

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



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Public Advocacy Division
Social Justice Section

ELECTRONIC FILING

March 30, 2021

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

**Re: RM29-2020-02 -- In the Matter of 15 DCMR Chapter 29 – Renewable
Energy Portfolio Standard.**

Dear Ms. Westbrook-Sedgwick:

On behalf of the Department of Energy and Environment (DOEE), please find the enclosed Motion for Leave to File Reply Comments. DOEE's Reply Comments are attached to the Motion. If you have any questions regarding this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,

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Attorney General

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

**In the Matter of 15 DCMR Chapter 29 –)
Renewable Energy Portfolio Standards)**

RM29-2020-02

**MOTION OF THE DEPARTMENT OF ENERGY AND ENVIRONMENT
FOR LEAVE TO FILE REPLY COMMENTS TO POTOMAC
ELECTRIC POWER COMPANY’S RESPONSE TO COMMENTS
REGARDING THE THIRD NOTICE OF PROPOSED RULEMAKING
NO. RM29-2020-02**

Pursuant to Rule 105.8 of the Public Service Commission of the District of Columbia’s (Commission) Rules of Practice and Procedure, 15 D.C.M.R. §105.8, the Department of Energy and Environment (DOEE), by and through the Office of the Attorney General, hereby moves the Commission for Leave to File Reply Comments to the Potomac Electric Power Company’s (Pepco) Response to Comments Regarding the Third Notice of Proposed Rulemaking (Third NOPR) No. RM29-2020-02 (Pepco’s Response).¹ DOEE’s proposed Reply Comments are attached hereto. For reasons discussed below, good cause exists to grant the relief sought in this Motion.

On February 5, 2021, the Commission issued its Third NOPR to its regulations governing the District’s Renewable Portfolio Standards (RPS). The Third NOPR states that Pepco is prohibited from extending so-called cross-border feeders outside of the District of Columbia solely to allow out-of-District solar energy systems to become eligible for certification to meet the solar portion of the District’s Tier One requirement of the RPS.¹ In response to the Third NOPR, DOEE along with several renewable energy developers, including SunPower Corporation (SunPower), submitted Comments.² DOEE’s Comments suggested revisions to language

¹ D.C. Register Vol. 68 – No. 6, at ¶ 4.

² See Comments from Groundswell Inc., Chesapeake Energy and Storage, Montgomery Country Green Bank, and Solvitech L.L.C. (all filed on March 8, 2021). Pepco did not file any Initial comments in response to the Third NOPR.

proposed for Section 2902.1(d) of the RPS for determining eligibility of an out-of-state renewable energy developer to qualify for the District's lucrative Solar Renewable Energy Credits (SRECs). DOEE's proposed revisions to the Third NOPR would *inter alia* change the test for whether an out of state solar energy system could qualify for District SRECs based, not on Pepco's cross-border feeder map posted on its website, but rather to a "static" cross-border feeder Map and cross-border feeder List to be filed periodically with the Commission. In its Comments, SunPower noted that Pepco's website indicated that a particular cross-border feeder to which a solar energy system was seeking connection was shown to be ineligible on Pepco's website, but was later found by Pepco to be eligible after discussions with SunPower.

In response to DOEE's and SunPower's Comments, Pepco filed a Motion for Leave to File Responsive Comments. In its Response, Pepco articulated several reasons why the Cross-Border Feeder Map posted on its website was an adequate guide for solar system developers to determine which cross-border feeders will qualify interconnecting solar systems for participation in the District's SREC market. In so doing, Pepco argued that requiring it to file a "static" cross-boarder feeder Map and List would (1) result in untimely updates to newly qualifying feeders; (2) be administratively inefficient; and (3) infringe on Pepco's authority to operate its electric distribution system.

As set forth in DOEE's attached Reply Comments, each of Pepco's arguments against requiring it to file its cross-border feeder Map and List with the Commission is unavailing. Pepco's Response also ignores important countervailing principles that the Commission should consider. In short, permitting DOEE leave to file the attached Reply Comments will aid the Commission in its decision and provide the Commission with a more robust record upon which to base its decision on this important matter.

WHEREFORE, DOEE respectfully moves the Commission for leave to file its attached

Reply Comments to the Third NOPR.

Respectfully submitted,

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March 30, 2021

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Environment*

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

IN THE MATTER OF:

**In the Matter of 15 DCMR
Chapter 29 – Renewable Energy
Portfolio Standard**

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Rulemaking No. RM29-2020-02

**REPLY COMMENTS OF THE DEPARTMENT OF ENERGY AND ENVIRONMENT
TO THE POTOMAC ELECTRIC POWER COMPANY’S RESPONSE
TO COMMENTS REGARDING THE THIRD NOTICE OF PROPOSED
RULEMAKING NO. RM29-2020-02**

In reply to the limited response of the Potomac Electric Power Company (Pepco or the Company)¹ to Initial Comments filed by the Department of Energy and Environment (DOEE) and SunPower Corporation (SunPower),² pursuant to the Public Service Commission of the District of Columbia’s (Commission) Third Notice of Proposed Rulemaking (Third NOPR),³ DOEE states the following.

REPLY COMMENTS

DOEE stated in its Initial Comments that a static Cross-Border Feeder Map and accompanying Cross-Border Feeder List would “enhance transparency, market certainty, and competitive fairness” for market participants seeking to develop Solar Energy Systems in

¹ Potomac Electric Power Company’s Motion for Leave to Response and Response, RM29-2020-02 (March 17, 2021).

² RM29-2020-02: DOEE, Initial Comments of the Department of Energy and Environment to the Third Notice of Proposed Rulemaking No. RM29-2020-02 (March 8, 2021); SunPower Corporation 's Comments regarding the Third NOPR (March 8, 2021).

³ RM29-2020-02 Third NOPR (*rel.* February 5, 2021).

locations served by cross-border feeders.⁴ The current arrangement, in which Pepco hosts and updates a dynamic Cross-Border Feeder Map is overly opaque. It is unclear to DOEE when, at what frequency, and for what reasons Pepco makes changes to the Cross-Border Feeder map. This lack of transparency may unfairly advantage solar developers that can anticipate, or even influence, when a change is made to the Cross-Border Feeder Map and take advantage of locations that are newly served by cross-border feeders.

The exchange set forth in SunPower's Initial Comments and Pepco's Response is illustrative of situations where a solar developer may be aware of a pending change to the Cross-Border Feeder Map before the change has been made public. In SunPower's Initial Comments, SunPower states that it received confirmation from Pepco that a specific location where SunPower was developing a Solar Energy System was served by a cross-border feeder, however, that location is not indicated as being served by a cross-border feeder on Pepco's Cross-Border Feeder Map.⁵ Pepco's Response acknowledges that the Cross Border Feeder Map incorrectly fails to designate this particular feeder as a cross-border feeder and commits to updating the Map accordingly.⁶ Pepco's Response continues by saying that it "regularly responds to developer and Commission Staff inquiries regarding addresses and feeders in order to determine potential SREC eligibility."⁷

However, the process described by Pepco, whereby updates to the Cross-Border Feeder Map are "regularly" made through non-public arrangements between Pepco and solar developers or other parties is the antithesis of transparency. It is precisely this lack of transparency which

⁴ DOEE Initial Comments pgs. 4-5.

⁵ SunPower Initial Comments at pp.2-3.

⁶ Pepco comments at p.4.

⁷ *Ibid.*

underlies DOEE's request that Pepco be required to file with the Commission a static Cross-Border Feeder Map and Cross-Border Feeder List that is updated as necessary. Requiring Pepco to make these periodic filings will establish a level playing field and provide equal access for all solar developers seeking to enter the District's lucrative SREC market via cross-border feeders.

Moreover, it is District of Columbia ratepayers who ultimately pay the costs of SRECs sold into the District's RPS market. Because the Cross-Border Feeder Map is used to determine whether a solar developer can sell its ratepayer-funded SRECs into the District's RPS market, District ratepayers have a compelling interest in ensuring that updates to the Cross-Border Feeder Map are made through a public process that is accounted for on the record of the Commission.

Finally, the requirement for a static Cross-Border Feeder Map would also allow DOEE and other stakeholders to monitor the expansion of cross-border feeder arrangements and determine whether changes are needed to the cross-border feeder provision in the Distributed Generation Amendment Act of 2011, D.C. Law 19-36, 57 DCR 6242, effective Oct. 20, 2011. In 2020, the Commission certified 7.6 MW of Tier I Solar in Maryland on cross-border feeders, representing 18% of the Tier I Solar certified that year.⁸ As the development of solar energy in Maryland on cross-border feeders continues to increase, DOEE has an interest in monitoring the Cross-Border Feeder Map that defines the locations eligible to access the DC SREC market. Effective oversight of the Cross-Border Feeder Map is much more difficult if updates are made unilaterally and without notice by Pepco.

Pepco incorrectly asserts that the Commission has no authority to approve a Cross-Border Feeder Map for use in determining eligibility of Solar Energy Systems to participate in the DC

⁸ Source: <https://dcpsc.org/PSCDC/media/PDFFiles/Eligible-Renewable-Generators-Website-List.xls>.

RPS.⁹ In fact, the Commission under DC Code § 34–1439(c) and § 34–1439(d) has explicit authority to establish standards for determining generator eligibility in accordance with the District’s RPS. As DOEE previously stated, the Cross-Border Feeder Map is simply a geospatial representation of Pepco’s cross-border feeder topography at a given point in time. The Commission’s adoption of a static Cross-Border Feeder Map for the purposes of determining RPS eligibility does not equate to the Commission asserting regulatory authority over Pepco’s design or operation of the distribution as this requirement would in no way limit Pepco’s ability or authority to make changes to its feeder topography. When such changes are made, Pepco could simply file a notice with the Commission describing the changes to the topography, why they were made, and a new map reflecting those changes. DOEE proposes that Pepco file an updated Cross-Border Feeder Map and Cross-Border Feeder List with the Commission at least on an annual basis.

CONCLUSION

For the reasons set forth above, DOEE respectfully requests that the Commission adopt the modifications to the language of Subsection 2902.1(d) proposed in DOEE’s Initial Comments.¹⁰

⁹ Pepco’s Response at p.4.

¹⁰ DOEE Initial Comments, at pg. 6 (“(d) Eligibility for certification to meet the solar portion of the Tier One requirement of the RPS, for Solar Energy Systems not located within the District and in locations served by a distribution feeder serving the District, is based on the Electric Company’s ~~current~~ Cross-Border Feeder Map and Cross-Border Feeder List filed with the Commission ~~posted on its website;~~”)

Respectfully Submitted,

/s/ Thomas Bartholomew

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of March 2021, I caused true and correct copies of the Department of Energy and Environment's Motion for Leave to File Reply Comments and Reply Comments to be emailed to the following:

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