

## PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF SECOND PROPOSED RULEMAKING**RM29-2019-01, IN THE MATTER OF 15 DCMR CHAPTER 29-RENEWABLE ENERGY PORTFOLIO STANDARD-CLEANENERGY DC OMNIBUS AMENDMENT ACT OF 2018**

1. The Public Service Commission of the District of Columbia (Commission), pursuant to its authority under D.C. Official Code §§ 2-505 (2016 Repl.) and 34-802 (2019 Repl.), hereby gives notice of its intent to amend Chapter 29 (Renewable Energy Portfolio Standard), of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days after the publication of this Notice in the *D.C. Register*.

2. On May 3, 2019, the Commission published a Notice of Proposed Rulemaking (NOPR) in the *D.C. Register* (66 DCR 5703-5707), revising certain sections of its Renewable Energy Portfolio Standard (RPS) rules in accordance with the CleanEnergy DC Omnibus Amendment Act of 2018 (CleanEnergy Act).<sup>1</sup> This Second NOPR supersedes the first NOPR published on May 3, 2019. The proposed amendments to Subsection 2901.5 require electricity suppliers to report information regarding: a) their energy supply contracts that were executed prior to October 8, 2016, the effective date of the Renewable Portfolio Standard Expansion Amendment Act of 2016,<sup>2</sup> and are not, therefore, subject to the increased solar compliance fees pursuant to that act in their annual RPS compliance reports; and b) their energy supply contracts that were executed prior to the March 22, 2019, effective date of the CleanEnergy Act, and are not, therefore, subject to the increased tier one and solar energy standards pursuant to that act in their annual RPS compliance reports.

3. Language has been added to Subsection 2901.5 to allow the compliance report form to be updated as needed by public notice and requiring each electricity supplier to report annually in its compliance report for the year following the compliance year that is the subject of the compliance report being filed, an estimate of the amount of compliance fees to be paid. The proposed amendments to Subsection 2901.7 change the deadline from April 1 to the period October 1 to November 1 for the submission of annual compliance fees. Subsection 2901.9 has been similarly revised to reflect this change. Subsection 2901.12 has been revised to reflect that energy supply contracts executed prior to the effective date of the CleanEnergy Act are not subject to the increased tier one and solar energy standards. Subsection 2901.13(c) has been revised to extend the three hundred dollars (\$300) compliance fee for each renewable energy credit (REC) shortfall for solar energy sources from 2029 through 2032 to 2029 through 2041, and provides for a one hundred-dollar (\$100) compliance fee for each REC shortfall for solar energy sources in 2042 and thereafter consistent with the CleanEnergy Act.

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<sup>1</sup> *CleanEnergy DC Omnibus Amendment Act of 2018*, effective March 22, 2019 (*D.C. Law 22-257*).

<sup>2</sup> *Renewable Portfolio Standard Expansion Amendment Act of 2016*, effective October 8, 2016 (*D.C. Law 21-154*).

4. In addition, Subsection 2902.16 has been amended to reflect the change in the definition of a REC, pursuant to the CleanEnergy Act, which phases out the certification of renewable generators in adjacent PJM states and the eligibility of RECs produced by those generators. The proposed amendments to Subsection 2903.4 extend the life of solar RECs from three (3) years from the date of generation to five (5) years from the date of generation. Subsection 2903.4 has also been revised to reflect that, after December 31, 2028, the RECs that had been produced by renewable generators, on or before that date, that were certified as tier one sources located within an adjacent PJM state on or before March 22, 2019, the effective date of the CleanEnergy Act, shall be valid for the remainder of the three (3)-year period from the date of generation. Subsection 2903.4 has also been revised to reflect that the solar RECs produced by such facilities, on or before December 31, 2028, shall be valid for the remainder of the five (5)-year period from the date of generation. The proposed amendments to Subsection 2999.1 harmonize the definition of a REC with the act; revise the definitions of "Adjacent PJM State" and "PJM Interconnection region;" and add new terms and definitions for "Compliance Year;" "Energy Supply Contract;" and "PJM Interconnection, L.L.C."

**Chapter 29, RENEWABLE ENERGY PORTFOLIO STANDARD, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:**

**Section 2901, RPS COMPLIANCE REQUIREMENTS, is amended as follows:**

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2901.5 Each Electricity Supplier must prepare and submit an annual compliance report to the Commission, in a format that may be updated pursuant to a Public Notice. The compliance report shall include, but shall not be limited to, the following information:

- (a) The quantity of its annual District of Columbia retail electricity sales;
- (b) A calculation of the annual quantity of required Tier One, Tier Two, and Solar Energy RECs;
- (c) The quantity of Tier One, Tier Two, and Solar Energy RECs purchased and evidence of those purchases;
- (d) The quantity of Tier One, Tier Two, and Solar Energy Credits transferred to the Electricity Supplier by a Renewable On-Site Generator;
- (e) A calculation of any compliance fees that the Electricity Supplier owes;
- (f) A summary report of RECs retired during the reporting period;
- (g) For Compliance Years 2019, 2020, and 2021 include:

- (1) The number of the energy supply contracts that were executed prior to October 8, 2016, the effective date of the Renewable Portfolio Standard Expansion Amendment Act of 2016 (D.C. Code § 34-1434, note);
  - (2) The length of each such energy supply contract; and
  - (3) The amount of electricity sold pursuant to each such energy supply contract for the current Compliance Year that is the subject of the compliance report being filed and an aggregated estimate of the amount of electricity to be sold pursuant to all such energy supply contracts for each Compliance Year through 2021. However, no estimates shall be required for inclusion in the compliance report for Compliance Year 2021.
- (h) For Compliance Years 2019, 2020, and 2021 include:
- (1) The number of the energy supply contracts that were executed prior to March 22, 2019, the effective date of the CleanEnergy DC Omnibus Amendment Act of 2018 (CleanEnergy Act) (*D.C. Law 22-257*);
  - (2) The length of each such energy supply contract; and
  - (3) 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 aggregated estimate of the amount of electricity to be sold pursuant to all such energy supply contracts for each Compliance Year through 2021. However, no estimates shall be required for inclusion in the compliance report for Compliance Year 2021;
- (i) For the year following the Compliance Year that is the subject of each compliance report being filed, an estimate of the amount of Compliance Fees to be paid;
- (j) All documentation supporting the data appearing in the annual compliance report; and
- (k) Certification of the accuracy and veracity of the compliance report.

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2901.7 An Electricity Supplier's annual compliance report shall be submitted to the Commission by April 1 of the calendar year following the Compliance Year. After notification of a decision of non-compliance by the Commission, the

supplier shall, within ten (10) calendar days, take the actions necessary to come into compliance, or file its response contesting the decision of non-compliance, or file a response indicating that it will submit the appropriate payment to the District of Columbia Department of Energy & Environment payable to the District of Columbia Renewable Energy Development Fund between October 1 and November 1 of the calendar year following the Compliance Year. The supplier shall concurrently file proof of payment with the Commission.

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2901.9 Any Electricity Supplier that fails to meet its Renewable Energy Portfolio Standard requirements shall submit to the District of Columbia Department of Energy & Environment the required annual compliance fee payable to the District of Columbia Renewable Energy Development Fund between October 1 and November 1 of the calendar year following the Compliance Year. The supplier shall concurrently file proof of payment with the Commission.

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- 2901.12 (a) Energy supply contracts executed prior to August 1, 2011, shall not be subject to the increased solar energy requirement established by the Distributed Generation Amendment Act of 2011 (*D.C. Law 19-36*); but any extension or renewal of such contracts, executed on or after August 1, 2011, shall be subject to the increased Solar Energy requirement as required by this act;
- (b) Energy supply contracts executed prior to October 8, 2016, the effective date of the Renewable Portfolio Standard Expansion Amendment Act of 2016 (*D.C. Law 21-154*), shall not be subject to the increased solar energy compliance fees as required by this act until October 8, 2021; but any extension or renewal of such contracts, executed on or after October 8, 2016, shall be subject to the increased solar energy compliance fee as required by that act; and
- (c) Energy supply contracts executed prior to March 22, 2019, the effective date of the CleanEnergy Act, shall not be subject to the increased Tier One and Solar Energy requirements required by the CleanEnergy Act through January 1, 2022; but any extension or renewal of such contracts, executed on or after March 22, 2019, shall be subject to the increased Tier One and Solar Energy requirements as required by the CleanEnergy Act.

2901.13 The Compliance Fee shall be:

- (a) Fifty dollars (\$50) for each REC shortfall for Tier One resources;
- (b) Ten dollars (\$10) for each REC shortfall for Tier Two resources; and

- (c) Three hundred dollars (\$300) for each REC shortfall for Solar Energy resources in 2008; five hundred dollars (\$500) for each REC shortfall for Solar Energy resources in 2009 through 2023; four hundred dollars (\$400) for each REC shortfall for Solar Energy resources in 2024 through 2028; three hundred dollars (\$300) for each REC shortfall for Solar Energy resources in 2029 through 2041; and one hundred dollars (\$100) for each REC shortfall for Solar Energy resources in 2042 and thereafter.

**Section 2902, GENERATOR CERTIFICATION AND ELIGIBILITY, is amended as follows:**

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2902.16 As of March 22, 2019, the effective date of the CleanEnergy DC Omnibus Amendment Act of 2018 (CleanEnergy Act) (*D.C. Law 22-257*), Tier One or Tier Two sources located within an Adjacent PJM State shall not be eligible for certification as qualified sources by the Commission. After December 31, 2019, a generating facility certified as a Tier Two renewable source shall not be eligible to generate RECs for the District of Columbia's RPS program. After January 1, 2029, a generating facility that was certified, as of March 22, 2019, the effective date of the CleanEnergy Act, as a Tier One source located within an Adjacent PJM State, shall not be eligible to generate RECs for the District of Columbia's RPS program.

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**Section 2903, CREATION AND TRACKING OF RENEWABLE ENERGY CREDITS, is amended as follows:**

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2903.4

- (a) RECs shall be valid for a three-year period from the date of generation, except that Solar RECs produced by Solar Energy systems which meet the requirements of D.C. Official Code § 34-1432(e)(1) and which may, therefore, be used to meet the Solar Energy portion of the Tier One requirement shall be valid for a five (5)-year period from the date of generation. These Solar RECs shall be valid for a five (5)-year period from the date of generation provided they were generated as of or after March 22, 2019, the effective date of the CleanEnergy DC Omnibus Amendment Act of 2018 (CleanEnergy Act) (*D.C. Law 22-257*). A newly certified Renewable Generator can produce RECs starting from January 1<sup>st</sup> of the year in which it was certified, except that any Renewable Generator certified in January of any year can produce RECs starting January 1<sup>st</sup> of the year before that certification.

- (b) After December 31, 2028, the RECs that had been produced by generating facilities, on or before that date, that were certified as a Tier One source located within an Adjacent PJM State on or before March 22, 2019, the effective date of the CleanEnergy Act, shall be valid for the remainder of the three (3)-year period from the date of generation. The Solar RECs produced by such facilities, on or before December 31, 2028, shall be valid for the remainder of the five (5)-year period from the date of generation.

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**Section 2999, DEFINITIONS, is amended as follows:**

2999.1 For the purposes of this chapter, the following terms and phrases have the following meanings:

**Adjacent PJM State** – Alabama, Arkansas, Georgia, Iowa, Mississippi, Missouri, New York, South Carolina, and Wisconsin are deemed to be adjacent to the PJM Interconnection Region as are those portions of Illinois, Indiana, Kentucky, Michigan, North Carolina, Tennessee, and Virginia which are not within the PJM Interconnection region.

...

**Compliance Year** – the calendar year for which the electricity supplier seeks to establish compliance with the District of Columbia’s renewable energy portfolio standard by filing a compliance report.

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**Energy Supply Contract** – a contract between an electricity supplier and a customer for the retail sale of electricity.

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**PJM Interconnection, L.L.C.** – the regional transmission organization that coordinates the movement of wholesale electricity in all or parts of 13 states and the District of Columbia and is regulated by the Federal Energy Regulatory Commission.

**PJM Interconnection region** – the area within which the movement of wholesale electricity is coordinated by the PJM Interconnection, L.L.C. This area includes all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia.

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**Renewable Energy Credit or REC** – a credit representing one megawatt hour (1 MWh) of energy produced by Tier One or Tier Two renewable source located within the PJM Interconnection region; or until January 1, 2029, a Tier One or Tier Two renewable source located within an Adjacent PJM State that was certified by the Commission as of March 22, 2019, effective date of the CleanEnergy DC Omnibus Amendment Act of 2018 (*D.C. Law 22-257*).

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5. Any person interested in commenting on the subject matter of this proposed rulemaking action may submit written comments not later than thirty (30) days after publication of this notice in the *D.C. Register* to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005 or electronically on the Commission's website at [https://edocket.dcpSC.org/public/public\\_comments](https://edocket.dcpSC.org/public/public_comments). Copies of the proposed rules may be obtained by visiting the Commission's website at [www.dcpSC.org](http://www.dcpSC.org) or at cost, by contacting the Commission Secretary at the address provided above. Persons with questions concerning this NOPR should call (202) 626-5150 or send an email to [psc-commissionsecretary@dc.gov](mailto:psc-commissionsecretary@dc.gov).