RECEIVED 2019 JUN 17 5:13 PM

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

KARL A. RACINE
ATTORNEY GENERAL

Public Advocacy Division
Public Integrity Section

ELECTRONIC FILING

June 17, 2019

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

Re: In the Matter of 15 DCMR Chapter 29 Renewable Energy Portfolio Standard CleanEnergy DC Omnibus Amendment Act of 2018: Rulemaking No. RM29-2019-01-M

Dear Ms. Westbrook-Sedgwick:

On behalf of the Department of Energy and Environment enclosed are Reply Comments filed in the above-captioned matter. If you have any questions regarding this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,

KARL A. RACINE
Attorney General

By: /s/ *Brian Caldwell*
BRIAN CALDWELL
Assistant Attorney General
(202) 727-6211 – Direct

Email: brian.caldwell@dc.gov

cc: Service List

BEFORE THE
PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA

IN THE MATTER OF:	)	
	)	
In the Matter of 15 DCMR Chapter 29 –	)	
Renewable Energy Portfolio Standard –	)	**Rulemaking No. RM29-2019-01-M**
CleanEnergy DC Omnibus Amendment	)	
Act of 2018	)	

REPLY COMMENTS OF THE DEPARTMENT OF ENERGY AND ENVIROMENT TO THE NOTICE OF PROPOSED RULEMAKING NO. RM29-2019-01-M

Pursuant to the Notice of Proposed Rulemaking ("NOPR") published in the *D.C. Register* on May 3, 2019, in which the Public Service Commission of the District of Columbia ("Commission") proposes amendments to Chapter 29 (Renewable Energy Portfolio Standard) ("RPS") of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations ("DCMR") and the invitation therein for interested parties to file comments, the Department of Energy and Environment ("DOEE"), on behalf of the District of Columbia Government ("the District"), hereby files reply comments to the June 3, 2019 comments of WGL Energy Services, Inc. ("WGL Energy") in the above-captioned proceeding.

INTRODUCTION

DOEE reviewed the language of the NOPR when it was it was initially released and determined that the proposed amendments were consistent with the

requirements of the CleanEnergy DC Omnibus Amendment Act of 2018 ("the CleanEnergy Act"). Consequently, DOEE elected not to submit comments in line with the initial June 3, 2019, deadline.

On June 3, 2019, WGL Energy filed comments in this proceeding. These comments sought clarification on three proposed amendments to subsections in 15 DCMR Chapter 29 – §§ 2901.5(h), 2902.16, and 2903.4 – and requested certain modifications to these proposed amendments.

After careful review, DOEE finds it necessary to reply to WGL Energy's comments. The modifications to the NOPR proposed by WGL Energy contradict the clear language of the CleanEnergy Act. Further, the proposed modifications would roll back existing rules governing the District's RPS and would move the District away from its clean energy goals.

For these reasons, DOEE urges the Commission to reject in full the modifications proposed by WGL Energy and adopt the NOPR language as originally published in this proceeding.

ARGUMENT

I. The Commission Should Reject WGL Energy's Modifications Regarding Subsection 2901.5(h) as Inconsistent with the Clear Language of the CleanEnergy Act

WGL Energy's comments seek clarification on the Commission's intentions to amend Subsection 2901.5(h). This Subsection describes the requirements for the

Electricity Supplier annual RPS compliance reports for Compliance Years 2019, 2020, 2021, and 2022 related to energy supply contracts grandfathered prior to March 22, 2019, the effective date of Title I of the CleanEnergy Act. WGL Energy objects to the following two reporting requirements related to these grandfathered electricity supply contracts:

> *"(1) The length of each such energy supply contract;*
>
> *(2) The amount of electricity sold pursuant to each such energy supply contract for the Compliance Year that is the subject of the compliance report being filed and an estimate of the amount of electricity to be sold pursuant to each energy supply contract for each Compliance Year through 2021. However, no estimates shall be required for inclusion in the compliance report for Compliance Year 2021"*[1]

WGL Energy states that the electricity suppliers currently provide similar information in aggregate for electricity contracts executed prior to October 6, 2016, and that this aggregated reporting for contracts executed between October 6, 2016 and March 22, 2019 is sufficient to satisfy the intent of the CleanEnergy Act. WGL Energy further claims that 2901.5(h)(1) is not necessary to meet the purposes of the CleanEnergy Act and that 2901.5(h)(2) should be rewritten as a one-time reporting obligation for the 2019 compliance report.

DOEE disagrees with each of these points. The language of the CleanEnergy Act related to supply contracts grandfathered prior to March 22, 2019, clearly states

[1] WGL Energy Comments, at 3.

that electricity suppliers shall report "the length of ***each*** exempt contract" and "the amount of electricity associated with ***each*** exempt contract."[2] This language leaves no ambiguity to the intent of the CleanEnergy Act that electricity suppliers must report disaggregated data for (1) the length of time of each supply contract and (2) the amount of electricity associated with each supply contract.[3] The disaggregated data is required for compliance years 2019, 2020, 2021, and 2022, so a one-time reporting obligation for the 2019 compliance report is insufficient. The new reporting requirements for energy suppliers are necessary for the Commission to evaluate electricity supplier compliance with the RPS and prepare the Commission's legislatively mandated annual report to the Council of the District of Columbia ("Council"). For these reasons, DOEE urges the Commission to reject WGL Energy's proposed modifications related to 2901.5(h) of the NOPR.

II. The Commission Should Reject WGL Energy's Modifications Regarding Subsection 2902.16 as Inconsistent with the Clear Language of the CleanEnergy Act

WGL Energy's comments seek clarification on the Commission's intention to amend subsection 2902.16, regarding generator certification and eligibility. Specifically, WGL Energy requests a modification of the NOPR that would allow the 3-year vintage eligibility rules applicable to 2027 and 2028 Tier One Renewable

[2] CleanEnergy Act, Section 101(c) (emphasis added).
[3] The CleanEnergy Act establishes similar reporting requirements for each electricity supply contract executed before October 8, 2016.

Energy Credits ("REC") generated by a 'PJM-adjacent state' Tier One generating facility certified prior to March 22, 2019, to satisfy 2029 and 2030 District of Columbia Tier One RPS requirements.[4]

This interpretation of REC certification and eligibility is inconsistent with the clear language of the CleanEnergy Act and should be rejected. Section 101(a) of the CleanEnergy Act amends the definition of REC as follows:

> "(10) "Renewable energy credit" or "credit" means a credit representing one megawatt-hour of energy produced by:
>
> (A) A tier one or tier two renewable source located within the PJM Interconnection region; or
>
> (B) Until January 1, 2029, a tier one or tier two renewable source located within a state that is adjacent to the PJM Interconnection region that was certified by the Commission as of the applicability date of the CleanEnergy DC Omnibus Amendment Act of 2018, passed on 2nd reading on December 18, 2018."

This definition states that beginning January 1, 2029, a tier one REC must represent energy produced by a tier one renewable resource located *within* the PJM region. Any unretired tier one RECs from grandfathered tier one renewable sources located within PJM-adjacent states cease to be valid RECs on January 1, 2029. These RECs from PJM-adjacent facilities may very well be used to comply with RPS

[4] WGL Energy comments, at 4-5.

requirements in other states after January 1, 2029, but they will no longer be valid for RPS compliance in the District of Columbia.

The intent of the CleanEnergy Act is to reduce the geographic footprint from which RECs may be sourced to the PJM region. The CleanEnergy Act does this by stopping the certification of new renewable sources in PJM-adjacent states after March 22, 2019, and stopping the crediting of RECs for renewable sources located in PJM-adjacent states by January 1, 2029. This phase-out of non-PJM RECs will allow the District to fulfill its RPS requirements with RECs produced entirely within the PJM region. Allowing RECs from grandfathered renewable sources in PJM-adjacent states to meet RPS requirements after January 1, 2029, is both inconsistent with the language and intent of the CleanEnergy Act. For these reasons, DOEE urges the Commission reject WGL Energy's proposed modifications to subsection 2902.16 and adopt the original NOPR language.

III. The Commission Should Reject WGL Energy's Modifications Regarding Subsection 2903.4 as Inconsistent with the Clear Language of the CleanEnergy Act

WGL Energy's comments seek clarification on the Commission's intention to amend Subsection 2903.4, regarding the creation and tracking of RECs. The amendments proposed in the NOPR state that "RECs shall be valid for a three (3)-year period from the ***date of generation***, except for Solar RECs produced by Solar

Energy systems which … shall be valid for a five (5)-year period from the ***date of generation***" (emphasis added). WGL Energy requests modifications to the language to change the phrase "date of generation" to "year of generation". WGL Energy does not find support for these modifications in the CleanEnergy Act, but instead claims that these modifications are necessary to "allow the market processes for DC Solar RECs to remain consistent with other REC markets."[5] WGL Energy provides no details as to with which REC markets the District's RPS rules are inconsistent, in which ways the District's RPS rules are inconsistent, or why it is necessary for the Commission to make the District's RPS rules consistent with the RPS rules in the unspecified other REC markets.

The Commission should reject WGL Energy's requested modifications as being inconsistent with both the clear language of the CleanEnergy Act as well as over a decade of regulatory precedence for how the effective life of RECs is measured. Subsection 101(e) of the CleanEnergy Act amends the provisions establishing the useful life of RECs with the following language:

> "(e) Section 10 (D.C. Official Code § 34-1439) is amended as follows:
>
> (1) Subsection (c) is amended by striking the phrase "3 years from the ***date created***" and inserting the phrase "3 years from the ***date created***; provided that a renewable energy credit from a solar energy system meeting the requirements of section 4(e)(1) shall exist for 5 years from the ***date created***" in its place." (emphasis added)

[5] Comments of WGL Energy, p.5.

The CleanEnergy Act specifies that the useful life for RECs and solar renewable energy credits ("SRECs") be measured from the date created and not the year created. This standard for measuring the useful life for RECs is not new to the District's RPS. The Commission's rules have included this standard since as early as January 2008, when the Commission adopted Chapter 29 of Title 15 DCMR governing rules for the implementation of the Renewable Energy Portfolio Standard Act of 2004 (D.C. Law 15-340).[6] WGL Energy's request to change the standard for measuring the useful life for RECs not only contradicts the language of the CleanEnergy Act, it also contradicts over a decade of rules governing the implementation of the District's RPS. WGL Energy is effectively asking the Commission to legislate through the rulemaking process.

The Commission has no requirement to align the District's RPS rules for the useful life of RECs with any other (unspecified) REC market. It is more important that the Commission's rules be consistent with the CleanEnergy Act than be consistent with the other REC markets over which the Commission and the Council have no jurisdiction. Furthermore, WGL Energy's comments fails both to identify the REC markets to which its comments refer and to establish the legal or economic basis for why this particular issue rises to the level of importance that it might supersede District law. Therefore, the Commission should reject WGL Energy's requested modifications as inconsistent with the text of the CleanEnergy Act and as an inappropriate attempt to legislate through the rulemaking process.

[6] Commission Order No. 14697 in Formal Case No. 945. Published January 10, 2008.

CONCLUSION

For the above-stated reasons, DOEE urges the Commission to reject in whole the recommended modifications to the NOPR proffered by WGL Energy and, instead, adopt the NOPR language as originally published by the Commission in the *D.C. Register* on May 3, 2019.

Respectfully Submitted,

/s/ Anna Lising
Anna Lising
Associate Director, Policy & Compliance
Energy Administration
Department of Energy & Environment
Government of the District of Columbia
1200 First Street NE, 5th Floor
Washington, DC 20002
202-671-4096 (Desk)
Anna.lising@dc.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of June 2019, I caused true and correct copies of the foregoing Reply Comments of the Department of Energy and Environment to be emailed to the following:

Christopher Lipscombe, Esq.
General Counsel
Public Service Commission
1325 G Street, N.W., Ste 800
Washington, D.C. 20005
clipscombe@psc.dc.gov

Laurence Daniels, Esq.
Assistant People's Counsel
Office of the People's Counsel
1133 15th Street, N.W. Suite 500
Washington, D.C. 20005
ldaniels@opc-dc.gov

Hussain Karim, Esq.
Department of Energy & Environment
1200 First Street, N.E., 5th Floor
Washington, D.C. 20002
Hussain.Karim@dc.gov

Bernice McIntyre, Esq.
WGL Energy, Inc.
8614 Westwood Center Dr. Ste 1200
Vienna, VA. 22182
Bernice.mcintyre@wglenergy.com

Edward Yim
Department of Energy & Environment
1200 First Street, N.E., 5th Floor 30
Washington, D.C. 20002
edward.yim@dc.gov

/s/ Brian Caldwell
Brian Caldwell