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PUBLIC SERVICE COMMISSION

#4, 1/29/2020 AM; ML#s 227645, 227838, 228039, 228067, 228070, 228364, 228454, 228474

February 14, 2020

Annette B. Garofalo
Assistant Staff Counsel
Public Service Commission
6 St. Paul Street
Baltimore, MD 21202

Susan Stevens Miller
Earthjustice
1625 Massachusetts Ave., N.W., Suite 702
Washington, D.C. 20036

Re: RM 56 Low and Moderate Income Verification

Dear Ms. Garofalo and Ms. Miller:

1. On November 25, 2019, the Office of Staff Counsel filed with the Public Service Commission a Request for Guidance Regarding Requirements for Low and Moderate Income Verification for subscribers to a community solar energy generation system.¹ Staff requested that the Commission issue an Order clarifying that self attestation does not qualify as an “. . . alternate means aside from income verification or participation in the Maryland Office of Home Energy Programs’ assistance programs to verify the status of Low and Moderate Income subscribers.”

2. On December 13, 2019, the Low and Moderate Income Advocates (“LMI Advocates”) filed comments on Staff’s Request.² Their comments asked the Commission to: 1) reject Staff’s Request; 2) establish self-attestation as an acceptable verification method when used in combination with another method; 3) promulgate a list of Commission-approved assistance programs, for which eligibility can serve as a proxy for individual income verification; 4) publish updated income levels for both low and moderate income subscribers; 5) adopt the American Community Survey data as the basis for moderate income participation levels; 6) authorize a Subscriber Organization’s submission of a signed declaration detailing review of approved-program eligibility documents to serve as sufficient income verification for program eligibility;

¹ Mail Log No. 227645

² Mail Log No. 227838

and 7) provide a concise guidance document that memorializes the guidelines and is posted to the Commission's website. On January 30, 2020 LMI Advocates filed supplemental information concerning census tracts in response to Commissioners' questions.

3. Comments were also filed by the Maryland Energy Administration,³ the Office of People's Counsel,⁴ and Nexamp.⁵

Commission Decision

4. After considering this matter at the January 29, 2020, Administrative Meeting, the Commission makes the following findings concerning income self-attestation for LMI participation in community solar energy generation systems.

5. For establishing low-income participation, the Commission adopts federal poverty levels ("FPL") found at <https://aspe.hhs.gov/poverty-guidelines>, as updated annually. For establishing moderate income participation the Commission adopts the American Community Survey data found at <https://www.census.gov/content/dam/Census/library/publication/2019/acs/acsbr18-01.pdf>, as updated annually. The Commission declines the LMI Advocates request to publish these income levels on the Commission website at this time.

6. The Commission finds that self-attestation plus proof of participation in any of the following programs is sufficient to qualify as an "alternate means" to verify LMI status under COMAR 20.62.03.03D.

Low-income programs:

- MD Energy Assistance Program (175% of FPL)
- Supplemental Nutrition Assistance Program ("SNAP")(130% of FPL)
- Medicaid (138% of FPL)
- HeadStart (175% of FPL)
- Free and Reduced Meals – Free Meals (130% of FPL)
- Documentation of affordable housing residency as long as Housing Authority certifies that 85% of residents qualify as low- income
- Low Income Home Energy Assistance program (LIHEAP)(150% of FPL)

Moderate-income programs:

- Free and Reduced Meals – Reduced meals (185% of FPL)
- EmPOWER Maryland (200% of FPL)
- Fuel Fund of Maryland (200% of FPL)

³ Mail Log Nos. 228039, 228454, 228474

⁴ Mail Log No. 228067.

⁵ Mail Log No. 228070.

The workgroup may propose for Commission approval additional eligible programs to be added to this list.

7. The Commission finds that the U.S. Census Bureau's American Community Survey income data for the state's census tracts establishes that only 84 census tracts (6.0%) have a median income below 175% of FPL. Since census tracts are based on population ranging from 1,200 persons to no more than 8,000 persons (average about 4,000 inhabitants per tract), there is a high probability that persons living in low-income census tracts also have low income. Therefore the Commission finds that self-attestation combined with proof of residency in a low-income census tract qualifies as an "alternate means" to verify low-income status under COMAR 20.62.03.03D.⁶

8. Since the same source indicates that 735 census tracts in Maryland (52.3%) have a median income below 80% of State-level median income, there is a much lower probability that persons living in those census tracts also qualify as moderate income. The Commission denies the request of the LMI Advocates that self-attestation plus proof of residency in one of those census tracts establishes an "alternate means" under COMAR 20.62.03.03D.

9. The Commission finds that a Subscriber Organization's signed affidavit under oath that approved-program eligibility documents or proof of residency were observed and that the subscriber's annual income meets the requirements of the LMI criteria, plus self-attestation,⁷ serves as an "alternate means" of income verification to establish program eligibility for LMI subscribers under COMAR 20.62.03.03D.

10. As provided for above, the Commission denies Staff's request for an Order clarifying that self-attestation does not qualify as an "alternate means" under COMAR 20.62.03.03D.

By Direction of the Commission,

/s/ Andrew S. Johnston

Andrew S. Johnston
Executive Secretary

cc: Net Metering Working Group

⁶ Commissioners O'Donnell and Herman dissent from this finding.

⁷ The self-attestation need not be under oath or penalty of perjury. Subscriber Organizations should retain affidavits and related documents for such time as necessary to respond to disputes filed under COMAR 20.62 and 20.32.