

**MEMORANDUM**

TO: County Council

FROM:  Michael Faden, Senior Legislative Attorney  
Leslie Rubin, Legislative Analyst, Office of Legislative Oversight

SUBJECT: **Action:** Expedited Bill 22-13, Taxation – Fuel Energy Tax – Renewable Energy Sources

**Government Operations and Fiscal Policy Committee/Transportation, Infrastructure, Energy, and Environment Committee recommendation: enact with amendments.**

Expedited Bill 22-13, Taxation – Fuel Energy Tax – Renewable Energy Sources, sponsored by the Council President (at the request of the County Executive) and Councilmember Leventhal, was introduced on July 9, 2013. A public hearing was held on July 30 (see testimony, ©12-14).

Bill 22-13 would exempt from the County fuel-energy tax any energy produced and delivered in the County and generated from a renewable energy source. A renewable energy source is defined by reference to the definition of a “Tier 1 renewable source” in the state Public Utilities law (see ©10-11), which includes solar and wind power, biomass, and geothermal energy, among other sources.

**Fiscal impact** The OMB fiscal impact statement estimated an annual revenue loss of \$108,500 in the near term, although this appears to be based only on energy generated by solar electric systems. This number could rise substantially as more homeowners and businesses install various forms of renewable energy sources.

**Committee worksessions** The Government Operations and Fiscal Policy Committee and Transportation, Infrastructure, Energy, and Environment Committee held a joint worksession on this Bill on January 23. The joint Committee recommended enactment of this Bill with one amendment, originally proposed by Pepco (see ©3, lines 28-31), to clarify that electricity which goes through the utility’s meters would be taxed. The Transportation, Infrastructure, Energy, and Environment Committee held a second worksession on July 21 and recommended a further amendment (see ©3, lines 33-36), which is summarized below.

### Issues/Committee recommendations

#### **1) Should this exemption be broadened to include all energy produced from renewable sources?**

Before this Bill could proceed to Council action, Committee Chair Berliner asked the Executive branch to answer questions posed by Councilmember Leventhal and himself about whether this Bill should be broadened to exempt from the fuel/energy tax all energy generated from renewable sources, instead of only the self-generated renewable energy that this Bill would exempt.

At the hearing Councilmember Leventhal, who signed on as a co-sponsor of this Bill, noted that the now-unfunded County Clean Energy Rewards program was adopted because, at the time, the Council was advised that it could not effectively exempt all energy from renewable sources from the fuel-energy tax because of the utilities' inability to calculate which energy supplied to each consumer is derived from renewable sources. Stan Edwards of the County Department of Environmental Protection (DEP) responded that the proposed exemption in this Bill is limited to on-site, self-generated "behind the meter" production that is not currently taxed because it is not measured, rather than all energy produced from renewable sources.

Councilmembers Leventhal and Berliner questioned whether the proposed exemption could now feasibly be expanded to all renewable energy, produced on-site and off-site. Assistant Chief Administrative Officer Bonnie Kirkland submitted a memo (see ©15-16) concluding that "the County Executive does not believe additional exemptions from the fuel energy tax are ready for implementation in FY15." Executive staff estimated a potential fuel-energy tax revenue loss from \$13 million to \$25.8 million if a tax exemption were expanded to all energy from renewable sources.

**Committee recommendation:** At the July 21 Transportation, Infrastructure, Energy, and Environment Committee worksession, Committee members expressed strong interest in a goal of exempting from the fuel/energy tax all energy from renewable sources. The Committee requested, and Executive branch staff confirmed that they would provide, a report by February 15, 2015, addressing how the County could effectively achieve this goal and the benefits and costs of doing so.

#### **2) Should this exemption be limited to electricity consumed on the site where it is generated?**

As introduced, Bill 22-13 would exempt from the County fuel-energy tax energy generated from a renewable source (as defined in § 7-701(1) of the Maryland Public Utility Article) if:

- the energy is generated in the County, and
- the energy is delivered to or used by an end user in the County. See ©3, lines 32-34.

The Executive's fiscal and economic impact statements (see ©6-9) note that the Bill's purpose is to exempt from the fuel-energy tax those residential and commercial energy providers

who generate energy, for their own or others' use, by installing certain renewable energy sources, such as solar photovoltaic panels. When a business or residence generates more electricity than it uses, the excess power is sent through the electrical grid and distributed to other customers.

If that excess power is later delivered to or used by an end user in the County, Bill 22-13, read literally, would exempt that electricity from the tax. However, electricity distributors such as Pepco note that they cannot trace the end user of any electricity produced by a specific source, and thus cannot determine whether that end user is located in the County, and concomitantly they cannot trace the actual source of any particular electricity consumed by an end user. Under the current County law (see ©2-3, lines 27-28), the fuel/energy tax is applied to quantities of energy measured at the point of delivery for final consumption in the County.

Pepco suggested an amendment to clarify how to measure which electricity is taxed, using the “net metering” concept, by inserting the following sentence on ©3, line 28-31:

For an electric company (as defined in state law), the rates of tax apply to the net consumption that is used to calculate each consumer bill.

Consistent with the original intent of this Bill, this amendment would effectively exempt “behind the meter” electricity from the fuel-energy tax. Executive branch staff and the County Attorney confirmed that this amendment is consistent with, and does not change their interpretation of, current County law. **GO/T&E recommendation: approve this amendment.**

**T&E recommendation:** To make this Bill internally consistent the T&E Committee recommended a further amendment suggested by DEP staff on ©3, lines 32-34:

The tax does not apply to energy that is generated from a renewable source in the County and [[delivered to or used by an end user in the County]] either used on the site where it is generated or subject to a net energy metering agreement (as defined in state law) with a public utility.

**3) Should this exemption be limited to power produced by residential and other small producers?**

Bill 22-13 as introduced was drafted broadly enough to exempt a large commercial producer of renewable energy located in the County from the fuel-energy tax, at least for the energy that producer uses itself on site. One speaker at the hearing (see Breiner testimony, ©14) noted that the exemption in this Bill could benefit, for example, the Town of Poolesville if it goes ahead with plans to lease a large solar array to provide power for town government users.<sup>1</sup> Depending on the degree of future development of on-site solar and wind power sources in the County, especially by large non-residential users such as shopping centers, the fuel-energy revenue loss (and the incentive for renewable energy use) could be substantial.

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<sup>1</sup>If both amendments recommended in Issue 2 are adopted, electricity produced by an off-site solar array such as the one this testimony referred to likely would not be exempt from the fuel/energy tax unless it were subject to a net energy metering agreement.

Executive branch staff believe that, if this scenario comes to pass (and they would not be averse to it happening), any revenue loss would be both manageable and outweighed by the positive environmental effects. They do not recommend limiting this exemption to residential or other small producers. Neither Committee discussed this issue.

This packet contains:

	<u>Circle #</u>
Expedited Bill 22-13 with Committee amendments	1
Legislative Request Report	4
Memo from County Executive	5
Fiscal and Economic Impact Statements	6
Md. Code Public Utilities Article §7-701	10
Hearing testimony	12
Memo from Assistant Chief Administrative Officer	15
State law on net energy metering	17

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Expedited Bill No. 22-13  
Concerning: Taxation – Fuel Energy Tax  
Revised: 7-23-14 Draft No. 3  
Introduced: July 9, 2013  
Expires: January 9, 2015  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the request of the County Executive and Councilmember Leventhal

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**AN EXPEDITED ACT to:**

- (1) exempt energy that is generated from certain renewable energy sources from the fuel energy tax; and
- (2) generally amend County law regarding the fuel energy tax.

By amending

Montgomery County Code  
Chapter 52, Taxation  
Section 52-14

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<b>[Single boldface brackets]</b>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<b>[[Double boldface brackets]]</b>	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

1           **Sec. 1. Section 52-14 is amended as follows:**

2   **52-14.       Fuel-energy tax.**

3           (a)    (1)   A tax is levied and imposed on every person transmitting,  
4                    distributing, manufacturing, producing, or supplying electricity,  
5                    gas, steam, coal, fuel oil, or liquefied petroleum gas in the  
6                    County.

7           (2)   The County Council must set the rates for various forms of fuel  
8                    and energy by a resolution adopted [according to the  
9                    requirements of] under Section 52-17(c). The Council may, from  
10                  time to time, revise, amend, increase, or decrease the rates,  
11                  including [establishing] setting different rates for fuel or energy  
12                  delivered for different categories of final consumption, such as  
13                  residential or agricultural use. [The rates] Each rate must be  
14                  based on a weight or other unit of measure regularly used [by  
15                  such persons] in the conduct of [their] business. The rate for each  
16                  form of fuel or energy should impose an equal or substantially  
17                  equal tax on the equivalent energy content of each form of fuel or  
18                  energy for a particular category of use.

19           (3)   The tax does not apply to the transmission or distribution of  
20                  electricity, gas, steam, coal, fuel oil, or liquefied petroleum gas in  
21                  interstate commerce through the County if the tax would exceed  
22                  the taxing power of the County under the United States  
23                  Constitution. The tax does not apply to fuel or energy converted  
24                  to another form of energy that will be subject to a tax under this  
25                  Section. The tax must not be imposed at more than one point in  
26                  the transmission, distribution, manufacture, production, or supply  
27                  system. The rates of tax apply to the quantities measured at the

28 point of delivery for final consumption in the County. For an  
29 electric company (as defined in state law), the rates of tax apply  
30 to the net consumption that is used to calculate each consumer  
31 bill.

32 (4) The tax does not apply to energy that is generated from a  
33 renewable source in the County and [[delivered to or used by an  
34 end user in the County]] either used on the site where it is  
35 generated or subject to a net energy metering agreement (as  
36 defined in state law) with a public utility. Renewable source  
37 means a “Tier 1 renewable source” as defined in Section 7-701(l)  
38 of the Public Utilities Article of the Maryland Code or any  
39 successor provision.

40 \* \* \*

41 **Sec. 2. Expedited effective date; applicability.**

42 (a) The Council declares that this legislation is necessary for the immediate  
43 protection of the public interest. This Act takes effect on the date when  
44 it becomes law.

45 (b) This Act applies to energy delivered before or after this Act takes effect.

46 *Approved:*

47  
48 \_\_\_\_\_  
Craig L. Rice, President, County Council

\_\_\_\_\_ Date

49 *Approved:*

50 \_\_\_\_\_  
Isiah Leggett, County Executive

\_\_\_\_\_ Date

## LEGISLATIVE REQUEST REPORT

Expedited Bill 22-13

Taxation – Fuel Energy Tax – Renewable Energy Sources

**DESCRIPTION:** Bill 22-13 will create an exemption from the fuel energy tax for energy that is generated from a renewable energy source.

**PROBLEM:** The current version of the fuel energy tax imposes the tax on all energy that is generated, manufactured or supplied from a renewable energy source.

**GOALS AND OBJECTIVES:** To exempt energy from the fuel energy tax that is generated from a renewable energy source.

**COORDINATION:** Department of Environmental Protection and Department of Finance.

**FISCAL IMPACT:** To be requested.

**ECONOMIC IMPACT:** To be requested.

**EVALUATION:** To be requested.

**EXPERIENCE ELSEWHERE:** To be requested.

**SOURCE OF INFORMATION:** Bob Hoyt, Department of Environmental Protection

**APPLICATION WITHIN MUNICIPALITIES:** Applicable.

**PENALTIES:** None.

BILL

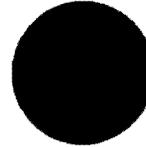


OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

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MEMORANDUM

Isiah Leggett  
County Executive



RECEIVED  
MONTGOMERY COUNTY

2013 JUN 24 PM 12: 50

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CC  
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June 21, 2013

TO: Nancy Navarro, Council President  
FROM: Isiah Leggett, County Executive   
RE: Proposed Legislation – Fuel Energy Tax Exemption for Renewable Energy Sources

I am transmitting for Council introduction a bill that creates an exemption from the County's fuel energy tax for energy that is generated from a renewable energy source provided the energy is generated within the boundaries of the County and is used by an end user in the County. I am also attaching the Legislation Request Report and Fiscal and Economic Impact Statements for the bill.

The bill will create an exemption from the fuel energy tax for energy that is created by a renewable energy source. The renewable energy sources are defined in Section 7-701(l) of the Public Utilities Article, which include among other things, electricity that is created by solar energy.

I would appreciate your consideration of this bill and if you have any questions or need additional information, do not hesitate to contact Bob Hoyt, Director, Department of Environmental Protection, at 240-777-7781.

Attachments: (4)

c: Joseph Beach, Director, Department of Finance  
Marc Hansen, County Attorney  
Bob Hoyt, Director, Department of Environmental Protection  
Jennifer Hughes, Director, Department of Management and Budget

**Fiscal Impact Statement**  
**Council Bill xx-13, Taxation – Fuel Energy Tax**

**1. Legislation Summary.**

The legislation exempts from the fuel energy tax energy that is generated from a renewable energy source. The legislation would exempt solar electricity from the fuel tax.

**2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget.**

**Includes source of information, assumptions, and methodologies used.**

The Bill does not have an expenditure impact. Currently, the County does not collect the fuel energy tax on energy generated by solar electricity systems. The County Attorney, however, has determined that electricity generated by solar systems is subject to the tax. Based on currently available industry data, the best estimate is that \$108,500 in fuel energy tax revenue would be exempt under this Bill. Since the solar industry continues to expand, the tax exemption could increase over time.

**3. Revenue and expenditure estimates covering at least the next 6 fiscal years.**

Revenues for the next six fiscal years are difficult to project, given that solar energy generation is a relatively small segment of energy generation in the County. Assuming annual growth of 10 percent, uncollected fuel energy tax revenue is estimated to be \$837,170 over six years.

**4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

This legislation does not affect retiree pension or group insurance costs.

**5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

The legislation does not authorize future spending.

**6. An estimate of the staff time needed to implement the bill.**

There is no additional staff time needed to implement the bill.

**7. An explanation of how the addition of new staff responsibilities would affect other duties.**

The legislation does not establish new staff responsibilities.

**8. An estimate of costs when an additional appropriation is needed.**

Not applicable.

**9. A description of any variable that could affect revenue and cost estimates.**

A key variable would be the number of solar electricity systems installed in the County. The estimate is based on Maryland Energy Administration data indicating 6500 kW of solar capacity in 2012. Growth in solar electricity capacity will result in increased fuel energy tax exemptions.

**10. Ranges of revenue or expenditures that are uncertain or difficult to project.**

See item number 9 above.

**11. If a bill is likely to have no fiscal impact, why that is the case.**

See numbers 2 and 3 above.

**12. Other fiscal impacts or comments.**

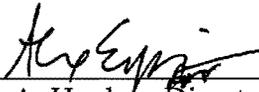
Not applicable.

**13. The following contributed to and concurred with this analysis:**

Erika Lopez-Finn, Office of Management and Budget;

Robert Hagedoorn, Department of Finance;

David Platt, Department of Finance

  
\_\_\_\_\_  
Jennifer A. Hughes, Director  
Office of Management and Budget

5/30/2013  
Date

**Economic Impact Statement**  
**Bill xx-13, Fuel Energy Tax**

**Background:**

This legislation would create an exemption from the fuel energy tax for energy that is generated from a renewable energy sources located within the County, primarily solar photovoltaic panels, and generally amend County law regarding the fuel energy tax

**1. The sources of information, assumptions, and methodologies used.**

- Maryland Energy Administration (MEA) solar grant database and Montgomery County Department of Environmental Protection (DEP) data on large systems being installed.
- DEP estimates that as of 2013 current installed solar panel capacity is 6,500 kilowatts (kW), of which approximately 5,500 kW is residential and 1,000 kW is commercial. A precise forecast of additional installed capacity is difficult; although it is expected to increase through 2016, when current federal incentives are due to expire. Other sources of clean energy subject to the exemption are minor compared to solar.

**2. A description of any variable that could affect the economic impact estimates.**

- The amount of additional capacity from the installation of solar panels.
- The price of electricity from energy distributors to residential and commercial customers.
- The County's tax rate for electricity usage by residential and commercial customers.

**3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.**

- The legislation may stimulate investment for solar panels by residential and commercial users because it clarifies the imposition of the County's energy tax on the generation of electricity from solar panels. The Bill exempts the generation of electricity from solar panels from the County's energy tax. That exemption would decrease energy expenses and increase incomes for both residential and commercial users of solar panels all other things being equal.
- With the exemption from the County's energy tax, the demand for solar panels could increase all other things being equal. Such an increase in demand would benefit local supply and construction companies and increase business income.

**Economic Impact Statement  
Bill xx-13, Fuel Energy Tax**

- While the stimulation in investment for solar panels may have an economic impact attributed to the exemption, the total impact on the County's economy through employment, spending, investment, incomes, and property values may be modest.

**4. If a Bill is likely to have no economic impact, why is that the case?**

- The Bill could have a modest positive economic impact.

**5. The following contributed to and concurred with this analysis: David Platt and Mike Coveyou, Finance**

  
\_\_\_\_\_  
Joseph F. Beach, Director  
Department of Finance

5/30/13  
Date

(3) the Commission approves under § 7-704.1 of this subtitle.

(l) *Qualifying biomass*. — (1) “Qualifying biomass” means a nonhazardous, organic material that is available on a renewable or recurring basis, and is:

(i) waste material that is segregated from inorganic waste material and is derived from sources including:

1. except for old growth timber, any of the following forest-related resources:

- A. mill residue, except sawdust and wood shavings;
- B. precommercial soft wood thinning;
- C. slash;
- D. brush; or
- E. yard waste;

2. a pallet, crate, or dunnage;

3. agricultural and silvicultural sources, including tree crops, vineyard materials, grain, legumes, sugar, and other crop by-products or residues; or

4. gas produced from the anaerobic decomposition of animal waste or poultry waste; or

(ii) a plant that is cultivated exclusively for purposes of being used at a Tier 1 renewable source or a Tier 2 renewable source to produce electricity.

(2) “Qualifying biomass” includes biomass listed in paragraph (1) of this subsection that is used for co-firing, subject to § 7-704(d) of this subtitle.

(3) “Qualifying biomass” does not include:

- (i) unsegregated solid waste or postconsumer wastepaper; or
- (ii) an invasive exotic plant species.

(m) *Thermal biomass system*. — “Thermal biomass system” means a system that:

(1) uses:

(i) primarily animal manure, including poultry litter, and associated bedding to generate thermal energy; and

(ii) food waste or qualifying biomass for the remainder of the feedstock;

(2) is used in the State; and

(3) complies with all applicable State and federal statutes and regulations, as determined by the appropriate regulatory authority.

(n) *Renewable energy credit*. — “Renewable energy credit” or “credit” means a credit equal to the generation attributes of 1 megawatt-hour of electricity that is derived from a Tier 1 renewable source or a Tier 2 renewable source that is located:

(1) in the PJM region;

(2) outside the area described in item (1) of this subsection but in a control area that is adjacent to the PJM region, if the electricity is delivered into the PJM region; or

(3) on the outer continental shelf of the Atlantic Ocean in an area that:

(i) the United States Department of the Interior designates for leasing after coordination and consultation with the State in accordance with § 388(a) of the Energy Policy Act of 2005; and

(ii) is between 10 and 30 miles off the coast of the State.

(o) *Renewable energy portfolio standard.* — “Renewable energy portfolio standard” or “standard” means the percentage of electricity sales at retail in the State that is to be derived from Tier 1 renewable sources and Tier 2 renewable sources in accordance with § 7-703(b) of this subtitle.

(p) *Renewable on-site generator.* — “Renewable on-site generator” means a person who generates electricity on site from a Tier 1 renewable source or a Tier 2 renewable source for the person’s own use.

(q) *Solar water heating system.* — (1) “Solar water heating system” means a system that:

(i) consists of glazed liquid-type flat-plate or tubular solar collectors or concentrating solar thermal collectors as defined and certified to the OG-100 standard of the Solar Ratings and Certification Corporation;

(ii) generates energy using solar radiation for the purpose of heating water; and

(iii) does not feed electricity back to the electric grid.

(2) “Solar water heating system” does not include a system that generates energy using solar radiation for the sole purpose of heating a hot tub or swimming pool.

(r) *Tier 1 renewable source.* — “Tier 1 renewable source” means one or more of the following types of energy sources:

(1) solar energy, including energy from photovoltaic technologies and solar water heating systems;

(2) wind;

(3) qualifying biomass;

(4) methane from the anaerobic decomposition of organic materials in a landfill or wastewater treatment plant;

(5) geothermal, including energy generated through geothermal exchange from or thermal energy avoided by, groundwater or a shallow ground source;

(6) ocean, including energy from waves, tides, currents, and thermal differences;

(7) a fuel cell that produces electricity from a Tier 1 renewable source under item (3) or (4) of this subsection;

(8) a small hydroelectric power plant of less than 30 megawatts in capacity that is licensed or exempt from licensing by the Federal Energy Regulatory Commission;

(9) poultry litter-to-energy;

(10) waste-to-energy;

(11) refuse-derived fuel; and

(12) thermal energy from a thermal biomass system.

(s) *Tier 2 renewable source.* — “Tier 2 renewable source” means hydroelectric power other than pump storage generation. (2004, ch. 487, § 1; ch. 488, § 1; 2005, ch. 266; 2007, chs. 119, 120; 2008, ch. 125, § 2; ch. 126, § 2; chs. 127, 128, 135, 136; 2011, chs. 65, 407, 408, 519; 2012, chs. 556, 557, 635; 2013, ch. 3, § 1; chs. 341, 342.)

**Effect of amendments.**

Section 2, chs. 125 and 126, Acts 2008, effective January 1, 2011, made identical changes.

Each reenacted (a) without change; and deleted “or in a state that is adjacent to the PJM region” at the end of (i)(1).

**Testimony on Behalf of County Executive Isiah Leggett  
Regarding Expedited Bill 22-13, Fuel Energy Tax - Renewable Energy Resources**

**Stan Edwards, Chief  
Division of Environmental Policy & Compliance  
Department of Environmental Protection**

**July 30, 2013**

Good afternoon. My name is Stan Edwards. I am the Chief of the Division of Environmental Policy and Compliance in the Department of Environmental Protection. I am testifying on behalf of the County Executive in support of Expedited Bill 22-13, Fuel Energy Tax - Renewable Energy Resources.

Under current law, the fuel-energy tax applies to all electricity that is delivered for final consumption in the County, and the tax is imposed on persons who distribute, produce, transmit, manufacture or supply electricity in the County. When the tax was adopted in 1971, electricity subject to taxation was generated by large, fossil fuel-based power plants and distributed to users in the County by regulated public utilities. To a large extent, this remains true today. However, with the advent of new technologies and financing mechanisms for solar photovoltaic systems, a number of homes and businesses in the County are now generating electricity on-site, supplementing the power delivered by their utilities. Because this on-site power does not come through the utility grid, it has not historically been taxed.

However, based on a recent review of the fuel-energy tax law by the Office of the County Attorney, it was determined that electricity generated by such systems is subject to the tax. Although electricity produced by these systems does not come through the utility grid, which is the only current mechanism for imposing the tax, current law does not expressly exempt this method of electricity production from taxation.

To our knowledge, when the fuel-energy tax was created in 1971, its applicability to on-site solar generated electricity was not considered by the County Council -- and the County has never collected revenues on this kind of electricity. Applying the fuel-energy tax to this kind of solar generated electricity would raise several issues. First, imposition of the tax could dramatically decrease demand for solar, which is contrary to previous County policy positions encouraging such systems. The solar industry has been marketing systems assuming the tax does not apply, since it has never been charged. This has been a significant incentive to install solar, including systems on County facilities.

Second, since these systems are "off the grid," collection of the tax would require the filing of some form of tax return and tax remittance to the County. Enforcement would require development of a system to track solar installations and confirm their generating capacity. While collection of the tax might result in additional revenue to the County, currently estimated to be \$100,000 to \$200,000, much if not all of this would be spent to collect, verify, and enforce the tax.

Exempting on-site solar systems from the tax would encourage continued expansion of solar systems in the County. Such systems benefit the environment by reducing greenhouse gas emissions and local criteria air pollutants, create jobs for local companies and reduce the strain on the utility grid, which is a priority in the region. Larger solar systems combined with new storage technologies may allow some organizations to minimize the risk of power failures. Finally, solar energy may provide more predictable energy costs for businesses and individuals.

I urge you to support Expedited Bill 35-12 and would be happy to address any questions the Council may have about the bill.



A PHI Company

Maryland Affairs  
701 Ninth Street, NW  
Washington, DC 20068  
202-872-2524 Phone

**Jerry Pasternak**  
Vice President Pepco Region - Maryland

July 30, 2013

The Honorable Nancy Navarro  
President, Montgomery County Council  
100 Maryland Avenue  
Rockville, Maryland 20850

Re: Expedited Bill 22-13, Taxation - Fuel Energy Tax - Renewable Energy Sources

Dear President Navarro:

The Potomac Electric Power Company (Pepco) submits the following comments on Expedited Bill 22-13, Taxation - Fuel Energy Tax - Renewable Energy Sources.

At Pepco, environmental stewardship and sustainability are fundamental principles that guide our business and enable our success, both for today and into the future. We are committed not only to delivering safe and reliable electricity, but also to helping the jurisdictions we serve become models of innovative environmental policies and practices.

Renewable energy, such as wind and solar, has the potential to provide us with cleaner air, a more diverse energy portfolio, and less dependence on foreign fossil fuels. Many of our customers generate their own electricity using "green" or renewable resources, such as solar panels. We partner with customers who want to install renewable-powered generators through our Green Power Connection™, a team of specialists dedicated to working with customers to ensure safety and compatibility of their systems with ours, as well as the installation of a net energy capable meter.

We support the intent of this bill to encourage generation and consumption of renewable energy by lowering its cost through fuel-energy tax relief. We have been working with both Executive and Council staff on how to best implement that laudable goal, and we look forward to continuing that dialogue so that we can agree on amended language that establishes a mechanism to implement the goal in a manner that addresses our concerns.

Lastly, given the County's fuel-energy tax, we support the dedicated use of those revenues on energy-related matters, rather than on General Fund expenditures. Incentivizing county residents to generate and consume renewable energy is one such measure and a step in the right direction.

Sincerely,



Jerry Pasternak

Testimony of Joyce Breiner  
Public Hearing - Expedited Bill 22-13, Taxation - Fuel Energy Tax - Renewable Energy Sources  
July 30, 2013

Council President Berliner and members of the County Council, thank you for the opportunity to testify in favor of the proposed Expedited Bill 22-13, Taxation - Fuel Energy Tax - Renewable Energy Sources.

In Feb 2013, my husband and I had a 12.48 kW residential solar system installed on our home by Standard Solar whose headquarters is in Rockville. As of yesterday, we have produced 7,506 kWh of electricity and currently carry a credit with the electric utility of 980 kWh. In addition to being on target to produce 95% or more of our home's annual electricity needs, the solar system meets most of our transportation fuel needs as well, in the form of electricity for our two electric cars.

We chose Standard Solar, in part, because they are a local company with local jobs we could support.

Promoting distributed renewable energy sources is the name of the game in this time of increased awareness of the urgent need to do what individuals can do to address climate change. This bill does that.

With fiscal budgets still tight, one of the most effective and advantageous things the county government can do to promote this effort is to refrain from taxing residents, businesses and local governments who take these bold moves toward renewables.

As you may know, the Town of Poolesville is also negotiating the lease of a 1.1 mWh solar array to produce enough energy to cover the town government's 6 largest electric bills. Passing Bill 22-13 would benefit my town and its citizens as well.

To address the climate change issue, individuals, towns, and governments from the county to the national level all need to step up to the plate. Our children and grandchildren will one day be asking what we did when we understood the challenges of climate change. The passing of this bill will be one of the many things we hopefully will be able to point to having accomplished.

Please pass this bill without delay. Thank you.



OFFICES OF THE COUNTY EXECUTIVE

Isiah Leggett  
County Executive

Timothy L. Firestine  
Chief Administrative Officer

MEMORANDUM

July 18, 2014

TO: Roger Berliner, Chair  
Transportation & Environment Committee

FROM: Bonnie Kirkland, Assistant Chief Administrative Officer  
Offices of the County Executive

SUBJECT: Expedited Bill 22-13: Taxation - Fuel Energy Tax - Renewable Energy Sources

In the Transportation and Environment Committee's meeting of January 23, 2014 on the subject legislation you asked whether it would be a feasible and effective incentive for consumers to choose "clean" electricity if the County exempted such consumers from the fuel energy tax. There are a number of operational and fiscal issues associated with this proposal, discussed below.

**Operational Challenges:**

As you are aware, the County fuel energy tax, authorized under Section 52-14 of the County Code applies to "every person transmitting, distributing, manufacturing, producing, or supplying electricity...in the County." This excise tax applies to electricity generators and is passed through to end users based on the amount of electricity they use. To implement an exemption from the pass through cost of the tax, the utility would need to know if the end user has selected an alternative clean electricity provider.

A utility like PEPCO knows which customers have selected an alternative electricity provider, but they do not have any information on whether the alternative product is clean electricity. Approximately 30% of PEPCO's over 300,000 residential customers and 45% of the nearly 27,000 commercial customers use an alternative provider.

In order to pass through the energy tax exemption to residential and commercial customers, it would be necessary for PEPCO and other utilities subject to the fuel energy tax to collect additional information from customers and revamp their billing systems and procedures. Depending on whether this required any changes to prevailing tariffs, this may also require authorization from the Public Service Commission.

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**Fiscal Impact**

Given the large proportion of residential and commercial customers who have switched to alternative providers, the triple digit growth in this market over the past five years and the assumed predisposition of these customers to select clean energy providers, the fiscal impact of the proposed exemption in just one year could be quite substantial. Using data on the different types of electric customers, their typical electricity consumption patterns, and historical energy tax revenues, the table below shows a reasonable estimated range of lost tax revenues if a full exemption from the tax was provided:

Customer Type	Low Estimate		High Estimate	
	% Clean	Lost Revenue	% Clean	Lost Revenue
Residential	10%	\$6,600,000	20%	\$13,200,000
Non-Residential				
Small	10%	\$4,000,000	20%	\$8,000,000
Medium	5%	\$1,800,000	10%	\$3,600,000
Large	1%	\$600,000	2%	\$1,200,000
<b>Total</b>		<b>\$13,000,000</b>		<b>\$25,800,000</b>

In light of the considerable operational and fiscal issues that need to be addressed, the County Executive does not believe additional exemptions from the fuel energy tax are ready for implementation in FY15 and urges the Committee and Council to approve Expedited Bill 22-13 in its current form. We are available to discuss these issues in more detail at the Committee's earliest convenience.

cc:

Timothy L. Firestine, Chief Administrative Officer  
Jennifer Hughes, Director, Office of Management and Budget  
Joseph F. Beach, Director, Department of Finance  
David Dise, Director, Department of General Services  
Robert Hoyt, Director, Department of Environmental Protection

including the combined use from all individually leased or owned units and all common areas.

(b) *Authorization of use, requirements.* — The Commission may authorize the use of a master meter in a residential multiple occupancy building for heating, ventilation, and air conditioning services without requiring individual metering or submetering for heating, ventilation, and air conditioning services as provided under § 7-303 or § 7-304 of this subtitle if:

(1) the utility bill for heating, ventilation, and air conditioning services for each individually leased or owned occupancy unit is included in the rent for that unit;

(2) the Commission is satisfied that the use of the master meter for heating, ventilation, and air conditioning services will result in a net savings of energy over the energy savings that would result from individual metering or submetering for heating, ventilation, and air conditioning services; and

(3) each individually leased or owned occupancy unit:

- (i) has individual metered service for other energy services; and
- (ii) directly receives the utility bill for the other energy services.

(c) *Review of proposed allocation of expenses.* — Before authorizing the use of a master meter for heating, ventilation, and air conditioning services, the Commission may review the proposed allocation of heating, ventilation, and air conditioning system expenses among individual units and common areas served by the master meter.

(d) *Inspection and testing.* — In accordance with § 7-301 of this subtitle, an electric company or a gas company may inspect and test a master meter authorized for use by the Commission under this section. (2010, chs. 314, 315; 2012, chs. 282, 283.)

**Effect of amendments.** — Chapters 282 and 283, Acts 2012, effective October 1, 2012, made identical changes. Each reenacted the section without change. 283, Acts 2012, provides that "this Act shall take effect July 1, 2010." Chapters 282 and 283, Acts 2012, deleted the prior abrogation of amendment.

**Editor's note.** — Section 2, chs. 314 and 315, Acts 2010, as amended by chs. 282 and

## § 7-306. Net energy metering.

(a) *Definitions.* — (1) In this section the following words have the meanings indicated.

(2) "Biomass" means "qualified biomass" as defined in § 7-701 of this title.

(3) "Closed conduit hydro" means a hydroelectric generating facility that:

- (i) generates electricity within existing piping or limited adjacent piping of a potable water supply system;
- (ii) is owned or operated by a municipal corporation or public water authority; and
- (iii) is designed to produce less energy than is consumed to operate the water supply system.

(4) "Eligible customer-generator" means a customer that owns and operates, leases and operates, or contracts with a third party that owns and operates a biomass, micro combined heat and power, solar, fuel cell, wind, or closed conduit hydro electric generating facility that:

- (i) is located on the customer's premises or contiguous property;
- (ii) is interconnected and operated in parallel with an electric company's transmission and distribution facilities; and
- (iii) is intended primarily to offset all or part of the customer's own electricity requirements.

(5) "Fuel cell" means an electric generating facility that:

(i) includes integrated power plant systems containing a stack, tubular array, or other functionally similar configuration used to electrochemically convert fuel to electric energy; and

(ii) may include:

1. an inverter and fuel processing system; and
2. other plant equipment to support the plant's operation or its energy conversion, including heat recovery equipment.

(6) "Micro combined heat and power" means the simultaneous or sequential production of useful thermal energy and electrical or mechanical power not exceeding 30 kilowatts.

(7) "Net energy metering" means measurement of the difference between the electricity that is supplied by an electric company and the electricity that is generated by an eligible customer-generator and fed back to the electric grid over the eligible customer-generator's billing period.

(8) "Net excess generation" means the amount of the electricity generated by an eligible customer-generator that is in excess of the electricity consumed by the eligible customer-generator and that results in a negative kilowatt-hour reading at the end of the eligible customer-generator's billing cycle.

(b) *Legislative intent.* — The General Assembly finds and declares that a program to provide net energy metering for eligible customer-generators is a means to encourage private investment in renewable energy resources, stimulate in-State economic growth, enhance continued diversification of the State's energy resource mix, and reduce costs of interconnection and administration.

(c) *Meter requirement.* — An electric company serving an eligible customer-generator shall ensure that the meter installed for net energy metering is capable of measuring the flow of electricity in two directions.

(d) *Standard contract or tariff; eligibility.* — The Commission shall require electric utilities to develop a standard contract or tariff for net energy metering and make it available to eligible customer-generators on a first-come, first-served basis until the rated generating capacity owned and operated by eligible customer-generators in the State reaches 1,500 megawatts.

(e) *Terms of contract or tariff; prohibited charges.* — (1) A net energy metering contract or tariff shall be identical, in energy rates, rate structure, and monthly charges, to the contract or tariff that the customer would be assigned if the customer were not an eligible customer-generator.

(2) (i) A net energy metering contract or tariff may not include charges that would raise the eligible customer-generator's minimum monthly charge above that of customers of the rate class to which the eligible customer-generator would otherwise be assigned.

(ii) Charges prohibited by this paragraph include new or additional

demand charges, standby charges, customer charges, and minimum monthly charges.

(f) *Calculation.* — (1) The electric company shall calculate net energy metering in accordance with this subsection.

(2) Net energy produced or consumed on a regular basis shall be measured in accordance with standard metering practices.

(3) If electricity supplied by the grid exceeds electricity generated by the eligible customer-generator during a month, the eligible customer-generator shall be billed for the net energy supplied in accordance with subsection (e) of this section.

(4) If electricity generated by the eligible customer-generator exceeds the electricity supplied by the grid, the eligible customer-generator shall be billed only customer charges for that month in accordance with subsection (e) of this section.

(5) (i) An eligible customer-generator under paragraph (4) of this subsection may accrue net excess generation for a period:

1. not to exceed 12 months; and
2. that ends with the billing cycle that is complete immediately prior to the end of April of each year.

(ii) The electric company shall carry forward net excess generation until:

1. the eligible customer-generator's consumption of electricity from the grid eliminates the net excess generation; or
2. the accrual period under subparagraph (i) of this paragraph expires.

(iii) 1. The dollar value of net excess generation shall be equal to the generation or commodity portion of the rate that the eligible customer-generator would have been charged by the electric company averaged over the previous 12-month period ending with the billing cycle that is complete immediately prior to the end of April multiplied by the number of kilowatt-hours of net excess generation.

2. For customers served by an electricity supplier, the dollar value of the net excess generation shall be equal to the generation or commodity rate that the customer would have been charged by the electricity supplier multiplied by the number of kilowatt-hours of net excess generation.

(6) (i) On or before 30 days after the billing cycle that is complete immediately prior to the end of April of each year, the electric company shall pay each eligible customer-generator for the dollar value of any accrued net excess generation remaining at the end of the previous 12-month period ending with the billing cycle that is complete immediately prior to the end of April.

(ii) Within 15 days after the date the eligible customer-generator closes the eligible customer-generator's account, the electric company shall pay the eligible customer-generator for the dollar value of any accrued net excess generation remaining at the time the eligible customer-generator closes the account.

(7) (i) Notwithstanding paragraphs (5) and (6) of this subsection, an eligible customer-generator served by an electric cooperative that serves a

population of less than 250,000 in its distribution territory may choose to be paid for the dollar value of net excess generation remaining at the end of each month instead of at the end of the accrual period specified under paragraph (5)(i) of this subsection.

(ii) If an eligible customer-generator chooses to be paid for the dollar value of net excess generation remaining at the end of each month:

1. the customer-generator may accrue net excess generation on a monthly basis;

2. the dollar value of the net excess generation shall be equal to the generation or commodity portion of the rate that the eligible customer-generator would have been charged by the electric company for the previous month; and

3. on or before 30 days after the end of each month, the electric cooperative shall pay the eligible customer-generator for the dollar value of net excess generation remaining at the end of the previous month.

(g) *Metering and credit for production in excess of consumption.* — (1) The generating capacity of an electric generating system used by an eligible customer-generator for net metering may not exceed 2 megawatts.

(2) An electric generating system used by an eligible customer-generator for net metering shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and Underwriters Laboratories.

(3) The Commission may adopt by regulation additional control and testing requirements for eligible customer-generators that the Commission determines are necessary to protect public safety and system reliability.

(4) An electric company may not require an eligible customer-generator whose electric generating system meets the standards of paragraphs (2) and (3) of this subsection to:

- (i) install additional controls;
- (ii) perform or pay for additional tests; or
- (iii) purchase additional liability insurance.

(5) An eligible customer-generator or the eligible customer-generator's assignee shall own and have title to all renewable energy attributes or renewable energy credits associated with any electricity produced by its electric generating system.

(h) *Reports.* — On or before September 1 of each year, the Commission shall report to the General Assembly, in accordance with § 2-1246 of the State Government Article, on the status of the net metering program under this section, including:

(1) the amount of capacity of electric generating facilities owned and operated by eligible customer-generators in the State by type of energy resource;

(2) based on the need to encourage a diversification of the State's energy resource mix to ensure reliability, whether the rated generating capacity limit in subsection (d) of this section should be altered; and

(3) other pertinent information. (An. Code 1957, art. 78, § 54M; 1998, ch. 8, § 2; 1999, ch. 535; 2004, ch. 542; 2005, ch. 266; 2006, chs. 121, 122; 2007, ch.