

BEFORE THE
PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA

Settlement Agreement

I. Introduction

1. Pursuant to the Public Service Commission Rules of Practice and Procedure, Title 15 of the District of Columbia Municipal Regulations (“15 D.C.M.R.”) §§ 130.10 et seq., the Office of Compliance and Enforcement (“OCE”) of the Public Service Commission of the District of Columbia (“Commission”) and Solar Solution, LLC (“Solar Solution” or “Company”) (collectively, the “Parties”) hereby enter into this Settlement Agreement (“Agreement”). The Agreement is in resolution of the Commission’s investigation into the business practices of Solar Solution in the District of Columbia (or “District”), pursuant to Commission Order No. 17929.¹
2. The Commission is the duly constituted agency of the District of Columbia empowered to implement a Renewable Energy Portfolio Standard (“REPS”) for the District of Columbia, pursuant to D.C. Code § 34-1432 (a).
3. Pursuant to D.C. Code § 34-1439 (c), the Commission has adopted regulations that govern the District’s REPS and are codified in Chapter 29 of 15 D.C.M.R.
4. Solar Solution installs, operates on behalf of third parties, and owns solar facilities in the District for the purpose of selling renewable energy to customers and creating and selling renewable energy credits in the District, as defined in D.C. Code § 34-1431 (10).
5. Solar Solution has certified the two solar facilities referenced in this Agreement as renewable electricity generators. The certified facilities constitute renewable energy sources

¹ Formal Case No, 1131, In the Matter of the Investigation into Solar Solution, LLC’s Possible Violations of Commission Regulations and the Terms of Use of PJM-Environmental Information Services’ Generation Attribute Tracking System, Order No. 17929, rel. July 24, 2015.

within the meaning of D.C. Code §34-1431 (15)(A) and are subject to the Commission's jurisdiction pursuant to 15 D.C.M.R. § 2902.

6. Solar Solution is an applicant, which submitted applications and affidavits of general compliance with the Commission for the purpose of certifying the two solar facilities referenced in this Agreement as renewable energy sources. As an applicant and affiant, Solar Solution is subject to the Commission's jurisdiction pursuant to 15 D.C.M.R. §2902.

7. The Commission has designated the PJM-Environmental Information Services' Generation Attribute Tracking System ("GATS") to serve as the District's renewable energy tracking system for the purpose of facilitating the creation, tracking and transfer of renewable energy credits, as required by D.C. Code § 34-1437 (a).

8. Pursuant to the applicable provisions of the D.C. Code and Commission regulations, the Commission has jurisdiction over the subject matter of the investigation and the alleged actions of Solar Solution.

9. The Commission has delegated its authority to investigate this particular matter to the Office of Compliance and Enforcement ("OCE").

10. OCE conducted an investigation at the request of the Commission to determine if any actions taken by Solar Solution violated District statutes and/or Commission regulations.

11. Based on negotiations between OCE and Solar Solution, the Parties have agreed that it is in the public interest to resolve this matter efficiently through a consent agreement, and without the potential delay and burden associated with judicial proceedings.

12. The Parties desire to enter into this Agreement to resolve all outstanding issues arising from OCE's investigation of Solar Solution's business practices in the District of Columbia. The

investigation resulted in certain determinations and findings regarding the Company's compliance with Chapter 14A of Title 34 of the D.C. Code, the Commission regulations, and the terms of use of the PJM GATS.

13. The Parties concur that this Agreement is expressly conditioned upon the Commission's acceptance of all of its terms, without material modifications.

14. Solar Solution neither admits nor denies that its actions violated the D.C. Code, the Commission's regulations, or the terms of use of the PJM GATS system, but, to avoid litigation of this matter, agrees to pay restitution in the amount of \$116, 210 plus interest of \$3,776, and a civil penalty of \$20,000, as described in Sections IV and V of the Agreement.

15. The Parties agree and stipulate that the facts set forth below are undisputed.

16. Nothing contained in this Agreement shall be construed as a waiver of either Party's rights, except as otherwise contained herein. Nothing in this Agreement shall limit or prevent the Commission from taking future enforcement actions against Solar Solution. Such enforcement actions can include assessing penalties against Solar Solution for violations that were investigated and confirmed by the Commission.

II. Background

17. On July 25, 2011 Solar Solution submitted to the Commission an application for certification of a solar energy facility located in the District at 2034 Allen Place, NW ("Allen Facility"). Solar Solution sought to certify the Allen Facility as an eligible District of Columbia renewable energy standard generating facility pursuant to 15 D.C.M.R. § 2902. The application for certification was signed by an authorized representative of Solar Solution and stated that the Allen Facility had a rated capacity of 9.2 KW and had begun operation on September 15, 2010.

Pursuant to 15 D.C.M.R § 2902.6 (d), Solar Solution also submitted an affidavit of general compliance, certifying that the information included in the application for certification was true, correct, and complete.

18. Based on the information presented in the application for certification and the affidavit of general compliance, the Commission certified the Allen Facility on August 18, 2011.²

19. On February 17, 2012 Solar Solution submitted to the Commission an application for certification of a solar energy facility located at 1200 First Street, NE, Washington, D.C. (“First Street Facility”). Solar Solution sought to certify the First Street Facility as an eligible District of Columbia renewable energy standards generating facility pursuant to 15 D.C.M.R. § 2902. The application for certification was signed by an authorized representative of Solar Solution and stated that the First Street Facility had a rated capacity of 60.09 KW and had begun operation in February 17, 2011. Pursuant to 15 D.C.M.R. § 2902.6 (d), Solar Solution also submitted an affidavit of general compliance, certifying that the information included in the application for certification was true, correct, and complete.

20. Based on the information presented in the application for certification and the affidavit of general compliance, the Commission certified the First Street Facility on April 3, 2012.³

21. As certified renewable energy standard generating facilities, the Allen Facility and the First Street Facility were eligible to generate Solar Renewable Energy Credits (“SRECs”) based on the volume of solar energy produced by these facilities and sell the SRECs to electricity

² See RPS 11-1692, *In the Matter of the Application of Solar Solution, LLC for Certification of the Sachs-Ellenbogen Residence Facility as a Renewable Energy Portfolio Standards Generating Facility*, Order No. 16512, rel. Aug. 18, 2011.

³ See RPS 12-23, *In the Matter of the Application of Solar Solution, LLC for Certification of Its 1200 1st Street, NE, Washington, D.C. Solar Energy Facility as a Renewable Energy Standards Generating Facility*, Order No. 16750, released April 3, 2012.

suppliers in the District.⁴ SRECs are sold to energy suppliers, which use them to demonstrate compliance with the District's REPS, pursuant D.C. Code §34-1434.

22. In May, 2015, the Commission learned that contrary to Solar Solution's representations included in its application for certification and in the affidavit of general compliance, the First Street Facility was never installed by Solar Solution and it never went into service.

23. Following further investigation, OCE determined that Solar Solution never installed the Allen Facility either.

24. OCE determined that despite the fact that the two facilities were never installed, Solar Solution entered energy production data for the two facilities into PJM's GATS system. Based on the submitted energy production data, the GATS system generated SRECs for these two facilities and Solar Solution sold the SRECs. The energy suppliers used the SRECs purchased from Solar Solution to comply with the District's REPS requirements.

25. In response to OCE's preliminary findings, on July 24, 2015, the Commission issued Order No. 17929, launching an investigation into Solar Solution's business practices in the District. OCE sent a data request to Solar Solution on August 5, 2015 and the Company responded on August 19, 2015.

III. OCE's Investigation and Findings

26. OCE determined that Solar Solution violated D.C. Code § 34-1433 (a) because the two certified solar facilities were not placed into service and therefore did not produce eligible energy for inclusion in meeting the District's REPS requirements. Solar Solution violated Section § 2902.5 and Section § 2902.6 of 15 D.C.M.R. for providing to the Commission inaccurate information in the two pertinent applications for certification, and for submitting affidavits of

⁴ See D.C. Code §34-1433, §34-1437 and §34-1438.

general compliance without verifying that the information was true, correct and complete. Solar Solution violated PJM's GATS Operating Rules Section 6.2, Subsection 5(e) for submitting an inaccurate affidavit declaration that the information being provided to PJM as part of the registration of the Allen Facility and the First Street Facility with PJM's GATS was true and correct. In addition, Solar Solution continued to submit inaccurate energy production data into PJM's GATS system for the purpose of obtaining SRECs from these two facilities from September 2010 through May 2015 for the Allen Facility, and from February 2011 through May 2015 for the First Street Facility.

27. OCE determined that the violations lasted from the registration date of the facility first registered with the Commission (the Allen Facility on July 25, 2011), until the last registration date of the facilities at issue (the Allen Facility on July 13, 2015).⁵

28. OCE determined that Solar Solution sold 301 SRECs for the First Street Facility, 245 of which were retired for compliance with the District's REPS pursuant to D.C. Code § 34-1438 (c). As of September 1, 2015, there were 56 outstanding SRECs that could be sold or otherwise transferred pursuant to D.C. Code § 34-1438 (b).

29. Solar Solution presented an affidavit and evidence demonstrating that 56 of the 56 outstanding SRECs for the First Street Facility were replaced with valid SRECs owned by Solar Solution.

30. OCE determined that Solar Solution sold 60 SRECs from the Allen Facility, 50 of which are retired and 10 are still outstanding. Solar Solution stated that despite its efforts, it could not

⁵ The First Street Facility was originally registered on February 17, 2011, and later Solar Solution corrected the registration to February 17, 2012.

trace the buyers of the 10 outstanding SRECs, and therefore was unable to replace these SRECs in a timely manner.

31. The retired SRECs from both facilities have already been used for compliance with the District's REPS by the energy suppliers who purchased them from Solar Solution.

32. The retired SRECs are no longer available on the SREC market because their period of validity has expired pursuant to D.C Code §34 -1438 (c). Energy suppliers have already used the SRECs for compliance with the District's REPS and therefore no replacement SRECs are available to substitute the retired SRECs purchased from Solar Solution's Allen and First Street facilities.

33. Solar Solution represented and provided OCE with an affidavit, stating that in October 2015 it conducted an internal audit of its facilities and records. The audit showed that with the exception of the Allen Facility and the First Street Facility, all facilities registered by Solar Solution as certified solar renewable energy generating facilities in the District are installed and operational. Solar Solution also represented that the information in the applications for certifications submitted to date to the Commission for solar facilities in the District are true, correct and complete.

34. Solar Solution represented that in response to OCE's investigation, the PJM Interconnection conducted an independent audit of 42 randomly selected facilities owned or operated by Solar Solution and registered with GATS. Solar Solution represented that PJM did not find any inaccuracies in the records reviewed.

IV. Restitution

35. Solar Solution agrees to refund the value of 305 SRECs, which originated from the two

non-existing facilities – the First Street Facility and the Allen Facility, and were sold to electricity suppliers in the District of Columbia. These SRECs were retired or could not be replaced by Solar Solution. No restitution is being paid for the 56 SRECs from the First Facility that Solar Solution has replaced with valid SRECs.

36. To avoid retroactive settlement of transactions that were already settled by the PJM GATS system, and to avoid potential compliance issues for the electricity suppliers that purchased SRECs from the Allen and First Street facilities, OCE determined that the restitution by Solar Solution should be made in the form of a payment to the District's Renewable Energy Development Fund ("Fund"). This approach ensures the continued smooth operation of the PJM GATS system, while guaranteeing that Solar Solution would not be unjustly enriched from selling SRECs from non-existing facilities to electricity suppliers.

37. The restitution shall be in the amount of \$116,210⁶ plus interest of \$3,776⁷ (total amount of \$119,986) and shall be paid into the Fund [REDACTED]

38. Solar Solution shall make the payment [REDACTED]
[REDACTED] Payments should be made payable to the DC Treasurer.

39. Solar Solution shall submit evidence of payment to OCE after each payment is remitted, until the amount is paid in full. The evidence shall be submitted no later than the fifth (5th) calendar day of each month.

⁶ OCE determined that the average price for the 295 retired SRECs was \$378 per SREC based on market price information for compliance years 2012, 2013, and 2014. The average price of \$470 per SREC for the 10 outstanding SRECs was based on independent brokerage data for compliance year 2015. The total restitution amount for the 305 SRECs at issue was calculated based on this price information.

⁷ Interest is calculated at 3.25%.

40. Solar Solution can make the payments on an accelerated schedule without penalty and notify the Commission.

V. Civil Penalty

41. OCE determined that in light of the foregoing facts, Solar Solution shall be assessed a civil penalty of \$20,000. OCE determined that this amount is appropriate, based on a starting penalty of \$27,291 and the application of the following mitigating and aggravating factors: 1) Solar Solution replaced in a timely fashion 56 of the 66 total outstanding SRECs and made good-faith efforts to find and refund the price of the SRECs to the buyers of the remaining 10 outstanding SRECs; 2) Solar Solution responded diligently to OCE's data request; 3) Solar Solution expressed willingness during the investigation to refund the fair value of the 305 SRECs that were retired or it was unable to replace; 4) following notification of the violations, Solar Solution took voluntary corrective measures and conducted an internal audit to verify the validity of the information that it had submitted to the Commission and entered into GATS for all of its remaining facilities; 5) the size of Solar Solution and its share of the District of Columbia's market for solar systems; and 6) the benefits Solar Solution's services provide to customers in the District who choose to install solar panels on their property and use solar energy.

42. The following aggravating factors were applied by OCE when determining the penalty amount: 1) the extended duration and the repetitive nature of the violations; 2) the negative impact of the violations on the SREC market and buyers of SRECs; and 3) Solar Solution's lack of internal controls and supervision designed to discover, mitigate, and prevent violations of this nature.

43. Pursuant to Section §34-710 of the D.C. Code, all penalties shall be paid into the General

Fund of the District of Columbia. Payments should be made payable to the DC Treasurer.

44. The penalty shall be paid [REDACTED]

45. Solar Solution shall submit evidence of payment to OCE after each payment is remitted until the amount is paid in full. The evidence shall be submitted no later than the fifth (5th) calendar day of each month.

46. Solar Solution can make the payments on an accelerated schedule without penalty and notify the Commission.

VI. Solar Solution's Voluntary Actions to Ensure Future Compliance

47. In addition to the actions taken, such as PJM's audit of 42 randomly selected Solar Solution sites and also Solar Solution's own internal audit, to ensure that the First Street and Allen Place sites are isolated incidents, Solar Solutions has taken voluntary steps to ensure future compliance for all of its sites registered with the Commission.

48. First, Solar Solution's process of registering sites is much different today than it was in the 2011-2012 time period. For example, [REDACTED]

[REDACTED] This improved process by Solar Solutions but also by Pepco and the Commission, is more thorough than the process that existed in the 2011-2012 time period, and will guard against a repeat of the events that gave rise to this proceeding.

49. Second, Solar Solution has taken steps to bulk up and better organize its team for inputting GATS data on a monthly basis. Specifically, Solar Solution [REDACTED]

[REDACTED]
[REDACTED] represents Solar Solution's commitment to comply with all applicable laws and rules regarding its solar facilities in the District.

50. Third, while not an affirmative action by Solar Solution taken in response to the First Street and Allen Place incidents and this proceeding, Solar Solution is a more mature, technologically sound, and smarter company today than in 2011-2012 when these two isolated incidents occurred. As examples, Solar Solution: (1) placed 205th in *Solar Power World's* 2015 ranking of the Top 500 North American Solar Contractors;⁸ (2) celebrated its 1,000th customer and is proud to have installed more than 60% of the solar systems installed in the District during the past three years; and (3) was awarded the Mayor's Sustainability Award for 2014 as one of the leading businesses in the community for helping the District become green and helping meet the Mayor's sustainability goals. Solar Solution's growth in infrastructure, technology, personnel, and community presence will help ensure future compliance with all applicable laws.

VII. Public Interest

51. OCE and Solar Solution submit that this Agreement is in the public interest and request an approval from the Commission.

52. The Agreement is in the public interest because the terms of the Agreement will have no adverse economic impact on rate payers and will protect the integrity of the District's SRECs market and the interest of electricity suppliers that have purchased non-compliant SRECs from the Allen and First Street facilities.

53. The Agreement meets the objective of the District of Columbia renewable energy

⁸ See <http://www.solarpowerworldonline.com/2015-top-500-north-american-solar-contractors/>.

portfolio standard law (D.C. Code Title 34, Chapter 14A) by encouraging the use of clean energy provided by eligible suppliers and promoting confidence in the District's SREC market.

54. The restitution money paid by Solar Solution into the Fund will be used for the development of renewable energy projects in the District in accordance with the Fund's rules and regulations.

55. The Agreement ensures that Solar Solution is not unjustly enriched by its actions described in this Agreement.

56. The civil penalty provides adequate incentive for Solar Solution to avoid same or similar actions in the future.

57. As outlined in Section VI of this Agreement, Solar Solution has voluntarily implemented internal control measures into its business model to ensure that the violations resolved with this Agreement would not be repeated.

58. The Agreement resolves the matter efficiently through consent, and without the potential delay and burden associated with litigation.

59. Given the multitude of complex market issues involved in this investigation and its resolution, the benefits contained in the Agreement provide a solution that protects consumers and electricity suppliers, and does not burden the PJM system for the tracking and sale of SRECs.

VIII. Additional Terms

60. **Effective Date.** This Agreement shall become effective on the day the Commission issues an order approving the Agreement without material modifications. Once effective, the Agreement shall resolve any and all claims related to Solar Solution's violations described herein

within the jurisdiction of the Commission.

61. Default. The following events shall constitute Default: 1) Any representation of Solar Solution in this Agreement that shall prove to have been fraudulent or incorrect in any material respect when made; 2) Any failure by Solar Solution to observe or perform any of its obligations under this Agreement and; 3) Failure to make timely monthly payments of civil penalty and restitution, as specified in this Agreement, and to submit evidence of payment to OCE by the fifth (5th) calendar day of each month.

In the event of a Default, OCE shall have the right to pursue enforcement, including sanction actions against Solar Solution and penalties up to the maximum penalty allowed by the applicable D.C. Code provisions, the D.C. Municipal Regulations and the Commission's orders. A Default shall be deemed a violation of a final order of the Commission.

62. Interest. If Solar Solution fails to make timely restitution and/or civil penalty payments, interest charges of 3.25% on the remaining unpaid balance, compounded daily, will begin to accrue from the date payment is due. The interest on any late civil penalty shall be payable to the General Fund of the District of Columbia; and the interest on any late restitution payment shall be payable to the Fund.

63. Severability. Unless the Commission issues an order approving the Agreement in its entirety, and without material modifications, the Agreement shall be null and void and of no effect.

64. Final Agreement, Waiver of Rights to Further Proceedings. The Parties agree that the Commission's order approving the Agreement without material modifications shall be a final and unappealable order. In that regard, Solar Solution waives any right to challenge, either through a

petition for reconsideration or judicial review, the monetary penalty set forth in the Agreement or the Commission's general authority to impose penalties under these circumstances.

65. Precedential Effect. The Parties agree that this Agreement shall have no precedential effect on future proceedings, and Solar Solution retains its right to challenge any future unrelated alleged violations and/or penalties assessed by the Commission.

66. Entire Agreement. The Agreement represents the entire agreement between the Parties. No tender, offer, or promise of any kind outside of the terms of the Agreement has been made to induce the signatories of the Parties to enter into the Agreement. No oral representations shall be considered a part of the Agreement.

67. Reservation of Rights. The Commission reserves its rights to initiate enforcement, penalty or sanction against Solar Solution in accordance with this Agreement, Title 34 of the D.C. Code, the D.C. Municipal Regulations, and the Commission's orders.

68. Closing of Investigation. OCE's investigation shall be closed once Solar Solution satisfies the terms of this Agreement. OCE's data hold directives remain in effect until the investigation is closed. The investigation will be closed by an order of the Commission.

69. Amendments. Any amendments to the Agreement shall be in writing. No amendment shall be effective unless it is in writing, executed by the Parties and approved by the Commission.

70. Representations. The undersigned representative for each party affirms that he or she read the Agreement, that all matters set forth in the Agreement are true and correct to the best of his or her knowledge, information or belief, and that he or she understands that the Agreement is entered into by each party in reliance on the representations set forth herein.

71. Review. Each Party agrees it has had the opportunity to consult with legal counsel regarding the Agreement and to review it carefully. Each party enters the Agreement voluntarily. No presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

72. Successors and Assigns. The Agreement shall be binding on all successors and assigns of the Parties.

73. Governing Law. The Agreement shall be governed by and construed under the laws of the District of Columbia.

74. Authority. The undersigned representative of each party warrants that he or she is authorized to represent and bind the designated party.

75. Counterparts. The Agreement may be executed in counterparts, in which case each of the counterparts shall be deemed to be the original but all of which, taken together, shall constitute one and the same agreement.


76. The Agreement is executed in duplicate copies with one original retained by each party.

Agreed to and accepted:

SOLAR SOLUTION, LLC

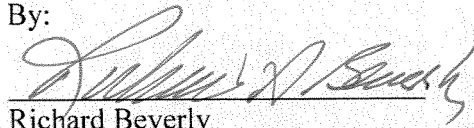
PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF
COLUMBIA
OFFICE OF COMPLIANCE AND
ENFORCEMENT

By:



Ben Breiterman
Member

By:



Richard Beverly
General Counsel

Date:

6/14/16

Date:

7/20/16