the Commission takes them up. We'll start with anyone from investor-owned utilities who might like to speak.

Ms. Curry, good morning. Why don't you start us off.

MS. CURRY: Kim Curry representing Baltimore Gas & Electric Company. We filed comments on May 27. I'm not going to provide a summary of all of our recommendations. I would like to focus on two of the more significant ones that we raised.

First, BGE continues to object to the inclusion of a provision that prohibits distribution rate recovery for utility-owned projects. As you recall, BGE filed a proposal for a pilot, a community solar pilot that would have served exclusively low income customers as subscribers, and the reason why we're not going forward with that project is because of this particular provision in the regulations. We continue to remain concerned that that universe of customers will be underserved with that utility

Page 1147

involvement.

We also think that it's unnecessary, it prematurely limits the Commission's discretion to consider rate recovery issues in the future as projects come to them, and do not think it's appropriate for a regulation. I know of no other provision in COMAR that predetermines a prohibition on a particular form of rate recovery.

The second issue is that we maintain -- this relates to the components of the credit. We believe that the credit should only be against the generation portion of the bill and not include transmission and distribution charges.

This is because there's a defined funding source for generation already embedded in the statute. As you know, the statute states that the energy that comes out of the facilities are going to be offset or offset the utilities' SOS purchases. And this creates a revenue stream for the utilities in that there's less commodity that we have to purchase from our wholesale suppliers and it's that funding stream that we can use to fund the generation portion of the credit.

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There is no such funding stream for transmission and distribution charges, which means we'll have to recover that from all the customers. Those are my two comments and I'm available for questions.

CHAIRMAN HUGHES: Thank you. Mr. Segers?

MR. SEGERS: Good morning. We've also filed comments and we incorporated our previous comments by reference. So I won't go over those either. PHI only had one -- essentially two minor changes, both with the same theme. And they were -- it's regarding the subscription credits. We also share the concerns by BGE concerning the revenue stream, but you've heard those arguments. I'm not going to reiterate those.

The only point that we pointed out in our supplemental comments was the way that section 20.62.02.04 and 20.62.02.07, how they are written, is that it would currently require the utilities to obtain the retail supply rate for any customer not taking SOS service. And that would constitute a significant administrative burden on the

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utility.

Also it does, as we indicated before, open up those provisions to an interpretation that possibly could be contrary to the statute concerning the revenue stream. So that was the only point that we wanted to make. And as I said before, we're here to answer any questions.

CHAIRMAN HUGHES: Thank you.

MS. KLODOWSKI: Amy Klodowski for the Potomac Edison Company. Potomac Edison also filed comments in May and in February. I won't reiterate all of our issues. But I did want to address a couple of things.

The first one being the revision to COMAR 20.50.10.07.B(3), the addition of the word county as eligible for the virtual net metering program. Staff filed this revision on February 5. Comment were due February 9th.

This provision was not discussed in any of the numerous working group meetings that were held on the community solar regs. The provision is not part of the community solar regs. Potomac Edison believes it should not be adopted in this

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proceeding.

If the Commission wants to pursue including counties as eligible for virtual net metering, we believe it should be added as a -- excuse me, it should be proposed as a separate rule-making proceeding. And so all parties have an opportunity to fully investigate whether in fact counties were intended to be included as eligible participants by the legislature. We believe they are not. And in our comments there are references to a couple of filings that Potomac Edison made in a previous proceeding that address that point.

In addition, I just wanted to mention Potomac Edison continues to be very concerned about the number of accounts that are eligible for a subscription, subscriber organization. Potomac Edison does not currently nor do we have plans to automate the billing process for net metering. So this would be a very manual labor intensive prospect if we have to manually bill thousands of accounts every month for each -- for subscriber organizations.

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One point in our comments I just wanted to highlight, is that -- one second, please. COMAR 20.62.02.05 contains a subscription limitation on each subscriber of 200 percent of their annual usage. Well, if utilities are required to investigate each subscriber, whether they fall within that limitation either as a net metering customer themselves or as a subscriber in other subscriber organizations, that's going to be terrifically burdensome and it is going to substantially slow down the application process.

Those are the only points I wanted to raise at this time.

CHAIRMAN HUGHES: Thank you. We appreciate your comments. Any questions for the panel? If not, thank you very much. Next if anyone from the co-ops or municipals would like to speak.

MR. MacDOUGALL: Good morning, Mr. Chairman, Commissioners. I'm Mark MacDougall on behalf of Southern Maryland Electric Cooperative. To my immediate left is Bob Weishaar with the law firm of McNees Wallace & Nurick

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representing SMECO and Choptank Electric, and to his left is Todd Chason of Gordon Feinblatt representing SMECO.

I wanted to start off by reaffirming for the Commission that SMECO and Choptank have generally been supportive of community solar programs in that it would provide a viable alternative for people who want to avail themselves of solar power. To be sure, though, we have had some concerns about the proposed provisions that would implement the three-year pilot.

The cooperatives voice those concerns in our May 27th comments. Most notably, SMECO and Choptank address what we believe to be the inappropriate levels of the credit and our concern that certain aspects of the proposed regulations would or could violate provisions of federal law.

In response to our comments, Maryland SUN and jointly the Energy Freedom Coalition of America and MDV-SEIA took issue. About a half hour ago I received an e-mail from Staff saying that they had filed comments in response to other

Page 1153

parties, but that SMECO's and Choptank's comments are addressed in separate reply comments.

We haven't seen those yet, so there's no opportunity for us to respond to that. I've asked Mr. Weishaar, who is one of the co-authors of SMECO's and Choptank's comments to respond to the solar group's replies, and I'd like him at this point to take the ball and go with it.

CHAIRMAN HUGHES: Good morning. Welcome to the Public Service Commission.

MR. WEISHAAR: I want to address two specific aspects of the Maryland SUN's supplemental comments. They argue first that certain aspects of the proposed regulations if uncorrected or we have argued if uncorrected could violate federal law regarding sales of power, notably the Public Utility Regulatory Policies Act and the Federal Power Act.

Second is that certain aspects of the proposed regulations if uncorrected could violate the avoided cost provisions of PURPA. Those are two distinct arguments that the cooperatives raised in their comments.

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I will respond specifically to Maryland SUN's reply. As Mark noted, two other entities filed comments expressing support for the Maryland SUN position. The cooperative's comments were limited to very specific aspects of the regulations, namely the provisions regarding excess generation in section 20.62.02.07. And I will note that similar issues may arise in the future with respect to the provisions regarding unsubscribed energy in section .08, but the regulations state that those issues will be addressed when electric companies file tariffs to pay a subscriber organization for unsubscribed energy.

The section of the statute that is referenced in the regulations in section .08, and the section of the statute is 7-306.2(D)(7), correctly state that any such payments for unsubscribed energy shall be, quote, at the amount it would have cost the electric company to procure the energy, closed quote. So the statute recognizes that the avoided cost standard that is in PURPA regulations is clearly in play.

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The payment requirements for excess generation and unsubscribed energy should be the same. Physically there's really no distinction and there's no distinction for jurisdictional purposes between unsubscribed energy and excess generation.

Maryland SUN identifies in its comments several cases in which FERC has permitted net metering, and basically FERC has said that in very specific circumstances, net metering is a permissible exception to the Federal Power Act and PURPA regulations. However, those cases apply only to net metering and the time period over which such net metering may apply.

And it's applicable to both on-site generation that is complementary to the customer's consumption on site behind the meter generation and also applies to consumption that is complementary to the customer's generation. So in specific circumstances involving station power FERC has said that a net outflow is not necessarily subject to the Federal Power Act and PURPA.

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The cases are not specific, however, and do not necessarily apply to virtual net metering, which is what's in play under these regulations. Virtual net metering is materially different from net metering as concerns these jurisdictional issues.

A CSEGS must be connected to the electric distribution grid. It may or may not be attached to the electric meter of a subscriber. It may be a separate facility with its own electric meter. There are clearly power flows that come from a CSEGS, hit the grid, and are attributed to customers, which is a different situation than what FERC was looking at in a net metering context.

Maryland SUN cites specifically to FERC's decisions in the SunEdison case. And we will note that the SunEdison case, again, SunEdison presented in its petition for declaratory order to FERC a very specific set of factual circumstances. SunEdison made clear that, quote, its wholesale operations are not the subject of this petition.

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Moreover, the FERC order describes SunEdison's retail operations which were the subject of the petition as involving, quote, the installation of photovoltaic panels, inverters and associated equipment. And this is the point of emphasis on property controlled by an electric energy consumer.

FERC also states that SunEdison, quote, sells the electric energy output to the on site end use customer. In the SunEdison case generation customers were all on site behind the single meter. SunEdison had ownership of the solar facilities that were on site, but everything was behind a single customer meter. That's a much different circumstance than what's presented with virtual net metering.

FERC rested its decision in SunEdison and in many other cases involving net metering on the fact that over some defined period there is no net sale to the grid. So the inflows and outflows through a single meter offset one another, so over a particular period of time, whether that's an hour, a day, a month or a year, the inflows and

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outflows net out.

The Maryland SUN comments have not pointed to cases where virtual net metering has been carved out and exempted from the Federal Power Act or PURPA by FERC. To the best of the cooperatives' understanding, the Federal Power Act and PURPA continue to apply to virtual net metering arrangements.

What this means is that if a CSEGS is not a qualifying facility under PURPA, this Commission does not have authority to set the rate at which electric companies compensate the CSEGS for excess or unsubscribed generation.

The other issue that Maryland SUN raises is regarding the standard for determining avoided cost. And we noted in our comments in section that .07A includes language that captures a potentially compliant approach to the avoided cost standard for excess generation. However, the language in that particular section ends by stating unless the company records subscriber credits as kilowatt hours. That is the language that is potentially troublesome.

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FERC regulations state that for as available purchases, and these are as available purchases, as the CSEGS has excess generation or unsubscribed generation, the electric companies purchase that or use it or take title to it, and for as available generation FERC regulations state the rates for such purchases shall be based on the purchasing utility's avoided cost calculated at the time of delivery. In this case at the time of delivery of the electric energy. The cooperatives urged a compliant approach in their May 27th comments.

Maryland SUN replied by citing to a New York case in which the New York Public Service Commission back in the early 1980s adopted a flat 6 cent per kilowatt hour rate for purposes of avoided cost. The New York PSC adopted that standard. New York state courts affirmed that decision. That decision is not necessarily binding on the State of Maryland.

What is clear, though, is that the CSEGS statute states that unsubscribed energy, quote, shall be purchased under the electric

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company's process for purchasing the output from qualifying facilities -- again, this is the point of emphasis -- at the amount it would have cost the electric company to procure the energy, closed quote. In other words, the statute requires that the purchases be made at avoided cost.

To address both the potential preemption concerns discussed earlier and to ensure that payments for excess generation and other subscribed energy are consistent with PURPA, the Federal Power Act, and the CSEGS statute, the cooperatives respectfully urge the Commission to adopt as part of the final CSEGS regulations the modest red line changes to sections .07A and .07B.

Those changes can be found and are discussed at pages 21 and 22 of the cooperative's comments. And the objective is to ensure that the regulations are both compliant with the statute, compliant with the Federal Power Act, and compliant with PURPA. We thank you for your attention to these very specific issues.

MR. CHASON: I don't have anything to add unless there are questions.

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CHAIRMAN HUGHES: Any questions for this panel? If not, thank you, gentlemen. We appreciate your testimony.

Next up, if anyone from the solar advocacy groups would like to present.

MS. MILLER: Thank you, my name is Susan Miller, and I'm representing Maryland SUN this morning. I think it's important to note with regard to the legal issues that SMECO raised that these issues -- Maryland is not the first state to do this. These issues have been considered by 11 other states, and several of them have done this, meaning the community solar regs, in the same way Maryland has.

Essentially you're looking at two different things. Looking at the netting which occurs in Maryland over months until the year in April. That is the same way that several states do it, and FERC has repeatedly said that netting is not a sale, which means it does not come under PURPA and the requirement that sales occur at avoided cost because it is not a sale at all. So the netting aspect of this does not come under

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PURPA at all and shouldn't be a concern.

With regard to the sale of the excess generation, virtually I know of at least five states who do this the same way. It's essentially put at avoided cost, and avoided cost can be determined by the Commission in a variety of ways. There's no one way a commission has to determine avoided cost.

The requirement that it be avoided costs or be the rate the person paid if they were in a retail supply situation perfectly meets the PURPA requirements because they are not as strict as the companies make out. Yes, it is true that the case I cited came from New York. But I feel compelled to point out that SMECO cited no cases in support of virtually all of its propositions.

Essentially the one case that considered this has existed for years, a New York statute was enacted was well above the avoided cost in New York. It was challenged and what the court decided, and it has never come up again, is that the avoided cost concept is a floor, not a ceiling, so that states can determine that a

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qualifying facility can receive more than avoided cost.

And that may not even be an issue. An argument can be made that no one is receiving more than avoided cost. If that's a concern of the Commission, it's irrelevant for purposes of PURPA.

Finally I'd like to say you should bear in mind what the general purpose of PURPA was was to encourage qualifying facilities. Essentially the avoided cost standard was a shield to be used by qualifying facilities to make sure that they weren't underpaid by the utilities. SMECO is now trying use this as a sword and I think that's inappropriate given the policy implications behind PURPA.

And finally, the one other thing they mentioned is they thought that every one of these facilities should be required to seek certification as a qualifying facility. That is unnecessary. First of all, any facility under one megawatt, FERC doesn't even require them to be certified anymore.

If they're over one megawatt, the

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federal regs, they have to meet any federal regulations. To have the Maryland Commission say you have to be a qualifying facility and get FERC approval would in one sense be redundant and would assume all of these are qualifying facilities, which I'm not sure is a hundred percent true in every situation.

So in the interconnection section of the regulations it says that when the company files to get in the interconnection line, it has to certify that it has all the permits it needs. One of the permits it would need to legally operate is that if it is a qualifying facility, it would have to have gotten its certification from FERC. So it's not necessary to change the regs to have them state the Maryland regs at all to have certification. If they are a qualifying facility, they are required under federal law if they're over one megawatt to get certification.

CHAIRMAN HUGHES: Thank you.

MR. CHRYSSIKOS: My name is Mac Chryssikos. I'm appearing on behalf of WGL Energy. We participated in the net metering

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working group that led to the proposed community solar generation regulations. We generally support them. We filed comments previously. We did not file comments to the published regulations on April 29th, but we support them.

We had one concern that we expressed and I think that the opportunity exists within the structure of the proposed regulations that deal with them. We were concerned about the utilities, once again, owning solar generation, and we expressed those concerns in our comments, and I think the regulations deal with them in a certain sense by providing that the utilities, if they do have a community solar project that the Commission accepts, they have to come and ask for it to be put in the queue, and if they can't recover their costs in their base distribution rates, which we support.

Just as caveat, we're kind of wondering, I -- authorized below the line utility activities like that, why not just have one of their unregulated affiliates participate, which is normally the way utilities participate in

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unregulated competitive markets.

With regard to the latter point that Ms. Miller was addressing, we read our comments as well as the SMECO and Choptank's comments, and we support Ms. Miller's legal analysis as submitted in her comments.

I would just add that it seems like some of the issues they are raising are implementation issues. The utilities including the co-ops are going to file a plan within 45 days of the adoption of the regulations and in the tariff they have to indicate how they're going to deal with the purchase of unsubscribed or excess generation.

And the second point I'd like to make is that in effect what they seem to be doing is challenging the statute itself and net metering and the community solar statute itself, which defines, has a definition for virtual net metering, so I guess we disagree with the point that the FERC cases would not be applicable to virtual net metering.

There are virtual net metering

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arrangements all over the state. We participated in virtual net metering arrangements on the Eastern Shore in a couple of projects, and I think the application of the net metering rules have been applicable to the virtual net metering.

It's kind of like gas, where you put gas in one part of the system and you take it out of the other part of the system, sort of by displacement, sort of what virtual net metering, the way it operates. That's all I have. Thank you.

CHAIRMAN HUGHES: Thank you. Any questions for this panel? If not, thank you very much.

Next is the Office of People's Counsel any other governments which would like to be heard.

MR. OUSLANDER: OPC raised two issues in the most recently filed --

CHAIRMAN HUGHES: Mr. Ouslander, could I ask you to identify yourself.

MR. OUSLANDER: Jacob Ouslander with the Office of People's Counsel.

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OPC raised two issues in the comments that were filed on May 31st. The first has to do with the hard cap that the regulations set out for the size of the pilot program. Obviously that was a very contentious issue during the consideration of these regulations, and if the transcript is reviewed very closely, I think that it was clearly the Commission's intent that that hard cap was not aspirational, that the Commission did intend to enforce it.

However, the actual wording in the regulations makes it seem as if a utility might have the discretion to unilaterally exceed the hard cap by accepting applications once the 1.5 megawatts plus the additional amount per LMI is reached. So OPC has proposed changes to COMAR to make that clear that the Commission will retain the authority to direct the utility to reject an application once the 1.5 megawatt hard cap with the addition for LMI is reached.

Staff recommended that that language not be adopted and that in its view the review of the project applications would provide the

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Commission the opportunity to exercise that authority. And if the proposed language is not adopted, we would ask for some guidance or some indication that the Commission will enforce that hard cap by directing a utility to reject an application once the hard cap is reached.

The second recommendation that we made in our comments was to have a stakeholder work group convene and consider a framework for considering the data and the information that the Commission will need to perform the study that the enabling legislature requires. In particular, OPC would like the work group to ensure that the Commission is able to evaluate the costs and benefits of community solar including appropriateness of continuing a full retail rate credit in any future community solar program outside of the pilot. With that I can answer any questions.

CHAIRMAN HUGHES: Thank you very much. Ms. Brennan?

MS. BRENNAN: For the record I'm Lisa Brennan with Montgomery County. And with me today

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is Michelle Vigen, senior energy planner with Montgomery County Department of Environmental Protection, who will speak again regarding these regulations.

MS. VIGEN: Montgomery County would like to reiterate our support of these community solar regulations and we do stand by our comments regarding the definition of moderate income which was filed May 18th.

In addition, we just want to note that we do support Staff's recommendation regarding COMAR 20.50.10.07B(3) regarding the inclusion of counties along with municipalities in the net metering program. This has been part of the rule-making process from the beginning and reflects the spirit of the regulation and the programs.

Further we look forward to participating in a work group process as recommended by OPC and we thank the Commission Staff for their work and deliberation in these regulations. Thank you.

CHAIRMAN HUGHES: Thank you. Any

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questions for this panel?

COMMISSIONER RICHARD: Just for this panel, I am very interested in this point on the cap size of the program. For Commission Staff, is that true, is it kind of squishy right now that we don't have the ability to cap at 1.5 percent?

MR. VANDERHEYDEN: This issue came up during the rule-making session. That's why there was a change made. If you look at 20.62.02.02, program generation capacity, .02A(1)(a) says that an electric company may not accept a pilot program project application after the statewide capacity has exceeded 1.5 percent. The electric utility is prohibited from going over the statewide cap.

It is, I suppose, incumbent on all of us involved in the process to keep an eye on where that cap is or where the program capacity is. I think that's why there's a requirement to notify the Commission if an individual utility plans to exceed its own 1 and a half percent. That in itself is not a hard cap. I think what OPC is asking is to make that a hard cap. That certainly is something that we can address as the program

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moves forward.
The Commission was I think pretty clear during the discussions that the 1 and a half percent statewide cap was a hard cap and so that is I would say hard-wired into this regulation. I am not concerned about the ability of the utility to somehow lift the statewide cap. Because I think they're prohibited from doing that by this regulation. That was I think as a result of a lengthy discussion in order to solve that problem in the rule-making session.
COMMISSIONER RICHARD: And OPC, are you satisfied by that answer?
MR. OUSLANDER: If the provision that Mr. VanderHeyden just quoted was the only regulation, then OPC would be fine. The problem is that in addition to that provision, .02A(4)(b) says that an electric company may accept project applications after it has accepted 1.5 percent of its 2015 peak demand and megawatt hours as measured by the sum of their means capacity in each project inverter.
And the only mandate that is included

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in that section is that the electric company notify the Commission that it has accepted an application beyond the level described in A(4)(a) of this regulation.
So that's where I think the tension comes into play. In one section it says this is a cap, and then in another section it says that the utility may accept applications in excess of that cap and need only to notify the Commission that it has done so.
COMMISSIONER RICHARD: For a number of us, I think OPC and I think the utilities and I think Maryland Energy Administration and Senator Hershey came and spoke to us, this was an important issue. Many of us think it went too far for a pilot. So I think it is important that we respect that. Our understanding is that we did set a hard cap. I think a lot of us ultimately supported it with that understanding, that it was a hard cap for this pilot.
CHAIRMAN HUGHES: Any additional questions for this panel? If not, thank you very much.

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Does anyone else wish to be heard on RM 56? Hearing none, the proposed rules are before us. Any discussion on whether to finally adopt our proposed rules? If not, I will make the motion.
I move to finally adopt the following proposed regulations as published in the Maryland Register on April 29, 2016, including the non-substantive changes made here today in this rule-making session. Before I go any further, let's go ahead and adopt those non-substantive changes. Any concerns with the non-substantive changes?
COMMISSIONER HOSKINS: Those are the ones suggested by Staff?
CHAIRMAN HUGHES: Right. Hearing none, the non-substantive changes are adopted.
With that I move to finally adopt the proposed regulations, beginning with revising COMAR 20.50.10.07, meter aggregation; revising COMAR 20.32.01.01 through .04; and the new subtitle 62, community solar energy generation systems and new chapters and associated

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regulations, COMAR 20.62.01, COMAR 20.62.02, COMAR 20.62.03, 20.62.04 and 20.62.05. Is there a second?
COMMISSIONER WILLIAMS: Second.
CHAIRMAN HUGHES: All those in favor signify by saying aye.
(All say aye.)
CHAIRMAN HUGHES: The motion carries.
COMMISSIONER HOSKINS: I wanted to address the issue that OPC just proposed about a work group. I think that makes a lot of sense in terms of continuing the collaboration that I think resulted in this very exciting and important rule and program for our pilot for Maryland.
I would like to propose that the Commission direct Staff to continue to have a work group and particularly to focus on ensuring that we have the right kind of standards to evaluate this pilot as it proceeds so that all of us can learn from this pilot and hopefully report back to the Commission. I don't know what the right time period might be. We can ask Staff what they think about that.

CHAIRMAN HUGHES: Let's get Mr. VanderHeyden's input on that.

MR. VANDERHEYDEN: We certainly are planning to undertake reconvening the working group as soon as we have a decision here so we could begin to develop hopefully a model tariff so that we'll get a tariff that each utility can build upon in order to make their own filings.

We expect a lot of work to work out some of the final implementation details, things that we deliberately do not include in the regs, are needed to have additional flexibility so each utility could have something that would work properly for them.

My expectation is we will be convening that working group very shortly to discuss getting these tariffs filed. There are certainly other net metering issues that have popped up in that group and has been more or less active on an ongoing basis and expect that we'll be doing so for the next three years, at least, in order to make sure that the pilot runs properly and we're able to report on it.

CHAIRMAN HUGHES: Thank you, Mr. VanderHeyden. We appreciate your continuing to work on this. Again, thank you for your great job as our work group leader and the excellent product you have brought to us. I want to thank Mr. Kucskar for his work on this and Ms. Garofalo, and I want thank all of the stakeholders for the many meetings and the time you have put in to make I think a very good product that we just adopted as our final regulations. Thank you. With that, we are adjourned.

(Proceedings adjourned at 10:50 a.m.)

REPORTER'S CERTIFICATE

- - - - - - - - - - - - - - -:
REVISIONS TO COMAR 20.62 - :
COMMUNITY SOLAR ENERGY : RM 56
GENERATION SYSTEMS :
- - - - - - - - - - - - - - -:

LOCATION OF HEARING: Baltimore, Maryland

DATE OF HEARING: Tuesday, June 14, 2016

I hereby certify that the foregoing proceeding was reported by me, and that the transcript is true, accurate and complete, to the best of my knowledge and belief.

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Court Reporter

INDEX OF PRESENTATIONS/DISCUSSIONS

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