

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Public Service Commission**
(DLS Control No. 16-039)

Overview and Legal and Fiscal Impact

These regulations implement the Community Solar Energy Generating System Pilot Program as required under Chapters 346 and 347 of the Acts of 2015.

These regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Public Service Commission:

Community Solar Energy Generation Systems: General: COMAR 20.62.01.01 .04

Pilot Program: COMAR 20.62.02.01 - .11

Pilot Program Administration: COMAR 20.62.03.01 - .08

Pilot Program Study: COMAR 20.62.04.01 - .03

Consumer Protection: COMAR 20.62.05.01 -.20

Legal Analysis

Background

Chapters 346 and 347 of 2015 require the Public Service Commission to establish a Community Solar Energy Generating Systems Pilot Program. The commission must adhere to specified guidelines in structuring the pilot program and adopt specified regulations to implement the pilot program by May 15, 2016. The commission must also, in consultation with the Maryland Energy Administration, convene a stakeholder workgroup to study the value and costs of the pilot program and make recommendations to the commission on the advisability of establishing a permanent program.

Summary of Regulations

Pilot Program Structure

The regulations require electric companies and any municipal electric company or electric cooperative electing to participate in the pilot program to file a plan and relevant tariffs within a

certain time period in order to comply with the regulations regarding the community solar energy generating system pilot program.

Each electric company shall establish a pilot program for community solar energy generating system (CSEGS) project to last for a period of three years from the earlier of an application from a subscriber organization to operate a CSEGS or six months following the adoption of these regulations. The electric company is required to apply bill credits and excess generation to the subscribers of the community solar generating system, pay the subscriber organizations for the unsubscribed energy generated, and maintain the pilot program data and records as required by the commission.

The regulations set the total statewide annual generation capacity for the program. The regulations also set annual program capacity percentages and capacity percentage limits for the following categories: small, brownfield, and other; open; and low and moderate income. Electric companies must accept pilot program applications up to 1.5% of its 2015 Maryland peak demand, and may accept applications after reaching 1.5% of its 2015 Maryland peak demand after notifying the commission. The regulations also specify when and how unused capacity may be used in a subsequent year or for other categories of subscriber organization. Each electric company shall maintain a list of accepted projects and total pilot program capacity and provide the list to the commission annually. The commission may direct electric companies to close the pilot program to new applicants under certain circumstances.

The regulations specify the maximum amount of accounts per CSEGS for each subscriber organization unless the electric company has developed an automated billing function for the program. An electric company may also require a subscriber organization to maintain a minimum average subscription size of 2 kW per customer for an individual CSEGS during the pilot program.

Subscriber organizations are required to provide to the electric company information regarding the proportion of a CSEGS's output that is to be credited to each subscriber's account. The procedure by which an electric company calculates the kilowatt-hours to be credited and reflected on a subscriber's bill is set forth, as well as limits to the amount of energy to which a person may subscribe, including multiple subscriptions. The regulation also provides how to calculate the dollar amount of excess generation and the payment to a subscriber organization for unallocated excess generation.

The regulations also provide for cost recovery for electric companies and procedures for the program's sunset.

Pilot Program Administration

The regulations set forth eligibility requirements for subscribers and a process is set forth to verify the low and moderate income status of subscribers for the purpose of the pilot program. Eligibility requirements are also established for subscriber organizations, and an application process is established for persons who wish to construct and operate a CSEGS. Electric companies shall process applications in order of the date of receipt of the application. The regulations sets

forth the required contents of an application and deadlines for a CSEGS to begin operation in order to remain in the electric company's pilot program queue.

The regulations require that all data communications made by a subscriber organization or an electric company are to be made through a uniform electronic transaction process approved by the commission.

Subscriber organizations shall own and have title to all renewable energy attributes or renewable energy credits associated with community energy generating facilities for which they have applied. Subscriber organizations may convert an existing solar generating systems to be a CSEGS if the existing system meets certain requirements. The regulations also specify where a CSEGS may be located.

Pilot Program Study

The regulations require electric companies to provide to the commission data to monitor the pilot program's status, impact on operations, and other information on request. Electric companies must also assist pilot program applicants with identifying means to locate and operate community energy generation facilities, designate a pilot program contact, and make certain information on the pilot program available on the electric company's website. The electric company shall also monitor and review its distribution system to determine any adverse or beneficial effects resulting from each installed CSEGS and maintain general data regarding subscribers. Subscriber organizations are required to maintain more specified information for the duration of the pilot program and provide that information to the commission on request.

Consumer Protection

The regulations set forth certain consumer protections. A subscriber organization may not enroll a customer as a subscriber without the approval of the customer and subscriber organizations must make certain disclosures in their marketing materials and solicitations. The regulations require that subscriber organizations use uniform standards for income, security deposits, and credit checks when determining whether to accept subscriptions in a given class and are prohibited from discriminating against a customer based on certain characteristics. Subscriber organizations may market on a geographic basis and are not required to market within the whole service territory but may not refuse to provide service to a customer based on the economic character or general creditworthiness of a particular locale.

A subscriber organization is required to make certain contract disclosures to customers and provide customer enrollment information to the electric company. The regulations specify minimum required contents for contracts entered into between a subscriber and a subscriber organization and set forth the methods of contracting, all of which require the customer's consent. The regulations require that a subscriber organization provide certain notice before a subscriber contract expires or is terminated. Also, notice is required before a subscriber organization assigns a customer's contract to another subscriber organization.

The regulations provide a method by which a subscription to a CSEGS may be transferred or cancelled and allow the subscription to be attributed to a new premises within the electric company's service territory. A subscriber organization is prohibited from releasing certain information regarding its subscribers except under certain circumstances. Prepaid subscription fees are required to be placed in escrow until the CSEGS starts operation.

Subscriber organizations may use agents to conduct marketing and sales activities, and is responsible for the actions of its agents. The regulations provide for standards and qualifications of agents, including background checks, and require agents to be trained in a certain manner. Agents must wear certain identification when conducting door-to-door activities or appearing at a public event on behalf of a subscriber organization and must comply with certain laws regarding door-to-door sales activities. Also, the regulations require a subscriber organization to provide certain notice to certain persons when conducting door-to-door sales.

Finally, any violation of these regulations may be referred to the commission's Office of External Relations.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The commission cites §§ 2-113, 2-121, 7-306, 7-306.1, and 7-306.2 of the Public Utilities Article as statutory authority for the regulations. Section 2-113 requires the commission to supervise and regulate the public service companies subject to the jurisdiction of the commission to ensure their operation is in the interest of the public and to prevent unjust discrimination in the delivery of utility services. Section 2-121 authorizes the commission to adopt reasonable regulations as necessary to carry out any law that relates to the commission. Section 7-306 requires the commission to require electric companies to develop a standard contract or tariff for net energy metering and make it available to eligible customer-generators. It also sets forth further requirements for net energy metering contracts and systems. Section 7-306.1 sets forth a process for the interconnection of a solar electric generating facility on an eligible customer-generator's property. Section 7-306.2 requires the commission to establish a pilot program for community solar energy generating systems and adopt regulations to implement the program, including regulations regarding (1) consumer protection; (2) a tariff structure for electric companies; (3) a calculation of virtual net energy metering; (4) a protocol for electric companies, electricity suppliers, and subscriber organizations to communicate the information necessary to calculate and provide the monthly electric bill credits and yearly net excess generation payments required by this section; and (5) a protocol for a subscriber organization to coordinate with an electric company for the interconnection and commencement of operations of a community solar energy generating system.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

The Department of Legislative Services contacted the commission regarding the termination of a CSEGS established under the pilot program (COMAR 20.62.02.10). The regulation limits the operation and associated benefits and responsibilities of a CSEGS to 25 years from termination of the pilot program. Section 7-306.2(f) of the Public Utilities Article does not limit the duration of a system established under the pilot program, but does subject a contract to regulations or orders of the commission. The commission determined, in consultation with both utility and industry stakeholders, that establishing a contract termination date was necessary for operation of the program. The period of 25 years was selected because it reflects the reasonable lifetime of a photovoltaic system. The Department of Legislative Services believes that this is a reasonable limitation.

The Department of Legislative Services also contacted the commission regarding the expansion of exemptions for the location of a CSEGS under COMAR 20.62.03.08. The regulation prohibits a CSEGS larger than 500 kW from being located on the same or adjacent property as an existing or proposed CSEGS that is owned by the same subscriber organization. A CSEGS constructed on a building rooftop, on certain industrial areas, on certain brownfield locations, on multi-level parking structures, or over parking lots or roadways are exempted from this prohibition. Section 7-306.2(d)(13) exempts systems installed on building rooftops from a prohibition against systems constructed on adjacent property. The commission indicated that the 500 kW size limitation in the regulation is intended to prevent larger systems from dividing the project into smaller systems on adjacent property and consequently circumventing the 2 MW net metering cap under § 7-306(g) of the Public Utilities Article. Additionally, the commission decided to expand the areas exempted to encourage the efficient use of brownfields and certain industrial areas and offset the high costs associated with installing a photovoltaic system on a building or parking structure. Section 7-306.2(d)(15) authorizes the commission to limit the pilot program in a manner that allows the commission to conduct a meaningful study of the pilot program and its results. The Department of Legislative Services believes that altering the exemptions to include a size limit and construction on brownfields and industrial areas is within the commission's authority. However, the Department of Legislative Services recommends that the commission seek legislation during the 2017 legislative session clarifying the application of the exemptions under § 7-306.2(d)(13) of the Public Utilities Article.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The commission advises that the regulations have minimal or no impact on State or local governments. The commission can implement the pilot program with existing staff. The Department of Legislative Services concurs and notes that the regulations implement Chapters 346 and 347 of 2015 (Senate Bill 398/House Bill 1087). Any fiscal impact is due to that legislation,

not the regulations. The fiscal and policy notes for those bills indicated that the commission could implement the pilot program with existing budgeted resources.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The commission advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs and notes that the regulations implement Chapters 346 and 347 of 2015 (Senate Bill 398/House Bill 1087). Any fiscal impact is due to that legislation, not the regulations. The fiscal and policy notes for those bills indicated that the pilot program would have a minimal impact on small businesses.

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