

MEMORANDUM

March 31, 2017

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney



SUBJECT: **Introduction:** Bill 9-17, Fuel-Energy Tax – Exemptions - Amendments

Bill 9-17, Fuel-Energy Tax – Exemptions - Amendments, sponsored by Lead Sponsor Councilmember Leventhal, is scheduled to be introduced on April 4. A public hearing is tentatively scheduled for April 25 at 1:30 p.m.

Bill 9-17 would exempt the energy generated by a renewable source in the County by a community solar energy generating system located in the same electric service territory as the subscriber using the energy and subject to a virtual net energy metering agreement (as defined in state law) with a public utility.

Background

The County fuel energy tax is imposed on every person transmitting, distributing, manufacturing, producing, or supplying electricity in the County. The tax is applied to the net consumption used to calculate the bill. Current law already exempts energy produced from a renewable source in the County and either used on the site where it is generated or subject to a net energy metering agreement (as defined in state law) with a public utility. However, this exemption only applies to the energy produced from a renewable source, such as solar panels, located on the customer's property or contiguous to the customer's property because of the definition in State law for a "net energy metering agreement."

A community solar facility generates energy from a renewable source and sells it to customers in the County through a "virtual net energy metering agreement," as defined in State law. This type of facility can be located anywhere in the same electric service area, and therefore, does not meet the eligibility requirements for the current fuel energy tax exemption for renewable energy. The County Attorney's Office has opined that the County fuel energy tax would apply to energy generated by a community solar facility and sold to a County customer under a virtual net energy metering agreement. See the County Attorney letter to the Public Service Commission at ©4-7. Bill 9-17 would expand the current exemption to include renewable energy produced by a community solar facility and sold to a County customer under a virtual net energy metering agreement. The Bill would permit a County resident who is unable to install solar panels on the

customer's property, such as a renter or an owner of a cooperative or condominium, to purchase solar energy from a community solar facility without paying the County fuel energy tax.

This packet contains:

Bill 9-17

Legislative Request Report

County Attorney Letter to PSC – 10-26-2016

Circle #

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F:\LAW\BILLS\1709 Fuel Energy Tax - Exemptions - Solar Energy\Intro Memo.Docx

Bill No. 9-17
Concerning: Fuel-Energy Tax -
Exemptions - Amendments
Revised: March 21, 2017 Draft No. 6
Introduced: _____
Expires: _____
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Leventhal

AN ACT to:

- (1) exempt the energy generated by a renewable source in the County by a community solar energy generating system through a virtual net energy metering agreement from the County fuel-energy tax; and
- (2) generally amend the exemptions from the County fuel-energy tax.

By amending

Montgomery County Code
Chapter 52, Taxation
Section 52-14

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 52-14 is amended as follows:

52-14. Fuel-energy tax.

(a) (1) A tax is levied and imposed on every person transmitting, distributing, manufacturing, producing, or supplying electricity, gas, steam, coal, fuel oil, or liquefied petroleum gas in the County.

* * *

(4) The tax does not apply to energy that is generated from a renewable source located:

(A) in the County and either used on the site where it is generated or subject to a net energy metering agreement (as defined in state law) with a public utility; or

(B) in the same electric service territory as the subscriber using the energy and subject to a virtual net energy metering agreement (as defined in state law) with a public utility.

Renewable source means a “Tier 1 renewable source” as defined in Section 7-701(l) of the Public Utilities Article of the Maryland Code or any successor provision.

* * *

Approved:

Roger Berliner, President, County Council

Date

Approved:

Isiah Leggett, County Executive

Date

LEGISLATIVE REQUEST REPORT

Bill 9-17

Fuel-Energy Tax – Exemptions - Amendments

DESCRIPTION: Bill 5-17 would exempt the energy generated by a renewable source in the County by a community solar energy generating system located in the same electric service territory as the subscriber using the energy and subject to a virtual net energy metering agreement (as defined in state law) with a public utility.

PROBLEM: The current exemption for energy generated by a renewable source from the County fuel energy tax only applies if the energy is produced on the customer's property or contiguous property. The Public Service Commission has approved a pilot program for community solar facilities that would sell electric energy to customers in the County from a renewable source not located on the customer's property. Under current law, the energy produced by a community solar facility would not be exempt from the County fuel energy tax.

GOALS AND The goal is to exempt energy produced by a community solar facility from the County fuel energy tax in order to encourage customers to purchase this type of renewable energy.

OBJECTIVES:

COORDINATION: County Attorney, Department of Environmental Protection

FISCAL IMPACT: Office of Management and Budget

ECONOMIC To be researched.
IMPACT:

EVALUATION: N/A

EXPERIENCE
ELSEWHERE: To be researched.

SOURCE OF
INFORMATION: Robert H. Drummer, Senior Legislative Attorney

APPLICATION
WITHIN
MUNICIPALITIES: Applicable.

PENALTIES: None



Isiah Leggett
County Executive

OFFICE OF THE COUNTY ATTORNEY

Marc P. Hansen
County Attorney

October 26, 2016

David J. Collins
Executive Secretary
Public Service Commission of Maryland
William Donald Schaefer Tower
6 St. Paul Street, 16th Floor
Baltimore, Maryland 21202

Re: RM 56 – Community Solar
Mail Log Nos. 198358, 198381, and 198406

Dear Mr. Collins:

This letter is in response to the filings by Potomac Edison (“PE”), Baltimore Gas and Electric Company (“BGE”) and Potomac Electric Power Company (“Pepco”) regarding their Compliance Plans and Relevant Tariffs for Implementing the Community Solar Energy Generating Systems (“CSEGS”) Pilot Programs (collectively “Compliance Plans”). PE’s Compliance Plan (Mail Log No. 198358), BGE’s Compliance Plan (Mail Log No. 198381),¹ and Pepco’s Compliance Plan (Mail Log No. 198406), were all filed on September 1, 2016 pursuant to the Code of Maryland Regulations (“COMAR”) Section 20.62.01.01(A). Montgomery County, Maryland (“Montgomery County”) files these comments to address how it interprets, and intends to enforce, the application of Montgomery County’s Fuel-Energy Tax (“FET”) on the CSEGS subscription credits applied to subscribers’ bills. This was previously discussed with the Commissioners during the Rulemaking 56 (“RM 56”) hearing on February 12, 2016 (see enclosed transcript).

In sum, as discussed in the Rule Making on February 12, 2016, the subscription dollar credit would be applied to the bill after the FET tax is applied to the net consumption.

Subscription Credits

Under COMAR 20.62.02.04(C)(1), “an electric company may choose to apply the appropriate kilowatt-hour credit...as either a reduction in metered kilowatt-hour use or a dollar credit to the subscriber’s billed amount.” It appears that all three utilities are planning on applying a dollar credit to the bills.

¹ BGE filed Errata to Compliance Plan of Baltimore Gas and Electric Company on September 16, 2016 (ML # 199336).

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a. Potomac Edison – The CSEGS Tariff filed with PE’s Compliance Plan states:

A Subscriber will receive a bill credit for their subscribed percentage of the monthly kilowatt-hour output of the CSEGS.... The monthly dollar credit on the Subscriber’s bill will be the equivalent of their subscription percentage of the CSEGS monthly kilowatt-hour generation amount applied to all kilowatt-hour charges on the Subscriber’s bill. The Subscriber’s bill credit will be used to offset the Subscriber’s total bill. PE CSEGS Tariff, p. 33-3.

b. BGE – BGE’s Compliance Plan states “BGE will provide the credit as a dollar amount instead of a kWh [kilowatt hour] credit.” BGE Compliance Plan, p. 2. BGE will apply a credit “that will be the equivalent of their subscription percentage of the CSEGS’s monthly generation amount applied to all energy charges on the Subscriber’s bill.” BGE Compliance Plan, p. 2. There will be a cap on the credit amount of the lesser of either the Subscriber’s actual usage or subscription amount. BGE Compliance Plan, p. 4.

c. Pepco – Pepco explains in its Compliance Plan that it “will provide the credit as a dollar amount. The subscriber will receive a monthly dollar credit on their bill that will be the equivalent of their subscription percentage of the CSEGS’s monthly generation amount applied to all volumetric charges on the subscriber’s bill.” Pepco Compliance Plan p. 2. The credit will offset the Subscriber’s total bill. Pepco Tariff Schedule “CNM”, p. 57.1.

Montgomery County Fuel-Energy Tax

Montgomery County imposes a Fuel-Energy tax “on every person transmitting, distributing, manufacturing, producing, or supplying electricity...in the County.” Montgomery County Code, Section 52-14(a) (1). The tax is applied to the net consumption used to calculate the bill. Montgomery County Code, Section 52-14(a) (3). PE, BGE and Pepco have all stated that they will be applying the subscription credits as a dollar amount. Therefore, as discussed in the Rule Making on February 12, 2016, the subscription dollar credit would be applied to the bill after the FET tax is applied to the net consumption. Volume IV, Tr. p. 773:23 – p. 776: 13.

There is an exemption to the County’s FET for energy generated from a renewable source, however, as currently written, that exemption would not apply to CSEGS’s. The exemption states:

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The tax does not apply to energy that is generated from a renewable source in the County and either used on the site where it is generated or subject to a net energy metering agreement (as defined in state law) with a public utility. Montgomery County Code, Section 52-14(a)(4).

Maryland defines *net energy metering* as “measurement of the difference between the electricity that is supplied by an electric company and the electricity that is generated by an eligible customer-generator and fed back to the electric grid over the eligible customer-generator’s billing period.” Public Utilities Article of the Annotated Code of Maryland (“PUA”) Section 7-306 (a)(7). An *eligible customer-generator* is defined as:

...a customer that owns and operates, leases and operates, or contracts with a third party that owns and operates a ... generating facility that: (i) is located on the customer’s premises or contiguous property; (ii) is interconnected and operated in parallel with an electric company’s transmission and distribution facilities; and (iii) is intended primarily to offset all or part of the customer’s own electricity requirements. PUA Section 7-306 (a)(4).

A CSEGS does not have to be on the customer’s premises. In fact, it can merely be “in the same electric service territory.” PUA Section 7-306.2 (a)(3)(ii). A CSEGS system “credits its generated electricity, or the value of its generated electricity, to the bills of the subscribers to that system through *virtual net energy metering*.” PUA Section 7-306.2 (a)(3)(iv) (emphasis added). *Virtual net energy metering*, which is entirely different from net energy metering, is defined as:

...measurement of the difference between the kilowatt-hours or value of electricity that is supplied by an electric company and the kilowatt-hours or value of electricity attributable to a subscription to a community solar energy generating system and fed back to the electric grid over the subscriber’s billing period, as calculated under the tariffs established under subsection (e)(2) of this section. (PUA Section 7-306.2 (a)(9)).

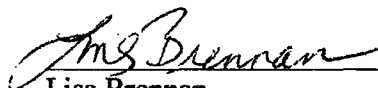
Thus, the exemption to the County’s FET for energy generated from a renewable source, would not apply to CSEGS’s.

Montgomery County firmly supports community solar and has participated in the RM56 proceedings. We appreciate the opportunity to further discuss how the County interprets, and intends to enforce, the application of Montgomery County’s Fuel-Energy Tax (“FET”) on the CSEGS subscription credits applied to subscribers’ bills.

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Please feel free to contact me if you have any questions regarding this matter.

Respectfully submitted,



Lisa Brennan
Associate County Attorney

Enclosure

cc: Amy M. Klodowski, Potomac Edison
Kimberly A. Curry, BGE
Matthew K. Segers, Pepco
Phillip VanderHeyden, PSC Staff
Leslie Romine, PSC Staff
Paula Carmody, OPC