

March 22, 2005

To: Maryland Public Service Commission Staff

From:

American Wind Energy Association
Chesapeake Bay Foundation
Clean Energy Partnership
Community Energy, Inc.
Conservation Services Group, Inc.
Montgomery County Department of Environmental Protection - Ann Elsen
PPM Energy, Inc.
U.S. Wind Force
Union of Concerned Scientists

Re: Supplemental Comments to the Draft Maryland Renewable Portfolio

Standard Regulations Released March 8, 2005

The above companies and organizations (“Parties”) would like to comment on the draft regulations of the Public Service Commission (PSC) dated March 8, 2005 and specifically on the importance of maintaining the competitiveness and integrity of the voluntary market for renewable energy credits (RECs) in Maryland, the ownership of which satisfies the requirements of the Renewable Portfolio Standard (RPS). In addition, Washington Gas Energy Services, Inc. (WGES) also authorizes the aforementioned Parties to state that WGES supports these statements. It is important that the language of the regulations not inadvertently shut down an element of this healthy REC market as it expands and helps to support new clean energy investment in Maryland and the surrounding region.

A voluntary market for renewable energy or RECs is emerging in Maryland and throughout the region, driven by consumer demand to have new renewable energy added to the regional electric grid. These customers pay premiums on top of their standard electric bill to “make a difference” by supporting renewable energy that is incremental to what already exists or is required. It would be an unfortunate outcome of the implementation of an RPS if it were to shut down this healthy market-based approach to the development of new clean generation.

The significant investment of Maryland’s largest voluntary market buyer, Montgomery County, is an example that helps illustrate the problem. Under their wind REC purchase, which is equivalent to the output of a 15 megawatt wind farm, the County owns the RECs from an early regional wind facility and their purchase payment is an integral part of the economic return on that project, which made it economically feasible to build. The County made the investment, has legal title to the renewable energy credits, and should not be deprived of its ownership of those RECs through inappropriate structuring of the RPS.

Based on our reading of the PSC regulations, it is unclear whether or not the RPS will prevent these RECs from being counted by suppliers under the RPS requirement. Montgomery County pays several hundred thousand dollars per year for their voluntary REC purchase. If the implementation of the RPS were to mean that those payments shifted the costs of compliance with the RPS disproportionately to the County and other voluntary purchasers rather than evenly to the ratepayers, the RPS will have disastrous impacts on the voluntary

market. The consequence would be the elimination of voluntary demand for renewable energy in Maryland.

The Parties request that the PSC be clear on this critical aspect of the implementation of the RPS, particularly as it relates to the voluntary ownership and purchase of RECs by a wide range of customers in the state. Large buyers such as Montgomery County can proactively prevent this double counting problem through explicit contract language. However, smaller and less aware customers do not have this sophistication and will assume that by paying a premium for a product marketed as renewable energy, they are supporting additional renewable energy (i.e., not simply paying an extra share for what is already required by law.).

This position supports the statute [70706 (A) (1)] which states that “the Commission shall allow an electricity supplier to recover actual dollar-for-dollar costs incurred, including a compliance fee under § 7-510 of this subtitle, in complying with a state-mandated renewable energy portfolio standard” and [7-706 (C) (1)] which states that “Any cost recover under this section: (1) for all electricity suppliers, may be in the form of a generation surcharge payable by all current electricity supply customers,”... The General Assembly clearly did not envision that the cost of implementing the RPS would be borne by the virtuous acts of voluntary customers.

Furthermore, the National Association of Attorneys General established Green Marketing guidelines in 1999, which argued that the double counting of

RECs are not acceptable¹. The guidelines state on page 4 that "if the same electricity or its attributes are sold more than once to consumers, the claim is deceptive." Also, other states looking at the issue (e.g., New York, Texas, Massachusetts, and Rhode Island) have kept the voluntary and compliance markets as additive, rather than eliminating one in favor of the other. Specifically, in August 2004, the Minnesota Public Utilities Commission reversed an earlier decision and ruled that renewable electricity resulting from voluntary green pricing programs should not be counted toward a utilities' renewable energy objective².

The Parties recommend the below straightforward language to keep the ownership and counting of RECs in the voluntary and compliance markets separate and additive to ensure a healthy marketplace for renewable energy in Maryland.

Chapter 01.

.04 Satisfaction of Renewable Energy Portfolio Standard.

B. and C.

(4) has not expired, been retired, been redeemed, or been sold to retail customers with a claim of renewable energy generation, whether by contract, marketing or other means, provided however that suppliers shall not be

¹ See the NAAG Green Marketing guidelines at http://www.naag.org/issues/pdf/Green_Marketing_guidelines.pdf

² See the Minnesota PUC reversal order at <http://www.puc.state.mn.us/docs/orders/04-0108.pdf>.

prevented from reacquiring RECs voluntarily surrendered by customers as set forth in Chapter 3 of this subsection.