

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



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Public Advocacy Division
Social Justice Section

ELECTRONIC FILING

September 10, 2021

Ms. Brinda Westbrook-Sedgwick
Public Service Commission
Of the District of Columbia Secretary
1325 G Street, NW, Suite 800
Washington, DC 20005

**Re: RM40-2020-01 -- In the Matter of 15 DCMR Chapter 40 –District of
Columbia Small Generator Interconnection Rules.**

**Formal Case No. 1050 – In the Matter of Investigation and Implementation
of Interconnection Standards in the District of Columbia.**

Dear Ms. Westbrook-Sedgwick:

On behalf of the Department of Energy and Environment, please find enclosed its Application for Reconsideration of Order No. 20991 in the above-captioned proceedings. If you have any questions regarding this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,

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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA**

In the Matter of 15 DCMR Chapter 40 –)	
District of Columbia Small Generator)	RM40-2020-01
Interconnection Rules)	
In the Matter of Investigation of)	
Implementation of Interconnection)	Formal Case No. 1050
Standards in the District of Columbia.)	

**APPLICATION BY THE DEPARTMENT OF ENERGY AND ENVIRONMENT
FOR RECONSIDERATION OF ORDER NO. 20991**

Pursuant to Section 604(b) of Title 34 of the District of Columbia Code, and Section 140.1 of the Public Service Commission of the District of Columbia’s (Commission) Rules of Practice and Procedure, 15 D.C.M.R. §140.1, the Department of Energy and Environment (DOEE), through the Office of the Attorney General, moves the Commission for reconsideration of Commission Order No. 20991 in the above-captioned proceedings.¹

I. INTRODUCTION

The Commission should reconsider its determination that Community Renewable Energy Facility (CREF) owners or Subscriber Organizations (if the CREF owner and Subscriber Organization are separate entities) (collectively referred to as CREFs) should be assessed a customer charge for administrative costs associated with a CREF’s use of the Potomac Electric Power Company’s (Pepco) System and billing services.² The Commission erroneously found that a CREF customer charge was reasonable “to ensure its subscribers benefit from the

¹ *Rel.* Aug. 11, 2021.

² Order No. 20991, at ¶ 33-34. The Commission determined that CREFs should pay a monthly Customer Charge equivalent to that of a GS-ND Small Commercial Class Customer. In 2021, the GS-ND monthly Customer Charge is \$30.40. In 2022, that charge will increase to \$32.88 per month.

monetary value of the electricity generated” such that “it is only fair that a CREF owner/subscriber organization be required to pay these administrative costs *as would any other customer* [emphasis added].”³ The Commission’s determination to treat CREFs like customers, rather than generators, ignores the Council’s policy as clearly articulated in the Community Renewable Energy Amendment Act of 2013 (CREA).⁴ As set forth below, any administrative costs to Pepco associated with CREF operations should instead be recovered through Pepco’s Standard Offer Service (SOS) Rider.

II. BACKGROUND

In 2005, the District of Columbia Council (Council) passed the Renewable Portfolio Standards Act (RPS), which required the Commission to implement a program to ensure that electricity suppliers operating in the District procured a fixed minimum percentage of their electricity supply from renewable energy sources at annually escalating levels.⁵ In particular, the RPS singled out solar generation as a source subject to annual minimum procurement amounts (solar carve-out).⁶ To help achieve the aggressive mandates established therein, the RPS also created a separate, non-lapsing Renewable Energy Development Fund (REDF) to be

³ *Id.* at ¶ 33.

⁴ D.C. Law 20-47, Act 20-186. Section 101(a) “It is in the public interest that the [DOEE] enables the development and deployment of community renewable energy facilities for the following purposes: (A) To allow renters and low- to moderate-income retail electric customers to own interests in tier one renewable energy generating facilities; (B) To allow interests in tier one renewable energy generation facilities to be portable and transferrable; (C) To facilitate market entry for all potential subscribers, while prioritizing those persons most sensitive to market barriers; and (D) To encourage developers to promote participation by renters and low- to moderate-income retail electric customers. . .”

⁵ D.C. Code § 34-1431 *et. seq.*

⁶ *See e.g.* Law 15-350, Act 15-755. As originally enacted, the RPS required 0.329% of the District’s electricity supply to be derived from solar energy in 2020. While in 2021, 0.386% of the District’s electricity supply was to be derived from solar generation.

administered by DOEE for the purpose of “supporting the creation of new solar energy sources in the District, including activities that support the use of solar energy sources. . . ”.⁷

Subsequently, the RPS was amended multiple times -- in 2008, 2016 and 2019 – to, among other things, dramatically increase the RPS’ solar carve-out.⁸ Council also clarified that energy suppliers may only obtain their RPS solar requirements from solar energy systems no larger than 5 MW capacity located within the District (or on a distribution feeder serving the District).⁹ To address concerns that the availability of locally sourced solar generation assets would not keep pace with the aggressive targets set forth the RPS, as well as equitable concerns that solar generation may be cost prohibitive to a large segment of the District’s low to medium income residents, Council passed several measures.¹⁰

First, Council passed the Community Renewable Energy Amendment Act of 2013 (CREA), which established the CREF as a low-cost means for renters and homeowners lacking adequate rooftop space to take advantage of solar energy savings by purchasing energy subscriptions in off-site solar installations.¹¹ The solar energy generated by CREFs is used by

⁷ D.C. Code § 34-1436(c)(1)(A).

⁸ D.C. Law 17-250, Act 17-497, “The Clean and Affordable Energy Act of 2008” (CAEA). By comparison, the original RPS required 0.329% of the District’s energy supply to be sourced from solar generation in 2020, whereas the CAEA required 0.4% to be sourced from solar in 2020; D.C. Law 21-154, Act 21-466, “The Renewable Energy Portfolio Expansion Amendment Act of 2016”; and D.C. Code § 34-1432(c), “The Clean Energy Omnibus Act of 2018”, which required 2.175% of the District’s energy supply in 2020 to be sourced from solar generation. By 2040, 10% of the District’s energy supply must be sourced from solar generation.

⁹ D.C. Law 19-036. The Distributed Generation Amendment Act of 2011.

¹⁰ See https://lms.dccouncil.us/downloads/LIMS/29213/Committee_Report/B20-0057-COMMITTEEREPORT.pdf at pg. 3 (“To meet the requirements of the DGAA the District would have to add solar generating capacity at a rate of over 900 kW per month. Thus the Community Renewable Energy Act of 2013 is an important tool that will allow for the creation of CREFs thereby incentivizing the growth in the District’s solar capacity.”)

¹¹ D.C. Law 20-47, Act 20-186. Section 101(a) “It is in the public interest that the [DOEE] enables the development and deployment of community renewable energy facilities for the following purposes: (A) To allow renters and low-to moderate-income retail electric customers to own interests in tier one renewable energy generating facilities; (B) To allow interests in tier one renewable energy generation facilities to be portable and transferrable; (C) To facilitate market entry for all potential subscribers, while prioritizing those persons most sensitive to market barriers; and (D) To encourage developers to promote participation by renters and low- to moderate-income retail electric customers.”

Pepco, as the Standard Offer Service (SOS) Administrator, to offset wholesale energy purchases needed to meet Pepco's total SOS supply.¹²

Second, the Renewable Energy Portfolio Expansion Amendment Act of 2016 created the Solar-For-All program to be funded by the REDF and administered by DOEE.¹³ The ambitious purpose of Solar-For-All is “to increase the access of seniors, small local businesses, nonprofits, and low-income households in the District to the benefits of solar power. The Program shall reduce by at least 50% the electric bills of at least 100,000 of the District's low-income households with high energy burdens by December 31, 2032.”¹⁴ According to DOEE's internal records, over 60% of CREF capacity in the District is attributable to Solar-For-All funded projects.

On September 19, 2018, the Commission “established a RM9 Net Energy Metering (NEM) Working Group to address: (1) system upgrade costs related to the interconnection of community renewable energy facilities; and (2) to review the Commission's Net Energy Metering Rules and propose CREF-specific rule changes for the Commission's consideration.”¹⁵ After convening nine meetings of the RM9 NEM Working Group, the Commission issued a Notice of Proposed Rulemaking (First NOPR) on April 10, 2020, proposing various amendment to the Commission's Small Generator Interconnection Rules related to interconnection timelines, costs, and incorporation of technical standards for inverters.¹⁶

¹² D.C. Code § 34-1518(b)(5)(F).

¹³ D.C. Code § 8-1774.16.

¹⁴ *Id.*

¹⁵ F.C. 1050 / RM-40-2017-01, Order No. 19676, ¶1 (*rel.* Sept. 19, 2018).

¹⁶ 65 D.C. Reg. 4042-4119.

In response to comments and replies of stakeholders, including DOEE, Pepco, the Office of People’s Counsel for the District of Columbia (OPC), solar industry groups, and clean energy advocates, the Commission issued a second Notice of Proposed Rulemaking (Second NOPR) on December 28, 2020.¹⁷ The stated purpose of the Second NOPR was “to further address and clarify concerns surrounding the maintenance of a public queue, sortable by feeder; Advanced Inverter profile development; Level 1, 2 interconnections cost letter, approval to install and modify timelines; [CREF] distribution system upgrades funding; and customer charge for CREFs, among other things.”¹⁸ Comments were submitted by the same group of stakeholders who submitted comments on the First NOPR.

In its comments on the Second NOPR, Pepco expressed its view that CREFs are commercial customers who should be assessed a customer charge because, “[i]n addition to acting as small load on the system, CREFs require back-office administration on an ongoing basis.”¹⁹ In opposition to Pepco’s comments, DOEE filed a Motion for Leave to File Reply Comments to Second Notice of Proposed Rulemaking.²⁰ DOEE’s motion was granted by the Commission.²¹

On August 11, 2021, the Commission issued its final Order on the NOPRs.²² In its Order, the Commission determined that CREFs should be assessed a monthly customer charge at a rate equivalent to General Service Non-Demand (GS ND) commercial class customers (\$30.40 in 2021 and \$32.88 in 2022). In so doing, the Commission stated:

¹⁷ 67 D.C. Reg. 14887-14965.

¹⁸ *Id.*

¹⁹ Comments of Potomac Electric Power Company [to Second NOPR], at pg. 17 (Feb. 16, 2021). Motion granted per Commission

²⁰ March 2, 2021 (Reply Comments appended to Motion).

²¹ Order No. 20991, ¶ 44 (*rel.* Aug. 11, 2021).

²² Order No. 20991.

Even if we were to conclude that CREFs are generators as OPC and DOEE argue, we discern no clear legislative intent that the costs they incur should be shouldered by other ratepayers. In the absence of such intent, this becomes an exercise of balancing interests. A CREF generates electricity and is also a subscriber organization wherein each subscriber benefits from the electricity generated from the CREF. Specifically, each subscription represents a percentage of the community renewable energy facility's generating capacity; provided, that the subscription is intended primarily to offset part or all of the subscriber's own electrical requirements. The CREF/subscriber organization must use Pepco's systems and billing services (such as billing, meter reading and meter maintenance) to ensure its subscribers benefit from the monetary value of the electricity generated, so it is a customer from that perspective. We agree with Pepco's recommendation to charge a fee to CREFs for the administrative costs incurred by Pepco. Whether it is called a customer charge or some other term, it is only fair that a CREF owner/subscriber organization be required to pay these administrative costs as would any other customer. We will allow the recovery through a customer charge since the CREF/subscriber organization uses Pepco's systems and billing services. Customer charges intend to recover the costs incurred by a utility for fixed costs, such as billing, metering, and customer service.²³

In reaching this determination, the Commission credited Pepco's assertion that "the RM9 Working Group agreed that CREFs pay a customer charge, as customers on the system, either by agreement with the CREF Owner or with the Subscriber Organization if the CREF owner and the Subscriber Organization are separate entities."²⁴ Moreover, the Commission found that Pepco's current practice of zeroing out the customer charge on CREF bills in the District "is inconsistent with how a community solar owner/Subscriber Organization is treated in other Pepco jurisdictions such as Maryland, where the entity pays a customer charge for use of the Pepco system and services."²⁵

In response to the Commission's decision to assess CREFs a customer charge in Order No. 20991, DOEE timely files this Application for Reconsideration.

²³ *Id.* at ¶ 33.

²⁴ *Id.* at ¶ 31.

²⁵ *Id.*

III. SPECIFICATION OF ERRORS

The Commission's determination in Order No. 20991 to assess CREFs a customer charge is in error because the determination:

1. Undermines the Council's intent to treat CREFs as suppliers of energy to help Pepco offset its purchases from wholesale SOS suppliers;
2. Undermines the Council's stated policy in the CREA to provide an equitable, low-cost renewable energy alternative to rooftop solar;
3. Undermines the Council's stated policy in the CREA to provide a means to help the District achieve its ambitious solar carve out requirements set forth in the RPS; and
4. Is grounded, in part, on an inaccurate recitation of facts.

IV. STANDARD OF REVIEW

The Court of Appeals "in reviewing a Commission order, must determine whether [the order's] overall effect is just and reasonable, and . . . has made findings based on substantial evidence, and has applied the correct legal standards to its substantive deliberations."²⁶ To afford meaningful judicial review, courts require the Commission to "explain its actions fully and clearly."²⁷ "A passing reference is not sufficient to satisfy the Commission's obligation to carry out reasoned and principled decision-making. [Reviewing courts] have repeatedly required the Commission to fully articulate the basis for its decision. This requirement is so that the court

²⁶ *Washington Gas Light Co. v. Pub. Serv. Comm'n*, 465 A.2d 1098, 1104 (D.C. 2004) (internal citations and quotation marks omitted).

²⁷ *Id.* (quoting *Potomac Elec. Power Co. v. Pub. Serv. Comm'n*, 661 A.2d 131, 135 (D.C. 1995)).

“can be confident that missing facts, gross flaws in agency reasoning, and statutorily irrelevant or prohibited policy judgments will come to a reviewing court’s attention.”²⁸

V. ARGUMENT

A. THE COMMISSION ERRED IN FAILING TO TREAT CREF ADMINISTRATIVE COSTS AS COSTS ASSOCIATED WITH THE PROVISION OF STANDARD OFFER SERVICE.

As set forth in the CREA’s preamble, one of the stated purposes of the legislation is “to allow the SOS Administrator to offset wholesale purchases via community net metering.”²⁹ Thus, rather than viewing CREFs as customers of Pepco, as framed by the Commission in Order No. 20991, the CREA positions Pepco in the role of customer *to the CREF*. As the Standard Offer Service (SOS) administrator, Pepco is the recipient of all electricity exported to the grid by a CREF. Pepco then uses this subscribed energy “to offset purchases from wholesale suppliers for standard offer service.”³⁰ Moreover, “if the electrical capacity of a community renewable energy facility is not fully subscribed, [Pepco] shall purchase the energy associated with the unsubscribed capacity at the PJM Locational Marginal Price for the PEPCO zone, adjusted for ancillary service charges.”³¹ Thus, CREF generated supply was clearly intended by Council to be a source of SOS.

Because CREFs serve as a source of supply for the SOS Administrator, any “administrative costs” associated with procuring CREF-generated supply (i.e. billing, meter reading and meter maintenance) should be viewed as SOS administrative costs.³² Moreover,

²⁸ *Great Lakes Gas Transmission Ltd. P’ship v. FERC*, 984 F.2d 426, 432 (D.C. Cir. 1993).

²⁹ Law 20-47, Act 20-186. Preamble.

³⁰ D.C. Code § 34-1518(b)(5)(F).

³¹ D.C. Code § 34-1518.01(i).

³² According to Pepco’s current Standard Offer Service Rider on file with the Commission, “the Standard Offer Service Rate for each Rate Schedule within each SOS Type, including any usage incurred under associated Riders, will include the following components: 1. The seasonally-differentiated and, if applicable, time-of-use differentiated

SOS administrative costs are tracked and recouped by Pepco via the Procurement Cost Adjustment and associated Administrative Credit, which are periodically reviewed and approved by the Commission.³³ By treating CREF administrative costs as a line-item under SOS administrative costs, the Commission can leverage an established procedure to “monitor the customer charge collection over time” as opposed to arbitrarily assigning CREFs a customer charge associated with the usage patterns of an unrelated commercial class.³⁴

B. THE COMMISSION ERRED IN IGNORING IMPORTANT PUBLIC POLICY CONCERNS UNDERPINNING THE COUNCIL’S CREATION OF CREFS.

As set forth in the Background Section above, Council created CREFs to address two important public policy concerns. First, Council identified CREFs as a tool to assist the District in meeting the RPS’ aggressive solar carve-out requirements. Second, Council identified CREFs as a means to enable District renters and low-income residents to reap the benefits of affordable, renewable solar energy. The Commission’s determination to increase the costs of CREFs by assessing CREF owner/subscribers a significant monthly customer charge undermines these important environmental and equitable goals established by Council.

C. THE COMMISSION ERRED IN BASING ITS DETERMINATION, IN PART, ON INACCURATE FACTS.

In its Order No. 20991, the Commission repeats an unproven assertion made by Pepco

load weighted average of all awarded electric supply prices for specific services in each year. 2. Retail charges designed to recover, on an aggregate basis, FERC-approved Network Integrated Transmission Service charges (“NITS”) and related charges and any other PJM charges and costs incurred by the Electric Company directly related to Electric Company’s SOS load obligation for each SOS Customer Group. 3. *An administrative charge (included in Generation rates shown below)* 4. Applicable taxes (Included in Generation Rates shown below.) [emphasis added].”

³³ According to its current tariff on file with the Commission, the Procurement Cost Adjustment or, PCA, “is an adjustment made in order to true-up the rates customers are billed to reflect the Company’s actual costs of providing Standard Offer Service. A true-up adjustment will be made to the PCA at least four (4) times per year. These true-ups will revise the PCA based on actual and forecasted collections of SOS revenues by SOS Type and the actual and forecasted cost of providing Standard Offer Service.”

³⁴ Order No. 20991, §34.

that “[s]ome Commenters recommended that CREFs pay a customer charge for CREFs, for distribution services.”³⁵ The only commenter to recommend that CREFs pay a customer charge was Pepco – the would-be recipient of this revenue. The rest of the commenters either did not address the issue or opposed the imposition of a customer charge. Further, the Commission cites Pepco’s representation “that the RM9 Working Group agreed that CREFs pay a customer charge.”³⁶ Such an agreement is not evidenced anywhere in the record of this proceeding.

Again, citing only to Pepco’s Comments to the Second NOPR, the Commission repeats Pepco’s assertion that “CREF owner/Subscriber Organization’s bill contains a customer charge which is zeroed out so that District of Columbia CREFs do not pay a customer charge. This practice is inconsistent with how a community solar owner/Subscriber Organization is treated in other Pepco jurisdictions such as Maryland, where the entity pays a customer charge for use of the Pepco system and services.”³⁷ As pointed out in DOEE’s Reply Comments to the Second NOPR, the community solar tariff in Maryland does not in fact include a customer charge.³⁸ To the extent that the Commission’s CREF customer charge determination relied on any of these inaccurate representations from Pepco, the Commission erred.

VI. CONCLUSION

The Commission should, therefore, reconsider and reverse its determination in Order No. 20991 to assess CREFs a customer charge. To the extent that recovery of any administrative

³⁵ *Id.* at § 31.

³⁶ *Id.*

³⁷ *Id.*

³⁸ DOEE Reply Comments to Second NOPR, at pgs. 10-11 (March 2, 2021). *See also*, <https://www.pepco.com/MyAccount/MyBillUsage/Pages/MD/CurrentTariffsMD.aspx>

costs associated with CREFs are warranted, the Commission should include these costs as part of Pepco's SOS administrative costs.

Respectfully submitted,

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September 10, 2021

*Attorney for the Department of Energy and
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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of September 2021, I caused true and correct copies of the Department of Energy and Environment' Application for Reconsideration of Order No. 20991 to be emailed to the following:

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