Agenda Item 8
April 25, 2017
Public Hearing

MEMORANDUM

April 21, 2017

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: **Public Hearing:** Bill 9-17, Fuel-Energy Tax – Exemptions - Amendments

Bill 9-17, Fuel-Energy Tax – Exemptions - Amendments, sponsored by Lead Sponsor Councilmember Leventhal and Co-sponsors Council President Berliner, Councilmembers Elrich, Hucker, Katz, Rice, Council Vice President Riemer, and Councilmember Navarro, was introduced on April 4. A joint Government Operations and Fiscal Policy/Transportation, Infrastructure, Energy and Environment Committee worksession is tentatively scheduled for May 4 at 9:30 a.m.

Bill 9-17 would exempt energy generated by a Community Solar Energy Generating System (CSEGS) by exempting energy that is generated from a renewable source located in the same electric service territory as the subscriber using the energy and subject to a virtual net energy metering agreement (as defined in State law) with a public utility.

Background

The County fuel-energy tax is imposed on every person transmitting, distributing, manufacturing, producing, or supplying electricity in the County. For an electric company, the tax is applied to the net consumption used to calculate each consumer bill and is passed through to end users. Current law already exempts energy produced from a renewable source in the County and 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. However, this exemption only applies to the energy produced from a renewable source, such as solar panels, located on the customer's property or contiguous to the customer's property due to the definition in State law for "net energy metering" generated by an "eligible customer-generator."

A CSEGS credits its generated electricity, or the value of its generated electricity, to the bills of the subscribers to that system through a "virtual net energy metering" agreement, as defined in State law. This type of facility can be located anywhere in the same electric service area, and therefore, does not meet the eligibility requirements for the current fuel-energy tax exemption for renewable energy. The County Attorney's Office has opined that the County fuel-energy tax would apply to energy generated by a CSEGS and sold to a County customer under a virtual net energy metering agreement. See the County Attorney letter to the Public Service Commission at ©4-7. Bill 9-17 would expand the current exemption to include renewable energy produced by a

community solar facility and sold to a County customer under a virtual net energy metering agreement. The Bill would permit a County resident who is unable to install solar panels on the customer's property, such as a renter or an owner of a cooperative or condominium, to purchase solar energy from a community solar facility without paying the County fuel-energy tax.

The Maryland Public Service Commission (PSC) established a CSEGS Pilot Program for utilities by adopting regulations under the Code of Maryland Regulations (COMAR). On February 15, 2017, the PSC issued an order concerning the tariffs to be used under the CSEGS Pilot Program. See ©8. Under COMAR, an electric company may choose to apply the appropriate kilowatt-hour credit to a subscriber's bill as either a reduction in metered kilowatt-hour use or a dollar credit to the subscriber's billed amount. However, the community solar bill credit must be of the same value to the subscriber using either method. An electric company that applies the community solar bill credit as a dollar credit would remit the County fuel-energy tax applied to the net consumption, but must pass through to the end user a dollar credit that would make the value of the community solar bill credit the same as if the utility had reduced the net consumption (and the fuel-energy tax owed) by applying the credit in kilowatt-hours. In the order, the PSC noted that Baltimore Gas and Electric Company stated it would recover any Montgomery County tax from all its distribution customers, but the PSC stated that it believes the County fuel-energy tax should only be recovered from Montgomery County distribution customers. Bill 9-17 would expand the County fuel-energy tax exemption to all CSEGS subscribers without regard to the type of billing by the utility.

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Bill No. 9-17
Concerning: Fuel-Energy Tax – Exemptions - Amendments
Revised: 4/7/ 2017 Draft No. 7
Introduced: April 4, 2017
Expires: October 4, 2018
Enacted:
Executive:
Effective:
Sunset Date: None
Ch. ____, Laws of Mont. Co. ____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Leventhal
Co-sponsors: Council President Berliner, Councilmembers Elrich, Hucker, Katz, Rice, Council Vice President Riemer, and Councilmember Navarro

AN ACT to:

(1) exempt the energy generated by a renewable source in the County by a community solar energy generating system through a virtual net energy metering agreement from the County fuel-energy tax; and
(2) generally amend the exemptions from the County fuel-energy tax.

By amending
Montgomery County Code
Chapter 52, Taxation
Section 52-14

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

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

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

52-14. Fuel-energy tax.

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

* * *

(4) The tax does not apply to energy that is generated from a renewable source located:

(A) in the County and 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; or

(B) in the same electric service territory as the subscriber using the energy and subject to a virtual net energy metering agreement (as defined in state law) with a public utility.

Renewable source means a "Tier 1 renewable source" as defined in Section 7-701(l) of the Public Utilities Article of the Maryland Code or any successor provision.

* * *

Approved:

Roger Berliner, President, County Council Date

Approved:

Isiah Leggett, County Executive Date

LEGISLATIVE REQUEST REPORT

Bill 9-17
Fuel-Energy Tax – Exemptions - Amendments

DESCRIPTION: Bill 5-17 would exempt the energy generated by a renewable source in the County by a community solar energy generating system located in the same electric service territory as the subscriber using the energy and subject to a virtual net energy metering agreement (as defined in state law) with a public utility.

PROBLEM: The current exemption for energy generated by a renewable source from the County fuel energy tax only applies if the energy is produced on the customer's property or contiguous property. The Public Service Commission has approved a pilot program for community solar facilities that would sell electric energy to customers in the County from a renewable source not located on the customer's property. Under current law, the energy produced by a community solar facility would not be exempt from the County fuel energy tax.

GOALS AND OBJECTIVES: The goal is to exempt energy produced by a community solar facility from the County fuel energy tax in order to encourage customers to purchase this type of renewable energy.

COORDINATION: County Attorney, Department of Environmental Protection

FISCAL IMPACT: Office of Management and Budget

ECONOMIC IMPACT: To be researched.

EVALUATION: N/A

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Robert H. Drummer, Senior Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: Applicable.

PENALTIES: None

Isiah Leggett
County Executive

OFFICE OF THE COUNTY ATTORNEY

Marc P. Hansen
County Attorney

October 26, 2016

David J. Collins
Executive Secretary
Public Service Commission of Maryland
William Donald Schaefer Tower
6 St. Paul Street, 16th Floor
Baltimore, Maryland 21202

Re: RM 56 – Community Solar
Mail Log Nos. 198358, 198381, and 198406

Dear Mr. Collins:

This letter is in response to the filings by Potomac Edison ("PE"), Baltimore Gas and Electric Company ("BGE") and Potomac Electric Power Company ("Pepco") regarding their Compliance Plans and Relevant Tariffs for Implementing the Community Solar Energy Generating Systems ("CSEGS") Pilot Programs (collectively "Compliance Plans"). PE's Compliance Plan (Mail Log No. 198358), BGE's Compliance Plan (Mail Log No. 198381),[1] and Pepco's Compliance Plan (Mail Log No. 198406), were all filed on September 1, 2016 pursuant to the Code of Maryland Regulations ("COMAR") Section 20.62.01.01(A). Montgomery County, Maryland ("Montgomery County") files these comments to address how it interprets, and intends to enforce, the application of Montgomery County's Fuel-Energy Tax ("FET") on the CSEGS subscription credits applied to subscribers' bills. This was previously discussed with the Commissioners during the Rulemaking 56 ("RM 56") hearing on February 12, 2016 (see enclosed transcript).

In sum, as discussed in the Rule Making on February 12, 2016, the subscription dollar credit would be applied to the bill after the FET tax is applied to the net consumption.

Subscription Credits

Under COMAR 20.62.02.04(C)(1), "an electric company may choose to apply the appropriate kilowatt-hour credit...as either a reduction in metered kilowatt-hour use or a dollar credit to the subscriber's billed amount." It appears that all three utilities are planning on applying a dollar credit to the bills.

[1] BGE filed Errata to Compliance Plan of Baltimore Gas and Electric Company on September 16, 2016 (ML # 199336).

a. Potomac Edison – The CSEGS Tariff filed with PE's Compliance Plan states:

> A Subscriber will receive a bill credit for their subscribed percentage of the monthly kilowatt-hour output of the CSEGS.... The monthly dollar credit on the Subscriber's bill will be the equivalent of their subscription percentage of the CSEGS monthly kilowatt-hour generation amount applied to all kilowatt-hour charges on the Subscriber's bill. The Subscriber's bill credit will be used to offset the Subscriber's total bill. PE CSEGS Tariff, p. 33-3.

b. BGE – BGE's Compliance Plan states "BGE will provide the credit as a dollar amount instead of a kWh [kilowatt hour] credit." BGE Compliance Plan, p. 2. BGE will apply a credit "that will be the equivalent of their subscription percentage of the CSEGS's monthly generation amount applied to all energy charges on the Subscriber's bill." BGE Compliance Plan, p. 2. There will be a cap on the credit amount of the lesser of either the Subscriber's actual usage or subscription amount. BGE Compliance Plan, p. 4.

c. Pepco – Pepco explains in its Compliance Plan that it "will provide the credit as a dollar amount. The subscriber will receive a monthly dollar credit on their bill that will be the equivalent of their subscription percentage of the CSEGS's monthly generation amount applied to all volumetric charges on the subscriber's bill." Pepco Compliance Plan p. 2. The credit will offset the Subscriber's total bill. Pepco Tariff Schedule "CNM", p. 57.1.

Montgomery County Fuel-Energy Tax

Montgomery County imposes a Fuel-Energy tax "on every person transmitting, distributing, manufacturing, producing, or supplying electricity...in the County." Montgomery County Code, Section 52-14(a) (1). The tax is applied to the net consumption used to calculate the bill. Montgomery County Code, Section 52-14(a) (3). PE, BGE and Pepco have all stated that they will be applying the subscription credits as a dollar amount. Therefore, as discussed in the Rule Making on February 12, 2016, the subscription dollar credit would be applied to the bill after the FET tax is applied to the net consumption. Volume IV, Tr. p. 773:23 – p. 776: 13.

There is an exemption to the County's FET for energy generated from a renewable source, however, as currently written, that exemption would not apply to CSEGS's. The exemption states:

> The tax does not apply to energy that is generated from a renewable source in the County and 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. Montgomery County Code, Section 52-14(a)(4).

Maryland defines *net energy metering* as "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." Public Utilities Article of the Annotated Code of Maryland ("PUA") Section 7-306 (a)(7). An *eligible customer–generator* is defined as:

> ...a customer that owns and operates, leases and operates, or contracts with a third party that owns and operates a ... 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. PUA Section 7-306 (a)(4).

A CSEGS does not have to be on the customer's premises. In fact, it can merely be "in the same electric service territory." PUA Section 7-306.2 (a)(3)(ii). A CSEGS system "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." PUA Section 7-306.2 (a)(3)(iv) (emphasis added). *Virtual net energy metering*, which is entirely different from net energy metering, is defined as:

> ...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. (PUA Section 7-306.2 (a)(9).

Thus, the exemption to the County's FET for energy generated from a renewable source, would not apply to CSEGS's.

Montgomery County firmly supports community solar and has participated in the RM56 proceedings. We appreciate the opportunity to further discuss how the County interprets, and intends to enforce, the application of Montgomery County's Fuel-Energy Tax ("FET") on the CSEGS subscription credits applied to subscribers' bills.

Please feel free to contact me if you have any questions regarding this matter.

Respectfully submitted,

Lisa Brennan
Associate County Attorney

Enclosure

cc: Amy M. Klodowski, Potomac Edison
Kimberly A. Curry, BGE
Matthew K. Segers, Pepco
Phillip VanderHeyden, PSC Staff
Leslie Romine, PSC Staff
Paula Carmody, OPC

STATE OF MARYLAND

PUBLIC SERVICE COMMISSION

#4, 1/11/17 AM; ML# 198358, RR-2932
#5, 1/11/17 AM; ML# 198406, RR-2934
#6, 1/11/17 AM; ML# 198381, RR-2933

February 15, 2017

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Dear Mss. Klodowski and Curry and Mr. Segers:

The Maryland Public Service Commission ("Commission") has reviewed the revised tariff pages and Compliance Plans implementing the Community Solar Energy Generating Systems ("CSEGS") Pilot Program filed on September 1, 2016 by The Potomac Edison Company ("PE"), Potomac Electric Power Company ("Pepco"), Delmarva Power & Light Company ("Delmarva"), and Baltimore Gas and Electric Company ("BGE") (collectively the "Companies") in compliance with COMAR 20.62.01.03.

After hearing from the Companies, the Commission's Technical Staff, Office of People's Counsel and other stakeholders[1] at the January 11, 2017 Administrative Meeting regarding the proposed tariffs implementing the Community Solar Energy Generating Systems Pilot Program, the Commission took this matter under advisement. Staff's comments identified two outstanding policy issues: Project Selection Oversight; and Annual Project Selection Process.[2] Staff and OPC also identified a number of other technical issues with the application process, not all of which are raised by the proposed tariff filings. In this Order, the Commission addresses and resolves many of these issues to enable the process of implementing the pilot programs to proceed. As explained below, BGE, Pepco, Delmarva and Potomac Edison are instructed to file revised copies of their community solar tariffs, consistent with the direction in this Order, within 15 days from the date of this Letter Order, for Commission review and approval.

Amount of Annual Capacity Available for Selection in Year 1

Commission Staff proposed that each of the three pilot program years should have a new and separate selection process. Staff believes that this selection method will ensure a more equitable allocation of pilot program capacity and a more diverse group of subscriber organizations.[3] On the other hand, solar developers asked that capacity for all three pilot program years be available for reservation at the beginning of the pilot program.[4] Under their proposal, applicants that are not approved in Year 1 are placed on a waiting list, and the queue for Year 2 (and then Year 3) is derived directly from the waiting list.[5] In practice, if a particular program category received applications early in Year 1 with sufficient capacity to fill all three pilot program years, then no further applications would be accepted for the remainder of the pilot program. Solar developers stress that certainty as to a project's queue position – i.e. whether the project can enter

[1] The following parties spoke at the Administrative Meeting: Phil VanderHeyden (Commission Staff); Kimberly Curry & John Murach (BGE); Matthew Segers (Pepco/Delmarva.); Amy Klondowski (PE); Ray Valdes (PE); Jacob Ouslander & William Fields (OPC); Lisa Brennan (Montgomery County); Dana Sleeper (MDV-SEIA); Harry Warren (Coalition for Community Solar Access); John Forgash (OneEnergy Renewables); Salar Naini (TurningPoint Energy); Peter Coleman (Clean Choice Energy); Myriam Tourneux (Fuel Fund of Maryland); Corey Ramsden (Maryland SUN); Michael Miller (OGOS Energy);
[2] Staff Comments at 3.
[3] Staff Comments at 3, 8-9.
[4] TurningPoint Comments at 3; CCSA Comments at 4; OneEnergy Comments at 4.
[5] The Companies' proposed tariffs reflected this selection method.

the program either in Year 1 or following years – is critical to financing and project development, as well as to its attempts to receive local permits.

The Commission believes that allocating all pilot program capacity at the outset is not in the best interests of the pilot program. The Commission wants to encourage Marylanders and companies to participate in the program, and it is concerned that allocating all pilot program capacity through the Year 1 application process may prohibit possible pilot program entrants from participating. In addition, the Commission wants to see the outcome of the Year 1 process to assess if the pilot program includes sufficient project diversity. Ultimately, the Commission has a statutory obligation to conduct a meaningful pilot program study,[6] and it believes that the study will be better if the pilot program contains a variety of project types. Therefore, the Commission finds that projects that do not receive a position in Year 1 must reapply for a position in a future year and do not maintain their queue or waiting list position for subsequent years.

Nonetheless, the Commission is sympathetic to the concerns of the solar developers about their desire for certainty about the project pipeline and their view that Maryland will have more successful projects if the queue is solidified further in advance. Therefore, in Year 2, the Commission will allow projects that apply – but do not receive – a position in the Year 2 queue to join a publicly-posted waiting list for Year 3 capacity. The Companies will fill the Year 3 queue starting with the waiting list developed in Year 2, which should provide those Year 2 wait-listed projects more certainty about their status for receiving a position in the remainder of the pilot program.

Project Selection Oversight

Commission Staff proposed a "Project Selection Oversight" plan that would give the Commission a chance to review the project selection queue before it took effect.[7] Staff listed several factors that the Commission could consider to distinguish projects and decide which

[6] Maryland General Assembly, Chapter 347 (2015), Section 2.
[7] Staff Comments at 3, 5-8, 17.

projects received a slot in the pilot program.[8] Staff acknowledged that its plan would slow the selection of projects, but believed that it would better ensure that the pilot included a variety of projects that would support a meaningful study. OPC supported Staff's proposal.[9]

Solar developers disagreed with Staff's plan and believed that first-come first-served project queues are most appropriate.[10] They believed that the pilot program categories (i.e. Open, Low & Moderate Income, and Small/Brownfield/Other) will ensure a sufficient amount of project diversity. These parties also note that projects will exit the interconnection queue and meet other approval prerequisites[11] – and thus be eligible to enter the pilot program queues – at different times, so requiring all applications to wait for an overarching Commission review would result in significant delays in project selection and project implementation, harming Maryland's potential community solar customers.[12]

In selecting projects for Year 1 of the pilot program, the Commission agrees with the solar developers that the pilot program queue should be filled on a first-come first-served basis. The Commission is concerned that Staff's proposal would significantly delay project selection and development, particularly because projects may enter the queue at different times depending on the results of interconnection studies and other permitting. The Commission agrees with Staff that it is important to ensure project diversity in this pilot program and appreciates Staff's attempt to outline selection factors. The Commission agrees with many of them, and while it does not make these selection factors binding, the Commission believes that they may offer useful guidance it reviews Year 1 results.[13] With the benefit of seeing what types of projects are accepted in Year 1, the Commission may revisit the selection process for Year 2 of the pilot program.[14]

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[8] Factors listed by Staff include: geographic concentration; feeder capacity; proximity to customer loads; technological, aesthetic or policy goals; subscriber organization percentage of category/program capacity; evaluation of distribution system benefits; category eligibility; customer service/performance; and subscriber organization authorization status. Staff Comments at 7, 17.

[9] OPC Comments at 8.

[10] CCSA Comments at 2; TurningPoint Comments at 7-8; OneEnergy at 5-6.

[11] See COMAR 20.62.03.04B(3).

[12] The Companies' draft tariffs as filed reflect the solar developers' preference to eliminate this oversight process.

[13] Staff listed several factors, but did not include others, such as the diversity of subscriber organization owners.

[14] The Commission notes that it maintains the authority to require each utility tariff to include a process to prioritize applications if a utility receives multiple applications that exceed "the available program capacity or category in a short period of time." COMAR 20.62.03.04B(2). Although the Commission declines to require each tariff to include

Pilot Program Capacity Limits

COMAR 20.62.02.02A(1) states that the pilot program's statewide capacity is limited to 1.5% of Maryland peak demand,[15] and that each utility is not required to accept applications totaling more than 1.5% of its Maryland peak demand. To measure 2015 peak demand, Commission Staff recommended using estimates of 2015 peak demand from the Commission's 2014 10-year plan, which would result in a statewide program capacity of approximately 225 MW. Staff argues that this approach is most consistent with the Commission's intention when it promulgated the regulations.[16] Solar developers support this approach.[17] The Companies recommend that the Commission use 2015 actual peak demand figures, arguing that using actual 2015 data is more consistent with the text of the regulations.[18]

The Commission's plain reading of COMAR 20.62.02.02 leads it to agree with the Companies' interpretation. The Commission instructs the Companies to use actual 2015 peak demand figures, as calculated by PJM,[19] in calculating pilot program capacity.[20] The regulation references the electric company's "2015 Maryland peak demand", which leads the Commission to dismiss Potomac Edison's contention that it should use 2015 *summer* peak demand instead of 2015 *actual* peak demand.[21]

The Commission agrees with Staff's position that each Company should be required to publish its capacity chart in its tariff as it will increase transparency and clarity of the program capacity. It concurs with BGE and PHI's suggestion to include an additional caption above the chart.[22]

Subscriber Organization Bond Amount & Timing

such a prioritization process at this time, it reserves the right to require each utility to institute such a process for the future program years.

[15] A utility must accept slightly more capacity if its LMI category is full. COMAR 20.62.02.02A(1)(b).

[16] Staff Comments at 4.

[17] CCSA Comments at 6.

[18] BGE/PHI Comments at 5; PE Comments at 2.

[19] Per PJM's Network Service Peak Load (NSPL) calculation.

[20] Per BGE/PHI's filings, the following capacity limits would occur: BGE – 100.7 MW; Pepco – 49.6 MW; Delmarva – 16.4 MW. PE did not provide its 2015 annual peak demand in its filing.

[21] PE Comments at 2.

[22] BGE and PHI proposed the following caption: The following table sets forth the annual capacity limits under the Pilot Program for the Company. Updates to the status of the Company's Pilot Program's queue and capacity limits can be found at www.xxx.com.

Staff proposed a bond of $250,000 per subscriber organization due at the time of application. Solar advocates countered that a $250,000 bond per subscriber organization is much too high, not in line with the risk to consumers, and puts small businesses and non-profits at an extreme disadvantage.[23]

The Commission agrees with solar advocates that a bond of $250,000 per subscriber organization is too large for many subscriber organizations, particularly for small businesses and non-profits. In addition, the Commission notes that subscriber organizations that collect prepaid subscription funds in advance of commercial operation are required to maintain those funds in an escrow account, which limits customers' financial risk.[24] It finds that the bonding requirement for an electric or gas broker license, which is $10,000, is the appropriate starting point for the subscriber organization bonding requirement. Therefore, the Commission sets the bonding amounts as follows:

Non-profit or "Type B"[25] subscriber organization (less than 1 MW) - no bond required;

All other subscriber organizations - $10,000 initial bond for up to 1 MW of proposed community solar capacity, plus any additional amount per the "Additional bonding requirement" below;

Additional bonding requirement - $25,000 per additional MW of proposed community solar capacity.[26]

Solar developers asked that the bonding obligation not apply until the project is accepted into the program.[27] They argue that a subscriber organization should not be forced to acquire a bond if its application is ultimately denied a queue position. However, the Commission finds that the administrative difficulty of managing a post-application bonding requirement outweighs the

[23] MD SUN Comments at 2.
[24] COMAR 20.62.05.11.
[25] Staff Comments, Draft Subscriber Organization Application Form at 2 (defining a "Type B" subscriber organization as one composed of a "Proposed Collective Group of Subscribers of a (single) Community Solar Energy Generating System).
[26] As an example, a for-profit subscriber organization requesting 2 projects with a combined capacity of 1.1 MW would be required to submit a $35,000 bond: a $10,000 initial bond, plus an additional $25,000 because the total proposed project capacity is over 1 MW.
[27] See Oral Comments of Michael Miller of OGOS Energy at January 11, 2017 Administrative Meeting.

concern noted by the developers. Therefore, the Commission approves Staff's proposal to require the appropriate bond at the time a subscriber organization applies for the program.

Method of Providing Subscription Credits

Potomac Edison proposed tariff language that would allow it to pay community solar bill credits as either dollar credits or per-kWh credits.[28] PE states that although COMAR 20.62.02.04C requires the same type of bill credit for all subscribers of a particular project, it does not require the same bill credit method to be implemented across all projects within a utility's service territory. PE stated that it wanted to maintain flexibility to choose between the types of bill credits in the future. Staff objected to PE's language, requesting that PE indicate in its tariff whether it will use a kWh or dollar credit method.[29]

The Commission agrees with PE that the law and regulation clearly allow a utility to choose either type of credit – either a kilowatt-hour or dollar credit – for each project and disagrees with BGE's assertion that it can only select the dollar credit option. In fact, the Commission is encouraged that PE is leaving open its options and encourages the other utilities to do so as well. One objective of the pilot program is to compare different types of implementations of the pilot program and provide recommendations to the General Assembly. Leaving open the possibility of providing bill credits by different methods is one way that the Commission can gather more comparative information about the pilot program. Thus, it approves PE's position to maintain its proposed tariff language on this point.

Additional Companies' Concerns

Staff recommended that community solar interconnection applications expire after 12 months,[30] which could prevent a possible backlog in the interconnection queue both for community solar projects and other distribution generation. However, developers argued that this requirement

[28] PE Comments at 2-3.
[29] Staff Comments at 9.
[30] Staff Comments, Redline Versions of Tariffs.

is overly burdensome.[31] BGE & PHI explain that there is no 12-month expiration limit in COMAR, but that it could incorporate such a limitation if the Commission thought it was reasonable.[32]

The Commission agrees with Staff's approach. It is cognizant of the possibility that a flood of community solar interconnection applications could, if they are approved, limit the capacity of distribution feeders available to future community solar applicants and other types of distributed generation, including rooftop solar. In particular, a community solar project that receives interconnection approval but does not receive a position in the Year 1 program queue would remain as an approved interconnection application for several years, thereby tying up feeder capacity and potentially blocking future interconnection applications even though the project has no straightforward path to operation. Therefore, the Commission directs that the Companies shall include tariff language that interconnection applications made for projects seeking Year 1 pilot program capacity expire at the end of the Year 1 if not implemented.[33] The Commission holds open the possibility of amending this provision for future program years and instruct Staff, in consultation with the workgroup, to file a report within 180 days with recommendations, if appropriate, for tariff language amendments on this issue.

The Companies raised other concerns about specific proposed tariff language. BGE noted that Staff suggested tariff language that an interconnection agreement be "partially" executed as a condition of entering the program and stated that the insertion was reasonable.[34] BGE requested that similar language be included in the Pepco and Delmarva tariffs. The Commission agrees with Staff's reasonable insertion and instructs all Companies to include such language in tariffs. Meanwhile, Potomac Edison asked that the Commission reject Staff's insertion of tariff language that: (a) provides exceptions to the co-location prohibition[35]; and (b) states that a subscriber organization must replace LMI subscribers with a sufficient number of LMI subscribers such that 30% of kWh output is provided to LMI customers.[36] The Commission agrees with Staff's position

[31] OneEnergy Comments at 6.
[32] BGE/PHI Comments at 3-4.
[33] The Commission notes that the Companies should not take this directive to imply that it should discard project information about an interconnection application at the end of Year 1, but simply that the project is no longer approved to connect at that time – and thus no longer ahead in the line and "blocking" other projects from obtaining capacity on that portion of the distribution system.
[34] BGE/PHI Comments at 4.
[35] PE Comments at 3.
[36] PE Comments at 4.

that both insertions simply state program requirements and are appropriate for the tariff, and thus rejects PE's contention that such provisions are unnecessary or inappropriate.

Additional OPC Concerns

OPC raised several general concerns about the pilot program. OPC is concerned that: (1) customers who receive support from the Electric Universal Service Program (EUSP) might not receive the full benefit of community solar bill credits; (2) the Commission has not yet approved a Contract Disclosure Form; (3) the process for a subscriber organization to certify LMI participation is not clear; and (4) the statutorily-required study has not received sufficient focus in workgroup meetings.[37]

The Commission agrees with OPC on all four points, and is particularly concerned to learn that the statutorily-required study may not be receiving the necessary attention and planning. The pilot program study is not only required by law, but it is at the heart of the pilot program's purpose. The pilot program is intended to test various possibilities for community solar in Maryland, and the study must provide the General Assembly with the necessary information by which it can evaluate whether a permanent community solar program should be implemented or if the state should meet its goals through other means.[38] If the Commission and other stakeholders fail to sufficiently focus on the study from the outset of the pilot program, it will have a more difficult time meeting its statutory obligation. Indeed, the obligation for a meaningful study falls not only Staff but on all stakeholders. Therefore, the Commission directs Staff, in consultation with the workgroup, to develop a study plan with specifics on the metrics for the Projects and Subscriber Organizations, as well as the data and cooperation it needs from all stakeholders. Staff shall file its detailed study plan within ninety (90) days.

Given the pilot program's statutory focus on including LMI customers as participants, the Commission shares OPC's concern that EUSP customers might not receive the same financial benefits as other customers. All customers, including those receiving EUSP benefits, should receive the same opportunity to benefit from this pilot program. The Commission directs Staff, in

[37] See OPC Comments at 3-8. Energy Advocates supported items (1) and (3) in its comments.
[38] For example, the General Assembly could decide that implementing greater retail choice options for developing and consuming renewable resources (i.e. "green" electricity supply options) is more advisable than a permanent community solar program.

consultation with the workgroup, to file within ninety (90) days a report outlining one or more possible solutions for EUSP customers. Regarding items (2) and (3), the Commission directs Staff, in consultation with the workgroup, to file within ninety (90) days a Contract Disclosure form and a document clarifying for stakeholders the method by which a subscriber organization can certify LMI participation.

Additional Solar Developer Concerns

Solar developers raised additional concerns with a few of Staff's other recommendations. They urged the Commission to: (1) allow a project to choose its program category at the time it is accepted into the pilot program, rather than declare it upfront; (2) declare that a project that already has an interconnection agreement retain its position in the interconnection queue, rather than reapply and go to the back of the line with other CSEGS-specific interconnection applications;[39] and (3) require that each utility post its interconnection queue online, similar to what occurs in some other states.[40]

The Commission rejects the first two requests and seeks more information on the third request. First, the Commission denies the request to allow a project to choose its category at its time of acceptance rather than in its application. The Commission created different program categories to ensure that it received project applications committed to those types of projects, particularly for the LMI category. It does not want to encourage projects which failed to receive capacity in one category to elect another category to the detriment of projects that were committed to that specific category from the outset. Second, the Commission denies the request to allow a project to maintain its position in the interconnection queue. Although the Commission recognizes that the interconnection process will work at different speeds for different projects (and will likely move faster for projects that were previously approved), it does not want to automatically give previously-approved projects the unfair advantages of essentially reserving access to particular feeders and satisfying the interconnection approval prerequisite immediately.[41] Third, the

[39] CCSA Comments at 8 (arguing that this requirement could affect a project's financial assumptions if a project is required to reapply and not "retain [its] position in the interconnection queue on constrained feeders or circuits consistent with [its] original application date.").
[40] CCSA Comments at 8 (citing California and Minnesota as other states with published interconnection queues).
[41] See ESA Comments at 1 & SynerGen Solar Comments at 2 (favoring the requirement for a new application as maintaining "a level playing field").

Commission is intrigued by the suggestion that each utility post its interconnection queue online. It requests that Staff and the Companies file comments within ninety (90) days outlining the feasibility, benefits, costs, and barriers of this suggestion.

Additional Items in Staff Filings

Staff filed a proposed Subscriber Organization Application and a general process timeline. The Commission agrees with Staff's general direction on these documents and instructs Staff to file clean copies with any minor adjustments that Staff deems appropriate. The Commission notes in particular that Staff will have to adjust the dates it proposed in its timeline, and it encourages Staff to select dates that will start the pilot program as soon as is feasible. Staff shall process Subscriber Organization Applications in a timely manner. Staff also noted that tariff language regarding cost recovery, particularly through BGE's Rider 10, should not constitute a *guarantee* that base rates or other charges would recover program costs.[42] The Commission agrees with Staff that it reserves the right review program costs at a later date.

Additional Concerns

Several other issues were raised by parties in comments. Staff and solar developers believe that the list of "Proof of Application of Applicable Permits" should remain in the tariff;[43] while Potomac Edison disagrees.[44] The Commission agrees with Staff and solar developers that this list should be included in the tariff to provide clarity to all stakeholders about permitting requirements. BGE and PHI asked that they be permitted to use the Standard Offer Service rate in determining the bill credit amount when a customer's retail rate is unavailable.[45] Solar developers support this position,[46] and although Staff expresses some concern with it, Staff ultimately recommends approval of this proposal.[47] The Commission agrees with the consensus recommendation and accepts BGE and PHI's position on this issue. Solar advocates asked that the requirement for

[42] Staff Comments at 9.
[43] Staff Comments, Redlined Tariffs; CCSA Comments at 6.
[44] PE Comments at 3.
[45] BGE/PHI Comments at 4-5.
[46] CCSA Comments at 8.
[47] Staff Comments at 9.

monthly subscriber list updates to the Companies be waived when no changes occur, and that the Commission post basic subscriber organization information on its website.[48] The Commission agrees with both recommendations. It instructs the Companies to include the waiver provision for list updates in their tariffs and instructs Staff to work with the Commission's Communications Director and IT Department to select the appropriate place on the Commission's website to post basic subscriber organization information.

During the hearing, the Commission heard testimony about the applicability of bill credits in relation to Montgomery County's Fuel-Energy Tax and other bill charges. The Commission reiterates that each utility's tariff must comply with COMAR 20.62.02.04D, which states that if a utility chooses to apply the community solar bill credit as a dollar credit, the applied credit must be "no less than the value *to the subscriber* [emphasis added] of the credit had it been applied to the subscriber's bill as a reduction in metered kilowatt hours." The law intends Community Solar virtual net-metering to be given the same treatment as behind the meter net-metering, and the Commission does not believe Montgomery County's plans to impose the Fuel-Energy Tax on Community Solar participants meets the intent of the law.[49] The Commission also took note of BGE's presentation stating that it would recover any Montgomery County tax from all its distribution customers; under such a circumstance, the Commission believes that the Montgomery County tax should only be recovered from Montgomery County distribution customers.

By Direction of the Commission,

/s/ David J. Collins

David J. Collins
Executive Secretary

[48] MD SUN Comments at 2.

[49] The Commission also notes that the community solar statute excludes a community solar project from the definitions of an electric supplier or generating station and mandates that the pilot program's capacity counts toward the state's net metering cap. Public Utilities Article, § 7.306.1(C), (G).