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PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET N.W., 2ND FLOOR, WEST TOWER
WASHINGTON, D.C. 20005

ORDER

February 4, 2015

FORMAL CASE NO. 945, IN THE MATTER OF THE INVESTIGATION INTO ELECTRIC SERVICE MARKET COMPETITION AND REGULATORY PRACTICES, Order No. 17794

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") addresses comments from interested persons and describes changes that we are making to the Notice of Proposed Rulemaking ("NOPR") published on September 12, 2014 amending Chapter 9, Rules and Regulations Governing Net Energy Metering ("NEM") of Title 15, Public Utilities and Cable Television of the District of Columbia Municipal Regulations ("DCMR") to implement those provisions of the "Community Renewable Energy Amendment Act of 2013 ("CREA") that implement the community net metering ("CNM") program.[1] The Commission has issued a revised NOPR with the incorporated changes that was published in the D.C. Register on January 30, 2015 for comment by interested persons.[2]

II. BACKGROUND

2. On October 17, 2013, the Council of the District of Columbia ("Council") enacted the CREA.[3] The CREA, among other things, amends the Retail Electric Competition and Consumer Protection Act of 1999[4] to create a community net metering ("CNM") program in the District of Columbia ("District"). Additionally, the CREA requires the Commission to establish rules to facilitate the implementation of CNM in the District.[5] Pursuant to this provision, the

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[1] The Community Renewable Energy Amendment Act of 2013 ("CREA") was enacted October 17, 2013. *See D.C. Act 20-0186.* The CREA became effective December 13, 2013. *See D.C. Law 20-0047.*

[2] *Formal Case No. 945, In The Matter of the Investigation into Electric Service Market Competition and Regulatory Practices*, ("*Formal Case No. 945*"), *62 D.C. Reg.* 1395-1406 (2015).

[3] The Community Renewable Energy Amendment Act of 2013 ("CREA") was enacted October 17, 2013. *See D.C. Act 20-0186.* The CREA became effective December 13, 2013. *See D.C. Law 20-0047.*

[4] The Retail Electric Competition and Consumer Protection Act of 1999 was enacted January 18, 2000. *See D.C. Act 13-0256.* Retail Electric Competition and Consumer Protection Act of 1999 became effective May 9, 2000. *See D.C. Law 13-107.*

[5] *See* Sec. 2 of the CREA amending 118(b) of the Retail Electric Competition and Consumer Protection Act of 1999, which amends D.C. Official Code § 34-1518 by adding paragraph 5.

Commission proposed revisions to Chapter 9 of Title 15 to implement CNM that were published on September 12, 2014. The proposed rules proposed amendments to subsections in the following sections of Chapter 9 of Title 15 of the DCMR: 900, 906, and 999 and adds new Sections 907, 908, 909, and 910. The addition of the new sections resulted in the renumbering of Chapter 9 from Section 907 through 910.[6]

3. In response to the September 12, 2014 NOPR, the Commission received comments from the following entities: 1) the Potomac Electric Power Company ("Pepco" or "the Company"); 2) the Office of the People's Counsel ("OPC"); 3) the Interstate Renewable Energy Council ("IREC"); 4) the Vote Solar Initiative ("Vote Solar"), on behalf of itself, DC Solar United Neighborhoods ("DC SUN"), and the Washington, D.C. Chapter of the Sierra Club ("Sierra Club D.C.") (collectively the "VSGroup"); 5) Nixon Peabody LLP ("NPLaw"); and 6) U.S. Photovoltaics, Inc. ("USPV").[7] The Commission received reply comments from the following parties: Pepco, IREC, and CleanGrid Advisors ("CleanGrid").[8] Based on the comments and reply comments received, the Commission proposes to further amend the proposed rules for Chapter 9. Specifically, the Commission further amends subsections in the following sections of Chapter 9 of Title 15 of the DCMR: 906, 907, 908 and 999. These proposed amendments result in a renumbering of subsections within Sections 906, 907 and 908.

III. DISCUSSION

Comments in Response to the Amendments to Section 999

4. The comments in response to our amendments to Section 999, specifically the "CREF Credit Rate," were comprehensive and extensive. Because of the significance of this issue and the comments raised, we will address the amendments to Section 999, first.

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6 *Formal Case No. 945, 61 D.C. Reg.* 9370-9380 (2014).

7 *Formal Case No. 945,* Comments of U.S. Photovoltaics, Inc. to the September 14, 2014 NOPR ("USPV's Comments"), filed October 14, 2014; Comments of the Potomac Electric Power Company to the Notice of the Proposed Rulemaking ("Pepco's Comments"), filed October 14, 2014; Comments of the Office of People's Counsel on the Proposed Rulemaking on the Community Renewable Energy Act of 2013 ("OPC's Comments"), filed October 14, 2014; Comments on the Proposed Rules for Community Renewable Energy Facilities of the Interstate Renewable Energy Council, Inc. ., Maryland DC Virginia Solar Energy Industries Association ("MDV-SEIA"), DC Solar United Neighborhoods, Skyline Innovations (d/b/a Nextility Inc.), Clean Energy Collective, Vote Solar, the DC Sierra Club D.C. ("IREC's Comments"), , filed October 14, 2014; Comments of the Vote Solar Initiative, DC Solar United Neighborhoods ("DC SUN"), and the Washington, D.C. Chapter of the Sierra Club to the Notice of Proposed Rulemaking, amending Chapter 9 of Title 15 of the District of Columbia Municipal Regulations ("VSGroup's Comments"), filed October 14, 2014; Comments of Nixon Peabody in Response to the Notice of Proposed Rulemaking ("NPLaw's Comments"), filed October 14, 2014; See also IREC's Errata Comments filed October 15, 2014.

8 *Formal Case No. 945,* Reply Comments of the Potomac Electric Power Company regarding the Notice of the Proposed Rulemaking ("Pepco's Reply Comments"), filed October 27, 2014; Reply Comments on the Proposed Rules for the Interstate Renewable Energy Council, Inc. ("IREC's Reply Comments"), filed October 27, 2014; Reply Comments of CleanGrid Advisors ("Clean Grid Advisors' Reply Comments"), filed October 28, 2014.

A. Pepco's Comments

5. In its comments, Pepco proposes that "of the Retail Competition and Consumer Protection Act of 1999, as amended" be substituted for the final three words "in the CREA." Pepco proposes this revision because Section 118 is a reference to the Retail Competition and Consumer Protection Act of 1999, not to the CREA.[9] The amended definition would read:

> **"CREF Credit Rate"** means a credit rate applied to Subscribers of community renewable energy facilities which shall be equal to the standard offer service rate for the General Service Low Voltage Non-Demand Customer class or its successor, as determined by the Commission, based upon Section 118 ~~of the CREA.~~ of the Retail Competition and Consumer Protection Act of 1999, as amended.

B. IREC's Comments

6. IREC's comments state that the proposed definition for term "CREF Credit Rate" "echoes the definition [given in the CREA] verbatim."[10] However, IREC notes that Pepco's applicable General Services, Low Voltage, Non-Demand ("GS-LV-ND") rate schedule specifies that Standard Offer Service ("SOS") customers will pay generation, transmission and distribution service (collectively "GT&D") charges, including all applicable riders,[11] although IREC admits that distribution charges are contained in a separate tariff section from generation and transmission SOS charges.[12] As such, IREC concludes "the statutory language is not clear as to which rate components – Generation, Transmission and Distribution – should be included in the CREF Credit Rate." IREC requests that the Commission provide clarity surrounding which rate components will be used to calculate credits.[13]

7. IREC also emphasizes that CREFs provide a range of benefits, including avoided energy costs and system losses, avoided generation capacity costs, avoided transmission and distribution costs, grid support services, financial benefits such as fuel price hedging and market price response, reliability and resiliency benefits, and environmental and social benefits, such as economic development.[14] Since the GS-LV-ND rate, as the CREF Credit Rate, is a "proxy

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9 *Formal Case No. 945,* Pepco's Comments at 11.

10 *Formal Case No. 945,* IREC's Errata Comments at 5.

11 *Formal Case No. 945,* IREC's Errata Comments at 5, citing *ELECTRICITY TARIFF, P.S.C.- D.C. No. 1,* Twentieth Revised Page No. R-41.1.

12 *Formal Case No. 945,* IREC's Errata Comments at 5, citing *ELECTRICITY TARIFF, P.S.C.- D.C. No. 1,* Twentieth Revised Page No. R-41.3.

13 *Formal Case No. 945,* IREC's Errata Comments at 5.

14 *Formal Case No. 945,* IREC's Errata Comments at 5.

intended to encompass the full value of the CREF and compensate the Subscriber accordingly," IREC argues that all GS-LV-ND rate components, in other words GT&D, should be included in the definition "to capture this full value."[15]

C. VSGroup's Comments

8. In it comments, VSGroup requests that the "Commission clarify that the CREF Credit Rate will be equal to the full retail distribution rate for the General Service Low Voltage GS-LV-ND customer class, including an appropriate credit for distribution charges, in addition to credits for generation, transmission, and administrative charges set forth under the Standard Offer Service rider."[16] VSGroup asserts that this clarification is necessary to eliminate uncertainty for CREF developers and Subscribers, ensure that CREF projects are economically viable, and "preserve the legislative intent of the Council and stakeholders to include distribution in the CREF Credit Rate."[17] In addition, VSGroup requests that the Commission clarify that the distribution rate component of the CREF Credit Rate will apply to Subscribers for any and all CREFs, which means that such credits are unrelated to the 100 kW capacity limit that applies to NEM customer-generators.[18]

9. Moreover, VSGroup recounts that in 2012 the Council convened the CREA Working Group for the purpose of negotiating the technical details for the Community Renewable Energy Amendment Act of 2013.[19] VSGroup states that the statutory language used to define the CREF Credit Rate was a direct result of negotiations among CREA working group participants.[20] VSGroup also claims that certain working group participants proposed various revisions to the CREF Credit Rate definition.[21] In particular, questions were raised as to: 1) whether the CREF Credit Rate would include distribution service rates; and 2) whether all CREF projects and Subscribers would qualify for the GT&D retail rate. According to VSGroup, the CREA "working group participants (including Commission staff) collaborated to craft language that clearly intended to apply the full retail rate to all CREF Subscribers, which was adopted by the Council in CREA as enacted."[22]

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15 *Formal Case No. 945,* IREC's Errata Comments at 5.

16 *Formal Case No. 945,* VSGroup's Comments at 2.

17 *Formal Case No. 945,* VSGroup's Comments at 2.

18 *Formal Case No. 945,* VSGroup's Comments at 2.

19 *Formal Case No. 945,* VSGroup's Comments at 3. The CREA working group included representatives from the Commission, VSGroup, PEPCO, OPC, DDOE, D.C. Sustainable Energy Utility, WGES, Skyline Innovations, WDC Solar and Greenspace.

20 *Formal Case No. 945,* VSGroup's Comments at 3.

21 *Formal Case No. 945,* VSGroup's Comments at 3.

22 *Formal Case No. 945,* VSGroup's Comments at 3-4.

10. In support of its position, VSGroup first points to the language used to define the CREF Credit Rate in the CREA. In particular, the VSGroup contends that the CREA mandates that the credit be equal to the "standard offer service rate for the General Service Low Voltage Non-Demand Customer class."[23] Similar to IREC, VSGroup argues that electric service to the GS-LV-ND class entails both SOS and distribution service.[24] VSGroup quotes from the Eighteenth Revised Page No. R-41.1 of Pepco's current tariff, which reads:

> Customers receiving Standard Offer Service will pay the Distribution Service Charge, Transmission Service Charge and Generation Service Charge including all applicable riders. The Distribution Service Charges are stated in the Monthly Rates for the Customer's applicable Rate Schedule.[25]

VSGroup concludes that "[w]hen the statutory definition is read together with the terms of PEPCO's filed rate schedules, it is difficult to imagine that the Council intended to exclude distribution charges from the CREF Credit Rate without spelling out such exclusion clearly and explicitly in the statute."

11. In further support of its position, VSGroup revisits portions of the legislative history of the CREF Credit Rate. First, VSGroup references the June 14, 2012, testimony of Commission Chairman Betty Ann Kane before the Council Committee on Public Services and Consumer Affairs, which VSGroup alleges supports the conclusion that the "CREA included a clear policy choice to use fully aggregated retail rates to credit Subscribers."[26] Second, VSGroup notes that the definition for the CREF Credit Rate in the Council's July 1, 2013, draft of the CREA was "even more explicit" in its intent to use the full retail rate:

> "CREF Credit Rate" means the following rate components that would otherwise be charged to a Subscriber's electric bill, including generation charges, transmission charges, distribution charges, and any demand charges. The value of these charges is based on the standard offer of service rate for the Subscriber's distribution rate class.[27]

12. On July 2nd and 3rd, 2014, VSGroup states that CREA Working Group participants considered various revisions to this CREF Credit Rate definition.[28] Specifically, VSGroup notes that Pepco had proposed the following language for the CREF Credit Rate

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23 *Formal Case No. 945,* VSGroup's Comments at 5.

24 *Formal Case No. 945,* VSGroup's Comments at 6.

25 *Formal Case No. 945,* VSGroup's Comments at 6 citing *Formal Case No. 945,* IREC's Errata Comments at 5, citing *ELECTRICITY TARIFF, P.S.C.- D.C. No. 1,* Eighteenth Revised Page No. R-41.1 (January 15, 2014).

26 *Formal Case No. 945,* VSGroup's Comments at 6-7.

27 *Formal Case No. 945,* VSGroup's Comments at 7.

28 *Formal Case No. 945,* Exhibit 1 to VSGroup's comments contains emails exchanges between working group members addressing the proposed revisions (in reverse chronological order).

during that period:

> "CREF Credit Rate" shall be determined by the Commission based upon D.C. Official Code § 34-1518(b)(4). The generation credit shall be equal to the standard offer service rate for the General Service Low Voltage Non-Demand Customer class or its successor, as determined by the Commission. If applicable, the distribution credit rate shall also be the General Service Low Voltage Non-Demand rate.[29]

VSGroup claims that Pepco's proposal to use "if applicable" language was based on "an erroneous interpretation of the CREF Credit Rate as being subject to the 100 kW limit for applying full distribution credits under NEM."[30] Nonetheless, VSGroup claims that "this concern expressed by Pepco was an explicit acknowledgement that everyone understood CREA's definition of CREF Credit Rate to be a full retail distribution rate."[31]

13. VSGroup avers that stakeholders ultimately recommended that the Council use the following "streamlined version of the CREF Credit Rate definition, with the understanding that the full retail distribution rate components would be included, even if not spelled out explicitly."[32]

> "CREF Credit Rate" shall be determined by the Commission based upon D.C. Official Code § 34-1518(b)(4). The credit rate shall be equal to the standard offer service rate for the General Service Low Voltage Non-Demand Customer class or its successor, as determined by the Commission.

VSGroup claims that Commission staff confirmed via the following email that this "tightened" language (which is nearly identical to the definition enacted by the Council) does propose to credit Subscribers at the full retail rate:[33]

> Using this language would actually include the generation, transmission and distribution charges included in the SOS rate for the GS-LV-ND [class] that would serve as the basis for the CREF Credit Rate. We have no objection to using this revised definition.[34]

14. Finally, VSGroup requests that the Commission consider amending the CREF rules "to clarify that the limits on credits for customer-generators under NEM rules do not apply

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29 *Formal Case No. 945,* VSGroup's Comments at 7.

30 *Formal Case No. 945,* VSGroup's Comments at 8.

31 *Formal Case No. 945,* VSGroup's Comments at 8-9.

32 *Formal Case No. 945,* VSGroup's Comments at 7.

33 *Formal Case No. 945,* VSGroup's Comments at 7.

34 *Formal Case No. 945,* VSGroup's Comments at 8 citing the Email sent by C. Hinton to the CREA Working Group participants dated July 3, 2013 at 11:25 am, included in Exhibit 1 to VSGroup's comments.

to CREF Subscribers under Community Net Metering rules." In VSGroup's view, the District's NEM rules apply only to customer generators.[35] Since neither the CREA nor the proposed CREF rules amend the definition of customer generator, "there is no legal authority for applying the NEM limits to any Community Net Metering facilities or Subscribers."[36]

D. NPLaw's Comments

15. NPLaw states that the CREF Credit Rate is fundamental to the success of the CREF program.[37] If the CREF Credit Rate is set too low, it would be unfair to program participants and "negatively impact the ability of CREFs to obtain financing and the success of the program overall."[38] From this point, NPLaw repeats virtually verbatim the comments of IREC, and requests that the Commission include GT&D in the CREF Credit Rate definition.[39]

E. Pepco's Reply Comments

16. In its Reply Comments, Pepco disagrees with the comments of IREC, VSGroup and NPLaw, which request the Commission to interpret the language in the CREA to include a distribution component in the CREF Credit Rate.[40] Pepco asserts that its SOS tariff language is clear. The SOS GS-LV-ND rate includes four components: 1) generation; 2) transmission; 3) an administrative charge; and 4) applicable taxes (which are included in the applicable generation rate).[41] Pepco also asserts that the SOS rate clearly excludes Pepco's distribution charges. As a result, Pepco states "the Commission should decline to extend the definition past what the Council clearly provided in the Act."[42]

F. Commission Discussion

17. Pepco suggests that we amend the definition of the "CREF Retail Rate" because Section 118 that is referenced therein is a section of the Retail Competition and Consumer Protection Act of 1999, not the CREA. We have confirmed that Section 118 is, as Pepco notes, a reference to a section of the Retail Competition and Consumer Protection Act of 1999 and not to CREA; therefore, the change that Pepco has suggested is appropriate. We have modified the revised NOPR accordingly.

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35 *Formal Case No. 945,* VSGroup's Comments at 9.

36 *Formal Case No. 945,* VSGroup's Comments at 10.

37 *Formal Case No. 945,* NP Law's Comments at 2.

38 *Formal Case No. 945,* NP Law's Comments at 2.

39 *Formal Case No. 945,* NP Law's Comments at 3.

40 *Formal Case No. 945,* Pepco's Reply Comments at 4.

41 *Formal Case No. 945,* Pepco's Reply Comments at 5.

42 *Formal Case No. 945,* Pepco's Reply Comments at 5.

18. IREC and VSGroup request that the Commission provide additional guidance with respect to the rate components in the CREF Credit Rate. It notes that the definition included in the NOPR merely repeats the statutory language in D.C. Official Code §43-1501(12A) that defines the CREF Credit Rate to mean "a credit rate applied to subscribers of community renewable energy facilities which shall be equal to the standard offer service rate for the General Service Low Voltage Non-Demand Customer class or its successor, as determined by the Commission, based upon § 34-1518." The commenters ask the Commission to address in particular whether the CREF Credit Rate includes a distribution and volumetric component and to amend the proposed definition accordingly. They argue that the rate should include all the kWh based charges of the retail rate including commodity charges (SOS rate), distribution, taxes, surcharges and other kWh denominated elements of a customer's bill.[43] Pepco, on the other hand, argues that the rate components for the CREF Credit Rate should be the same as the SOS GS-LV-ND tariff rate which includes four components: 1) generation; 2) transmission; 3) an administrative charge; and 4) applicable taxes and therefore there is no need to further clarify the definition as requested by IREC and VSGroup.

19. The Commission has reviewed and considered the comments that have been submitted. In this order which is the Commission's first opportunity to address this topic, we are providing the requested additional guidance with respect to the appropriate rate components of the CREF Credit Rate. In conducting our review, we start with an acknowledgement that with the advent of the restructuring of retail electric markets in the District of Columbia in 1999 came the disaggregation of the components of District consumers' electric bills into generation services, transmission services and distribution services. Following the passage of the Retail Competition Act, the Electric Company no longer provides generation services. Consumers now have the opportunity to obtain their electricity from a Competitive Electricity Supplier or receive Standard Offer Service ("SOS") from the SOS Administrator designated by the Commission under the tariff rate for their applicable customer class. CREA provides that the renewable energy produced by a CREF will be an additional source of energy to be acquired by the SOS Administrator. When acquired, the energy will be treated in one of two ways. If the energy is unsubscribed energy from a CREF it will be acquired at the LMP Price. When the energy is subscribed energy from a CREF, it will be acquired and Subscribers will be compensated through the issuance of a credit at the CREF Credit Rate which, according to D.C. Official Code §43-1501(12A) is defined as "a credit rate applied to subscribers of community renewable energy facilities which shall be equal to the standard offer service rate for the General Service Low Voltage Non-Demand Customer class or its successor, as determined by the Commission, based upon § 34-1518." It is the appropriate elements of this rate that the commenters have put at issue.

20. To provide further guidance, we have looked at the legislative history. WE begin by noting, in particular, the following language in the Committee Report on Bill 20-0057:

> CREF credit rate: the CREF credit rate is the rate at which a subscriber of a CREF will receive credits on their bill for the

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[43] *Formal Case No. 945,* IREC's Errata Comments at 5-6; NP Law's Comments at 3; and VSGroup's Comments at 2 and 4.

> energy produced by the CREF. The working group and the Committee determined that the credit rate shall be equal to the standard offer service rate for the General Service Low Voltage Non-Demand customer class or its successor. This rate provides across the board certainty for the electric company that is calculating the billing. Previously the Committee had considered setting the Credit rate as the standard offer service rate for the subscriber's distribution rate class, however that definition may have led to billing difficulties for electric companies who will be manually calculating the net metering given that you may have different subscriber rates within the same CREF.[44]

The discussion contained in the Committee Report and the language of the CREA both confirm the Council's intent that the CREF rate equals the standard offer service rate for the General Service Low Voltage Non-Demand Customer class ("GS-LV-ND SOS ") or its successor.

21. As directed by this Committee language and the statutory language, we next looked at the elements of the GS-LV-ND SOS rate.[45] Pepco stated in its Reply Comments that the rate includes four elements: 1) generation; 2) transmission; 3) an administrative charge; and 4) applicable taxes. We note that the following elements are listed in the Wholesale Full Requirements Sale Agreement that the SOS Administrator procures and thus make up the full requirements rate:

1. Energy;
2. Capacity;
3. Transmission other than Network Integration Transmission Service;
4. Ancillary Services;
5. Renewable Energy Resource Requirement;
6. Transmission and distribution losses;
7. Congestion management costs;
8. Other services or products needed to supply electric service.[46]

When a CREF subscriber is compensated with a CREF credit at the GS-LV-ND SOS purchase price, the subscriber is being fully compensated for all of these elements. In a restructured jurisdiction like the District these elements are determined in a market environment and represent a market determined "avoided cost."

22. IREC and VSGroup argue that in order for CREFs to be viable, the definition of

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[44] Committee Report on Bill 20-0057 the "Community Renewables Energy Act of 2013", Committee on Government Operations at 8 (July 2, 2013).

[45] *ELECTRICITY TARIFF, P.S.C.- D.C. No. 1,* Twentieth Revised Page No. R-41-R-41.5 (December 1, 2014).

[46] *Formal Case No. 1017, In the Matter of the Development and Designation of Standard Offer Service in the District of Columbia ("Formal Case No. 1017")*, Pepco Wholesale Full Requirements Service Agreement, filed September 30, 2014. at 4, Definitions, "Full Requirements Service."

the "CREF Credit Rate" should also include the distribution services included in the GS-LV-ND SOS Full Retail Rate. We do not agree for several reasons. First, we think that it is inconsistent with our restructured market for energy purchased by the SOS Administrator to include the cost of distribution services, absent a clear statutory mandate to do so and we find no such mandate in the final language of the CREA.

23. We do not accept the argument advanced by IREC and VSGroup that the CREF Credit Rate should have a compensation structure similar to that of a NEM facility of less than 100 kW capacity, i.e. that the CREF Credit Rate should include all volumetric charges paid by the GS-LV-ND distribution class in order to make the CREF Credit Rate equal to the Total GS-LV-ND Retail Rate.[47] When a NEM customer of less than 100 kW generates energy in excess of total use, the NEM rules provide that such a customer receives full retail rate compensation for such generation.[48] However, such a customer is limited by law and Commission rules to installing generation that is forecast to provide no more than 100 percent of annual historic use.[49] Therefore, the long-term expected value of such a customer's generation in excess of use is zero if the generation is sized to provide 100 percent of a customer's load. The situation is different with a CREF and CNM. A CREF is not sized to meet the load of a single user; nor is it sized to meet the load of its Subscribers. Furthermore, unlike NEM where a NEM customer uses its load and therefore reduces the load on the grid, the CREF Subscribers are not required to demonstrate any corresponding reduction of their load use while the CREF injects its generation directly into Pepco's distribution grid. Consequently, there is no corresponding reduction of load on the grid; the net load remains the same. The benefits that accrue because of lower loads on the grid simply do not occur in the context of a CREF.[50] That is, the load reduction benefits of energy efficiency, energy conservation or behind the meter generation do not occur with CREF generation.

24. The CREF arrangement is also a more costly arrangement. A NEM customer with a maximum allowed sized generating system would have an expected long-term bill of $0.00 per year. If that same customer had generation, for some reason, of 120% of their annual use, the non-energy portion of that credit, the part that is at issue for the commenters, would be about $64 at existing rates. This credit would be carried as an unfunded liability by Pepco as the regulated distribution company. If, collectively, this unfunded liability credit became large, Pepco could convert the liability into a regulatory asset and request return of the asset in rates. If the same customer invested in a CREF, that customer would receive a credit of about $500 for 100% of his usage and a credit of about $600 if he invested in such a way that he offset 120% of his

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47 *Formal Case No. 945,* VSGroup's Comments at 11; IREC's Errata Comments at 5.

48 15 DCMR §§ 902.3 and 903.5.

49 *See* D.C. Official Code § 1501(15) which reads: "Customer-generator" means a residential or commercial customer that owns and operates an electric generating facility that: (A) Has a capacity of not more than 1000 kilowatts; (B) Uses renewable resources, cogeneration, fuel cells, or microturbines; (C) Is located on the customer's premises; (D) Is interconnected with the Electric Company's transmission and distribution facilities; and (E) Is intended primarily to offset all or part of the customer's own electricity requirements.

50 There may be some benefits from have generation local rather than remote. These benefits are compensated, if desired, by the sale of Renewable Energy Credits by a local generator.

usage. This amount would represent a direct subsidy to the CREF Subscriber without any of the system benefits from lowered grid flows as from a NEM customer's generation or a customer who invested in energy efficiency or energy conservation. As the subsidy would come through payments by the SOS Administrator and not through the rate-of-return regulated distribution company, it would not be collectible through a rate case. It is a subsidy in need of a source of funds. This is a serious concern to the Commission when we focus on the fact that there is a significant difference in the magnitude of the subsidy to a NEM customer and the magnitude of the subsidy being sought for the CREF Subscriber for non-energy charges. An example of the difference is summarized in the table below:

Table 1 – Comparison of Direct Subsidy between NEM & CNM Customer Full Retail Rate

	100%	**120%**
NEM Customer	$0	$64
CNM Customer	$500	$600

For 100 MW of CREFs, the annual amount of the direct subsidy would be over $7.3 million per year.

25. The final argument that we have considered relates to the suggestion that the CREF Credit Rate should include all volumetric charges. We reject this suggestion for three reasons. First, there is nothing in the legislative history of the statute itself to indicate a legislative intention to include volumetric charges related to distribution services and other fees as part of this Credit Rate. We think it is important to examine what costs would not be funded by a CREF Subscriber who receives compensation for all volumetric charges. The CREF Subscriber is effectively: 1) Not paying Delivery Tax, although the Subscriber is taking delivery of full requirements power and energy; 2) Not paying Public Occupancy charges; 3) Not contributing to the Sustainable Energy Trust Fund (SETF) which funds demand-side projects in the District, including energy efficiency, renewable energy and green jobs; 4) Not contributing to the Energy Assistance Trust Fund (EATF) which subsidizes bills for low-income ratepayers; 5) Not contributing to the Residential Aid Discount Surcharge; and 6) Not contributing to the cost of undergrounding vulnerable feeders, although benefitting from improved reliability. The funding scheme being advanced raises questions of equity, as well as questions of cost-causality and a mismatch of beneficiaries and payees of utility services. A CREF Credit Rate that is limited to the generation and transmission services that the SOS Administrator pays for GS-LV-ND energy instead of the total retail rate addresses these equity concerns and the cost-causality question and eliminates the mismatch between beneficiaries and payees of utility services.

26. Second, we think there are ample income streams available to Subscriber Organizations to make the community net metering program economically viable. CREF Subscriber Organizations have an additional income stream available to support the operation of the CREF, i.e. the sale of RECs and Solar Renewable Energy Credits ("SRECs").[51] RECs are

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[51] CREFs are not required to register to sell SRECs or to sell SRECs even if registered. However, all CREFs will be eligible to register and sell RECs or SRECs and to ignore that potential income stream is to overlook an important part of what would make a CREF economically viable.

compensation to renewable generators for providing the benefits to the District described in the RPS Act. The solar portion of the RPS program was substantially modified by the Distributed Generation Amendment Act of 2011 which increased the solar carve-out in recognition of the value of solar to the District. The legislation also limited SRECs to facilities in the District or on a feeder supplying the District making sure that compensation for economic development and other social benefits and the value of local embedded generation were properly compensated to local solar facilities.[52] At present, the value of a SREC is about $0.47/kWh or over 10 times the value of the average Pepco zone LMP, which represents the energy value of as-available intermittent energy in the District. We view the income stream available to a CREF from the sale of SRECs as an additional compensation to support the economic viability of CREFs. CREF Subscriber Organizations have the option of sharing that revenue stream with its Subscribers. REC and SREC income is also not the only other income stream that is available to Subscriber Organizations. They can receive additional income streams for CREFs in the form of tax advantages, including an exemption for property tax in the District. The commenters do not address these issues and therefore have not persuaded the Commission that the combination of SRECs and the CREF Credit Rate as described in the NOPR was not sufficient to insure the viability of a CREF project.

27. Third and most importantly, the parties who promote this idea have provided no persuasive explanation of how revenue stream to CREF Subscribers would be funded.[53] As we understand the scheme under CREA, as written, it requires the SOS Administrator to buy CREF output at the GS-LV-ND SOS rate from CREF Subscribers and then turn around and sell the energy at the same GS-LV-ND SOS rate to SOS customers. In other words, the SOS Administrator is buying and selling the CREF output at the same price. Thus, the transaction as set up under CREA has little or no economic impact on SOS customers, the majority of whom are residential ratepayers, nor does it create a shortfall of revenues for the SOS Administrator. At the same time, the transaction benefits the environmental and sustainability goals of the District by increasing the supply of renewable energy serving District ratepayers.

28. By contrast, the scheme outlined by IREC and VSGroup would require the SOS Administrator to buy CREF subscribed energy at the full retail rate, but then turnaround and sell the output to SOS customers at the GS-LV-ND SOS tariff price which is to say, to sell it at a loss. An additional funding source would need to be identified to keep the SOS Administrator whole. The commenters have not suggested where we would find the source for this additional funding; and the CREA is silent on how any such funding would be accomplished. The silence in the statute indicates to this Commission that its drafters did not contemplate that compensation above and beyond the mechanism explicitly described in the statute would be used.

29. We likewise reject the argument that CREA allows for CREF subscribed energy to be bought at the full retail rate but sold it at the GS-LV-ND SOS tariff price because the funding

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[52] The Distributed Generation Amendment Act of 2011 was enacted August 09, 2011. *See D.C. Act 19-0151.* The Distributed Generation Amendment Act of 2011 became effective October 20, 2011. *See DC Law 19-0036.*

[53] *Formal Case No. 945,* VSGroup's Comments at 5-6; NPLaw's Comments at 2-3; IREC's Errata Comments at 6.

could eventually be obtained by the operation of Section 122 of the amended Retail Electric Competition and Consumer Protection Act of 1999. Section 122, Recovery of CREF Implementation Costs, provides:

> "Pursuant to paragraphs 2 and 94 of section 8 of An Act Making appropriations to provide for the expenses of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 977, 994; D.C. Official Code §§ 34-1101 and 34-901), the Electric Distribution Company may seek recovery of any costs associated with the implementation of this act in a base rate case. In a base rate case filing that includes recovery of such costs, the Electric Distribution Company shall include in its filing with the Commission any benefits and costs to the Electric Distribution Company. Any recovery of the net costs by the Electric Distribution Company approved by the Commission shall occur solely through a rate assessment of the Subscribers."[54]

If a surcharge was placed on the bills of the general body of ratepayers to fund a subsidy to CREF Subscribers, it would be considered a cost of implementing the CREA under Section 122, which would then have to be recovered "solely through a rate assessment of the Subscribers." Such an arrangement would effectively negate any surcharge that funded the requested subsidy from the general body of ratepayers.

30. In light of our review and analysis on the elements related to this issue, we interpret that the plain language of the CREA statute to mean that the CREF Credit Rate only includes generation and transmission, not distribution or other dollar/kWh denominated charges. Therefore, we determine that the definition of the CREF Credit Rate as set forth in the NOPR is appropriate, and should not be amended. Furthermore, since the CREF Credit Rate does not include a distribution component, we find there is no need to amend the NOPR to clarify that the size restrictions applicable to NEM customer generators, in regard to receiving distribution-related credits, do not apply to CREF Subscribers, as suggested by VSGroup.

Additional Terms to be Incorporated into Section 999

31. During the course of its review of comments, the Commission found that there were two terms used throughout the NOPR for which there were no definitions: "Community Net Metering Credit" or "CNM" Credit and Competitive Electric Supplier or "CES". With respect to the term: "Community Net Metering Credit" or "CNM" Credit the Commission has determined that it is appropriate to distinguish between the CREF Credit Rate, as previously defined, and the term "Community Net Metering Credit," which is used throughout our proposed rules. To that end, we propose to add the following definition to Section 999:

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[54] *See* Sec. 2(e) of the CREA adding Sec. 122 to the Retail Electric Competition and Consumer Protection Act of 1999.

> **"Community Net Metering Credit"** or **"CNM Credit"** means the credit realized by the Subscriber, based on its ownership share in the CREF. The credit will be reflected on the Subscriber's bills from the Electric Company.

32. In addition, the Commission has added a definition for the term "Competitive Electricity Supplier" or "CES," which is also used throughout our proposed rules. The definition for "Competitive Electricity Supplier" or "CES" has been written to correlate with the term "Electric Supplier," defined under D.C. Official Code § 34-1431(15). Thus, Section 999 is further amended to read:

> **"Competitive Electricity Supplier" or "CES"** means a person, other than the SOS Administrator, including an aggregator, broker, or marketer, who generates electricity; sells electricity; or purchases, brokers, arranges or, markets electricity for sale to customers, and shall have the same meaning as the term "Electricity Supplier" set forth Section 101 of the Retail Electric Competition and Consumer Protection Act of 1999, effective May 9, 2000 (D.C. Law 13-107; D.C. Official Code § 34-1501).

33. Finally, we amended the definition for the term "Electric Company." We amended the term for the sake of clarity and consistency with other related regulatory provisions such as Chapter 41 of Title 15, in order to ensure further harmony between the two chapters. We amended the definition so that it also reflects the definition found in D.C. Official Code § 34-207. The term as amended reads:

> **"Electric Company" means** every corporation, company, association, joint-stock company or association, partnership, or person and doing business in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, physically transmitting or distributing electricity in the District of Columbia to retail electric customers. The term excludes any building owner, lessee, or manager who, respectively owns, leases or manages, the internal distribution system serving the building and who supplies electricity and other related electricity services solely to occupants of the building for use of the occupants. The term also excludes a person or entity that does not sell or distribute electricity and that owns or operates equipment used exclusively for the charging of electric vehicles.

Comments in Response to Proposed Subsection 906.1

A. IREC's Comments

34. In its comments, IREC proposes that the Commission strike 906.1:

> 906.1 A Community Renewable Energy Facility (CREF) shall meet all applicable safety and performance standards established by the National Electrical Code (NEC), National Electrical Safety Code (NESC), the Institute of Electrical and Electronics Engineers (IEEE), Underwriters Laboratories (UL) as required by the Electric Distribution Company for execution of an Interconnection Agreement.

IREC proposes to delete this subsection, because it contends that the required safety and performance standards are already part of the interconnection procedures with which CREFs must comply.[55]

B. Commission Discussion

35. A CREF must first obtain an Interconnection Agreement under the DCSGIR Therefore, IREC is correct that there is an overlap between Subsection 906.1 and Section 4002 of the "District of Columbia Small Generator Interconnection Rules" ("DCSGIR"), Chapter 40 of Title 15 of the DCMR.[56] We nevertheless think it is important to remind CREFs that they have a continuing obligation to meet the safety and performance standards set out in Section 906.1. We will address this continuing obligation in the revised NOPR in Section 906.3 and delete Section 906.1 from the revised NOPR.

Comments in Response to the Proposed Subsection 906.2

A. IREC's Comments

36. IREC proposes to add the following text at the end of Subsection 906.2:

> 906.2 . . . Under no circumstances may a CREF sell subscriptions totaling more than one hundred percent (100%) of its energy generation. CREF Subscriptions may be transferred or sold to any person or entity who qualifies to be a Subscriber or to the Subscriber Organization for resale by the Subscriber Organization to other Subscribers. A Subscriber may change the premise or account number that the CREF energy is attributed to, as long as the Subscriber continues to qualify under these rules. Any transfer of Subscriptions must be coordinated through the Subscriber Organization, which in turn needs to provide the required updated Subscriber information in its quarterly update.

IREC quotes from the CREA, that it is in the public interest that community renewable energy

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55 *Formal Case No. 945,* IREC's Errata Comments at 14.

56 *Formal Case No. 1050, In the Matter of the Investigation of Implementation of Interconnection Standards in the District of Columbia* ("*F.C. 1050*"), Order No. 15182 rel. February 6, 2009; See also the Notice of Final Rulemaking at 56 *D.C. Reg.* 1415-1486 (February 13, 2009); 15 *D.C.M.R.* Chapter 40 (February 13, 2009).

facilities be developed "to allow interests in tier one renewable energy generation facilities to be portable and transferrable."[57] IREC's Model Rules define "portability" as a customer's ability to bring her subscription in a shared renewable energy facility with her if she moves within a program's territory. The Model Rules define "transferability" as a Subscriber's ability to transfer her subscriptions to another customer within a program's territory.[58] IREC claims that with only half of Americans remaining in a residence for longer than 10 years, the treatment of these portability and transferability issues are critical to program participation.[59] IREC therefore recommends that the Commission incorporate the above provision addressing both of these key program components.

B. NPLaw's Comments

37. NPLaw recommends that the Commission incorporate a provision allowing for the portability and transferability of subscriptions. NPLaw agrees with and supports the language proposed by IREC, shown above.[60]

Reply Comments in Response to the Proposed Subsection 906.2

C. Pepco's Reply Comments

38. Pepco does not oppose the portability and transferability of interests in CREF subscriptions, and can agree to include this language in its proposed CREF Rider to Pepco's Tariff. Pepco recommends that this issue be addressed when it submits its proposed CREF Tariff Rider for the Commission's approval.[61]

D. Commission Discussion

39. The Commission's jurisdiction over CREFs and CNM is limited to the technical implementation of the CREA. It does not extend to issues (contractual or otherwise) between the CREF and its Subscribers. We consider transferability to be an issue within the province of the Mayor or the Mayor's designee.[62] Consequently, we decline the suggestion to amend the NOPR to include any language on transferability. Portability, on the other hand, has to do with the identification of the appropriate billing meter and falls within the jurisdiction of the Commission. The proposed Section 906.2 requires the CREF to report quarterly to the Electric Company a list

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57 Sec. 2(b) of the CREA, adding Sec. 101a (3)(B) of the Retail Electric Competition and Consumer Protection Act of 1999.

58 *Formal Case No. 945,* IREC's Errata Comments at 6; IREC's *Model Rules* are available on its website at www.irecusa.org/regulatory-reform/shared-renewables.

59 *Formal Case No. 945,* IREC's Errata Comments at 7.

60 *Formal Case No. 945,* NP Law's Comments at 3-4.

61 *Formal Case No. 945,* Pepco's Reply Comments at 5.

62 *See* Section 121(c) of the CREA, D.C. Official Code § 34-1521.

of Subscribers and associated billing meters. Therefore, the draft rules, as written, allow for portability and do not need to be modified. The subsection will, however, be renumbered as Subsection 906.1.

Comments in Response to the Proposed Subsection 906.3

A. Reply Comments of CleanGrid

40. CleanGrid states that the last clause of this Subsection references the distribution level generation requirements set forth in Chapter 41 of Title 15 of the District of Columbia Municipal Regulations, Section 4109. However, CleanGrid asserts that the referenced code sections relates to a different subject, and is not the correct reference.[63]

B. Commission Discussion

41. The last clause of this Subsection references the Distribution Level Generation Requirements set forth in the proposed revisions to Chapter 41 of Title 15 of the District of Columbia Municipal Regulations for the proposed Section 4109 in Formal Case No. 1017.[64] The proposed Section 4109, Distribution Level Generation Requirements, is a new Section that is being added to Chapter 41; it will replace the current Section 4109, Market Monitor Consultant. The Distribution Level Generation Requirements Section did not exist in Chapter 41 prior to the NOPR issued on September 12, 2014 for Chapter 41 in Formal Case No. 1017. Formal Case No. 1017 NOPR renumbers Chapter 41 and the Market Monitor Consultant Section so that its provisions will be contained in the proposed Section 4110 for the proposed SOS Rules. The reference as it was published in the NOPR is correct and no amendments are necessary. However, we have made some small non-substantive modifications to this provision for the sake of clarity. Specifically, we modified the proposed rule to read as follows:

> 906.3 The owners of any Subscriber Organization controlling a CREF: (a) shall not be considered public utilities or electricity suppliers solely as a result of their interest or participation in the CREF; (b) shall own any Renewable Energy were explicitly contracted for through a separate transaction independent of any interconnection agreement or contract; (c) shall follow all procedures and all standards for performance and safety for interconnection set forth in Chapter 40 of Title 15 of the District of Columbia Municipal Regulations; and (d) shall be subject to the distribution level generation requirements set forth in Chapter 41 of Title 15 of the District of Columbia Municipal Regulations, Section 4109.

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63 *Formal Case No. 945,* CleanGrid's Reply Comments at 7.

64 *Formal Case No. 1017, In the Matter of the Development and Designation of Standard Offer Service in the District of Columbia ("Formal Case No. 1017"),* 61 *D.C. Reg.* 38, 9381-9394 (2014).

Comments in Response to the Proposed Section 906.5

A. Pepco Comments

42. Pepco proposes to strike the reference to the 5 megawatt maximum because: 1) the maximum capacity of a CREF is already stated in the definition of a CREF; and 2) it is not appropriate to discuss the (MW) limitation on the facility's capacity in a section that addresses the energy (MWh) produced by the facility. In addition, Pepco proposes to strike all references to ancillary services because: a) renewable energy facilities do not typically provide ancillary services; and b) such services would, in any case, be provided directly to PJM, not Pepco, and PJM would be providing payment for those services directly to the CREF generator.[65] The amended Section 906.5 would read:

> 906.5 All electricity exported to the grid by a CREF shall become the property of the SOS administrator, pursuant to Section 118a(h) of the CREA, but shall not be counted toward the Electric Distribution Company's total retail sales pursuant to the Renewable Energy Portfolio Act of 2004, effective April 12, 2005, D.C. Law 15-340; D.C. Official Code §§ 34-1431 *et. seq.* If the electrical capacity of a CREF is not fully subscribed, the Electric Distribution Company designated as the SOS administrator shall purchase the unsubscribed energy produced by the CREF~~, up to the 5 megawatt maximum~~, at the PJM Locational Marginal Price for energy in the PEPCO zone~~, adjusted for ancillary service charges. CREF owners shall provide the level of voltage and VAR support required by the Electric Distribution Company if they opt to have their price adjusted upward to include payment for ancillary services or shall allow the Electric Distribution Company to procure all necessary ancillary services to maintain voltage and VAR support and have the CREF price adjusted downward to remove the payment for ancillary services~~. The SOS Administrator shall use unsubscribed energy to offset purchases from wholesale suppliers for standard offer service, and shall recover the cost of unsubscribed energy from SOS customers, in accordance with Chapter 41 of Title 15 of the District of Columbia Municipal Regulations, Subsection 4109.3.

B. OPC's Comments

43. OPC states that proposed Section 906.5 does not provide any details regarding how the increased payment for unsubscribed energy would be calculated should a CREF owner maintain voltage and VAR support. OPC requests that the Commission include specific guidance on how the price for unsubscribed energy should be adjusted and verified to account for ancillary services supplied by a CREF owner. OPC avers that this information should be

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65 *Formal Case No. 945,* Pepco's Comments at 5.

included in the CREF Rider to the Interconnection Agreement. In addition, OPC requests that the Commission "delineate the procedure for review and resolution" of any disputes that may arise in connection with the SOS Administrator's amount of payment (for ancillary services) or possible failure to purchase unsubscribed energy.

C. IREC's Comments

44. IREC believes that this subsection appropriately captures the CREA statute that reads "[i]f the electrical capacity of a community renewable energy facility is not fully subscribed, the SOS administrator shall purchase the energy associated with the unsubscribed capacity at the PJM Locational Marginal Price for the Pepco zone, adjusted for ancillary service charges." [66] IREC further notes that the PJM LMP for unsubscribed energy, with or without the ancillary services adjustment, is substantially lower than the CREF Credit Rate, with or without the distribution component of the GS-LV-ND rate, and therefore encourages CREFs to be fully subscribed.[67]

D. NPLaw Comments

45. NPLaw provides the same comment as IREC.[68]

Reply Comments in Response to the Proposed Subsection 906.5

E. Pepco's Reply Comments

46. In response to OPC, Pepco reiterates that it does not purchase ancillary services from generators, and that it does not participate in the process where PJM compensates generators for ancillary services. Moreover, Pepco avers that the CREA "does not address the provision of ancillary services by CREFs." Consequently, Pepco stands by its initial comments to remove the applicable language in proposed Section 906.5.[69]

F. IREC Reply Comments

47. IREC agrees with OPC that: 1) further clarity and guidance is needed regarding how the price paid for unsubscribed energy should be adjusted for ancillary services; and 2) the Commission needs to clarify how disputes involving pricing will be resolved. While Pepco may not be directly involved in an ancillary service transaction, IREC states that it is unclear why that circumstance would prevent Pepco "from passing through the value or cost of ancillary services to the CREF." In IREC's view, the CREA clearly intends for CREFs to receive compensation

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66 Sec. 2(d) of the CREA adding § 118a(i) of the Retail Electric Competition and Consumer Protection Act of 1999.

67 *Formal Case No. 945,* IREC's Errata Comments at 8.

68 *Formal Case No. 945,* NP Law's Comments at 4-5.

69 *Formal Case No. 945,* Pepco's Reply Comments at 2.

for any ancillary services supplied, and further clarification is needed to ensure that CREF regulations comport with the intent of the CREA on this matter.[70]

48. In response to Pepco's comment that "renewable facilities do not typically provide ancillary services," IREC notes that this is changing. Many solar installations are already using smart inverters capable of providing VAR support, so with the potential grid support capabilities of CREFs, IREC supports the Commission's efforts to determine the best practice for compensating CREFs for those services. [71]

G. Commission Discussion

49. We will adopt Pepco's suggestion to strike the reference to the "5 megawatt maximum." Including the "5 megawatt maximum" reference may cause some confusion between the concepts of a CREF's capacity and the facility's output.

50. With regard to the reference to ancillary services, Pepco argues that this is an issue related to services provided by PJM and therefore should be removed from these rules. IREC argues that this language should remain in recognition of the fact that there can be distribution-related ancillary services. OPC suggests that we determine compensation and prices however, neither OPC nor IREC mention what is the adequate compensation level for distribution-related ancillary services. The new Subsection 118a(i) of the Retail Electric Competition and Consumer Protection Act of 1999, D.C. Original Code § 1518.01(i) allows for adjustments for ancillary services. Currently, no one is charging for ancillary services at the distribution level, so we are assuming no adjustment is necessary. In the event there are distribution-related ancillary service charges, adjustments for these charges can be made at the distribution level as necessary. While we recognize that the parties would like to receive more guidance from the Commission as to specific compensation or prices, at this time, we do not have such information. Moreover, the parties were not able to identify any state or jurisdiction that provides such compensation to distributed generators for distribution-related ancillary services. Consequently, absent a specific tariff for ancillary service, we conclude that the best approach is to have language that states "ancillary service charges shall be adjusted for distribution services as necessary." This language recognizes that the ancillary service compensation on distribution is a new area which is being discussed in IEEE 1547 committees, so the standards are still evolving. We point out that going forward, any party, including IREC, OPC or Pepco, can submit a petition to the Commission seeking to establish a proposed tariff for the purpose of compensating CREFs for ancillary services. However, no ancillary service compensation will be provided unless such a tariff is vetted and approved.

Comments in Response to the Proposed Subsection 906.6

A. OPC's Comments

51. In their comments, OPC proposes that the 24-hour deadline for notifying the

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70 *Formal Case No. 945,* IREC's Reply Comments 4.

71 *Formal Case No. 945,* IREC's Reply Comments at 5.

Electric Distribution Company that a CREF has fewer than two Subscribers be extended to two or three days. This will alleviate administrative and logistical challenges for CREF owners.[72]

B. IREC's Comments

52. IREC's comments propose the following rule change to Subsection 906.6:

> 906.6 A CREF shall have no less than two (2) Subscribers. In the event that a CREF has begun operation with more than two (2) Subscribers and subsequently falls below two (2) Subscribers, the CREF shall notify the Electric Distribution Company in its next quarterly report pursuant to Subsection 908.3 ~~within twenty-four (24) hours of having less than two (2) Subscribers~~. Upon request from the Commission, the Electric Distribution Company shall provide notice of any CREFs which fall below two (2) Subscribers for more than 90 days. A CREF with fewer than two (2) Subscribers for more than 90 days is subject to disconnection and shall not provide energy for CREF credit pursuant to Subsection 907.4 or sell any energy supply to the SOS Administrator pursuant to Subsection 907.8.

According to its comments, IREC recognizes that a CREF is required to have at least two Subscribers and that this proposed Subsection aims to ensure that this requirement is met, but IREC believes that the 24-hour timeframe is excessively short. IREC asserts that despite a Subscriber Organization's best efforts, a CREF may be temporarily unsubscribed, but will be motivated to find new Subscribers given the significantly lower rate paid for unsubscribed energy. IREC recommends that the rule change be adjusted to allow flexibility for obtaining new Subscribers within the quarter, rather than 24 hours, before being subject to non-payment and disconnection.[73]

C. NPLaw's Comments

53. NPLaw agrees that the 24-hour timeframe is burdensome and recommends that it be changed to a quarterly reporting requirement. NPLaw agrees with and supports the language proposed by IREC, shown above.[74]

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72 *Formal Case No. 945,* OPC's Comments at 4.

73 *Formal Case No. 945,* IREC's Errata Comments at 11-12.

74 *Formal Case No. 945,* NPLaw's Comments at 6-7.

Reply Comments in Response to the Proposed Subsection 906.6

D. Pepco's Reply Comments

54. Pepco does not oppose the recommendation made by OPC to extend the 24-hour deadline to two or three days.[75]

E. IREC's Reply Comments

55. IREC agrees with OPC that a 24-hour timeframe is logistically challenging, but feels that two or three days would be equally problematic. IREC maintains the original recommendation for an extension to a quarterly (90 days) requirement.[76]

F. Commission Discussion

56. The parties raise two issues in connection with this section involving: 1) the time period within which the CREF must notify the Electric Distribution Company that it has fewer than two Subscribers; and 2) the time period within which the CREF must sign up a new Subscriber(s) in order to avoid the possibility of disconnection. OPC asserts that a 24-hour notification period is unnecessarily short and may present logistical challenges for a Subscriber Organization. We accept OPC's suggestion and we will amend this subsection and extend the notification period from 24 to 72 hours.

57. With respect to an appropriate sign-up period, we are not persuaded that a CREF should be permitted 90 days to acquire an additional Subscriber. The CREA seeks to encourage "broad participation in District-based tier one renewable electric generation by District residents." To that end, the CREA deems a CREF with fewer than two Subscribers to no longer be a CREF. Because the CREA deems Subscribers to be the "life blood" of a Subscriber Organization, we find IREC's proposal that we allowed a non-qualifying CREF an additional 90-day sign-up period to be inconsistent with CREA. On the other hand, after the initial notification is made, we are willing to amend 906.6 to establish a 30-day enrollment window to allow a CREF additional time to enroll a new Subscriber. Thus, we amend Subsection 906.6 to state the following:

> 906.6 A CREF shall have no less than two (2) Subscribers. In the event that a CREF ~~has begun operation with more than two (2) Subscribers and subsequently~~ falls below two (2) Subscribers, the CREF shall notify the Electric Distribution Company within seventy-two (72) hours. A CREF with fewer than two (2) Subscribers <u>for more than thirty (30) days</u> shall not provide energy for CREF credit pursuant to Subsection 907.4 or sell any energy supply to the SOS Administrator pursuant to Subsections 906.4 and 907.7 <u>and</u>

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75 *Formal Case No. 945,* Pepco's Reply Comments at 2.

76 *Formal Case No. 945,* IREC's Reply Comments at 6.

is subject to disconnection by the Electric Distribution Company. The Electric Distribution Company shall provide notice of any CREFs which fall below two (2) Subscribers to the Commission, upon request.

Comments in Response to the Proposed Subsection 906.9

A. Pepco's Comments

58. Pepco proposes to strike the reference to Interconnection Agreement and instead would submit a CREF Rider to its tariff. Doing so would permit Pepco to use the existing Small Generator Interconnection Agreement (that is currently approved and in effect for NEM customers) for CREFs. In addition to that Interconnect Agreement, CREFs would be required to execute a separate CREF Rider with Pepco. Pepco proposes to submit a CREF Rider to its tariff for Commission approval within 90 days of the final rulemaking.[77]

B. IREC's Comments

59. IREC states that its fails to understand the necessity for a CREF Rider. IREC also points out that "a CREF is similar to other exporting renewable energy facility interconnecting to the Electric Distribution Company's grid," and that the Electric Distribution Company will obtain all necessary information about a CREF's attributes through the registration process outlined in Subsection 908.1. IREC suggests that the CREF Rider would be unnecessary and recommends that this Subsection be removed, along with all references to the CREF Rider in the proposed rules.[78]

Reply Comments in Response to the Proposed Subsection 906.9

C. **Pepco's Reply Comments**

60. Pepco disagrees with the comments stating that a CREF Rider is unnecessary. Pepco is required to submit a CREF Rider to its tariff to the Commission for approval pursuant to DC Code § 34-901, and cannot bill customers under the new rate until the Rider is approved. The CREF Rider is used to communicate important points to CREFs and Subscribers including: 1) availability; 2) requirements of participation; 3) application requirements; 4) program limitations; 5) mechanics and timing of billing; 6) meter requirements; 7) transferability and portability provisions; and 8) charges for participation. For these reasons, Pepco states that a CREF Rider to the Pepco Tariff is necessary.[79]

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77 *Formal Case No. 945,* Pepco's Comments at 4.

78 *Formal Case No. 945,* IREC's Errata Comments at 12-13.

79 *Formal Case No. 945,* Pepco's Reply Comments at 6-7.

D. IREC's Reply Comments

61. IREC originally suggested removing the reference to the CREF Rider, but appreciates that Pepco will need specifications regarding the treatment of CREFs in its tariff and an associated contract, as it has with net metering. IREC therefore agrees with Pepco that CREFs should use the existing small capacity generator interconnection agreement associated with the Interconnection Rules.[80]

E. CleanGrid's Reply Comments

62. In its Reply Comments, CleanGrid presumes that the "Interconnection Agreement" referred to in the proposed rules is the "District of Columbia Small Generator Interconnection Rule Level 2-4 Standard Agreement for Interconnection of Small Generator Facilities." Based on its review of the language, Clean Grid believes that the Agreement is sufficient to support the interconnection of a CREF, without the need for a Rider. However, CleanGrid states that since a CREF will be transferring title and/or selling energy to the Electric Company, that transfer or sale may be subject to provisions of an EDC tariff. CleanGrid supports Pepco's recommendation that a CREF Rider to its tariffs be created specifically to: 1) cover the provision of bill credits to Subscribers; and 2) define the relationship and responsibilities between Pepco and a CREF.[81]

F. Commission Discussion

63. We note that all parties agree that it is appropriate to include a CREF Rider to Pepco's tariff. There is not clear agreement with respect to the inclusion of a CREF Rider to the Interconnection Agreement. We conclude that both documents are needed to address the various terms and conditions related to the CREF relationship. Therefore we have amended the rule to require that Pepco prepare and file a tariff for the treatment of a CREF and a rider to the existing interconnection agreement containing the terms and conditions for the CREF's interconnection and operation between the Subscriber Organization and the Electric Distribution Company. Thus, we propose the following language for Subsection 906.9:

> 906.9 Within thirty (30) days of this rulemaking, ~~the~~ Electric Company shall create and submit to the Commission for approval a separate CREF Tariff as well as a CREF Rider to the existing Interconnection Agreement for Commission review. The CREF Rider shall include the terms and conditions between the Subscriber Organization and the Electric Company for the CREF's interconnection and operation. ~~to the Interconnection Agreement, which shall be executed between the Electric Company and a CREF when its interconnection application is granted, in~~

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80 *Formal Case No. 945,* IREC's Reply Comments at 8-9.

81 *Formal Case No. 945,* CleanGrid's Reply Comments at 1-2.

~~accordance with Chapter 40 of Title 15 of the District of Columbia Municipal Regulations~~.

Comments in Response to the Proposed Subsection 906.10

64. Subsection 906.10 reads:

> 906.10 A CREF applicant shall notify the Commission if it is interconnected to the bulk power system in addition to an interconnection to the local distribution system. A CREF shall notify the Commission within five (5) days of submitting an application to be interconnected to the bulk power system. The Commission has the right to review, and if necessary terminate, the operation of a CREF with an interconnection to the bulk power system if the sale of its electric supply raises federal jurisdictional issues.

A. OPC's Comments

65. OPC requests that this subsection be revised to make the termination of the operation of a CREF contingent upon an FERC determination of jurisdiction over community-shared renewable energy facilities. However, until jurisdiction is firmly established, OPC submits that this proposed section is not necessary.[82]

B. IREC's Comments

66. IREC suggests that this section is not necessary and proposes that it be removed. With both the statute and the proposed rules outlining i) how a CREF would interconnect and deliver energy to the local distribution system and ii) that all CREF generation exported to the grid becomes property of the SOS Administrator, IREC argues that it seems unlikely that a CREF would also be interconnecting to and selling power into the bulk power system. To the extent that this section seeks to address which interconnection procedures a CREF would need to follow, IREC avers that this is a separate issue to be resolved outside of the District's CREF program.[83]

Reply Comments in Response to the Proposed Subsection 906.10

C. IREC's Reply Comments

67. IREC agrees with and supports OPC's suggestions, and maintains that this subsection should be removed from the rules.[84]

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82 *Formal Case No. 945,* OPC's Comments at 4-5.

83 *Formal Case No. 945,* IREC's Errata Comments at 13.

84 *Formal Case No. 945,* IREC's Reply Comment at 6-7.

D. Commission Discussion

68. Section 906.2 requires, in part, that a CREF "must be directly interconnected with the Electric Distribution Company's distribution system." The commenters suggest that there would be no circumstance when a CREF would be simultaneously connected to both the distribution system and the bulk power system. If such simultaneous connections were to occur, there could be a jurisdictional issue. As this is not the current situation and the commenters suggest that no such circumstance is likely to occur in the future, we will accept the suggestion to strike Section 906.10 in its entirety.

Comments in Response to the Proposed Subsection 907.1

A. Pepco's Comments

69. Pepco proposes the following modifications to Subsection 907.1:

> 907.1 Each subscription to a CREF shall represent a percentage of the CREF's generating capacity, provided that the subscription is intended primarily to offset part or all of the Subscriber's own electrical requirements. In no event may a Subscriber offset more than one hundred and twenty percent (120%) of the Subscriber's billing meter electricity consumption over the previous twelve (12) months. The Electric Company shall use the twelve (12) months immediately prior to the first billing cycle upon which a Subscriber is eligible to receive a credit for CREF generation to determine the Subscriber's previous twelve (12) months of electricity consumption. If the Subscriber does not have a twelve (12) month billing history as of that first billing cycle, the Electric Company shall use the then current average annual consumption of a customer in the Subscriber's distribution service rate class as a proxy for the Subscriber's previous twelve (12) months consumption. ~~The Electric Company shall update the Subscriber's previous twelve (12) months of consumption once each year, upon reaching the anniversary date of the first billing cycle that the Subscriber was eligible to receive a credit for CREF generation.~~

Pepco states that removing this annual update requirement would ensure consistency with current practices for prospectively determining a customer's consumption baseline. Also, Pepco claims that resetting the baseline each year could discourage efforts to conserve energy, and would be administratively burdensome. [85]

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[85] *Formal Case No. 945,* Pepco's Comments at 6.

B. IREC's Comments

70. IREC proposes the following changes to Subsection 907.1:

> 907.1 Each subscription to a CREF shall represent a percentage of the CREF's generating capacity, provided that the subscription is intended primarily to offset part or all of the Subscriber's own electrical requirements. In no event may a Subscriber offset more than one hundred and twenty percent (120%) of the Subscriber's billing meter electricity consumption over the previous twelve (12) months. The Electric Company shall use the twelve (12) months immediately prior to the first billing cycle upon which a Subscriber is eligible to receive a credit for CREF generation to determine the Subscriber's previous twelve (12) months of electricity consumption. If the Subscriber does not have a twelve (12) month billing history as of that first billing cycle, and there is not twelve (12) months of billing history, including billing history of another customer(s), associated with the Subscriber's premises, the Electric Company shall use the then current average annual consumption of a customer in the Subscriber's distribution service rate class as a proxy for the Subscriber's previous twelve (12) months consumption. If the Subscriber does not have a twelve (12) month billing history as of that first billing cycle, and there is twelve (12) months of billing history, including billing history of another customer(s), associated with the Subscriber's premises, the Electric Company shall allow the Subscriber to choose to use either: (1) the existing twelve (12) month billing history associated with the Subscriber's premises; or (2) the then current average annual consumption of a customer in the Subscriber's distribution service rate class as a proxy for the Subscriber's previous twelve (12) months consumption. The Electric Company shall update the Subscriber's previous twelve (12) months of consumption once each year, upon reaching the anniversary date of the first billing cycle that the Subscriber was eligible to receive a credit for CREF generation.

IREC agrees with the process of the proposed rule for estimating a Subscriber's maximum Subscription amount. However, IREC suggests a refinement whereby a Subscriber moving into an existing premise with at least 12 months of billing history at the premises (even if associated with another customer or customers), may opt to use that existing billing history in place of the class average. IREC believes that this will provide a more accurate estimate because it will take

into account the "characteristics and use of the premises."[86]

C. NPLaw's Comments

71. NPLaw supports the option to use the billing history associated with the Subscriber's premise in place of the current average annual consumption of a customer in the Subscriber's distribution service rate class as a means of establishing a usage baseline. NPLaw agrees with and supports the language proposed by IREC, shown above.[87]

Reply Comments in Response to the Proposed Subsection 907.1

D. Pepco's Reply Comments

72. Pepco does not oppose the clarification proposed by IREC and NPLaw. [88]

E. IREC's Reply Comments

73. IREC proposes an additional change pertaining to the last sentence in Subsection 907.1: [89]

> 907.1 Each subscription to a CREF shall represent a percentage of the CREF's generating capacity, provided that the subscription is intended primarily to offset part or all of the Subscriber's own electrical requirements. In no event may a Subscriber offset more than one hundred and twenty percent (120%) of the Subscriber's billing meter electricity consumption over the previous twelve (12) months. The Electric Company shall use the twelve (12) months immediately prior to the first billing cycle upon which a Subscriber is eligible to receive a credit for CREF generation to determine the Subscriber's previous twelve (12) months of electricity consumption. If the Subscriber does not have a twelve (12) month billing history as of that first billing cycle, and there is not twelve (12) months of billing history, including billing history of another customer(s), associated with the Subscriber's premises, the Electric Company shall use the then current average annual consumption of a customer in the Subscriber's distribution service rate class as a proxy for the Subscriber's previous twelve (12) months consumption. If the Subscriber does

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86 *Formal Case No. 945,* IREC's Errata Comments at 15.

87 *Formal Case No. 945,* NPLaw's Comments at 7.

88 *Formal Case No. 945,* Pepco's Reply Comments at 7.

89 *Formal Case No. 945,* IREC's Reply Comments at 7.

> not have a twelve (12) month billing history as of that first billing cycle, and there is twelve (12) months of billing history, including billing history of another customer(s), associated with the Subscriber's premises, the Electric Company shall allow the Subscriber to choose to use either: (1) the existing twelve (12) month billing history associated with the Subscriber's premises; or (2) the then current average annual consumption of a customer in the Subscriber's distribution service rate class as a proxy for the Subscriber's previous twelve (12) months consumption. At the Subscriber's request, ~~the~~ Electric Company shall update the Subscriber's previous twelve (12) months of consumption no more than once each year, upon reaching the anniversary date of the first billing cycle that the Subscriber was eligible to receive a credit for CREF generation.

IREC understands that the requirement for the Electric Company to update a Subscriber's consumption data annually may be administratively burdensome for Pepco, but opines that an update *may* be beneficial to the Subscriber in some instances.[90] For this reason, IREC recommends modifying Subsection 907.1 to state that the Electric Company should update a customer's data no more than once annually, but only at the request of the Subscriber.[91]

F. Commission Discussion

74. The parties raise two (2) issues in connection with Subsection 907.1: 1) whether or under what circumstances the Electric Company shall update the Subscriber's previous twelve months of consumption yearly;[92] and 2) whether, at the Subscriber's option, the Electric Company should use (i) the then current average annual consumption of a customer in the Subscriber's distribution service rate class or (ii) the billing history of another customer (when such history is associated with the Subscriber's premises), as a proxy for the Subscriber's previous twelve months of electricity consumption.[93]

75. With respect to the first issue, we refer to Sec. 2(d) of the CREA, which amends the Retail Electric Competition and Consumer Protection Act of 1999 by adding Section 118a(b). Section 118a(b) reads: "A Subscriber to an eligible community renewable energy facility may offset no more than 120% of the Subscriber's electricity consumption over the previous 12

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90 *Formal Case No. 945,* IREC's Reply Comments at 7.

91 *Formal Case No. 945,* IREC's Reply Comments at 8.

92 *Formal Case No. 945,* IREC's Errata Comments at 15-16 and Reply Comments at 8; Pepco's Comments at 5.

93 *Formal Case No. 945,* IREC's Errata Comments at 15-16 and Reply Comments at 8; Pepco's Comments at 5.

months."[94] Put simply, this CREA requirement cannot be implemented unless the Electric Company know the Subscriber's previous twelve months of consumption. That information can only be obtained by the Electric Company updating the Subscriber's information at least once each year. Therefore, the Commission rejects Pepco proposal to strike, and IREC's proposal to modify, the last sentence of Subsection 907.1.

76. With respect to the second issue, we believe that IREC's proposal to allow the Subscriber to choose one of two (2) designated proxies for the Subscriber's previous twelve months of consumption, in the case where a Subscriber does not have a twelve (12) month billing history, is reasonable. We will therefore modify the original language of Subsection 907.1 to include this option. Similar to Subsection 906.2, we have also made some small non-substantive modifications to this provision for the sake of clarity.

Comments in Response to the Amendments to Subsection 907.3

A. Pepco's Comments

77. Pepco claims this section is unnecessary because all of the Subscriber's meters for an individual Pepco billing account would be combined for CREF billing purposes as they already are for any other applicable Pepco tariff.[95]

Reply Comments in Response to the Proposed Subsection 907.3

B. IREC's Reply Comments

78. IREC states that it appreciates Pepco's comment that the combination of meters is common practice, but recommends that this Subsection remain in place for transparency and clarity. IREC reasons that this Subsection clarifies the application of the 120% rule to meters that are combined for billing purposes.[96]

C. Commission Discussion

79. While Pepco may be correct that its current practice makes Section 907.3 technically unnecessary, we agree with IREC that 907.3 is important for clarity and transparency purposes. In addition, the Commission notes that Section 907.3 also acts to reinforce the application of the "120% rule," which is addressed below in our discussion of Subsection 907.9. Thus, we determine that the Subsection 907.3 should be retained as originally drafted.

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94 *See* Sec. 2(d) of the CREA adding Section 118a of the Retail Electric Competition and Consumer Protection Act of 1999.

95 *Formal Case No. 945,* Pepco's Comments at 6.

96 *Formal Case No. 945,* IREC's Errata Comments at 13.

Comments in Response to the Proposed Subsection 907.4

A. Pepco's Comments

80. Pepco Comments propose the following changes to Subsection 907.4:

> 907.4 The amount of electricity generated by a CREF each month and available for allocation as subscribed or unsubscribed energy shall be determined by a revenue quality ~~production~~ interval meter (production meter) installed by the Electric Distribution Company and paid for by the owner(s) of the CREF. It shall be the Electric Distribution Company's responsibility to read the ~~production~~ revenue quality interval meter. In no event shall the electricity generated by a CREF be eligible for net energy billing.

According to Pepco, its proposed changes serve to clarify that a CREF must use an hourly interval meter, provided by Pepco, for the purpose of determining the CREF's generation credits. Pepco asserts that an interval meter is necessary in order to determine the specific quantity of energy exported by the CREF each hour, for PJM market settlement purposes.[97]

B. NPLaw's Comments

81. In its Comments, NPLaw proposes the following modifications to Subsection 907.4:

> 907.4 The amount of electricity generated by a CREF each month and available for allocation as subscribed or unsubscribed energy shall be determined by a revenue quality production meter ~~installed and paid for by the owner(s) of the CREF~~. In no event shall the Electric Distribution Company be responsible for installation or payment for the CREF meter. It shall be the Electric Distribution Company's responsibility to read the production meter. In no event shall the electricity generated by a CREF be eligible for net energy billing.

NPLaw proposes to eliminate the phrase "installed and paid for by the owner(s) of the CREF" on the grounds that a special purpose entity may be named as the CREF owner, yet use funds from investors or lenders to pay for the CREF and this proposed meter. In place of such language, NPLaw proposes the addition of: "In no event, shall the Electric Distribution Company be responsible for the installation or payment for the CREF [meter]."[98]

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[97] *Formal Case No. 945,* Pepco's Comments at 6.

[98] *Formal Case No. 945,* NPLaw's Comments at 8. Based on the context of this comment we presume that NPLaw omitted the term "meter" at the end of the last the sentence.

Reply Comments in Response to the Proposed Subsection 907.4

C. IREC's Reply Comments

82. IREC asserts that it takes no position on the language change suggested by Pepco and only asks that the Commission ensure that Pepco is correct that an interval meter is necessary for CREFs. IREC also asserts that if an interval meter is not essential and a production meter is sufficient, then it is preferable to retain the statutory language, especially if interval meters are more costly. IREC disagrees with Pepco's second suggested change, that the meter must be installed by the Electric Distribution Company, rather than by the CREF owner. IREC does not believe that the rules need to specify that installation must be performed by the Electric Distribution Company, as long as the meter meets the necessary technical requirements. Because the CREF owner will be paying for the meter, IREC asserts that the proposed revision may require CREF owner to purchase a meter of Pepco's choosing, rather than an equally acceptable meter that they can acquire and install themselves.[99]

D. Commission Discussion

83. To recount, the parties raise two (2) basic questions with respect to Section 907.4: 1) whether or not an interval meter is necessary to measure CREF output; and 2) whether the Electric Distribution Company or Subscriber Organization should be responsible for the meter's installation.[100] In addition, NPLaw requests that the rule accommodate the case where a special purpose entity is named as the CREF owner.[101] Concerning the first question, because CREF output will displace energy purchases from SOS wholesale suppliers on an hour-to-hour basis, the Commission concludes that an interval meter is clearly necessary in order to determine the amount of energy generated by a CREF in each hour. Without such hourly information, there would be no way to settle PJM transactions with regard to determining who and how much to pay for energy delivery to Pepco's service territory each hour of the year.

84. With respect to the second question, we cannot agree with Pepco that the Electric Distribution Company should install the CREF meter. D.C. Official Code 34-1518(b)(5)(H), a new provision added to the Retail Electric Competition and Consumer Protection Act of 1999 by the CREA, provides that the meter shall be installed and paid for by the owner of the community renewable energy facility. The Electric Distribution Company is responsible to read the meter.[102] In addition, according to Chapter 40 of Title 15 of the DCMR, District of Columbia Small Generator Interconnection Rules ("DCSGIR") and the accompanying form agreements,[103]

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99 *Formal Case No. 945,* IREC's Reply Comments at 12.

100 *Formal Case No. 945,* Pepco's Comments at 6; IREC's Reply Comments at 12.

101 *Formal Case No. 945,* NPLaw's Comments at 8.

102 *See* Sec. 2(c) of the CREA amending Section 118(b) of the Retail Electric Competition and Consumer Protection Act of 1999; D.C. Code 34-1518(b)(5)(H).

103 15 *D.C.M.R.* Chapter 40 (2009).

there is already a process in place for the installation of the equipment by the customer and inspection and approval of the interconnected equipment by the Electric Distribution Company. However, we appreciate the merits of Pepco's concerns regarding the specifications for the interval meter itself. Thus, we conclude that upon completion of the CREF meter's installation, the Electric Distribution Company shall have the responsibility of determining that the interval meter was properly installed to ensure that it meets Electric Distribution Company's standards and is operating effectively.

85. Finally, to address the "special purpose entity" concern raised by NPLaw, the Commission will substitute "Subscriber Organization," as used in Paragraph 908.6(b), in place of CREF owner(s), as the party responsible for the incurring the cost and installation of the CREF meter.

Thus, the Commission amends Subsection 907.4 to read as follows:

> 907.4 The amount of electricity generated by a CREF each month and available for allocation as subscribed or unsubscribed energy shall be determined by a revenue quality interval meter (production meter) installed and paid for by the Subscriber Organization. The interval meter shall be capable of recording energy production based on intervals of at least five minutes. After installation of the interval meter, it shall be the Electric Distribution Company's responsibility to determine that the revenue quality interval meter has been properly installed, in accordance with industry standards. It shall also be the responsibility of the Electric Distribution Company to read the revenue quality interval meter. In no event shall the electricity generated by a CREF be eligible for net energy billing.

Comments in Response to the Proposed Subsection 907.6

A. Pepco's Comments

86. Pepco proposes the following amendments to Subsection 907.6:[104]

> 907.6 Each billing month, the Electric Distribution Company shall calculate the value of the CNM Credit for the subscribed energy allocated to each Subscriber by multiplying the quantity of kilowatt hours allocated to each Subscriber by the CREF Credit Rate. <u>The CNM Credit may be reduced by an administrative fee approved by the Commission</u>. If the value . . .

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104 *Formal Case No. 945,* Pepco's Comments at 7.

Pepco proposes this addition to facilitate the potential addition of an administrative fee as allowed by Section 122 added to the Retail Electric Competition and Consumer Protection Act of 1999, which allows Pepco to seek recovery of "any costs associated with implementation of this act in a base rate case."[105]

Reply Comments in Response to the Proposed Subsection 907.6

B. IREC's Reply Comments

87. IREC contends that the insertion proposed by Pepco is unnecessary at this time. IREC adds that the CREA explicitly allows an Electric Distribution Company to recover its costs for implementing the program "through a rate assessment of the Subscribers" in a base rate case.[106] IREC maintains that Proposed Subsection 908.7 already codifies this provision; therefore, the proposed addition to Subsection 907.6 should not be included in a final rule.[107]

C. Commission Discussion

88. Sec. 2(e) of the CREA amends the Retail Electric Competition and Consumer Protection Act of 1999 by adding a new Section 122, which addresses the recovery of CREF implementation costs. The Commission agrees with IREC that Pepco's suggested addition to Subsection 907.6 is unnecessary because Pepco's ability to recover any net costs associated with implementing CNM "through a rate assessment of the Subscribers," pursuant to Section 122,[108] is included in Section 908.7. Thus, we will not amend Subsection 907.6 at this time as suggested by Pepco; however we may revisit this issue again after CREFs have been operative for a period of time.[109] However, similar to Subsections 906.2 and 907.1, we have made some small non-substantive modifications to Subsection 907.6 for the sake of clarity.

Comments in Response to the Proposed Subsection 907.7

A. Pepco's Comments

89. In its Comments to proposed Subsection 907.7, Pepco proposes the following amendments:

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105 *See* Sec. 2(e) of the CREA adding Section 122 to the Retail Electric Competition and Consumer Protection Act of 1999.

106 *See* Sec. 2(e) of the CREA adding Section 122 to the Retail Electric Competition and Consumer Protection Act of 1999.

107 *Formal Case No. 945,* IREC's Reply Comments at 5-6.

108 *See* Sec. 2(e) of the CREA adding Section 122 to the Retail Electric Competition and Consumer Protection Act of 1999.

109 *See* Sec. 2(e) of the CREA adding Section 122 to the Retail Electric Competition and Consumer Protection Act of 1999.

907.7 The CNM credit shall be a line item on a Subscriber's Electric Distribution Company bill. ~~In addition to the value of the Subscriber's CNM credit the line item shall also include the Subscriber's percentage ownership of the CREF, the price used to calculate the CNM credit and the applicable monthly output of the CREF~~.

Pepco argues that it is inappropriate at this time to require more information on the customer bill than is required under the law, and points out that this additional information will be available to Subscribers directly from the Subscriber Organization. Pepco, thus, advocates for the removal of the language requiring the additional information.[110]

B. IREC's Reply Comments

90. IREC represents that it does not oppose the change proposed by Pepco with two (2) caveats. The first caveat is that along with any monetary credit, Subscribers see the kilowatt-hours generated by their subscription on their monthly bill. The second caveat is that a monthly generation reporting mechanism be specified in the Procedural Manual so that Subscriber Organizations have access to the CREF meter generation information and can make the information available to Subscribers.[111]

C. Commission Discussion

91. Based on our review and analysis, we prefer to make the application of the CNM credit to a Subscriber's bill as transparent as possible, by including the derivation of the CNM credit, as described in 907.6. Moreover, we agree with IREC's proposal that including kilowatt-hours generated on the monthly bill would be useful and informative to the CREF Subscribers, if that is feasible. Consequently, we are amending Subsection 907.7 to include language that requires that kilowatt-hours generated and price be reflected on the Subscriber's bill. The proposed Subsection 907.7 will then read:

907.7 The CNM credit, as well as the kWh and price upon which it is based, shall be line items on a Subscriber's Electric Distribution Company bill.

We note, however, that by separate order issued in *Formal Case No. 1078*, we have directed Pepco to inform the Commission about the timing and the mechanisms for making billing format changes to respond to any final rules under CREA. While we believe it is important to provide this information on bills, we do not want to delay the CNM program because all of the required information cannot be timely placed on a customer's bill. We will consider the comments filed

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110 *Formal Case No. 945,* Pepco's Comments at 7.

111 *Formal Case No. 945,* IREC's Reply Comments at 7.

in response to Order No. 17796 in *Formal Case No. 1078* along with the comments that we receive in response to this amended rule.[112]

Comments in Response to the Proposed Subsection 907.8

A. Pepco's Comments

92. Pepco argues that this subsection should be deleted because the intent of the law is that compensation for unsubscribed energy is to be paid to the Subscriber Organization, and that a Subscriber is to be paid to the extent of its interest in the CREF. In addition, Pepco asserts that the value of the credit on a Subscriber's bill is already clearly established in the first sentence of Section 907.6.[113]

B. OPC's Comments

93. In its Comments, OPC recommends that this subsection be omitted because it is internally inconsistent. Additionally, OPC asserts that this subsection could result in CREF Subscribers accumulating double, unearned credits as well as deter CREF owners from achieving full subscription of the CREFs.[114]

C. IREC's Comments

94. IREC recommends that this subsection be removed in its entirety, along with the final sentence of Subsection 4109.3, Chapter 41 of Title 15 of the DCMR from the proposed rulemaking proceeding in *Formal Case No. 1017*.[115] The final sentence of proposed Subsection 4109.3 contains a reference to proposed Subsection 907.8. In support of its assertion that proposed Subsection 907.8 should be removed, IREC states that: 1) the requirement regarding the distribution and credit of unsubscribed energy is not included in the statute, which already requires a payment for unsubscribed energy at the LMP; 2) the extra credits could require CREFs to provide Subscribers with credits above and beyond their consumption threshold, meaning they would receive more value than they paid for in obtaining their Subscription; 3) allowing CNM credits to expire after 24 months contradicts the provision that all unsubscribed energy will be purchased and paid for by the SOS Administrator at the LMP; 4) if credits expire, the CREF does not receive compensation for the energy associated with them, which could undermine the ability to secure CREF project financing; 5) it would be difficult to properly size initial Subscriptions since the distribution of surplus credits would depend on the actions of other Subscribers joining or leaving the CREF; and 6) it would burden the Electric Distribution Company with the

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112 *Formal Case No. 1078, In the Matter of an Investigation into the Adequacy of Billing Information on Monthly Utility Bills ("Formal Case No. 1078")*, Order No. 17796, rel. February 2, 2015.

113 *Formal Case No. 945*, Pepco's Comments at 8.

114 *Formal Case No. 945*, OPC's Comments at 6.

115 *Formal Case No. 1017, In the Matter of the Development and Designation of Standard Offer Service in the District of Columbia* ("*Formal Case No. 1017*"), 61 *D.C. Register* 9381-9394 (September 12, 2014).

administration of an additional crediting mechanism.[116]

D. NPLaw's Comments

95. NPLaw's Comments echo the comments provided by IREC and recommends that this provision be removed. NPLaw adds that the expiration of credits after 24 months does not lend itself to the portability of subscriptions.[117]

E. USPV's Comments

96. In its Comments, USPV proposes the following modifications to Subsection 907.8:

> 907.8 Any unsubscribed energy purchased by the SOS Administrator pursuant to subsection 906.5 will be paid to the CREF Subscriber Organization. ~~will be distributed to CREF Subscribers as CNM credits in proportion to their ownership share in the CREF up to the CREF Subscriber's one hundred and twenty percent (120%) cap for subscribed energy. CNM credits for unsubscribed energy that are not credited to CREF Subscribers must be used within twenty four (24) months otherwise the CNM credits will expire.~~

USPV agrees that the original language distributes revenues to Subscribers from unsubscribed energy, which may undermine the development of community solar projects. USPV contends that its proposed amendments eliminate the possibility of a Subscriber receiving "more than their fair share of the electricity value" and provides more flexibility for the commissioning of systems even before they are fully subscribed.[118]

Reply Comments in Response to the Proposed Subsection 907.8

F. Pepco's Reply Comments

97. In its Reply Comments, Pepco agrees with OPC, IREC, and NPLaw that modification is necessary so that Subscribers do not earn credits for unsubscribed energy. However, Pepco still moves to strike the subsection in its entirety, as the law does not require payment for unsubscribed energy to Subscribers. Pepco maintains that the unsubscribed energy should be paid to the Subscriber Organization.[119]

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116 *Formal Case No. 945*, IREC's Reply Comments at 9-10.

117 *Formal Case No. 945*, NPLaw's Comments at 4-6.

118 *Formal Case No. 945*, USPV's Comments at 2.

119 *Formal Case No. 945*, Pepco's Reply Comments at 3.

G. IREC's Reply Comments

98. IREC continues to support the removal of this Subsection, along with the final sentence of the proposed rule in *Formal Case No. 1017*, Subsection 4109.3, which contains the reference to proposed Subsection 907.8. IREC also agrees with Pepco that if Subsection 907.8 is removed, then Subsection 907.9 would be unnecessary to the CREF regulations.[120]

H. Commission Discussion

99. The original intent of Subsection 907.8 was to ensure the sale of unsubscribed energy would not be treated as a wholesale transaction and, thus, beyond the jurisdiction of the Commission. The Commenters do not share this apprehension and have persuaded the Commission that the sale of unsubscribed energy to the SOS Administrator should be a simple transaction. Based on this reasoning, we will amend proposed Subsection 907.8 to read:

> "Any unsubscribed energy purchased by the SOS Administrator pursuant to Subsection 906.5 will be paid to the CREF Subscriber Organization on a monthly basis."

Comments in Response to the Proposed Subsection 907.9

A. Pepco's Comments

100. Pepco seeks to strike this subsection because excess credits are addressed under Section 118(b)(5)(K) of the Retail Electric Competition and Consumer Protection Act of 1999, because Pepco believes there is no limit to the amount or time period for accumulating credits provided in the CREA. Instead, a Subscriber should reduce his subscription to resolve the issue.[121]

B. Commission Discussion

101. We do not accept Pepco's argument that Subsection 907.9 conflicts with Section 118(b)(5)(K) of the amended Retail Electric Competition and Consumer Protection Act of 1999. Sec. 2(c) of the CREA amends Section 118(b) of the Retail Electric Competition and Consumer Protection Act of 1999 and D.C. Official Code § 34-1518(b) by adding a new paragraph (5) and its subparagraph (K). Section 118(b)(5)(K) reads as follows:

> If the value of the credits generated by the community renewable energy facility allocated to the Subscriber exceeds the amount owed by the Subscriber as shown on the Subscriber's bill at the end of the billing period, the remaining value of the credit shall carry over from month to month until the value of the remaining

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120 *Formal Case No. 945*, IREC's Reply Comments at 2-3.

121 *Formal Case No. 945*, Pepco's Comments at 8.

credits are used.

A month-to-month carry over is specifically in the statute. In any event, we point out that the ability of a Subscriber to carry over excess credits from month to month is set forth in Subsection 907.6, Subsection 907.9 does not address the disposition of excess credits. Instead, Subsection 907.9 addresses the situation where a Subscriber is no longer entitled to a CNM credit, due to the Subscriber's share of CREF generation exceeding 120% of the Subscriber's baseline consumption. The CREA does not entitle a Subscriber to a CNM credit under the above circumstances. Therefore, Subsection 907.9 is needed to ensure that the CREA is implemented properly.

102. In addition, we note that Subsection 907.9 is needed to distinguish between situations where the SOS Administrator is purchasing subscribed versus unsubscribed energy. The price paid for subscribed energy is higher than the price paid for unsubscribed energy. Without Subsection 907.9, the SOS Administrator would be forced to pay the higher (subscribed) price for energy that is effectively unsubscribed. Thus, we determine that Subsection 907.9 should be retained, as originally drafted.

Comments in Response to the Proposed Subsection 908.1

A. Pepco's Comments

103. In its Comments, Pepco proposes the following modification to Subsection 908.1:

> 908.1 Each CREF shall ~~register~~ apply with the Electric Distribution Company. The Electric Distribution Company shall develop an ~~Registration Form~~ application [form] within thirty (30) days of these rules becoming final. The ~~Registration Form~~ application [form] shall include:
>
> 5. Name Plate ~~summer AC generating~~ capacity of the CREF; . . .

According to Pepco, it proposes the above modifications to ensure that it is consistent with the NEM application process. Pepco also wants to clarify that a CREF would "apply" for approval Pepco rather than simply registering. Furthermore, Pepco proposes modifying paragraph 5 because the term "nameplate capacity" is defined in 15 DCMR § 4099, and is consistently used in the District.[122]

B. IREC's Comments

104. IREC's Comments propose the following amendments to the proposed Subsection 908.1:

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122 *Formal Case No. 945,* Pepco's Comments at 9.

908.1 Each CREF shall register with the Electric Distribution Company. The Electric Distribution Company shall develop a Registration Form within thirty (30) days of these rules becoming final. The Registration form shall include:...

(6) Copy of Interconnection Agreement ~~and CREF Rider~~ between the CREF and the Electric Distribution Company, if obtained and executed;...

(8) List of CREF Subscribers, if available, including:

(a) Name and address of Subscriber;

(b) Address of the individual billing meter in the District of Columbia to which the CNM credit will be applied;

(c) Electric Distribution Company Account number; and

(d) Percentage ownership in the CREF.

If an Interconnection Agreement is not included with the Registration Form, once the CREF has obtained and executed an Interconnection Agreement, the CREF owner or operator will submit it to the Electric Distribution Company. By the date of Final Interconnection and Operation, under the procedures for interconnection set forth in Chapter 40 of Title 15 of the District of Columbia Municipal Regulations, the CREF owner or operator will submit to the Electric Distribution Company its List of CREF Subscriber[s], which must include at least two (2) Subscribers.

IREC supports the intent to have CREFs register with the Electric Distribution Company using a standardized Registration Form. However, IREC proposes modifications to the substance of the registration requirements. The first modification is the removal of the CREF Rider requirement as explained in comments to Subsection 906.9. Second, IREC notes that when a CREF registers with the Electric Distribution Company, its interconnection application may still be in progress. Consequently, IREC asserts that some flexibility should be introduced here so CREFs may supplement their registration with an executed interconnection application, once they have one. Similar to the second modification, IREC advocates for flexibility in providing a Subscriber list with the Registration Form. IREC reasons that CREFs may still be in the process of obtaining Subscribers at the time of registration and suggests that this provision should be made more flexible to allow for CREFs to supplement their Subscriber information after their initial

registration but before operation.[123] IREC also suggests replacing "summer AC generating capacity" in Paragraph 908.1(5) with "AC generating capacity."[124]

C. NPLaw's Comments

105. In its Comments, NPLaw agrees with IREC that: 1) the CREF Rider requirement should be removed entirely; 2) CREF registration may be supplemented with an executed Interconnection Agreement once they have one; and 3) CREFs should be allowed to supplement their Subscriber information after registration but before commencing operation. As a result, NPLaw agrees with and supports the language proposed by IREC, shown above.[125]

Reply Comments in Response to the Proposed Subsection 908.1

D. IREC's Reply Comments

106. IREC's Reply Comments do not support Pepco's proposed change in language from "register" to "apply." According to IREC, the proposed change implies that Pepco has discretion to deny access to participants. IREC asserts that unless a CREF does not meet the program requirements, Pepco cannot deny its participation in the program. For this reason, IREC stresses that "register" and "registration" are the more appropriate terms to use in this Subsection.[126] Finally, IREC supports Pepco's modification regarding the generating capacity language.[127]

E. Commission Discussion

107. The Commission agrees with IREC's suggested amendments to Subsection 908.1 and the reasoning behind them. We will incorporate the suggested amendments into the proposed Subsection 908.1. Regarding the suggested changes to Paragraph 908.1(5), we determine that it is only necessary to strike the word "summer" from this provision. Additionally, we have made some small non-substantive modifications to Subsection 908.1 for the sake of clarity.

Comments in Response to the Proposed Subsection 908.2

A. IREC's Comments

108. IREC proposes to delete this subsection because it believes the required safety

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123 *Formal Case No. 945,* IREC's Errata Comments at 17.

124 *Formal Case No. 945,* IREC's Errata Comments at 19.

125 *Formal Case No. 945,* NPLaw's Comments at 8-10.

126 *Formal Case No. 945,* IREC's Reply Comments at 12-13.

127 *Formal Case No. 945,* IREC's Reply Comments at 13.

and performance standards are already part of the interconnection procedures. IREC opines that the requirement of an affidavit is an unnecessary burden placed on CREFs, which also must meet all the applicable safety and performance requirements of Chapter 40 of Title 15 of the DCMR, District of Columbia Small Generator Interconnection Rules ("DCSGIR"),[128] to interconnect and commence operation.[129]

B. Commission Discussion

109. Based on our review of the provisions, we conclude that Section 908.2 is effectively identical to Section 906.1, except for the requirement in Subsection 908.2 that each CREF submit an affidavit affirming compliance with all applicable safety standards. Given that a CREF must meet all of the referenced safety and performance standards in order to satisfy the District's interconnection requirements, we agree with IREC that an affidavit is unnecessary and both 906.1 and 908.2 can be struck as these are issues that are already addressed under the interconnection processes set forth in Chapter 40 of Title 15 of the DCMR and amended Subsection 906.2.

Comments in Response to the Proposed Subsection 908.4

A. Pepco's Comments

110. Pepco proposes that the 30-day deadline for filing a procedural manual to the Commission be extended to a minimum of 90 days due to the complexity of the undertaking. Specifically, Pepco asserts that numerous new processes need to be included in the procedural manual involving customer billing and communications with customers, as well as with wholesale and third-party suppliers. Given these new processes, Pepco requests a 90-day window be given to prepare the procedural manual so that the appropriate Pepco personnel can provide the necessary input and collaborate in this effort.[130]

B. IREC's Comments

111. IREC contends that the procedural manual proposed in this subsection will encourage transparency and clarity regarding program details. IREC adds that the manual could identify the type of information that the Electric Distribution Company and/or the SOS Administrator will provide to CREF owners. IREC notes that this information could include a monthly list of which Subscribers received bill credits and in what allocations, so that the CREF can ensure allocation accuracy. IREC supports the requirement that the Electric Distribution Company submit the manual within 30 days, but suggests that the Commission direct the Electric Distribution Company to involve stakeholders in the development of the procedural manual. IREC asserts that stakeholder input may be incorporated over time, as the program develops.

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128 15 *D.C.M.R.* Chapter 40 (2009).

129 *Formal Case No. 945,* IREC's Errata Comments at 14.

130 *Formal Case No. 945,* Pepco's Comments at 2.

Additionally, IREC suggests the requirement that the Electric Distribution Company provide links to the procedural manual, as well as any applications, forms, rules, or CREF program material, on a single webpage for simple online access. Submission of applications and forms electronically should be accommodated whenever possible.[131]

Reply Comments in Response to the Proposed Subsection 908.4

C. Pepco's Reply Comments

112. Pepco opposes IREC's recommendation to include stakeholders in the process of developing the procedural manual. Instead, Pepco states that stakeholder comments can be considered at the time Pepco submits the procedural manual for Commission approval. Pepco also states that as operational experience is gathered over time, it will consider additions and refinements to the manual. Pepco claims that it does not oppose IREC's suggestion of a single, easy-to-use, and accessible webpage, but suggests that the resource could be developed at a later date.[132]

D. IREC's Reply Comments

113. IREC reiterates its recommendations for incorporating stakeholder input on the procedural manual. IREC suggests the Commission give Pepco an additional 15 days to produce the manual, for a deadline of 45 rather than 30 days because of the importance of stakeholder input in creating a straightforward and clean manual. IREC urges the Commission to require Pepco to update the manual with additional participant feedback as the program moves forward.[133]

E. Commission Discussion

114. Pepco asks that it be given an additional 60 days to complete a draft of a procedure manual. We think that 90 days after the publication of the final regulations is too long. We will agree to extend the preparation period to 45 days following the publication of final rules. We think that is an adequate timeframe for Pepco to draft a procedural manual. Pepco can start to prepare the manual now with respect to non-disputed items. In addition, since we have specified the items required in Subsection 908.4, the scope of manual already has been defined.

115. We find IREC's suggestion that the Electric Distribution Company provide links to the procedural manual, as well as any applications, forms, rules, or CREF program material, on a single webpage for simple online access, to be a good one and we will include it in the amended rule. Submission of applications and forms electronically should be accommodated whenever possible. Pepco can complete these user-friendly webpage changes at a later date; however, this must be done within 120 days after the final rulemaking is published in *D.C.*

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131 *Formal Case No. 945,* IREC's Errata Comments at 17-18.

132 *Formal Case No. 945,* Pepco's Reply Comments at 8.

133 *Formal Case No. 945,* IREC's Reply Comments at 9-10.

Register IREC has asked the Commission to direct Pepco to work with the stakeholders on the procedural manual. We decline to accept that suggestion. Because we have shortened the period of time for the preparation of the procedural manual, Pepco should be allowed to prepare it in the manner which it finds to be most efficient in meeting that time requirement. So while we will not direct Pepco to work the stakeholders on this produce, we would encourage them to do so. In any event, the Commission will allow stakeholders to comment on the draft procedural manual that Pepco produces before it is finalized.

Comments in Response to the Proposed Subsection 908.5

A. Pepco's Comments

116. Pepco proposes that the 30-day deadline for submitting the form of the line item on Pepco's bill be extended to 90 days following the final rulemaking. Pepco claims that this adjusted timeline is needed because implementing changes of this nature requires input from various Company personnel, many of whom are currently dedicated to the implementation of the new customer relationship management and billing system. Additionally, Pepco claims that because of the status and timeline for implementing the new system, the bills for Subscribers will, in all likelihood, be manually produced for some time. Pepco adds that only after the new system is successfully implemented can automation of the bill credits be developed, tested, and included in its SolutionOne system for billing purposes.[134]

Reply Comments in Response to the Proposed Subsection 908.5

B. IREC's Reply Comments

117. IREC's Comments advocate for the Commission to retain the 30-day timeframe for the sample bill to ensure timely implementation of the program. IREC points out that the CREA was passed in October 2013, making Pepco aware of the program parameters in the statute for over a year. Therefore, IREC feels that 30 days is sufficient time for the development of the sample bill document.[135]

C. Commission Discussion

118. We are not persuaded by Pepco that it needs the additional time that it has requested to provide the required sample bill. Thus, we determine that the language of Subsection 908.5 should remain unchanged.

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134 *Formal Case No. 945,* Pepco's Comments at 3.

135 *Formal Case No. 945,* IREC's Reply Comments at 9.

Comments in Response to the Proposed Subsection 908.6

A. Pepco's Comments

119. Pepco proposes the following changes to the proposed Subsection 908.6:

908.6 ~~Within ten (10) days of the end of each quarter~~ By March 31 each year, the Electric Distribution Company shall submit to the Commission a report that provides:

(1) An annual prior calendar year overview of the CREFs operating in the District including summary statistics as to the number of CREFs, the number of Subscribers, and the amount of electric supply generated . . .

(e) Name Plate ~~summer AC generating~~ capacity of the CREF;

(m) ~~Any benefits to the distribution system from CREFs including use of CREFs to supply ancillary services including, but not limited to, voltage support, VAR support, and frequency regulation;~~ . . .

(3) The identification of any feeder which approaches a net energy export within a ten percent (10%) margin (i.e., a feeder where the total production from CREF and other net metering facilities ~~is ten percent (10%) or less~~ ninety percent (90%) or more than the total energy consumption for the feeder). . .

Pepco proposes that that it files the CREF report on an annual rather than quarterly basis. According to Pepco, this modification would reduce the expense of administering the program, which is ultimately assessed to Subscribers as proposed in Subsection 908.7.[136] Pepco also represents that the change to Subparagraph 908.6(2)(e) would make it consistent with the proposed language in Paragraph 908.1(5).[137] Similarly, Pepco states that the deletion of Subparagraph 908.6(2)(m) would make it consistent with the proposed change to Subsection 906.5. Pepco also notes that it would not have access to the information necessary to comply with Subparagraph 908.6(2)(m).[138] Additionally, Pepco's Comments propose the modification to 908.6(3) to correct an inadvertent error, and match the intended reporting requirement for feeders that approach a net energy export because of the generation output of CREFs or NEM facilities.[139]

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136 *Formal Case No. 945,* Pepco's Comments at 9-10.

137 *Formal Case No. 945,* Pepco's Comments at 10.

138 *Formal Case No. 945,* Pepco's Comments at 10.

139 *Formal Case No. 945,* Pepco's Comments at 10.

B. IREC's Comments

120. In its Comments, IREC proposes the following amendments to the proposed Subsection 908.6:

> 908.6(2)(*l*) Any problems created by CREFs to the distribution system that are of concern to the Electric Distribution Company, with as much specificity as possible and quantified to the extent possible; and

IREC strongly supports the proposed quarterly reporting requirements and offers three (3) comments on the reporting requirements of Subsection 908.6.[140] First, IREC suggests that the Commission request more specific, quantifiable data on any concerning distribution system problems. Second, IREC suggests that the Commission provide more specific guidance to the Electric Distribution Company for the tracking and reporting of benefits of CREFs to the distribution system. Finally, IREC agrees with the requirement that the Electric Distribution Company must identify feeders based on the characteristics set forth in Paragraph 908.6(3).[141] IREC asserts that this information will aid the Electric Distribution Company and the Commission with the identification of system areas with high penetrations of CREFs and other distributed generation. The information will also facilitate proactive planning of system upgrades to accommodate increased distributed generation and meet customer needs.[142] IREC also suggests replacing "summer AC generating capacity" in Subsection 908.6(2)(e) with "AC generating capacity."[143]

C. NPLaw's Comments

121. NPLaw's Comments echo the comments offered by IREC and add a suggestion that the location, including zip code and Ward, of the CREF and the Subscribers also be included in the quarterly report. Moreover, NPLaw states that "to the extent that any Subscriber is a renter or is of low or moderate income (to the extent known), this information [should be reported as it] could help the Commission respond to the DC government's request for information."[144]

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140 *Formal Case No. 945,* IREC's Errata Comments at 19.

141 *Formal Case No. 945,* IREC's Errata Comments at 19.

142 *Formal Case No. 945,* IREC's Errata Comments at 19.

143 *Formal Case No. 945,* IREC's Errata Comments at 19.

144 *Formal Case No. 945,* NPLaw's Comments at 10.

Reply Comments in Response to the Proposed Subsection 908.6

D. Pepco's Reply Comments

122. Pepco reiterates that it opposes the proposed quarterly reporting requirement. Pepco argues that such a requirement is not found in the CREA and would lead to unnecessary administrative expenses that will ultimately be passed on to the Subscribers. Pepco also proposes to file an annual CREF report in the same filing the Company already prepares for its Annual Small Generator and Distributed Interconnection report, in accordance with Formal Case No. 1050.[145]

123. Pepco also reiterates that it does not purchase ancillary services from generators, and that it does not participate in the process where PJM compensates generators for ancillary services. Consequently, Pepco reiterates its recommendation to remove the language in Subparagraph 908.6(2)(m) regarding ancillary services.[146]

E. IREC's Reply Comments

124. According to its Comments, IREC supports regular, timely reporting based upon the quarterly interval established in the proposed Subsection 908.6. IREC also supports Pepco's modifications to the feeder reporting requirements.[147] On the other hand, IREC strongly disagrees with Pepco's request to eliminate the requirement that the Electric Distribution Company report any benefits to the distribution system deriving from CREFs.[148] IREC believes that Pepco should be required to report on potential benefits including but not limited to: 1) ancillary services; 2) deferred and avoided capacity upgrades; 3) avoided line losses; and 4) peak shaving.[149] In addition, IREC provides two (2) references for further information about the range of benefits that distributed renewable energy facilities can provide to the grid: IREC's *A Regulator's Guidebook: Calculating the Benefits and Costs of Distributed Solar Generation* and the Rocky Mountain Institute's (RMI) *emPower: Accurately Valuing Distributed Energy Resources.*[150] IREC restates its recommendation that the Commission provide more specific reporting requirements including how the data should be quantified or otherwise captured.[151]

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145 *Formal Case No. 945,* Pepco's Reply Comments at 8.

146 *Formal Case No. 945,* Pepco's Reply Comments at 2.

147 *Formal Case No. 945,* IREC's Reply Comments at 10.

148 *Formal Case No. 945,* IREC's Reply Comments at 10-11.

149 *Formal Case No. 945,* IREC's Reply Comments at 11.

150 *Formal Case No. 945,* IREC's Reply Comments at 11.

151 *Formal Case No. 945,* IREC's Reply Comments at 11.

F. Commission Discussion

125. We will not accept Pepco's request to change the quarterly reporting requirement to an annual reporting requirement. Given the potential size of a CREF facility, the Commission needs to monitor the development and impact of CREFs throughout the city. The required reporting elements are not numerous and some of the reporting items will remain unchanged for periods of time. We do not want to make the collection of information for this requirement overly burdensome in terms of time or costs. At the same time, however, we want to have sufficient information to enable us to monitor the success of this new program. To balance both concerns, we think that reports filed twice a year will be sufficient for us to ensure sound oversight on the development and impact of CREFs in the District. Thus, we will amend this provision to require that the CREFs reports be filed by the end of the second and fourth quarter of each year.

126. Next, we agree with part of Pepco's revision to Subparagraph 908.6(1)(e). Based on our review, this section should be revised to read: 908.6(1)(e) Name Plate ~~summer~~ AC generating capacity of the CREF. We will also apply the same change to 908.1(5). We will retain the term "Name Plate AC generating capacity" because the difference in AC ("Alternating Current") and DC ("Direct Current") capacity for a photovoltaic generating system are substantial and we believe that the AC capacity rating of the system that actually interconnects with the grid is the important capacity value to use when evaluating CREFs.

127. Regarding Subparagraph 908.6(2)(m), Pepco states that it would not have access to the information necessary to comply with the requirement. Also, Pepco claims that it does not purchase ancillary services from generators, and does not participate in the process where PJM compensates generators for ancillary services.[152] Thus, Pepco requests that item Subparagraph 908.6(2)(m) be removed. In contrast, IREC suggests that the Commission review a couple of studies pertaining to the potential benefits (and costs) associated with distributed solar generation, but did not provide any concrete examples where states have implemented such a reporting requirement.[153]

128. Based on our review and analysis of this issue, we are not aware of any jurisdiction that requires a report on the distribution system benefits provided by solar facilities. However, we think the required information will be helpful if and when it becomes available to Pepco. Consequently, we will revise Subparagraph 908.6(2)(m) as shown in the below insertion. We will consider revising this provision as more knowledge and/or experience is acquired on this issue in the future. Subparagraph 908.6(2)(m) is revised to read:

> (m) To the extent possible, the ~~Any~~ benefits to the distribution system from CREFs including use of CREFs to supply ancillary services including, but not limited to, voltage support, volt-ampere reactive ("VAR") support, and frequency regulation; . . .

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152 *Formal Case No. 945,* Pepco's Reply Comments at 2.

153 *Formal Case No. 945,* IREC's Reply Comments at 11.

129. With respect to Paragraph 908.6(3), our original language seeks to identify any feeder where that feeder is approaching a net energy export situation, within a 10% margin. In other words, the subsection seeks to identify a situation where the difference between total (CREF) production and total (feeder) consumption is 10% or less, say 8%. Pepco seeks to identify such feeders from the opposite perspective, which is identifying feeders approaching net export where total CREF production would be 90% or more of the total consumption.[154] Based on our analysis, we conclude that these two (2) approaches are functionally equivalent. Pepco and the Commission are targeting the same situation and arriving at the same policy solution from two (2) perspectives. Thus, we conclude that we did not make an error in our expression and Pepco is just presenting an alternative way to arrive at the same result. Nevertheless, given IREC's belief that Pepco's alternative expression is better, we are persuaded that the simplest way to proceed is to adopt Pepco's suggested revisions to Paragraph 908.6(3) with slight changes to the wording.

130. Turning next to Subparagraph 908.6(2)(*l*), IREC suggests more detailed information be included in this provision. We agree. With more detailed information, we can improve/facilitate CREF development in the District, consistent with the CREA.

131. Finally, with respect to NPLaw's comments to Subparagraph 908.6(2)(*l*), we can agree to add Location, including zip code and Ward information to the registration form and report. However, NPLaw has not fully explained its reasoning, nor are we sure why renters and low-income Subscribers need to be identified. At this point, we do not see a need to further identify/report the Subscribers' profiles. However, we have made some substantive modifications to this provision for the sake of clarity and to facilitate implementation of CREA's requirements.

THEREFORE, IT IS ORDERED THAT:

132. The Commission shall incorporate the changes to the Notice of Proposed Rulemaking amending Chapter 9, Net Energy Metering of Title 15, Public Utilities and Cable Television of the District of Columbia Municipal Regulations, in accordance with the reasoning set forth in this Order; and

133. The Commission shall publish another Notice of Proposed Rulemaking with the incorporated changes in the *D.C. Register* for comment by interested persons.

A TRUE COPY: **BY DIRECTION OF THE COMMISSION:**

CHIEF CLERK: **BRINDA WESTBROOK-SEDGWICK**
COMMISSION SECRETARY

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154 *Formal Case No. 945,* IREC's Comments at 19.