BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

Revisions to COMAR 20.62 – Community Solar Energy Generation Systems	*	Administrative Docket RM56

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COMMENTS OF NRG ENERGY, INC.
ON DRAFT COMMUNITY SOLAR REGULATIONS

NRG Energy, Inc. ("NRG") respectfully submits these comments on the Draft Regulations proposed in Administrative Docket RM56, pursuant to the Notice Initiating Rulemaking issued on November 12, 2015.

I. Introduction to NRG

NRG is at the forefront of changing how people think about and use energy. NRG is the nation's largest independent power producer, with a diverse resource mix that includes over 50,000 megawatts of both renewable and conversional generation. NRG is also a competitive energy retail supplier, serving nearly 3 million retail customers throughout the country, including in Maryland. By giving customers access to the latest tools to better monitor and manage their energy usage, NRG is also a pioneer in enabling customers to make smarter and more sustainable energy choices.

A. NRG's Experience in Sponsoring Community Solar Programs.

NRG currently has operational community solar projects serving customers in Colorado and Massachusetts. In addition, NRG is actively developing shared solar projects in a variety of additional markets to enable customers who may not have a rooftop suitable for solar still have

the option to "go solar." NRG sees major opportunities in the Maryland market, and would like to invest additional solar dollars in the state.

II. Comments on the Proposed Pilot Community Solar Program

NRG appreciates the work of Maryland PSC staff in convening and gathering input from a diverse group of stakeholders during the development of the Draft Regulations. Based on our experience with community solar programs in other states, elements of a successful community solar program include:

1. Certainty of long-term revenue, end date, and size of the program;
2. The ability to access a broad customer base,
3. A crediting level that is sufficient to finance projects and offer a value proposition comparable to on-site solar; and
4. Transparent rules so that customers, developers, and retailers all understand the nature of the program.

The pilot program described in the Draft Regulations largely contains these elements, although we note some needed changes and clarifications in these comments.

A. The Commission Should Make the Full Program Capacity Available for the Duration of the Three-Year Pilot.

NRG supports the proposed pilot program size of 300 MW, which will provide sufficient capacity for development of community solar energy generating systems ("CSEGS") in Maryland, while providing certainty to the Commission, utilities, and stakeholders about the maximum size of the program. However, Section 2.02(A)(2) of the Draft Regulations raises the possibility that the program could be scaled down as early as 2017. Introducing uncertainty into the project development process chills the market and may signal to investors that they should to allocate their capital to other community solar markets with greater regulatory certainty. NRG strongly recommends that this section be removed.

In particular, NRG highlights two significant problems with the existing proposal. *First*, as the Commission is aware, the upfront expenditure of funds associated with building a new business can be substantial, and developers will be reluctant to invest the capital if the program may terminate early. Committing to the program for the full three years would significantly alleviate this concern for companies that would like to actively develop a community solar market in Maryland.

Second, NRG is concerned that ending the program early could discourage developers from entering the market because of the risk that a project could become "stranded" half way through the multi-month development cycle. While Section 2.02(A)(3) attempts to address this issue by protecting projects that have "been accepted into an electric company's project queue" from being removed from the program due to an early termination, NRG has concerns that this language is not as protective as it seems. In particular, a community solar project only qualifies to be "accepted into the electric company's project queue" towards the *end* of the development cycle. For example, the project developer must have submitted an application for all permits and site control before a utility company can accept a project into the queue. Moreover, Section 3.04(B)(3) requires developers to provide an executed interconnection agreement *prior* to be accepted into the queue. For larger community solar projects, an executed interconnection agreement can take many months and is highly reliant on a utility's review process. Lengthy interconnection timelines have been significant barriers to community solar in other states. The Commission could facilitate predictable and timely access to the queue by requiring utilities to set target interconnection review timelines for the CSEGS.

The Commission can further facilitate the Pilot's effectiveness by requiring utilities to set clear and enforceable deadlines for performing any system upgrades that must happen before the CSEGS come online. Unclear and lengthy interconnection timelines have proven to be one of the biggest risk factors for community solar project development in other states.

Given that the pilot program will only last for three years, it is reasonable for the Commission to commit to making the full amount of program capacity available for the duration of the pilot.

B. To provide a Customer Value Proposition Comparable to On-Site Solar, Crediting should be Offered at the Full Retail Rate.

A major driver of the success of community solar programs in other communities is the ability for community solar customers to access the same financial benefits as customers with the appropriate roof type, home ownership status, or financial wherewithal to install solar panels on their roofs. While Sections 2.04(C) and (D) appear to correctly value community solar at the full bundled retail rate, NRG respectfully requests that the Commission clarify that this is indeed the intent of these regulations. Specifically, Sections 2.04(C) and (D) give electric companies the option to apply bill credits to subscribers' accounts as either a reduction in metered kilowatt-hour (kWh) usage, or a monetary credit equaling no less than the value of a reduction in metered kWh usage. In other words, the credit should be equivalent to the total kWh's produced by the customer's share of the community solar facility times the full retail rate, including all charges.

NRG supports offering full retail crediting to community solar subscribers, with two requests for clarification:

- The language in the Draft Regulations is somewhat ambiguous on whether the credit being offered represents all per-kWh components of the retail rate. To

avoid any confusion, the regulations should state clearly that the community solar credit equals all per-kWh portions of the retail rate.

- Subscriber organizations will need to know what form of credit is being offered (kWh or monetary) in order to accurately market a project to potential subscribers. To make this possible, utilities should be required to select the form of crediting early in the project development process – for example, at the point when the project is accepted into the program queue – and should be required to commit to that same form of crediting for the lifetime of the project.

C. Retail Electric Suppliers Should Not be Affected by the Allocation of Credits.

NRG requests that the Commission clarify that community solar subscriptions will not affect the calculation of electricity provided by retail electric suppliers to subscribers. A community solar subscription is a distinct transaction between the customer and the CSEGS, wholly separate from the subscribing customer's actual on-site consumption or the electricity purchased by a subscribing customer from a retail supplier. Indeed, a retail electric supplier will continue to deliver 100% of the customer's retail usage, regardless of whether the customer has a community solar subscription.

The clear intent of the statute is that the utilities will: 1) use the energy generated from a community solar project to offset their purchases from wholesale electricity suppliers for standard offer service, and 2) use their tariff structures to pay credits – whether as a dollar credit or kWh credit – to community solar project subscribers.[1] However, as proposed, the Draft Regulations are ambiguous as to how retail supplier supply obligations and revenues would be impacted by the application of community solar credits. NRG urges the Commission to modify Chapter 2.04 of the proposed Draft Regulations to clarify that the community solar transaction

[1] Md. Code Ann. §7-306.1(D)(5) and (D)(8).

will not affect the compensation provided by the utilities to suppliers for their customers' on-site consumption by adding a new Paragraph E as follows:

> "E. Whether an electric company chooses to apply the credit from Section C of this regulation as a reduction in metered kilowatt-hour use or as a dollar credit, the electric company's application of the credit shall not relieve or otherwise reduce the electric company's obligation to compensate the electricity supplier in full for the subscriber's actual total consumption."

D. Community Solar Projects Built under the Pilot Program should be able to Lock in the Proposed Bill Crediting Arrangement for at Least 25 years.

NRG supports the provision in the Draft Regulations to allow pilot projects to continue generating bill credits for 25 years after the pilot concludes (Section 2.10) and urges the Commission to extend this period to 35 years. Thirty-five years is consistent with the expected useful life of a solar generating system, as confirmed by independent engineering estimates, and has also become the market standard in attracting low-cost, tax-efficient capital to fund solar projects. In addition, the Draft Regulations require the utility tariffs governing the provision of bill credits to remain in place for 25 years; the regulations should additionally specify that the method of calculating bill credits will also remain the same for the full grandfathering period. Without this clarification, it will be difficult (if not impossible) to finance projects under the pilot.

Further, the Draft Regulations do not specify what stage a project must reach by the end of the three-year period in order to participate in the pilot and qualify for the grandfathered treatment. We request that the Commission clarify that a project that is accepted into the program queue by the end of the three-year pilot will be allowed to participate in the program. If the cutoff is set later in the project development process, this will risk stranding projects that are in the program queue but still under development at the end of the three-year pilot.

E. Comments on Chapter 03: Pilot Program Administration

1. Projects should be allowed to enroll subscribers across a utility's service territory.

To allow the maximum number of customers to benefit from participating in the pilot program, we support allowing customers to subscribe to any CSEGS located in their utility service territory, as proposed in Section 3.01. Some parties have proposed placing narrower geographic restrictions on the pilot, or offering higher bill credits based on a project's proximity to its subscribers. However, the evidence does not yet exist to support this approach; this is a question for the pilot program evaluation to resolve.

2. Regulated utilities cannot compete fairly in a program they administer and should not be allowed to own and operate CSEGS.

Regulated utilities should not be allowed to own and operate CSEGS during the pilot program. Section 3.02(C), however, appears to allow utilities to participate in the pilot program so long as they "do not recover CSEGS project costs through base distribution rates." The pilot program is an opportunity to test the viability of a competitive community solar market in Maryland; regulated utilities should only be allowed into this market if a viable competitive market does not emerge during the pilot period.

Even the utility's unregulated affiliates will have a clear advantage in competing for subscribers, given their name recognition and existing customer relationships. In addition, Section 3.03 of the Draft Regulations states that the utilities will control the program queue, which creates a serious conflict of interest. A position toward the front of the queue allows a project to move forward more quickly than its competitors, and it also determines which projects can be built in the event that the pilot is oversubscribed. If utilities are competing for queue positions for their own projects and at the same time determining which projects are admitted to the queue, they will be at an unavoidable advantage compared to independent CSEGS operators.

3. Program queue requirements should be set to limit speculative applications without imposing undue burden on the project development process.

i. Commission review of prospective CSEGS operators should be clarified

Section 3.02 states that prospective CSEGS operators would apply to the Commission for admission to the program, but does not specify what would be involved in this review. NRG urges the Commission to make this review as streamlined as possible, given the many forms of oversight contemplated elsewhere in the Draft Regulations (*e.g.*, admission to project queue; consumer protection regulations; data provision for pilot program evaluation).

ii. Admission to the program queue should not depend on permit applications

Section 3.04(3)(ii) states that a CSEGS developer would need to provide "proof of application for all jurisdictional permits" prior to receiving a position in the pilot program queue. Some standard requirements for project maturity, such as site control, help ensure that projects in the queue are real and viable. However, permitting requirements differ significantly from one locality to another, and different permitting requirements may apply at different stages of a project's development. Because of this variation, requiring proof of application for all jurisdictional permits could result in a project maturity requirement that varies significantly, and arbitrarily, depending on a project's location. In addition, the term "jurisdictional permits" is not in common use in similar programs; it could be construed to include ministerial permits (such as a building permit) that are received as a matter of course but are typically applied for much later in the project development process. This requirement should be removed, or at least modified to refer to "discretionary permits" (such as a wetlands permit) rather than "jurisdictional permits."

iii. Extensions to project deadlines should be granted when necessary due to factors beyond the project developer's control

Section 3.04(5) imposes a 12- to 18-month deadline for projects to be completed, without exceptions due to extenuating circumstances. Deadlines are clearly important in ensuring that inactive projects are removed from the queue. However, there are many known circumstances that can delay completion of a CSEGS, and a viable project should not be removed from the program due to factors that are not under the control of the project developer – for example, due to delays in utility interconnection work. As a point of comparison, Massachusetts' system of net metering eligibility allows for an extension of the reservation period if the project is delayed due to a legal challenge, or if the project is awaiting authorization to interconnect pending the completion of utility interconnection work. It would also be appropriate to extend a deadline if a project is awaiting receipt of a permit. The regulations should be modified to allow for an extension of the 12-month and 18-month deadlines under any of the following circumstances: (1) a project is delayed due to a legal challenge; (2) utility interconnection work has not yet been completed; or (3) the project is awaiting receipt of a permit for which it has timely applied.

F. Comments on Chapter 04: Pilot Program Study.

Utilities, CSEGS developers, and subscribers could all benefit from identifying locations where CSEGS could be sited with minimal required system upgrades, as described in Section 4.02(C). However, the question of a project's impact on the distribution system remains an open question for analysis in the pilot program study; during the pilot, information on distribution system capacity should be readily provided to developers, but this information should not limit which projects are allowed to proceed.

Some of the subscriber data requested by the Commission could be difficult to obtain or perceived as intrusive by subscribers, especially if information is expected to be updated throughout the three-year pilot. In particular:

- Other than for projects seeking a special designation for serving low and moderate-income subscribers, the Commission should clarify that a subscriber can opt not to disclose household income without penalty to herself or to the subscriber organization.
- Given the sensitivity of subscriber information (including income and credit scores), the Commission should also clarify that subscriber organizations will only be required to provide the subscriber data listed in Section 4.03 at a single point in time, rather than repeatedly updating this information throughout the three-year pilot.
- Finally, the subscriber organization will not have ready access to subscribers' on-site electricity usage and peak demand, as this data is collected by the utility. In particular, peak demand is not regularly reported on bills for residential customers and others on non-demand rates. This requirement should be either removed or revised to apply to the utility rather than the subscriber organization.

G. Comments on Chapter 05: Consumer Protection

While NRG appreciates the need for strong consumer protection, some of the regulations proposed in this section seem duplicative or overly prescriptive, including the following:

- Section 5.03(B)(2)(c) would require subscriber organizations to present potential subscribers with a scenario in which electricity rates do not rise. Customers should be able to decide whether to subscribe to a CSEGS based on a realistic

view of utility rates; a scenario in which rates remain constant for 25 years is not realistic and will confuse customers.

- Section 5.08(A)(1)(y): The Commission should only require reporting of an outage if it is an extended outage that would materially affect subscribers' bills. Many subscription agreements include a production guarantee, which would protect subscribers from the bill impacts associated with an outage. If an outage is momentary or is covered by a production guarantee, this requirement could confuse customers by providing information that is not relevant to their bills.
- Subscriber organizations should not be prohibited from charging a fee to customers seeking to downsize their subscription (Section 5.08(A)(2)), unless the change in subscription size is due to a documented change in the customer's on-site consumption.
- Section 5.09(B) states that a transfer of a CSEGS subscription would take effect immediately. However, transferring a subscription requires several steps that cannot occur immediately. Subscriber organizations should be permitted to implement reasonable limits on transfers to allow for the transition to be processed – for example, requiring subscribers to give notice at least one billing cycle in advance of the transfer, or specifying that the customer requesting the transfer is still responsible for any contracted payments until a new subscriber is identified and the transfer is processed. In addition, the Commission should specify the time period for utilities to process transfer requests – for example, within one billing cycle of receiving a request.

- The requirement to maintain a waiting list and draw from the waiting list to fill new capacity (Section 5.09(D)) should be removed, as it is overly prescriptive and would increase transaction costs for community solar projects. A waiting list is likely to go stale quickly as customers find other projects to subscribe to. In addition, a strict first-come, first-served requirement would prevent existing customers from increasing the size of their subscriptions or from referring their neighbors.

H. Conclusion

NRG appreciates the opportunity to submit comments on the Draft Regulations, which lay the groundwork for a successful community solar program in Maryland. We look forward to participating in the pilot program to provide Maryland consumers with more options to go solar.

Respectfully submitted,

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