

**ORDER NO. 87760**

RE: PETITION FOR DECLARATORY \*  
RULING ON THE ELIGIBILITY OF TIER 1 \*  
SOLAR RESOURCES \*  
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BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND

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ML 195723

**Issued: September 8, 2016**

On August 3, 2016, the Energy Freedom Coalition of America LLC, Community Energy Solar LLC, and Standard Solar, Inc. (“Joint Petitioners”) submitted to the Public Service Commission of Maryland (“Commission”) a petition for an expedited declaratory ruling<sup>1</sup> to clarify the factors determining eligibility of solar resources to be included as Tier 1 resources in the State of Maryland’s Renewable Energy Portfolio Standard.<sup>2</sup> The Joint Petitioners seek an Order confirming that Section 7-704(a)(2)(i) requires solar resources to have a point of interconnection directly to a distribution-level service line<sup>3</sup> that is at least partially located in Maryland and is an integrated part of the distribution grid serving Maryland ratepayers.

Although Joint Petitioners speculate that allowing PJM-connected solar resources that are not interconnected with a Maryland distribution-level service line into the Maryland SREC market would negatively impact the demand for Solar Renewable Energy Credits (“SRECs”), their petition comes without evidence that the Commission has demonstrated a lack of clarity in its certification of SRECs, or any specific claim of

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<sup>1</sup> ML 195723.

<sup>2</sup> Md. Pub. Util. Code § 7-701, *et seq.*

<sup>3</sup> Joint Petitioners seek to define a distribution-level service line as having a capacity of 35kV or below.

injury or controversy. The Commission would also note that the General Assembly opted not to delineate a specific voltage of interconnection in Section 7-704(a)(2), and that the Commission has always certified qualified solar facilities that are located in Maryland, and only those facilities that are located at least partially in Maryland, without regard to the voltage of the interconnecting line.

Generally, the Commission does not issue advisory opinions,<sup>4</sup> and will not do so in this case. Without any apparent controversy, it is instructive to look to the Maryland Uniform Declaratory Judgments Act for guidance. In particular, section 3-409 of the Courts and Judicial Proceedings Article establishes that:

- (a) Except as provided in subsection (d) of this section, a court may grant a declaratory judgment or decree in a civil case, if it will serve to terminate the uncertainty or controversy giving rise to the proceeding, and if:
  - (1) An actual controversy exists between contending parties;
  - (2) Antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation; or
  - (3) A party asserts a legal relation, status, right, or privilege and this is challenged or denied by an adversary party, who also has or asserts a concrete interest in it.

The Court of Appeals explained the meaning of this statute in *Hatt v. Anderson*, finding that:

“[i]t is thus clear that the existence of a justiciable controversy is an absolute prerequisite to the maintenance of a declaratory judgment action. As we noted in *Reyes*, a controversy is justiciable when there are interested parties asserting adverse claims upon a state of facts which must have accrued wherein a legal decision is sought or demanded. To be justiciable the issue must present more than a mere difference of opinion, and there must be more than a mere prayer for declaratory relief.”<sup>5</sup>

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<sup>4</sup> See, e.g., *Re Potomac Edison Company*, 100 Md.P.S.C. 276 (2009).

<sup>5</sup> 297 Md. 42, 45-46 (1983) (internal citations omitted).

In this proceeding, there is no actual uncertainty or controversy concerning the manner in which the Commission certifies SRECs. Moreover, there is no controversy between contending parties, there are no antagonistic claims indicating imminent and inevitable litigation, and no party has challenged or denied the assertion of any other party's interest in the granting of SRECs. Until such a justiciable controversy emerges in the form of an actual application for certification as a Tier 1 resource, the Commission will avoid placing itself "in the position of rendering purely advisory opinions, a long forbidden practice in this State."<sup>6</sup>

**IT IS, THEREFORE,** this 8<sup>th</sup> day of September, in the year Two Thousand and Sixteen, by the Public Service Commission of Maryland,

**ORDERED:** That the Petition of Energy Freedom Coalition of America LLC, Community Energy Solar LLC, and Standard Solar, Inc. for an Expedited Declaratory Ruling is hereby denied.

By Direction of the Commission,

*/s/ David J. Collins*

David J. Collins  
Executive Secretary

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<sup>6</sup> *Id.* at 46.