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Public Service Commission of the District of Columbia
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March 31, 2009

VIA HAND DELIVERY

Cynthia Brock-Smith
Secretary to the Council
Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

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2009 MAR 31 P 5:20

PUBLIC SERVICE COMMISSION

Re: *Fourth Annual Report on the Renewable Energy Portfolio Standard*

Dear Ms. Brock-Smith:

Attached is the Public Service Commission of the District of Columbia's ("Commission") Report on the Renewable Energy Portfolio Standard, which is filed in accordance with § 34-1439 of the District of Columbia Official Code. Specifically, this section requires the Commission to file a report with the Council on or before April 1 of every year on the status of implementation of the Renewable Energy Portfolio Standard Act, including: the availability of tier one renewable resources; certification of the number of credits generated by the utilities meeting the requirements of § 34-1432; and any other such information as the Council shall consider necessary.

Thank you. If you have any questions, please do not hesitate to contact me.

Sincerely,

Dorothy Wideman
Commission Secretary

Attachment (1)

cc: The Honorable Betty Ann Kane, Chairman, Public Service Commission
The Honorable Richard E. Morgan, Commissioner, Public Service Commission
The Honorable Lori Murphy Lee, Commissioner, Public Service Commission
The Honorable Muriel Bowser, Councilmember (Ward-4)
The Honorable Mary M. Cheh, Councilmember (Ward-3)
The Honorable Jim Graham, Councilmember (Ward-1)
The Honorable Harry Thomas, Jr., Councilmember (Ward-5)
The Honorable Michael A. Brown, Councilmember (At-Large)

Public Service Commission

of the

District of Columbia

**Fourth Annual
Report on the Renewable Energy Portfolio
Standard**

March 31, 2009

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EXECUTIVE SUMMARY

On January 19, 2005, the District of Columbia Council enacted the Renewable Energy Portfolio Standard Act ("REPS Act"), which established a renewable energy portfolio standard ("RPS") through which a minimum percentage of District electric providers' supply must be derived from renewable energy sources beginning January 1, 2007, with an ultimate target of 11 percent by 2022. Renewable energy sources are separated into two categories, Tier I and Tier II, with Tier I resources including solar energy, wind, biomass, methane, geothermal, ocean, and fuel cells, and Tier II resources including hydroelectric power other than pumped storage generation and waste-to-energy.

The REPS Act requires that the Commission adopt regulations, or orders, governing the application and transfer of renewable energy credits and implementation of the REPS Act. The RPS rules became effective upon the publication of the Notice of Final Rulemaking in the *D.C. Register* on January 18, 2008. As part of its RPS rules, the Commission has established a process for certifying eligible generators. The certification process includes a streamlined application that the Commission developed, which has performed fairly smoothly. Renewable generators do not need to submit as much documentation for the streamlined application and the Commission is able to respond in a shorter period of time. At this time, there do not appear to be any problems that need to be addressed.

To date the Commission has approved sixty-five (65) renewable generators. Of the 65 facilities, fifty-two (52) use Tier I resources (including biomass, methane from landfill gas, solar, and wind) and thirteen (13) use Tier II resources (including hydroelectric and municipal solid waste). Since these renewable generators may be certified in other states that have a RPS as well, the renewable energy credits ("RECs") associated with the generating capacity are not necessarily fully available to meet the District's RPS.

Electricity suppliers filed their first RPS compliance reports for the 2007 compliance year pursuant to the RPS rules, which require the submission of annual compliance reports to the Commission by May 1 of the calendar year following the year of compliance. Pursuant to the Commission's RPS rules, all active electricity suppliers with retail sales in 2007—a total of fourteen (14)—submitted a compliance report for that calendar year. All the suppliers met the RPS requirements either through acquiring RECs or by submitting a compliance payment.

The Commission did not receive any solar generator applications to satisfy the 2007 compliance year requirements. Thus, there were no solar RECs available for the District's RPS program in 2007. As a result, electricity suppliers paid the compliance fee of \$300 per MWH shortfall in order to meet the solar requirement. The total amount of money generated from the compliance fees was \$196,490. This money was deposited

into the Renewable Energy Development Fund administered by the District Department of the Environment's Energy Office ("DDOE").

The majority of the Tier I RECs used for compliance were from qualifying biomass resources, including black liquor and wood waste. Methane from landfill gas accounted for the remaining Tier I RECs. Tier II RECs were primarily from hydroelectric facilities, with the remainder accounted for by municipal solid waste. About 76 percent of the RECs used for compliance were generated in 2006. After reviewing the compliance reports, the Commission issued various Orders to ensure compliance with the RPS rules.

With respect to the availability of resources, the generation of electricity in the PJM region provides one perspective. In terms of the PJM system fuel mix, the overall renewable resources in the PJM region represent less than three percent of the available fuels. Hydroelectric power accounts for the largest share among renewable resources, close to one percent. Among other renewable sources, municipal solid waste represents the second largest resource, comprising less than one percent.

On October 22, 2008, the permanent version of the Clean and Affordable Energy Act of 2008 became law. This legislation, in part, amended the REPS Act and, among other things, changed the definition of solar energy to allow solar thermal applications that do not generate electricity, raised the RPS requirements to 20 percent by 2020, and increased certain compliance fees.

The Commission continues to address issues to implement the RPS. Through its website, the Commission is also making forms and the rules available, to help facilitate the process. In addition, a list of approved renewable generating facilities is posted on the Commission's website.

I. Introduction

The District of Columbia Council enacted the Renewable Energy Portfolio Standard Act (“REPS Act”) on January 19, 2005 and established a renewable energy portfolio standard (“RPS”), through which a minimum percentage of District electric providers’ supply must be derived from renewable energy resources beginning January 1, 2007.¹ The RPS minimum requirements, among other things, were amended by the Clean and Affordable Energy Act (“CAE Act”) of 2008.²

Renewable energy resources are divided into two categories, Tier I and Tier II, with Tier I resources including solar energy, wind, biomass, methane, geothermal, ocean, and fuel cells, and Tier II resources including hydroelectric power other than pumped storage generation and waste-to-energy. Although minimum percentage requirements are specified for Tier I and Tier II resources, Tier I resources can be used to comply with the Tier II standard. In addition, a minimum requirement is carved out specifically for solar energy. The REPS Act allows an electricity supplier to begin receiving and accumulating renewable energy credits as of January 1, 2006.

The REPS Act requires that the Commission adopt regulations, or orders, governing the application and transfer of renewable energy credits (“RECs”) and implementation of the REPS Act. The Commission is also tasked with establishing standards to account for customer generation from eligible renewable resources. The RPS rules became effective upon the publication of the Notice of Final Rulemaking in the *D.C. Register* on January 18, 2008.

The Commission must also provide a report to the Council, on or before April 1 of each year, on the status of implementation of the Act, including the availability of Tier I renewable sources, certification of the number of credits generated by the utilities meeting the requirements of D.C. Official Code § 34-1432—which outlines the minimum percentages to be derived from certain renewable resources—and any other such information as the Council shall consider necessary. This annual report fulfills the reporting requirement outlined in the REPS Act.

In Section II, we provide an update on the steps that the Commission has taken to implement the RPS in the District. Section III reviews the RPS compliance report submitted for the first compliance year of 2007. In Section IV, we present some information on the current availability of renewable resources. Section V addresses the impact of the Clean and Affordable Energy Act of 2008 on the District’s RPS program. Finally, Section VI summarizes other ongoing actions to implement the RPS in the District and next steps. In addition, we include Attachment 1, which provides a national perspective on what other states are doing with respect to the implementation of a renewable portfolio standard. Attachment 2 contains a list of selected orders that the Commission has issued to implement the RPS.

¹ D.C. Official Code § 34-1432(c) (2008 Supp.). See D.C. Law 17-250.

² The permanent version of the CAE Act became law on October 22, 2008.

II. Update on the Implementation of the Renewable Energy Portfolio Standard

This section provides a brief description of the history of actions that the Commission has undertaken to implement the RPS. In order to establish a record and to begin implementation of the Act, the Commission issued Order No. 13566 on April 29, 2005, inviting interested parties to submit their views on twelve (12) RPS-related issues. The twelve issues addressed:

- the process and timeline that the Commission should adopt to implement the Act;
- the procedure to apply for, verify, and transfer renewable energy credits (“RECS”);
- the type(s) of renewable energy projects that are feasible within the District;
- the process for certifying the eligibility of generating facilities;
- the standards that should apply to customer generators;
- the information that should be submitted in an electricity supplier’s annual compliance report;
- the appropriate procedures for cost recovery by PEPCO;
- the standards that the Commission should employ for determining whether the compliance costs claimed by PEPCO were prudently incurred;
- the verification of an electricity supplier’s compliance with the RPS;
- the imposition of an administrative fee;
- the data and confidentiality concerns of stakeholders; and
- the states that qualify as being within or adjacent to the PJM Interconnection Region.

In Order No. 13766, released on September 23, 2005, the Commission addressed the various issues based on the record developed in response to Order No. 13566. Among other things, the Commission directed interested parties to form a RPS Working Group to examine in more detail certain issues related to the implementation of the REPS Act, and to propose a timeline and recommendations for a two-phased approach to resolving those issues.³ The Commission also indicated that the PJM Environmental Information Service (“PJM-EIS”) Generation Attribute Tracking System (“GATS”) would be used in the implementation of the Act. In addition, the Commission indicated its intent to establish regulations to govern the application and transfer of RECs, on an interim basis, prior to January 1, 2006.

RPS Rules

Based on input from the Working Group, the Commission established interim RPS rules in Order No. 13840 (December 28, 2005). These rules were subsequently amended in Order No. 13899 (March 27, 2006) and Order No. 14225 (March 2, 2007). The Commission eventually established a formal rulemaking process and on November 2, 2007 a Notice of Proposed Rulemaking (“NOPR”) appeared in the *D.C. Register* requesting comments on revised RPS rules that were based, in part, on the interim RPS

³ In Attachment A of Order No. 13766, the Working Group was asked to address 23 issues.

rules. After receiving and reviewing comments on the NOPR, the Commission issued Order No. 14697 (January 10, 2008) and adopted Chapter 29 of Title 15 District of Columbia Municipal Regulations (“Final Rules”). The Final Rules became effective upon the publication of the Notice of Final Rulemaking (“NOFR”) in the *D.C. Register* on January 18, 2008.

On October 3, 2008, a Notice of Proposed Rulemaking (“NOPR”) appeared in the *D.C. Register* that contained revisions to the RPS rules that would, among other things, allow an applicant seeking to certify a renewable generator for the District’s RPS program to provide a self-certified Affidavit of Environmental Compliance. This Affidavit helps provide documentation that the renewable generating facility complies with all applicable state and federal environmental requirements. OPC filed comments on November 3, 2008. On January 2, 2009, the Commission issued an amended NOPR that superseded the October 3 NOPR. OPC filed comments on February 11, 2009. The Commission is preparing to issue a Notice of Final Rulemaking.

The following issues are addressed in the RPS rules. In particular, the current rules establish definitions for various terms consistent with the REPS Act, compliance requirements for electricity suppliers, certification of renewable generators, policies regarding the creation and tracking of RECs, and directives concerning the recovery of fees and costs.

Compliance Requirements for Electricity Suppliers

The RPS rules include compliance requirements for electricity suppliers beginning in 2007. Suppliers are to file annual reports that include the following components: (1) the quantity of annual District retail electricity sales; (2) the quantity of any exempt retail electricity sales to a customer with a Renewable On-Site Generator; (3) a calculation of the annual quantity of required Tier I, Tier II, and Solar Energy Credits; (4) the quantity of Tier I, Tier II, and Solar Energy Credits purchased and evidence of those purchases; (5) the quantity of Tier I, Tier II, and Solar Energy Credits transferred to the electricity supplier by a Renewable On-Site Generator; (6) a calculation of any compliance fees owed by the energy supplier; (7) certification of the accuracy and veracity of the report; (8) all documentation supporting the data in the annual compliance report; (9) a list of all RECS used to comply with the RPS; (10) a summary report of RECs retired during the reporting period; and (11) the total price paid for Tier I, Tier II, and Solar Energy Credits. Suppliers that purchase RECs solely via bundled products are exempt from including the total price paid for Tier I, Tier II, and Solar Energy Credits in their annual compliance report. The Commission allows the information in item (11) to be filed confidentially. An electricity supplier that fails to meet its RPS requirements must submit an annual Compliance Fee to the District of Columbia Renewable Energy Development Fund administered by the District Department of the Environment’s Energy Office (“DDOE”) by May 1 of the calendar year following the year of compliance.

To facilitate the compliance reporting, the Commission issued Order No. 14782 on April 10, 2008 and adopted a 2007 Compliance Report form for the District’s RPS