IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF WEST VIRGINIA, ex rel. JOHN B. MCCUSKEY, Attorney General,
Office of the West Virginia Attorney General
1900 Kanawha Blvd. E
WV State Capitol Complex
Building 1, Room E-26
Charleston, WV 25305

Plaintiff,

v.

DISTRICT OF COLUMBIA
Office of the Attorney General
400 6th Street, NW,
Washington, DC 20001

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1325 G St NW, Suite 800
Washington, DC 20005

TED TRABUE, in his official capacity as Interim Chairman of the Public Service Commission of the District of Columbia
1325 G St NW, Suite 800
Washington, DC 20005

and

COMMISSIONER RICHARD A. BEVERLY, in his official capacity as Commissioner of the Public Service Commission of the District of Columbia
1325 G St NW, Suite 800
Washington, DC 20005

Defendants.

Civil Action No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The State of West Virginia, *ex rel*. John B. McCuskey, Attorney General, brings this action against the District of Columbia, the Public Service Commission of the District of Columbia (the "Commission"), and the officials responsible for implementing and enforcing the geographic restrictions found in D.C.'s Renewable Energy Portfolio Standard, as established by the Distributed Generation Amendment Act of 2011 ("DGAA") and as further amended by the Renewable Energy Portfolio Standard Amendment Act of 2024 (together, the "Act"). The lawsuit seeks to vindicate the constitutional rights of West Virginia, its energy producers, its ratepayers, and its citizens under the Commerce Clause of the United States Constitution. The State seeks declaratory and injunctive relief.

BACKGROUND

1. The District's Renewable Energy Portfolio Standard (RPS) mandates that electricity suppliers obtain a certain percentage of their energy each year from renewable energy sources. To fulfill that requirement, electricity suppliers must buy renewable energy credits (RECs) equal to a certain percentage of their electricity sales. One REC equals one megawatt-hour (MWh) produced by a Tier One source located within the PJM Interconnection region.

2. But RECs for solar requirements can satisfy the RPS only if they come from solar energy generators "located within the District" or "in locations served by a distribution feeder serving the District." D.C. CODE § 34-1432(e)(1). These explicit geographic restrictions are textbook Commerce Clause violations, as they facially discriminate against out-of-state industry.

3. Moreover, the Act's geographic restrictions serve no legitimate governmental purpose, nor do they advance the welfare of D.C.'s citizens. To the contrary, they inflict direct economic harm on the District's ratepayers, whose electricity compliance costs have skyrocketed because of distorted energy markets.

4. In 2025, D.C. solar renewable energy credit prices averaged $407 per credit,[1] among the highest in the nation. The District, which is only 68 square miles in size, has for most of the program's history been unable to generate enough solar energy to meet its own mandates, paying more than $50 million in compliance fees from 2018 through 2025, and more than $26 million in 2017 alone.[2] When electricity suppliers cannot meet RPS standards, they must pay Alternative Compliance Payments (ACPs), which—along with the already high credit costs—get passed on to ratepayers. D.C. Mayor Muriel Bowser recently wrote:

> DC's solar renewable credits (SRECs) are the highest in the country – ***and they add $20 to every electricity bill***. DC's energy laws result in all DC electricity ratepayers subsidizing a small portion of residents – regardless of their income – to have solar panels on their homes. If the Council takes no action to rightsize SRECs and align their cost with the rest of the country, the $20 on every electricity bill will double to $40 by 2029 and then continue growing every year.[3]

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[1] *Renewable Energy Portfolio Standards: A Report for Compliance Year 2025*, D.C. PUB. SERV. COMM'N 16 (May 1, 2026) [hereinafter *2025 RPS Report*], https://tinyurl.com/y8yw44k7.

[2] *Report on the Renewable Energy Portfolio Standard for Compliance Year 2017*, D.C. PUB. SERV. COMM'N 6 (May 1, 2018), https://tinyurl.com/38hmasn5.

[3] Muriel Bowser, *Mayor's Letter to the D.C. Council* 4–5 (June 2, 2026), https://tinyurl.com/2ueztnt2 (emphasis in original).

5. The Act's restrictions were designed for one illegitimate purpose: to channel economic benefits to in-District solar producers at the expense of out-of-state competitors.

6. Starting in 2011, D.C. cut access to out-of-state competitors, refusing to approve any new out-of-state solar generators—meaning only legacy out-of-state generators would be able to continue selling SRECs, and only for as long as they remain in operation.

7. But, in 2024, through the Renewable Energy Portfolio Standard Amendment Act of 2024, the D.C. Council went even further by directing the Commission to *retroactively* decertify solar facilities outside the District that had been certified before February 1, 2011. This law stripped market access from generators that had invested in reliance on their prior eligibility, and it removed most of the remaining vestiges of out-of-state participation in the District's solar renewable energy credit market.

8. West Virginia and the District of Columbia are connected by PJM Interconnection, L.L.C., a regional transmission organization through which wholesale electricity flows across state lines. Accordingly, absent the District's geographic barriers, many West Virginia energy producers would sell renewable energy credits to D.C. electricity suppliers. The District's solar requirement is a market worth about $155 million a year at 2025 prices, and the District's own suppliers paid more than $50 million in compliance fees from 2018 through 2025 for

credits they could not obtain; West Virginia's solar producers were barred from supplying any credits after 2020.

9. The District's solar requirement will rise from 5% of retail sales in 2026 to 15% in 2041, so the market from which West Virginia is excluded, about $155 million a year at 2025 prices, will roughly triple by 2041. West Virginia's solar producers are excluded from all of it by their location alone. So too are West Virginia households, farms, and small businesses that own solar generation systems, and the State ultimately loses out on income taxes from those lost revenues.

10. The Framers included the Commerce Clause in our Constitution precisely to prevent this kind of naked economic warfare between states. *See* U.S. CONST. art. I, § 8, cl. 3. As courts have long recognized, the Clause prevents States—and the District—from erecting barriers at their borders to shield local companies from the rigors of interstate competition, no matter how politically popular the protectionism may be at home.

11. West Virginia brings this action—along with other pending suits against similar laws, *see West Virginia ex rel. McCuskey v. Pa. Pub. Util. Comm'n*, No. 3:26-cv-02527 (M.D. Pa. filed Sept. 3, 2026)—to tear down the District's unconstitutional trade barriers and restore the interstate market that the Constitution and federal energy policy were designed to create.

PUBLIC INTEREST

12. The Attorney General believes this action to be in the public interest of the citizens of the State of West Virginia and brings this lawsuit by his constitutional and statutory authority, powers, and duties.

13. West Virginia ratepayers are directly harmed by the District of Columbia's border-closing legislation. West Virginia is a fully regulated, vertically integrated electricity market. West Virginia law authorizes its regulated utilities to build solar generation and sell the output and certificates of those facilities to subscribing customers, with the cost of any output not subscribed recovered from all of the utility's customers through a surcharge, net of what the utility earns selling that output and its certificates into the market. Every certificate those facilities produce is excluded from the District's solar requirement, so the utility cannot earn the District's price on the certificates of unsubscribed output, and to that extent the surcharge its customers bear is higher than it would otherwise be. When West Virginia generators are blocked from selling credits into D.C., it is West Virginia families who lose.

14. West Virginia's growing solar industry, developing under its Senate Bill 583, is also harmed by the District's unconstitutional trade barriers. Passed in 2020, Senate Bill 583 created a program for electric utilities to expand their energy capacity by building large-scale solar facilities in West Virginia. W. VA. CODE § 24-2-1*o*. West Virginia's solar fleet has increased in size, including its small-scale fleet, which has grown from about 9,500 MWh in generation in 2018 to 80,000 MWh in 2025.[4] Yet the District's geographic restrictions block these West Virginia producers from selling solar renewable energy credits into D.C.'s solar renewable energy credit market.

[4] *See* U.S. Energy Info. Admin., *Form EIA-861M, Small Scale PV Estimate*, https://tinyurl.com/ms4wpcve (using spreadsheets from years 2018–2025, sorting by monthly totals for West Virginia, and summing up each month).

15. While West Virginia has authorized its utilities to expand the State's solar capacity by law, D.C. is simultaneously increasing its demand for solar in the District through statutory mandates. *See* D.C. CODE § 34-1432(c). As of 2026, at least 5% of the District's energy sales must be derived from solar energy, and by 2041, that percentage will increase to 15%. *See id.* § 34-1432(c)(16), (31). Thus, with every year that goes by, West Virginia and its energy producers are cut out of an increasingly larger share of D.C.'s total energy market, which is mandated to increase reliance on solar and, therefore, solar renewable energy credits. That market was open to West Virginia solar producers before the District closed its borders, and it should be open today.

PARTIES

16. The State of West Virginia, by and through its Attorney General, brings this action in its sovereign capacity as *parens patriae* on behalf of its citizens, including the West Virginia households, farms, and small businesses that own solar generation systems and the State's solar producers described below, as well as in its own economic interest in the income its residents earn from the sale of solar certificates and in the taxes on that income. The Attorney General is the Chief Legal Officer of the State of West Virginia, charged with protecting the State, its general economy, and its residents from unlawful interference with interstate commerce. *See* W. VA. CODE § 5-3-2.

17. Defendant District of Columbia is responsible for passing the Renewable Energy Portfolio Standard Act and its geographic restrictions. *See* D.C. CODE §§ 34-1431–34-1440.

18. Defendant Public Service Commission of the District of Columbia is an independent agency of the Government of the District of Columbia charged with, among other responsibilities, administering, implementing, and enforcing the District's Renewable Portfolio Standard, including the geographic eligibility requirements for solar renewable energy credits. *See id.* §§ 34-1432(a), 34-1439(c). The Commission is required to submit annual reports to the Council of the District of Columbia detailing the implementation of the Act. *See id.* § 34-1439(b).

19. Defendant Ted Trabue is the Interim Chairman of the Public Service Commission of the District of Columbia. Defendant Richard A. Beverly is a Commissioner of the Public Service Commission of the District of Columbia.[5] They are sued in their official capacities for prospective declaratory and injunctive relief. As officials of the Commission, they participate in, supervise, and are responsible for the ongoing implementation, administration, and enforcement of D.C.'s Renewable Portfolio Standard, including all its geographic restrictions, challenged in this action.

JURISDICTION AND VENUE

20. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because this action arises under the Constitution of the United States, specifically Article I, Section 8, Clause 3 (the Commerce Clause).

[5] The remaining Commissioner seat is currently vacant, so that individual cannot be named in his or her official capacity at this time. Nonetheless, this Complaint and the relief sought therein apply against the position of the remaining Commissioner and the person who fills that role in his or her official capacity. *See* Fed. R. Civ. P. 25(d).

21. The Court has federal equity jurisdiction, including under *Ex parte Young*, 209 U.S. 123 (1908), and may award declaratory and further necessary or proper relief under 28 U.S.C. §§ 2201(a) and 2202, and injunctive relief pursuant to its inherent equitable powers.

22. Plaintiff seeks declaratory and injunctive relief to stop ongoing violations of the U.S. Constitution. The individual defendants are sued in their official capacities because they are charged with administering and enforcing the challenged statutory restrictions and the Commission's orders and regulations.

23. Venue is proper in the District of Columbia under 28 U.S.C. § 1391(b)(1) and (2) because Defendants reside in and operate and administer the challenged laws in this District, and a substantial part of the events giving rise to this action occurred here.

24. Although the District of Columbia is not a State, its locally enacted laws are subject to constitutional constraints, including the Commerce Clause. Congress has plenary authority over D.C. under Article I, Section 8, Clause 17 of the Constitution, but the District's exercise of legislative and regulatory authority—whether through the D.C. Council or the Commission—remains subject to the same constitutional limitations that apply to state action, including the dormant Commerce Clause. Courts have consistently applied dormant Commerce Clause principles to D.C. actions and regulations. *See, e.g.*, *Milton S. Kronheim & Co. v. District of Columbia*, 91 F.3d 193, 198 (D.C. Cir. 1996).

FACTS

A. The PJM Interconnection and the Federal Policy of Non-Discriminatory Wholesale Competition

25. PJM Interconnection, L.L.C. ("PJM") operates the electric transmission system—i.e., "grid"—for all or part of thirteen states[6] and the District of Columbia. PJM centrally dispatches generation and coordinates the movement of wholesale electricity across this vast, interconnected, multi-state region.[7]

26. Wholesale energy in PJM is interstate commerce because of the interconnected grid across numerous state lines. *See New York v. FERC*, 535 U.S. 1, 7 (2002) (in all but three states, "[a]ny electricity that enters the grid immediately becomes a part of a vast pool of energy that is constantly moving in interstate commerce"); *see also FPC v. Fla. Power & Light Co.*, 404 U.S. 453, 458 (1972).

27. PJM was founded in 1927 as a power pool of three utilities serving customers in Pennsylvania and New Jersey.[8] It became a fully functioning Independent System Operator ("ISO") in 1996 and introduced competitive markets

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[6] Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.

[7] *See About PJM*, PJM INTERCONNECTION, L.L.C., https://tinyurl.com/5edm6m8r (last visited Nov. 15, 2026); *see also PJM*, FERC (last updated Oct. 15, 2026), https://tinyurl.com/y47fjwru.

[8] *PJM*, FERC, *supra* note 7.

with bid-based pricing in 1997.[9] Over time, its footprint expanded to include utilities across thirteen states, including West Virginia, and the District of Columbia.[10]

28. PJM's creation as an ISO was a direct result of federal policy mandating non-discriminatory access to wholesale electricity markets. In 1996, the Federal Energy Regulatory Commission ("FERC") issued Order No. 888, titled "Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities." FERC's goal was "to remove impediments to competition in the wholesale bulk power marketplace and to bring more efficient, lower cost power to the Nation's electricity consumers." *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities*, Order No. 888, 61 Fed. Reg. 21,540, 21,541 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996).

29. Order No. 888 required all public utilities that own, control, or operate facilities used for transmitting electric energy in interstate commerce to file open-access non-discriminatory transmission tariffs containing minimum terms and conditions for non-discriminatory service. *Id.* FERC also promoted the formation of ISOs to "ensure fair and non-discriminatory access to transmission services and ancillary services for all users of the system . . . independent of any individual market participant or any one class of participants." *Id.* at 21,596.

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[9] *PJM History*, PJM INTERCONNECTION, L.L.C., https://tinyurl.com/4k272br2 (last visited Nov. 15, 2026); *PJM*, FERC, *supra* note 7.

[10] *See Territory Served*, PJM INTERCONNECTION, L.L.C., https://tinyurl.com/rtbs9fxr (last visited Nov. 15, 2026).

30. Congress "empowered and directed" FERC to "divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy." 16 U.S.C. § 824a(a). Acting on that authority, in 1999, FERC issued Order No. 2000, which encouraged the formation of Regional Transmission Organizations ("RTOs") to promote broader regional transmission planning, energy trading, and coordination. *See Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809, 825 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999). RTOs are designed to ensure non-discriminatory access to the grid, so that sellers and buyers of wholesale electricity can connect with ease and achieve competitive, fair, market-based prices. PJM became an RTO under this federal framework.

31. The federal policy underlying these orders is that the interstate wholesale electricity market is to be open and non-discriminatory, not balkanized along state lines. FERC's orders were designed to ensure that market participants could not give preferential treatment to favored generators at the expense of competitors. *See* Order No. 888, 61 Fed. Reg. at 21,541; Order No. 2000, 65 Fed. Reg. at 825.

32. The District of Columbia's laws run directly counter to three decades of federal energy policy. They partition the integrated PJM market along political-geographic lines, favoring location over economic efficiency and environmental equivalence.

B. Renewable Energy Credits and the PJM Trading System

33. Within the PJM system, renewable energy credits ("RECs") function as tradeable certificates that track and verify the generation of electricity from qualifying renewable energy sources. A REC is issued for every megawatt-hour (MWh) of electricity generated and delivered to the grid from an eligible energy resource. Each certificate is assigned a unique serial number and represents the legal property right to the renewable energy attributes of that generation.[11]

34. RECs are tracked through PJM's Generation Attribute Tracking System ("GATS"), a centralized electronic platform that creates, records, and tracks certificates as they are generated and traded.[12] GATS ensures that credits are not double-counted and provides state regulators with access to centralized reporting. Credits are traded independently. Generators produce them, and utilities purchase them to satisfy their state renewable portfolio standard obligations.[13]

35. This system was designed to harness the efficiencies of interstate commerce. Renewable energy generated in West Virginia and delivered over the PJM grid creates the same environmental benefit as if it were produced by a generator in

[11] *About GATS*, PJM-EIS, https://tinyurl.com/3barfdkp (last visited Nov. 15, 2026).

[12] *Id.*

[13] *Generation Attribute Tracking System*, PJM INTERCONNECTION, L.L.C. (Sept. 26, 2025), https://tinyurl.com/2fhw83z4.

the District of Columbia.[14] The credit itself represents the public benefit and is fungible across state lines.

C. The District of Columbia's Renewable Portfolio Standard and Its Geographic Restrictions

36. The Renewable Energy Portfolio Standard Act of 2004 (D.C. LAW 15-340), codified at D.C. CODE § 34-1431, *et seq.*, took effect in 2005 and established the District's renewable energy credit trading program. The RPS requires D.C. electricity suppliers to obtain prescribed percentages of their retail electricity sales from qualifying renewable energy resources, purchase the equivalent in renewable energy credits, or pay an alternative compliance payment.

37. The original RPS allowed renewable energy credits from generators throughout the PJM region. Under this framework, any qualifying renewable energy facility located within PJM's service territory could produce RECs eligible for D.C. compliance. West Virginia generators were a part of this market from almost the beginning.[15]

38. But the D.C. Council has progressively narrowed this open-market framework for solar resources. Solar renewable energy credits ("SRECs") were singled out for unique geographic restrictions that do not apply to other renewable resources.

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[14] *See Generation Attribute Tracking System (GATS) Operating Rules*, PJM-EIS at 42 (Jan. 26, 2024), https://tinyurl.com/jh4fvuud (certificates created and tracked within GATS "represent all of the Attributes from one MWh of generation").

[15] *2013 Report on the Renewable Energy Portfolio Standard*, D.C. PUB. SERV. COMM'N 13 (April. 1, 2013), https://tinyurl.com/yck59yp6.

39. To qualify as a solar energy source for D.C.'s solar carve-out, a facility must be either "located within the District" or "in locations served by a distribution feeder serving the District." D.C. CODE § 34-1432(e)(1). This language limits SREC eligibility to facilities physically located within the District's 68 square miles or connected to Potomac Electric Power Company's ("Pepco") distribution feeders serving the District. As of 2025, Maryland is the only state outside of the District that has systems on a feeder serving the District.[16]

40. In its 2012 report, the D.C. Public Service Commission specifically noted that the DGAA barred out-of-District solar facilities after 2011: "As a result of the revised statutory REC definition, the Commission began approving solar generator applications from states such as New York and Wisconsin in 2010. However, under the DGAA legislation, out-of-state solar energy systems are now generally disallowed."[17]

41. The purpose of this geographic provision is best described by one of the DGAA's sponsors, Councilmember Yvette Alexander, who explained that the goal of the amendment was "preventing the continued oversaturation of the local market so that the true interest of the bill could be achieved"[18] and "*to ensure that local*

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[16] *2025 RPS Report*, *supra* note 1, at 22.

[17] *2012 Report on the Renewable Energy Portfolio Standard*, D.C. PUB. SERV. COMM'N 13 (Mar. 29, 2012) [hereinafter *2012 RPS Report*], https://tinyurl.com/46u38b85. The legislation "generally" disallowed out-of-state solar energy systems in 2012 because some out-of-state systems were grandfathered in and other out-of-state systems were still connected to Pepco's feeders.

[18] *Thirteenth Legislative Meeting for the Council Period 19*, D.C. COUNCIL, at 1:03:02–1:03:10 (June 7, 2011), https://tinyurl.com/p2m6rm48.

companies receive contracts."[19] The Commission's 2012 Report explained that "the Council's intent [is] to render SRECs from non-D.C. facilities unmarketable."[20]

42. Despite members of the D.C. Council claiming the market for solar energy was saturated, the District's own Chief Financial Officer warned the Council of the opposite. In the Fiscal Impact Statement on the then-proposed geographic restrictions, the Council was warned of the lack of solar energy in the District and the cost that removing out-of-state energy producers from the market would impose on D.C. ratepayers. The Statement explained that "there is unlikely to be ample supply of solar energy located in the District of Columbia to meet the requirements of this legislation over the next several years."[21] The effect of this lack of supply, the Statement opined, is that "the cost of solar energy will reach parity with the [Alternative Compliance Payment] at $500 per [megawatt hour]."[22] And these costs would be "passed along to energy consumers in the District, increasing energy bills."[23]

43. Nonetheless, the D.C. Council forged ahead. The Clean Energy DC Omnibus Amendment Act of 2018 (D.C. LAW 22-257) and the Local Solar Expansion Amendment Act of 2022 (D.C. LAW 24-314) escalated the effect of the geographic

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[19] *Seventeenth Legislative Meeting for the Council Period 19*, D.C. COUNCIL, at 1:12:43–1:12:47 (July 12, 2011), https://tinyurl.com/mtn87skt (emphasis added).

[20] *2012 RPS Report*, *supra* note 17, at 28.

[21] Natwar M. Gandhi, *Fiscal Impact Statement—"Distributed Generation Amendment Act of 2011,"* D.C. OFF. OF THE CHIEF FIN. OFFICER 2 (May 25, 2011), https://tinyurl.com/42ytjc3u.

[22] *Id.*

[23] *Id.*

restrictions by establishing one of the most ambitious renewable portfolio standards in the nation that included a rapidly escalating solar carve-out. The solar carve-out is a mandatory minimum percentage of an electricity supplier's retail sales that must come from solar energy. That carve-out works together with the geographic restrictions on solar energy credits to increase the harm to West Virginia and its energy producers, who are cut out of an increasingly larger share of D.C.'s total energy market, which is mandated to increase reliance on solar and, therefore, solar renewable energy credits. The solar carve-out percentage has grown from 0.825% in 2016 to 4.3% in 2025 and continues to climb steeply toward 15% by 2041. *See* D.C. CODE § 34-1432(c)(6), (15), (31).

44. The D.C. Code mandates physical presence in the District of Columbia. A solar facility located in West Virginia, even one that delivers electricity onto the same PJM grid and produces the same environmental attributes, cannot satisfy these criteria. Out-of-state generators cannot be "located within the District."

45. Other than a few systems located in Maryland, out-of-state generators are not connected to Pepco's distribution feeders "serving the District." In 2021, the Commission closed the one remaining path, "prohibit[ing] Pepco from extending the District's distribution system through a line extension and or [sic] service connection solely for the purpose of accommodating non-District solar energy systems' participation in the District's SREC program."[24]

[24] *2025 RPS Report*, *supra* note 1, at 38 (citing 15 DCMR § 2902(b)(1)).

46. The DGAA's geographic restriction makes the exclusion of out-of-state entities nearly absolute.

D. The RPS Amendment Act of 2024 Further Tightened Restrictions and Decertified Out-of-District Facilities

47. The D.C. Council's 2024 RPS Amendment Act went further still. Rather than merely barring new out-of-District solar facilities from obtaining SREC certification, the 2024 Act directed the Commission to *retroactively decertify* solar facilities outside the District that had been certified prior to February 1, 2011. *See* Renewable Energy Portfolio Standard Amendment Act of 2024, D.C. Law 25-217, tit. VI, subtit. B (codified at D.C. CODE § 34-1432(e)(3)). This served to rid the District of remaining out-of-District solar producers who had been grandfathered in and allowed to sell solar energy credits because they were certified before the District's geographic restrictions took effect.

48. In 2025, the Commission began carrying out this directive, decertifying SREC-certified solar facilities not located in the District of Columbia or on a D.C.-serving distribution feeder that had previously been certified under the original, more inclusive geographic framework. Among them were systems located in West Virginia, whose credits the District's suppliers had retired for compliance in earlier years; over 150 West Virginia credits were retired for the 2020 compliance year alone.[25]

[25] *See Renewable Energy Portfolio Standards: A Report for Compliance Year 2020*, D.C. PUB. SERV. COMM'N 18 (May 3, 2021) [hereinafter *2020 RPS Report*], https://tinyurl.com/3ra2wcw2.

49. Decertified facilities may still produce non-solar RECs for D.C. compliance purposes. But they are stripped of the more valuable SREC designation, where credits command prices averaging $407 per MWh in 2025. Instead, they are relegated to the voluntary market where credits trade for a fraction of that value. The decertification provisions thus impose retroactive economic harm on facilities that have invested in capacity in reliance on D.C.'s prior regulatory framework.

50. The discriminatory purpose of the 2024 Act is, again, stated openly. Councilmember Charles Allen said the Amendment would "shore[] up the local solar market," "increas[e] the demand for locally produced solar energy," and "help preserve the current value of solar energy credits."[26] Further, he explained, "what is this [Amendment] all about? . . . [It] helps *keep money in the pockets of our individuals, businesses, and places of worship that produce solar energy*."[27] The Chief Financial Officer of the District said much the same, noting that decertifying out-of-state generators "will help maintain REC price."[28]

51. As the Commission explained in 2025:

> Pursuant to the DGAA, in Order No. 16528 (September 9, 2011), the Commission *denied all applications by solar energy facility owners seeking RPS certification, which were not located within the District*, or in locations connected to a Pepco distribution feeder serving the District, and pending before the Commission on August 1, 2011. Moreover, in Order No. 16529 (September 9, 2011), the Commission *decertified 1,426 solar energy facilities not located within the District, or in locations served by a distribution feeder*

[26] Committee of the Whole Additional Meeting, D.C. COUNCIL, at 4:13:42–4:13:54 (May 29, 2024), https://tinyurl.com/5x2xd7s9.

[27] *Id.* at 4:13:54–4:14:00 (emphases added).

[28] Glen Lee, *REVISED Fiscal Impact Statement—"Fiscal Year 2025 Budget Support Act of 2024,"* D.C. OFF. OF THE CHIEF FIN. OFFICER 64, https://tinyurl.com/h86m9r5n.

> *serving the District*, and certified by the Commission between February 1, 2011, and the effective date of the DGAA, August 1, 2011, as well as any solar facilities with a capacity larger than 5 MW, regardless of the date certified.[29]

52. By retroactively decertifying facilities based on their geographic location outside the District, the law targets out-of-state generators for uniquely unfavorable treatment. No comparable decertification applies to in-District facilities. The provisions serve no legitimate governmental purpose; they merely eliminate competition from out-of-District producers who deliver the same energy onto the same grid.

E. D.C.'s Laws Have Successfully Barred Out-of-State Solar RECs

53. If there were any doubt that the D.C. laws facially discriminate against out-of-District solar RECs, and that they were specifically intended to accomplish that goal, the Commission's own statistics show the law has had that exact effect.

54. Below are charts excerpted from the Commission's own annual RPS reports, which show the substantial decrease in out-of-District solar RECs as facilities producing legacy RECs are retired.

55. Below are the solar photovoltaic and solar thermal systems approved for RPS compliance. As the Commission explained, the "total capacity associated with these solar energy systems is about 23.1 megawatts (MW), with about 4.2 MW located in the District—as of March 9, 2012."[30] In other words, only about 18% of approved solar capacity was located in the District.

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[29] *Renewable Energy Portfolio Standards: A Report for Compliance Year 2024*, D.C. PUB. SERV. COMM'N 2 (May 1, 2025), https://tinyurl.com/mup682ey (emphases added).

[30] *2012 RPS Report*, *supra* note 17, at 15.

Renewable Generators by Capacity and Location
(Capacity in Megawatts)

Location	Biomass	Methane from Landfill Gas	Solar PV	Solar Thermal	Wind	Hydroelectric	Municipal Solid Waste	Total
District of Columbia			3.1	1.0				4.2
Delaware		7.4	1.2	0.0				8.6
Illinois		39.7	0.3		946.5	3.0		989.5
Indiana		40.8	0.2		799.4			840.4
Kentucky		16.8	0.1	0.0				16.9
Maryland	65.0		1.3	0.0		20.0	55.0	141.4
Michigan	103.0	33.0	0.0					136.0
North Carolina		5.0	1.7	0.2				6.9
New Jersey			0.2					0.2
New York			0.4	0.0		34.8		35.2
Ohio	109.3		1.1	0.0				110.4
Pennsylvania		35.8	9.3	0.0	80.0	467.5		592.7
Virginia	309.7	16.1	2.0	0.4		147.2	60.0	535.4
Wisconsin			0.1			9.1		9.2
West Virginia			0.1	0.0	462.1	152.6		614.8
Total	587.0	194.6	21.3	1.8	2,288.0	834.2	115.0	4,041.9

Note: Biomass includes black liquor and wood/wood waste.

[31]

56. Today, the percentages are flipped, with 81% going to the District, and almost all the rest going to a single "feeder" site, located in Maryland.

[31] *Id.* at 16.

Solar RECs Retired by State in the 2025 Compliance Year

State	SRECs Retired	Share of Total
District of Columbia	308,015	81.0%
Delaware	290	0.08%
Illinois	162	0.04%
Indiana	30	0.01%
Kentucky	27	0.01%
Maryland	68,157	17.94%
Michigan	8	0.00%
North Carolina	366	0.10%
New Jersey	7	0.00%
New York	159	0.04%
Ohio	116	0.03%
Pennsylvania	1,824	0.48%
Virginia	710	0.19%
Wisconsin	45	0.01%
West Virginia	31	0.01%
Total	379,947	100.0%

[32]

F. D.C.'s Geographic Restrictions Have Created One of the Most Expensive SREC Markets in the Nation

57. The District of Columbia's geographic restrictions on solar RECs have produced predictable and severe market distortions. By confining SREC eligibility to the District's 68-square-mile geographic area and to Maryland systems that happen to sit on Pepco's cross-border feeders, and simultaneously mandating escalating solar carve-out percentages, D.C. has created a chronic structural imbalance between supply and demand.

58. The result is one of the most expensive SREC markets in the country. According to the Commission, D.C. SRECs averaged $407 per credit in 2025. This is

[32] *2025 RPS Report*, *supra* note 1, at 18.

the direct and foreseeable consequence of the District's decision to exclude out-of-District solar generation from its compliance market.

59. The District has persistently struggled to generate sufficient in-District solar to meet its own mandates. Historically, D.C. has been forced to rely heavily on ACPs, penalty payments made by electricity suppliers that cannot procure enough SRECs to meet the solar carve-out.[33] The District's past reliance on ACPs highlights the artificial scarcity that the District's geographic restrictions have created.

60. D.C.'s solar demand grew to approximately $155 million in 2025 and will escalate steeply through 2041 as the solar carve-out percentages increase under the Clean Energy DC Omnibus Amendment Act of 2018 and the Local Solar Expansion Amendment Act of 2022.[34] Yet the District's ability to satisfy this demand with in-District generation remains fundamentally constrained by its small size. With only 68 square miles of dense urban environment, there is limited rooftop and ground-mount solar capacity.

61. The impossibility of the District's approach is self-evident. D.C. requires 100% renewable energy by 2032 with a solar carve-out that grows to 15% by 2041, yet it continues to constrain supply by excluding out-of-District competitors. Rather than opening its borders to the abundant solar generation available throughout the

[33] *See, e.g.*, *2020 RPS Report*, *supra* note 25, at 16.

[34] *2025 RPS Report*, *supra* note 1, at 16. The $155 million estimate was calculated by multiplying the SRECs retired in 2025 (379,947) by the average SREC price in 2025 ($407) and adding the compliance fee payments to meet the solar requirement in 2025 ($145,730).

PJM region, including from West Virginia, the District has chosen to maintain its geographic restrictions and accept significant compliance costs and penalty payments.

62. The costs from an artificially restricted market are borne by D.C. ratepayers, adding at least $20 to every electricity bill and potentially increasing to $40 per bill by 2029, according to the District's Mayor, Muriel Bowser.[35]

G. West Virginia's Producers, Ratepayers, and Treasury Have Been Directly Harmed

63. Without access to sell into the District of Columbia, West Virginia's solar producers typically sell renewable energy credits on only the low-rate "voluntary market," hovering around a few dollars per MWh, driven by consumers who choose to procure renewable electricity beyond what policy requires.[36]

64. West Virginia possesses substantial eligible generation that is locked out of D.C.'s solar requirement solely because of its geographic restrictions, and its solar generation fleet is growing. West Virginia's own solar statute, Senate Bill 583 of 2020, authorizes each of the State's electric utilities to develop up to 200 megawatts of utility-scale solar, and the utilities' integrated resource plans now before the West Virginia Public Service Commission include solar additions in every scenario.

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[35] Bowser, *Mayor's Letter to the D.C. Council*, *supra* note 3, at 4–5.

[36] *Green Power Pricing*, EPA (last updated July 10, 2026), https://tinyurl.com/c83283cr; *see* Steve Marcou, *Renewable Energy Credits: Your Complete 2025 Guide to RECs, Pricing, and Environmental Impact*, Solar Tech (May 20, 2026), https://tinyurl.com/3xae2ndf.

65. But the District of Columbia's geographic restrictions block these solar producers from selling SRECs into D.C.'s market, where credits command $407 per MWh, compared to the approximately $2 to $8 per MWh West Virginia solar producers receive in voluntary markets.

66. **Generator Harm.** West Virginia generators are shut out of a substantial market. The District of Columbia's SREC prices represent a market that West Virginia generators are categorically excluded from based solely on geography. While it is difficult to predict how the D.C. SREC market would react to open borders and competition, and how much prices would drop as a result, the total market value of SRECs in D.C. is about $155 million (i.e., 379,947 SRECs retired in 2025, at a price of $407.24).[37] Even the credits the District's own suppliers could not obtain, on which they paid more than $50 million in compliance fees from 2018 through 2025, could not come from West Virginia.[38] West Virginia producers are kept out of that market.

67. **Ratepayer Harm.** West Virginia is a fully regulated, vertically integrated electricity market: when its utilities sell renewable energy credits, the proceeds are credited back to customers. Because D.C.'s geographic restrictions exclude West Virginia generation from the District's SREC market, those credits cannot earn the District's price, and the surcharge West Virginians pay is higher than it would otherwise be.

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[37] *See 2025 RPS Report*, *supra* note 1, at 18.

[38] *2020 RPS Report*, *supra* note 25, at 16 (compliance fees 2018 through 2020); *2025 RPS Report*, *supra* note 1, at 17 (2021 through 2025).

68. State Fiscal Harm. The entire State of West Virginia also shares in the harm. The credit revenue that West Virginia's solar owners would earn in the District's market is West Virginia taxable income, and the State's income tax on that revenue is lost with it.

69. **The Need for Prompt Relief.** The Court's intervention is needed now, because the harm will compound early next year. Under the Commission's regulations, a newly certified generator may produce SRECs dating back to January 1 of the year certified, and a generator certified in January of any year may sell Retroactive SRECs back to January 1 of the preceding year. *See* 15 DCMR § 2904.5(a).

70. Accordingly, if the District's unconstitutional borders are taken down, and West Virginia solar generators can be certified by January 2027, they would be able to supply SRECs for the 2026 output, which electricity suppliers may use for Compliance Year 2026 and report to the Commission by March 25, 2027. *See* 15 DCMR §§ 2901.9, 2999.1. But if West Virginia generators are not approved by the end of January 2027, they will lose the ability to supply compliance SRECs for 2026 that the regulations would otherwise allow, and that opportunity cannot be recovered later. Because the Commission has up to thirty business days to decide a certification application, *see* 15 DCMR § 2902.8, West Virginia generators would need to apply by mid-December 2026 to be certified in time. Absent prompt relief from this Court, the District's geographic restrictions will permanently foreclose West Virginia generators from the 2026 compliance market.

CAUSES OF ACTION

Count I – Violation of the Dormant Commerce Clause
(D.C. CODE § 34-1432(e)(1) — Solar Geographic Restrictions)

71. West Virginia re-alleges the facts above and incorporates them herein by reference.

72. The Commerce Clause of the United States Constitution grants Congress the power to "regulate Commerce . . . among the several States." U.S. CONST. art. I, § 8, cl. 3. The Supreme Court has long held that this affirmative grant of power contains a "negative" or "dormant" component that prohibits state and local laws that discriminate against or unduly burden interstate commerce, even in the absence of congressional action. *See Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978).

73. The antidiscrimination principle is the "very core" of dormant Commerce Clause jurisprudence. *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 369 (2023). A state law that "clearly discriminate[s]" against out-of-state commerce is "virtually *per se* invalid." *Or. Waste Sys., Inc. v. Dep't of Env't Quality*, 511 U.S. 93, 99 (1994). Discriminatory laws are subject to "the strictest scrutiny." *Tenn. Wine & Spirits Retailers Ass'n v. Thomas*, 588 U.S. 504, 518 (2019).

74. A law discriminates against interstate commerce if it mandates "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." *Or. Waste Sys.*, 511 U.S. at 99. Discrimination may be demonstrated on the face of the statute, from its purpose, or through its

practical effects. *See Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 352-53 (1977).

75. Wholesale-electricity flows between States are quintessentially interstate commerce. *See FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 267 (2016); *Transource Pa., LLC v. DeFrank*, 156 F.4th 351, 358 (3d Cir. 2025); *Energy Mich., Inc. v. Mich. Pub. Serv. Comm'n*, 126 F.4th 476 (6th Cir. 2025); *NextEra Energy Cap. Holdings, Inc. v. Lake*, 48 F.4th 306 (5th Cir. 2022).

76. All these principles apply with full force to local laws enacted by the District of Columbia. *See Kronheim*, 91 F.3d at 198. Although the District is not a State, it exercises legislative and regulatory authority subject to the constitutional constraints of the dormant Commerce Clause. *See id.*

77. D.C. CODE § 34-1432(e)(1) is facially discriminatory. It conditions eligibility for D.C.'s solar renewable energy credits on in-District location by requiring that solar resources be "located within the District" or "in locations served by a distribution feeder serving the District." Those eligibility criteria, on their face and as interpreted and implemented by the Commission, exclude otherwise eligible out-of-District PJM solar resources from D.C.'s SREC market.

78. Even if D.C. CODE § 34-1432(e)(1) were not facially discriminatory, it violates the Commerce Clause because it was enacted and implemented for a discriminatory purpose and has a discriminatory practical effect. The progressive tightening of geographic restrictions—from the original PJM-wide eligibility to the current in-District requirement—along with statements from lawmakers

demonstrate an ongoing purpose to exclude out-of-District generators from D.C.'s SREC market. And that has led to a discriminatory effect because West Virginia generators are being cut out of an increasingly larger share of D.C.'s SREC market based solely on their location.

79. D.C.'s solar geographic restriction is also unconstitutional under the *Pike* balancing test. A state law violates the Commerce Clause where "the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

80. D.C.'s solar geographic restriction imposes a severe burden on interstate commerce by excluding otherwise eligible out-of-District solar resources from D.C.'s SREC market. It blocks West Virginia solar producers from selling into a market where credits command $407 per MWh, compared to the approximately $2 to $8 per MWh West Virginia solar producers can receive in voluntary markets.

81. The burden is substantial. West Virginia generators, ratepayers, and the State treasury are denied the value of a market from which they are excluded by location alone, as alleged above, because D.C.'s solar geographic restriction forecloses interstate renewable energy credit transactions that would otherwise occur throughout the PJM region.

82. The putative local benefits are minimal or nonexistent. D.C.'s geographic restriction does not create materially greater environmental benefits than would be achieved by allowing otherwise eligible out-of-District PJM resources to participate on equal terms. Instead, D.C.'s restriction protects in-District generators

from interstate competition, has historically failed to generate sufficient in-District solar to meet D.C.'s own mandates—requiring penalty payments—and has increased compliance costs by restricting supply while demand grew. The restriction does not create new clean energy. It merely limits who can supply it.

83. Non-discriminatory alternatives exist that would allow the District to promote local solar development without violating the Commerce Clause, including direct subsidies, tax incentives, and feed-in tariffs for in-District generation that do not condition credit eligibility on geographic location.

Count II – Violation of the Dormant Commerce Clause
(D.C. CODE § 34-1432(e)(3), RPS Amendment Act of 2024 — Decertification Provision)

84. West Virginia re-alleges the facts above and incorporates them herein by reference.

85. The RPS Amendment Act of 2024's decertification provision is facially discriminatory. It directs the Commission to decertify SREC-certified solar facilities based solely on their location outside the District of Columbia, imposing a geographic criterion that categorically excludes out-of-District generators from D.C.'s SREC market. Facilities that were previously certified and had invested in reliance on that certification are retroactively stripped of their SREC eligibility, including systems located in West Virginia, based on nothing more than their out-of-District location.

86. The decertification provision, on its face and as implemented by the Commission, imposes an express in-District presence requirement and excludes otherwise eligible out-of-District PJM solar resources from D.C.'s SREC market. *See*

D.C. CODE § 34-1432(e)(3). The 2024 Act imposes a severe burden on interstate commerce by retroactively decertifying out-of-District facilities that had been participating in D.C.'s SREC market, eliminating their access to credit prices averaging $407 per MWh.

87. Even if the 2024 Act were not facially discriminatory, it violates the Commerce Clause because it was enacted and implemented for a discriminatory purpose, as described by D.C. Council legislators, and has a discriminatory practical effect. The 2024 Act's decertification provisions were designed to eliminate the remaining out-of-District facilities from D.C.'s SREC market and have the effect of further tightening the protectionist geographic framework that had already excluded new out-of-District facilities.

88. The 2024 Act is unconstitutional under the *Pike* balancing test as well. A law violates the Commerce Clause where "the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." *Pike,* 397 U.S. at 142.

89. The burden on interstate commerce is substantial. The 2024 Act has caused out-of-District solar credits to be stripped from D.C.'s SREC market entirely, with the exception of credits from the few Maryland systems located on Pepco distribution feeders serving the District. Out-of-District generators that invested in reliance on their prior SREC certification have been retroactively barred from the market. West Virginia generators, ratepayers, and the State treasury face significant lost revenues, lost ratepayer savings, and lost tax receipts because the 2024 Act

forecloses interstate renewable energy credit transactions that would otherwise occur throughout the PJM region.

90. The putative local benefits are minimal or nonexistent. The 2024 Act does not create materially greater environmental benefits than would be achieved by allowing otherwise eligible out-of-District PJM resources to participate on equal terms. Instead, the 2024 Act protects in-District generators from interstate competition and has drastically increased costs to D.C. ratepayers by further restricting supply while demand grew.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in favor of the State of West Virginia and against Defendants, and grant the following relief:

1. Declare that the geographic eligibility restrictions imposed by D.C. CODE § 34-1432(e)(1), as applied to solar energy resources and solar renewable energy credits, violate the dormant Commerce Clause of the United States Constitution to the extent they exclude otherwise eligible out-of-District PJM resources from D.C.'s solar renewable energy credit market based solely on location, physical connection to D.C. distribution feeders, or other in-District presence requirements;

2. Declare that the Commission's orders and regulations implementing the solar geographic restrictions of D.C. CODE § 34-1432(e)(1) violate the dormant Commerce Clause of the United States Constitution to the extent they implement, interpret, or enforce those geographic eligibility restrictions against otherwise eligible out-of-District PJM resources;

3. Declare that the decertification provision of the Renewable Energy Portfolio Standard Amendment Act of 2024 found in D.C. CODE § 34-1432(e)(3), as applied to retroactively decertify previously certified out-of-District solar facilities, violates the dormant Commerce Clause of the United States Constitution to the extent it excludes otherwise eligible out-of-District PJM

resources from D.C.'s solar renewable energy credit market based on out-of-District location;

4. Declare that the Commission's implementation of the Renewable Energy Portfolio Standard Amendment Act of 2024's decertification provision violates the dormant Commerce Clause of the United States Constitution to the extent it implements, interprets, or enforces the decertification provision against otherwise eligible out-of-District PJM resources;

5. Permanently enjoin Defendants, their officers, agents, servants, employees, successors, and all persons in active concert or participation with them from implementing or enforcing the geographic eligibility restrictions imposed by D.C. CODE § 34-1432(e)(1) and the decertification provisions of the RPS Amendment Act of 2024 found in D.C. CODE § 34-1432(e)(3), and the Commission's orders and regulations, in a manner that excludes otherwise eligible out-of-District PJM resources from participating in D.C.'s solar renewable energy credit market on equal terms with comparable in-District resources;

6. Order Defendants to recognize otherwise eligible out-of-District PJM resources as eligible to create, transfer, sell, and be used for compliance with D.C.'s solar renewable energy credit requirements on the same terms as comparable in-District resources, without regard to the resource's out-of-District location, out-of-District physical connection, or absence of connection to D.C.-serving distribution feeders, except to the extent a nondiscriminatory eligibility requirement applies equally to in-District and out-of-District resources;

7. Order Defendants to accept, docket, and decide applications for solar certification from out-of-District PJM solar energy systems on the same terms and within the same time limits that apply to in-District systems under 15 DCMR §§ 2902.6 to 2902.8, and to decide every such application submitted on or before December 15, 2026 no later than January 29, 2027, so that credits for the systems' 2026 generation may be created under 15 DCMR § 2904.5(a); and, to the extent any such application is not decided by that date, to exercise the Commission's authority under 15 DCMR § 2906.1 so that the applicant may create credits for generation from January 1, 2026 upon certification;

8. Order Defendants to reinstate the certification of every system decertified under D.C. CODE § 34-1432(e)(3) as if the decertification had not occurred, and to notify PJM Environmental Information Services, Inc. accordingly;

9. Declare that renewable energy credits produced by such systems for generation on and after January 1, 2026 are eligible to meet the solar

requirement for the 2026 and subsequent compliance years on the same terms as credits from in-District systems;

10. Award Plaintiff its costs and, to the extent authorized by law, attorneys' fees; and

11. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: November 18, 2026

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