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PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., 2nd FLOOR, WEST TOWER
WASHINGTON, D.C. 20005

2009 SEP 28 P 3:55

ORDER

SEP 28 2009
PUBLIC SERVICE COMMISSION
September 28, 2009

**FORMAL CASE NO. 945, IN THE MATTER OF THE INVESTIGATION INTO
ELECTRIC SERVICES MARKET COMPETITION AND REGULATORY
PRACTICES, Order No. 15561**

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") adopts the attached amendments to Chapter 29 of the Commission's Rules of Practice and Procedure. These rules shall become effective upon publication of a Notice of Final Rulemaking in the *D.C. Register*.

II. BACKGROUND

2. Pursuant to a Notice of Proposed Rulemaking ("NOPR") issued April 3, 2009, the Commission sought to amend Chapter 29 of the Commission's Rules governing the District of Columbia's Renewable Energy Portfolio Standard ("RPS") consistent with the applicable sections of the Clean and Affordable Energy Act of 2008 ("CAEA").¹ The Commission proposed adding a new subsection detailing the requirements for meeting the solar portion of the standard. In addition, the proposed amendments raise the compliance fees for tier one and solar energy Renewable Energy Credit ("SREC") shortfalls as well as change the definition of solar energy. The amendments also require additional documentation for applications for certification of solar thermal systems as District of Columbia renewable energy facilities. The Commission invited interested parties to file comments on the NOPR.

III. DISCUSSION

A. Constellation's Comments

3. On May 4, 2009, Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc., and Constellation Energy Projects and Services Group, LLC ("Constellation") filed one set of comments on behalf of all three corporate entities in response to the NOPR.² Constellation's comments address the Commission's intent to add the following language as Commission Rule 2901.1(a):

¹ Notice of Proposed Rulemaking, 56 *D.C. Reg.* 2596-2599 (April 3, 2009); See Clean and Affordable Energy Act of 2008 ("CAEA"), D.C. Law 17-250 (Oct. 22, 2008).

² *F.C. No. 945, In The Matter Of The Investigation Into Electric Service Market Competition And Regulatory Practices ("F.C. No. 945")*, Comments of Constellation Energy Commodities Group, Inc.,

[A]n electricity supplier shall meet the solar requirement [of the renewable energy portfolio standard] by obtaining the equivalent amount of renewable energy credits from solar energy systems interconnected to the distribution grid serving the District of Columbia. *Only after an electricity supplier exhausts all opportunity to meet this requirement that the solar energy systems be connected to the grid within the District of Columbia, can that supplier obtain renewable energy credits from jurisdictions outside the District of Columbia.*³

In Constellation's view, it is unclear when and how a supplier may have been deemed to have "exhausted 'all opportunity to meet [the solar RPS] requirement.'"⁴ Constellation urges the Commission to adopt a clearer standard and suggests an alternative.

B. Office of the People's Counsel's Comments

4. The Office of the People's Counsel ("OPC") filed comments on May 1, 2009.⁵ Based on its review of the CAEA, the present RPS rules, and the proposed amendments to the RPS rules in the NOPR issued April 3, 2009, OPC asserts that the proposed amendments comport with the provisions of the CAEA and should therefore be adopted as proposed.⁶

C. Commission Decision

5. With regard to Constellation's comment that the language for proposed Rule 2901.1(a) lacks clarity, the language in question was taken *verbatim* from the CAEA and was added solely to conform the rules to the statute. Although the statutory language cannot be changed by the Commission, Constellation has raised important implementation issues. The Commission will address implementation issues in a future rulemaking, and we encourage Constellation and other suppliers to comment at that time.

Constellation NewEnergy, Inc., and Constellation Energy Projects and Services Group, LLC ("Constellation's Comments"), filed May 4, 2009.

³ 56 D.C. Reg. at 2596 (emphasis added); See CAEA § 301(e).

⁴ Constellation's Comments at 3.

⁵ F.C. No. 945, Comments of the Office of the People's Counsel on the April 3, 2009 Notices of Proposed Rulemaking Regarding Chapter 9, Net Metering Rules, and Chapter 29, Renewable Energy Portfolio Standard, filed May 1, 2009.

⁶ *Id.* at 4.

6. The Commission also advises electricity suppliers that several District-based solar energy facilities have been certified since November 2008 and this information is available on the Commission's website as well as the PJM-EIS website. Electricity suppliers are encouraged to review the "Solar Weighted Average Price" report, available to the public on the PJM-EIS website, on a regular basis, to determine whether District SRECs are available, before acquiring SRECs from other jurisdictions.

THEREFORE, IT IS ORDERED THAT:

7. The amended rules in the April 3, 2009, Notice of Proposed Rulemaking are **ADOPTED** and shall become effective upon publication of a Notice of Final Rulemaking in the *D.C. Register*.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:

A handwritten signature in black ink, appearing to read "D. Wideman", with a long horizontal stroke extending to the right.

CHIEF CLERK:

**DOROTHY WIDEMAN
COMMISSION SECRETARY**

ATTACHMENT A

CHAPTER 29 RENEWABLE ENERGY PORTFOLIO STANDARD

2901 RPS COMPLIANCE REQUIREMENTS

2901.1 An Electricity Supplier shall meet the Renewable Energy Portfolio Standard requirement by obtaining Renewable Energy Credits ("REC") that equal the annual percentage requirement for electricity sold at retail or by paying the specified compliance fee. An Electricity Supplier shall not apply any surplus Renewable Energy Credits derived from voluntary purchases of energy from qualified renewable sources toward its mandatory compliance requirements.

- (a) An electricity supplier shall meet the solar requirement by obtaining the equivalent amount of renewable energy credits from solar energy systems interconnected to the distribution grid serving the District of Columbia. Only after an electricity supplier exhausts all opportunity to meet this requirement that the solar energy systems be connected to the grid within the District of Columbia, can that supplier obtain renewable energy credits from jurisdictions outside the District of Columbia.

2901.9 The Compliance Fee shall be:

- (a) \$50 \$25 for each Renewable Energy Credit shortfall for Tier One resources;
- (b) \$10 for each Renewable Energy Credit shortfall for Tier Two resources; and
- (c) \$300 for each Renewable Energy Credit shortfall for Solar Energy resources in 2008 and \$500 for each Renewable Energy Credit shortfall for Solar Energy resources in 2009 until 2018.

2902 GENERATOR CERTIFICATION

2902.6 In addition to the information required in § 2902.5, an applicant submitting a Regular Application must also attach:

- (a) A current Certificate of Good Standing for the applicant issued by the state in which the business was formed;

- (b) A copy of the U.S. Department of Energy, Energy Information Administration Form EIA 860, if the rated capacity is greater than 1.0 MW;
- (c) A Certificate of Authorization to Conduct Business in the District of Columbia, if applicable;
- (d) An Affidavit of General Compliance;
- (e) Documentation of authority to sign on behalf of the Applicant; and
- (f) An Affidavit of Environmental Compliance, if the rated capacity is greater than 10kW;
- (g) Documentation that nonresidential solar heating, cooling, or process heat property systems, as well as residential solar thermal systems, are certified by the Solar Rating and Certification Corporation (SRCC), if applicable;
- (h) Documentation that the energy output of the nonresidential solar heating, cooling, or process heat property systems producing or displacing greater than 10,000 kilowatt hours per year is determined by an on-site energy meter that meets performance standards established by the International Organization of Legal Metrology (OIML), if applicable;
- (i) Documentation that the energy output of the nonresidential solar heating, cooling, or process heat property systems producing or displacing 10,000 or less kilowatt-hours per year is determined by the SRCC OG-300 annual system performance rating protocol applicable to the property, by the SRCC OG-100 solar collector rating protocol, or by an on-site energy meter that meets performance standards established by OIML, if applicable; and
- (i) Documentation that the residential solar thermal system energy output is determined by the SRCC OG-300 annual rating protocol or by an on-site energy meter that meets performance standards established by OIML, if applicable.

2902.7

In addition to the information required in § 2902.5, an applicant submitting a Streamlined Application must also attach: ~~an Affidavit of General Compliance and an Affidavit of Environmental Compliance.~~

- (a) An Affidavit of General Compliance;

- (b) An Affidavit of Environmental Compliance, if the rated capacity is greater than 10 kW;
- (c) Documentation that nonresidential solar heating, cooling, or process heat property systems, as well as residential solar thermal systems, are certified by the SRCC, if applicable;
- (d) Documentation that the energy output of the nonresidential solar heating, cooling, or process heat property systems producing or displacing greater than 10,000 kilowatt hours per year is determined by an on-site energy meter that meets performance standards established by the OIML, if applicable;
- (e) Documentation that the energy output of the nonresidential solar heating, cooling, or process heat property systems producing or displacing 10,000 or less kilowatt-hours per year is determined by the SRCC OG-300 annual system performance rating protocol applicable to the property, by the SRCC OG-100 solar collector rating protocol, or by an on-site energy meter that meets performance standards established by OIML, if applicable; and
- (f) Documentation that the residential solar thermal system energy output is determined by the SRCC OG-300 annual rating protocol or by an on-site energy meter that meets performance standards established by OIML, if applicable.

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DEFINITIONS

“Solar energy” means radiant energy, direct, diffuse, or reflected, received from the sun at wavelengths suitable for conversion into thermal, chemical, or electrical energy, that is collected, generated, or stored for use at a later time.