



CRS

center for
resource
solutions

May 27, 2016

David J. Collins
Executive Secretary
Maryland Public Service Commission (PSC)
William Donald Schaefer Tower
6 St. Paul Street
Baltimore, Maryland 21202-6806

RE: Comments of Center for Resource Solutions (CRS) on the Notice of Proposed Action 16-104-P, Subtitle 62 Community Solar Energy Generation Systems (CSEGS)

Dear Mr. Collins:

CRS appreciates this opportunity to comment on the PSC's Proposed Action 16-104-P to adopt new regulations under Subtitle 62 Community Solar Energy Generation Systems (CSEGS), as described in the Maryland Register, Volume 43, Issue 9, Friday, April 29, 2016 (hereafter "Register")¹. Our comments focus on Renewable Energy Credit (REC) ownership under the Pilot Program and consumer protection requirements for the Pilot Program.

Introduction to CRS and Green-e®

CRS is a 501(c)(3) nonprofit organization that creates policy and market solutions to advance sustainable energy. CRS has broad expertise in renewable energy policy design and implementation, electricity product disclosures and consumer protection, and greenhouse gas (GHG) reporting and accounting. CRS administers the Green-e programs. Green-e Energy is the leading certification program for voluntary renewable electricity products in North America. In 2014, Green-e Energy certified retail sales of 38 million megawatt-hours (MWh), representing over 1% of the total U.S. electricity mix, or enough to power nearly a third of U.S. households for a month. In 2014, there were over 836,000 retail purchasers of Green-e certified renewable energy, including 50,000 businesses.

Stakeholder-driven standards supported by rigorous verification audits and semiannual reviews of marketing materials ensure robust customer disclosure and are pillars of Green-e Certification. Through these audits and reviews, CRS is able to provide independent third-party certification of renewable energy products. Green-e program documents, including the standards, Code of Conduct, and the annual verification report, are available at www.green-e.org. CRS also has a long history of working with state agencies to design and implement consumer protection policies that ensure accurate marketing and avoid double counting of individual resources towards multiple end uses.

Comments

Our comments pertain to the following chapters and sections of the proposed subtitle, as shown in the Register, as well as the following section of the Public Utilities Article.

¹ Available online: <http://www.dsd.state.md.us/MDR/4309.pdf>.

20.62.01 General

.02. Definitions.

B. Terms Defined.

(18) "Subscriber" has the meaning stated in Public Utilities Article, §7-306.2, Annotated Code of Maryland.

(19) "Subscriber organization" has the meaning stated in Public Utilities Article, §7-306.2, Annotated Code of Maryland.²

20.62.03 Pilot Program Administration

.06 Renewable Energy Credit Ownership.

A. Subscribers are not customer-generators under Public Utilities Article, §7-306(g)(5), Annotated Code of Maryland.

B. Subscriber organizations shall own and have title to all renewable energy attributes or renewable credits associated with community energy generating facilities for which they have applied.³ ()

Maryland Public Utilities Article, §7-306.2.a⁴

(5) "Subscriber" means a retail customer of an electric company that:

(i) holds a subscription to a community solar energy generating system; and

(ii) has identified one or more individual meters or accounts to which the subscription shall be attributed.

(6) "Subscriber organization" means:

(i) a person that owns or operates a community solar energy generating system; or

(ii) the collective group of subscribers of a community solar energy generating system.

First, based on Sec. .06 of Pilot Program Administration (20.62.03) on Renewable Energy Credit Ownership and the definition of "Subscriber Organization" in Public Utilities Article, §7-306.2.a, it is not clear whether the "person that owns or operates a community solar energy generating system" or "the collective group of subscribers of a community solar energy generating system" will own the RECs under the Pilot Program, if they can be different entities.

Second, although Subscribers are not proposed to be considered "customer-generators," Subscribers should nevertheless own the RECs from the community solar project to which they subscribe, or RECs from the project should be retired on their behalf, such that Subscribers can make credible and exclusive renewable energy usage and carbon footprint claims based on their subscriptions.⁵

² See p.555 of the Register.

³ See p.558 of the Register.

⁴ Available online: <http://mgaleg.maryland.gov/webmga/frmStatutesText.aspx?article=gpu§ion=7-306.2&ext=html&session=2016RS&tab=subject5>.

⁵ Jones, T. (2015). The Legal Basis of Renewable Energy Certificates. Center for Resource Solutions. Available online at: <http://resource-solutions.org/site/wp-content/uploads/2015/07/The-Legal-Basis-for-RECs.pdf>.

Also See:

US Federal Trade Commission. (2015). Letter from James A. Kohm, Associate Director, Division of Enforcement, Bureau of Consumer Protection, to R. Jeffrey Behm, Esq., Sheehey, Furlong & Behm, P.C. February 5, 2015. Available at: https://www.ftc.gov/system/files/documents/public_statements/624571/150205gmpletter.pdf.

U.S. Environmental Protection Agency. (2008) Renewable Energy Certificates. Available online at: http://www.epa.gov/greenpower/documents/gpp_basics-recs.pdf.

Third, if the Subscriber Organization is an owner or operator of the CSEGS that is a separate entity from the collective group of Subscribers, then that entity may sell or transfer the RECs to an entity other than the Subscribers or the collective group of Subscribers, which would prevent Subscribers from making renewable energy usage claims and could result in double claiming. Furthermore, if those RECs are used for compliance with a Renewable Portfolio Standard (RPS), then Subscribers' investments would in fact be supporting compliance with state law and generating on behalf of all customers in the state (or another state, if used for compliance with another state's RPS), rather than delivering renewable energy for the Subscriber's own use in excess of what is required by law. This could lead to a great deal of confusion and frustration among Subscribers and negatively affect the non-financial value of their investment.

Recommendations

1. We recommend that Sec. .06 of Pilot Program Administration (20.62.03) on Renewable Energy Credit Ownership be revised to clarify that individual Subscribers or the collective group of Subscribers shall own and have title to all renewable energy attributes or RECs associated with the project to which they subscribe, or these RECs shall be retired on their behalf.
2. We recommend that information about REC ownership be included in the Minimum Contract Requirements (Sec .08.A of 20.62.05 Consumer Protection) and Required Disclosures (Sec .07) to individual Subscribers.

If the Subscribers do not own the RECs, or if the RECs are not retired on their behalf, we recommend that there be very clear disclosure that the Subscribers are not receiving the environmental benefits from the CSEGS project.

3. We recommend that a section on "Retirement of CO₂ Allowances through the Voluntary Renewable Set-aside Account" be added to Chapter 20.62.03 on Pilot Program Administration.

We recommend that this section require that Subscriber Organizations submit the documentation identified in Code of Maryland Regulations (COMAR) §26.09.02.08.B(2)⁶ to the Department of the Environment annually in exchange for the permanent retirement of CO₂ allowances from the Voluntary Renewable Set-aside Account (VRSA) as a part of Maryland's CO₂ Budget Trading Program.

The VRSA allows voluntary renewable energy, including onsite and community solar projects located in Maryland, to reduce the overall level of greenhouse gas emissions in the state. All onsite solar, community solar, and other distributed generation in the state, where the RECs are retained by the consumer (along with all voluntary renewable energy sellers and buyers in the state) should be using the VRSA in order to ensure that generation used to meet voluntary demand has an effect on grid emissions

U.S. Department of Energy, U.S. Environmental Protection Agency, the World Resources Institute, Center for Resource Solutions. (March 2010). Guide to Purchasing Green Power Renewable Electricity, Renewable Energy Certificates, and On-Site Renewable Generation. Office of Air (6202J) EPA430-K-04-015. DOE/EE-0307. Available online: http://www.epa.gov/greenpower/documents/purchasing_guide_for_web.pdf.

Sotos, M. (2015) GHG Protocol Scope 2 Guidance: An Amendment to the GHG Protocol Corporate Standard. World Resources Institute. Available online: http://www.wri.org/sites/default/files/Scope_2_Guidance_Final.pdf.

⁶ See <http://www.dsd.state.md.us/comar/comarhtml/26/26.09.02.08.htm>.

and is incremental to the cap (i.e. is surplus to regulation). Without having allowances retired through the VRSA on behalf of the generation, CSEGS projects will not reduce emissions beyond the level of the cap, the avoided grid emissions associated with generation from these projects will effectively be zero, and the Pilot Program will fail to adequately recognize the carbon-reduction value of these projects. This will discourage Subscribers from participating and making these private investments in renewable energy.

4. The PSC may consider requiring or referencing Green-e certification as a part of the Pilot Program to verify conformance with Consumer Protection requirements (Chapter 20.62.05)

Specific requirements that Green-e certification can help to verify include:

- Advertising and Solicitations (Sec .03) – Green-e enforces requirements for all marketing of certified renewable energy, including marketing language requirements and restrictions (Sec IV.E1 of the Green-e Energy Code of Conduct⁷); REC disclosure language (IV.E2); requirements for advertising through TV, radio, and electronic media (IV.E7), and requirements for information provided on websites (IV.E8).
- Required Disclosures (Sec .07) – Green-e requires the provision of certain disclosures to customers purchasing certified renewable energy, including certain mailings (Sec IV.B of the Green-e Energy Code of Conduct); prospective and historical Product Content Labels (IV.C); and a detailed Price, Terms, and Conditions (IV.D).
- Contractual terms and conditions (Sec .08.A) – Green-e enforces requirements for the terms and conditions that must be provided to customers purchasing certified renewable energy (See Sec IV.D of the Green-e Energy Code of Conduct).
- Requirements for different Methods of Contracting (Sec .08.B) and different sales channels and methods (Secs .12, .19, and .20) – Green-e enforces requirements for various different sales channels and subscription mechanisms (Sec IV.F of the Green-e Energy Code of Conduct).
- Requirements for different types of contracts, including automatically renewed contracts (Sec .08.C) – Green-e enforces requirements based on the type of contract used around compliance with verification requirements (Sec III, IV and V of the Green-e Energy Code of Conduct) and delivery of disclosures (IV.B, IV.C3, IV.C4, and IV.D1).

Other states have required Green-e certification for similar programs. For example, in January 2015, the California Public Utilities Commission (CPUC) directed the three largest investor-owned utilities (IOUs) in the state—Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company, which together cover nearly 80% of the state— to offer a Green-e Energy certified 100% renewable energy option to their customers and encouraged them to develop a range of green power options that will allow ratepayers at all income levels to use more renewable energy than that which is required under the state's Renewable Portfolio Standard.⁸ Each IOU will offer two distinct Green-e certified program models:

- Green Tariff: Customers can sign up to meet up to 100% of their electricity with solar generation purchased from the utility. The customer will see an additional charge on their utility bill that

⁷ The Green-e Energy Code of Conduct is available online at: <http://www.green-e.org/docs/energy/coc/Green-e%20Energy%20Code%20of%20Conduct.pdf>.

⁸ California Public Utilities Commission (CPUC). Decision 15-01-051. January 29, 2015. *Decision Approving Green Tariff Shared Renewables Program for San Diego Gas & Electric Company, Pacific Gas and Electric Company, and Southern California Edison Company pursuant to Senate Bill 43*. Available online: <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M146/K250/146250314.PDF>.

- reflects the additional costs of receiving solar generation to meet their electricity use.
- Enhanced Community Renewables (ECR): This program reflects the "Community Solar" model of renewable energy purchasing. Customers sign up to purchase a portion of a local solar project directly from a developer at a level that meets at least 25% and up to 100% of their monthly electricity demand. The customer will pay the developer for the subscribed output, and receive a credit on their utility bill that reflects their enrollment level.

According to the CPUC's order, "Green-e Energy certification will also provide customers with standardized, understandable information on the energy's attributes."⁹

Thank you very much for the opportunity to comment. We would be happy to supply any other supporting or clarifying information that would be helpful.

Sincerely,

A handwritten signature in black ink, appearing to read 'Todd Jones', with a stylized flourish at the end.

Todd Jones
Senior Manager, Policy and Climate Change Programs

⁹ California Public Utilities Commission (CPUC). Decision 15-01-051 January 29, 2015. Section 5.4, pg. 90.