

**COMMENTS OF THE DELAWARE DIVISION OF THE PUBLIC ADVOCATE ON
PROPOSED RULES TO IMPLEMENT 26 DEL. C. §§354(i) AND (j) PROMULGATED
BY THE DELAWARE DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

The Delaware Division of the Public Advocate (“DPA”) hereby submits the following comments (“Comments”) regarding the Department of Natural Resources and Environmental Control’s (“DNREC”) proposed rules (the “2015 Revised Rules”) published November 1, 2015 titled “Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions.”

I. Introduction.

In 2010, the General Assembly amended Section 354 of the Renewable Energy Portfolio Standards Act (“REPSA”) to add provisions allowing for a freeze of the minimum renewable energy purchase requirements for regulated utilities under certain circumstances:

(i) The State Energy Coordinator in consultation with the Commission, may freeze the minimum cumulative solar photovoltaics requirement for regulated utilities if the Delaware Energy Office determines that the total cost of complying with this requirement during a compliance year exceeds 1% of the total retail cost of electricity for retail electricity suppliers during the same compliance year. In the event of a freeze, the minimum cumulative percentage from solar photovoltaics shall remain at the percentage for the year in which the freeze is instituted. The freeze shall be lifted upon a finding by the Coordinator, in consultation with the Commission, that the total cost of compliance can reasonably be expected to be under the 1% threshold. The total cost of compliance shall include the costs associated with any ratepayer funded state solar rebate program, SREC purchases, and solar alternative compliance payments.

(j) The State Energy Coordinator in consultation with the Commission, may freeze the minimum cumulative Eligible Energy Resources requirement for regulated utilities if the Delaware Energy Office determines that the total cost of complying with this requirement during a compliance year exceeds 3% of the total retail cost of electricity for retail electricity suppliers during the same compliance year. In the event of a freeze, the minimum cumulative percentage from Eligible Energy Resources shall remain at the percentage for the year in which the freeze is instituted. The freeze shall be lifted upon a finding by the Coordinator, in consultation with the Commission, that the total cost of compliance can reasonably be expected to be under the 3% threshold. The total cost of compliance shall include the costs

associated with any ratepayer funded state renewable energy rebate program, REC purchases, and alternative compliance payments.

The amendments to REPSA also included an amendment to 26 *Del. C.* §362 by adding subsection (b). That subsection provides:

For regulated utilities, the Commission shall further adopt rules and regulations to specify the procedures for freezing the minimum cumulative solar photovoltaic requirement as authorized under § 354(i) and (j) of this title, and for adjusting the alternative compliance payment and solar alternative compliance payment as authorized under § 358(d)(4) and (e)(3) of this title.

26 *Del. C.* §362(b) (emphasis added).

Despite being given the authority to promulgate regulations to implement the requirements of 26 *Del. C.* §§354(i) and (j), the Public Service Commission (“Commission”) has taken no concrete steps to do so. Rather, it has impermissibly ceded its statutory authority to do so to DNREC.

In April 2012, DNREC published the first proposed regulations purporting to implement Sections 354(i) and (j). Those proposed regulations were roundly criticized. DNREC withdrew them and went back to the drawing board.

In late 2014, DNREC proposed revised regulations (the “2014 Proposed Rules”). The 2014 Proposed Rules again included the provisions that drew opposition the first time. They also stated that the comparison would be based on the costs on a year-over-year comparison rather than a comparison of costs for “the same compliance year” as Sections 354(i) and (j) specifically provide.

The 2014 Proposed Rules also engendered significant criticism, including from the DPA. The DPA primarily argued that: (1) DNREC did not have the statutory authority to promulgate rules on the issue; (2) even if DNREC did have such authority, the 2014 Proposed Rules erroneously provided that the comparison was a year-over-year comparison rather than a same-year comparison; (3) even if DNREC did have such authority, it had exceeded its authority by adding criteria for calculating costs that the statutes did not include, and was therefore rewriting the statutes in the form of the regulations; (4) even if DNREC did have such authority, it ignored the role of the Commission, which the General Assembly expressly included in the statutes; and (5) even if DNREC did have such authority, the 2014 Proposed Rules were opaque as to what would inform DNREC’s judgment and therefore had the potential to be applied arbitrarily and capriciously.

After receiving the comments on the 2014 Proposed Rules, DNREC withdrew them from the Hearing Officer’s consideration and went back to work. On October 1, 2015, it published revised proposed rules. However, it later notified interested persons that it had inadvertently submitted the wrong rules for publication, and that it would submit the correct proposed rules for publication in the November Register of Regulations.

On November 1, 2015, DNREC published the current version of the revised regulations (“2015 Revised Rules”). The hearing record will close on December 1, 2015, and the Hearing Officer will hold a public comment session on November 23, 2015.

In what appears to be a concession that the Commission has a statutorily-delegated role in declaring a freeze of the renewable energy requirements, the 2015 Revised Rules include consultations with the “staff of the PSC” in determining whether a freeze should be implemented or lifted and in declaring such a freeze or the lifting thereof. While that is a move in the right direction, the Commission Staff is not the appropriate body with whom the consultation is to occur. The correct body is the Commission itself.

Furthermore, in the 2015 Revised Rules, DNREC removed all references to Qualified Fuel Cell Provider (“QFCP”) and Qualified Fuel Cell Provider Project (“QFCPP”) that had been in the first iteration of the proposed rules and 2014 Proposed Rules.

The 2015 Revised Rules contain many of the same provisions to which the DPA and others have objected. DNREC ignored those arguments. As we will show, the 2015 Revised Rules cannot pass legal muster any more than the 2014 Proposed Rules could, and for many of the same reasons. The DPA therefore respectfully requests the Hearing Officer to reject them.

II. The 2015 Revised Rules Are Void *Ab Initio* Because The Commission, Not DNREC, Has the Authority to Promulgate the Rules That Will Determine the Procedures for Freezing the RPS Requirements.

The DPA made this argument in opposing the 2014 Proposed Rules. DNREC ignored it. The DPA and the Caesar Rodney Institute (“CRI”) filed petitions with the Commission asking it to reopen its rulemaking docket to promulgate rules specifying the procedures for freezing the solar and other renewable energy requirements pursuant to its authority to do so as provided in 26 *Del. C.* §362(b). On November 3, 2015, the Commission heard oral argument and voted not to reopen its rulemaking docket. The DPA submits this argument in this rulemaking proceeding so as not to be deemed to have waived it in the event that the DPA appeals any rules that come out of this proceeding.

DNREC claims that the authority supporting these regulations is 26 *Del. C.* §§354(i) and (j). Those subsections do require the Commission and DNREC’s Division of Energy and Climate to consult together to determine whether a freeze should be implemented, and if so, whether it should subsequently be lifted. And those sections further state that DNREC will determine whether the 3% and 1% cost caps have been reached. But those are steps 2 and 3. The *first* step is promulgating the regulations that specify *how* the cost of compliance with the renewable energy mandates and the total retail cost of electricity are calculated. *That* is the authority that DNREC believes it has. And *that* is the authority that the DPA believes belongs solely to the Commission pursuant to the clear language of 26 *Del. C.* §362(b). That section, which was added to the REPSA at the same time as sections 354(i) and (j), provides:

For regulated utilities, the Commission shall further adopt rules and regulations *to specify the procedures for freezing the minimum cumulative solar photovoltaic requirement as authorized under § 354(i) and (j) of this title*, and for adjusting the alternative compliance payment and solar alternative compliance payment as authorized under § 358(d)(4) and (e)(3) of this title.

(Emphasis added). Section 352(2) of the REPSA defines “Commission” as the Delaware Public Service Commission, *not* DNREC.

The goal of statutory construction is to give effect to the General Assembly’s intent. *Zambrana v. State*, 118 A.3d 775, 776 (Del. 2015); *Terex Corp. v. Southern Track & Pump, Inc.*, 117 A.2d 537, 543 (Del. 2015). The General Assembly could have given that authority to DNREC in the REPSA, since DNREC is a defined term in the REPSA and DNREC is specifically assigned other responsibilities in the REPSA. But it did not. The General Assembly clearly intended to entrust the authority to promulgate regulations governing the procedures for freezing the renewable energy requirements to the Commission, not to DNREC.^{1, 2}

Furthermore, the statute does not give the Commission authority to delegate its responsibility for specifying the procedures for freezing the RPS requirements to DNREC, and the Commission cannot delegate its authority *sua sponte*. See, e.g., *Matador Pipelines, Inc. v. Oklahoma Water Resources Board*, 742 P.2d 15 (Okla. 1987) (agency cannot delegate statutory duty to other agencies); *Lake Isabella Development, Inc. v. Village of Lake Isabella*, 674 N.W.2d 40 (Mich. Ct. App. 2003) (agency could not delegate authority to municipality); *Booker Creek Preservation Inc. v. Southwest Florida Water Management District*, 534 So.2d 419 (Fla. Dist. Ct. App. 5th Dist. 1988) (agency cannot delegate statutory duty to other agencies). The Commission’s attempt to do so in its regulations is void, and since DNREC does not have the statutory authority to jump into the breach left by the Commission, any regulations issued by it are void *ab initio* and unenforceable.

¹Section 362(b) does not specifically identify “eligible energy resources” as subject to the Commission’s regulation, but it *does* explicitly refer to both sections 354(i) and (j). And Section 354(j) addresses eligible energy resources. Therefore, the DPA concludes that the General Assembly did in fact include both types of renewable energy resources as subject to regulation by the Commission with respect to establishing procedures for freezing the REPSA requirements.

²The Commission did issue regulations, but they do not specify procedures for freezing the REPSA requirements. See 26 *Del. Admin. C.* Part 3008 – Rules and Procedures to Implement the Renewable Energy Portfolio Standard. Indeed, Section 3008-3.2.21 delegates the responsibility for issuing procedures to implement 26 *Del. C.* §§354(i) and (j) to DNREC. As discussed *infra*, such delegation is impermissible and invalid.

III. Sections 5.2, 5.3, 6.1 and 7.3: The Statutorily-Required Consultation Between DNREC and “the Commission” Is With the Commission Itself, Not Its Staff – And Because the Commission Must Transact Public Business at an Open Meeting, the Consultation With the Commission Must Occur at a Public Meeting.

This is one of three substantive differences between the 2014 Proposed Rules and the 2015 Revised Rules.³

Sections 354(i) and (j) explicitly require DNREC to consult with “the Commission” with respect to declaring and lifting a freeze of the minimum renewable requirements. In the 2015 Revised Rules, DNREC finally acknowledges that the General Assembly did not give it *carte blanche* to declare and lift freezes. Sections 5.3, 5.3, 6.1 and 7.3 of the 2015 Revised Rules provide that DNREC will consult with the “staff of the PSC” with respect to freezing the requirements and lifting the freeze.

As noted previously, the REPSA defines the “Commission” as the “Delaware Public Service Commission.” 26 *Del. C.* §352(2). It does not define the Commission as the Commission “Staff.” In this regard, we note that although the REPSA defines “DNREC” as the “Delaware Department of Natural Resources and Environmental Control,” it also includes provisions specifying certain functions within DNREC as having particular responsibilities (i.e., the State Energy Coordinator; the Secretary). Clearly, then, the General Assembly knew how to assign responsibilities to entities other than DNREC, and if it had wanted to assign the consultation responsibility to the Commission Staff, it knew how to do so.

DNREC’s insertion of the word “staff” in the 2015 Revised Rules, when it does not appear anywhere in the statute, seems to be intended to circumvent the public notice and open meeting requirements of the Freedom of Information Act (“FOIA”) that apply to the Commission.

Section 10001 of the FOIA declares the State’s policy:

It is vital in a democratic society that public business be performed in an open and public manner so that our citizens shall have the opportunity to observe the performance of public officials and to monitor the decisions that are made by such officials in formulating and executing public policy; and further, it is vital that citizens have easy access to public records in order that the society remain free and democratic. Toward these ends, and to further the accountability of government to the citizens of this State, this chapter is adopted, and shall be construed.

29 *Del. C.* §10001 (emphasis added).

³The second substantive change is discussed in Section IV. The final substantive difference between the 2014 Proposed Rules and the 2015 Revised Rules is that DNREC apparently has bowed to opponents’ arguments that the appropriate comparison is the same compliance year, not the previous compliance year. Thus, proposed Rules 5.2 and 5.3 no longer contain the phrase “over the previous compliance year.”

Section 10001(h) of the FOIA defines a “public body” as”

... any regulatory, *administrative*, advisory, executive, appointive or legislative *body of the State*, or of any political subdivision of the State, *including, but not limited to, any board, bureau, commission, department, agency, committee, ad hoc committee, special committee, temporary committee, advisory board and committee, subcommittee, legislative committee, association, group, panel, council* or any other entity or body established by an act of the General Assembly of the State, or established by any body established by the General Assembly of the State, or appointed by any body or public official of the State or otherwise empowered by any state governmental entity, which:

- (1) Is supported in whole or in part by any public funds; or
- (2) Expends or disburses any public funds, including grants, gifts or other similar disbursements and distributions; or
- (3) Is impliedly or specifically charged by any other public official, body, or agency to advise or to make reports, investigations or recommendations.

Id. §10002(h) (emphasis added).

Section 10004(a) of the FOIA provides that “[e]very meeting of all public bodies shall be open to the public except those closed pursuant to subsections (b), (c), (d) and (h) of this section.”⁴ *Id.* §10004(a).

⁴FOIA Section 10004(b) provides that a public body may call for an executive session closed to the public only for the following purposes:” (1) to discuss an individual citizen's qualifications to hold a job or pursue training unless the citizen requests that such a meeting be open; (2) for preliminary discussions on site acquisitions for any publicly funded capital improvements, or sales or leases of real property; (3) activities of any law-enforcement agency in its efforts to collect information leading to criminal apprehension; (4) strategy sessions, including those involving legal advice or opinion from an attorney-at-law, with respect to collective bargaining or pending or potential litigation, but only when an open meeting would have an adverse effect on the bargaining or litigation position of the public body; (5) discussions which would disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to said contribution by the contributor; (6) discussion of the content of documents, excluded from the definition of "public record" in § 10002 of this title where such discussion may disclose the contents of such documents; (7) student disciplinary cases (unless the student requests a public hearing); (8) employee disciplinary or dismissal hearings (unless the employee requests a public hearing); and (9) personnel matters in which the names, competency and abilities of individual employees or students are discussed (unless the employee or student requests that such a meeting be open). 29 *Del. C.* §10004(b)

FOIA Section 10004(c) sets forth the procedures for entering into executive session. *Id.* §10004(c).

FOIA Section 10004(d) provides that a person who is willfully and seriously disrupting the conduct of a public meeting may be removed from that meeting. *Id.* §10004(d).

Section 10002(g) of the FOIA defines a “meeting” as “the formal or informal gathering of a quorum of the members of any public body for the purpose of discussing or taking action on public business either in person or by video-conferencing.” *Id.* §10002(g).

The Commission is a public body as defined in 29 *Del. C.* §10001(h). Consulting with DNREC regarding whether to implement or lift a freeze of the minimum renewable energy requirements is public business. Because the FOIA requires the Commission to transact public business in open meetings, any consultation with DNREC regarding whether to implement or lift a freeze must be done in an open meeting.

26 *Del. C.* §§354(i) and (j) specifically require DNREC to consult with the *Commission* – not the Commission Staff – in determining whether to implement or lift a freeze. DNREC cannot change that statutory requirement by consulting with the Commission Staff. Thus, the consultation requirement contained in Sections 5.2, 5.3, 6.1 and 7.3 must be changed to reflect that the consultation must be with the *Commission*.

IV. Sections 2.0, 4.2 and 4.3: Assuming *Arguendo* That DNREC Has the Authority to Promulgate Regulations to Implement 26 *Del. C.* §§354(i) and (j), DNREC’s Removal of “Qualified Fuel Cell Provider” and “Qualified Fuel Cell Provider Project” From the Definitions, and the Concomitant Removal of QFCP Offsets From the Calculation of the Renewable Energy Costs of Compliance: (A) Directly Contradicts Representations DNREC Has Made in Proceedings Before the Commission; (B) Is Inconsistent With How the Costs of Renewable Compliance Have Been Presented on Delmarva’s Customers’ Bills; and (C) Artificially Reduces the Cost of Compliance for Renewable Energy.

In 2011, the State of Delaware reached an agreement with Diamond State Generation Partners, LLC (“Diamond State”) whereby Diamond State would locate a fuel cell manufacturing facility in Delaware. As part of that agreement, the General Assembly significantly amended the REPSA to provide that Delmarva Power & Light Company (“Delmarva” or “DPL”) would purchase up to 50 MW of output from the fuel cells manufactured in Delaware. In connection with this agreement, the General Assembly amended the REPSA to provide that the energy provided by the qualified fuel cell provider project (“QFCP” and

Finally, FOIA Section 10004(h) identifies proceedings that are excluded from the open meeting requirement: grand, petit and special juries; the deliberations of any court; the Board of Pardons and Parole; public bodies having only one member; public bodies within the legislative branch of the state government other than the House of Representatives, the Senate, the Joint Finance Committee, the Joint Committee on Capital Improvement, the Joint Sunset Committee, Legislative Council, committees, excluding ethics committees, specifically enumerated and created by Resolution of the House of Representatives and/or Senate or task forces specifically enumerated and created by Resolution of the House of Representatives and/or Senate; certain Victims’ Compensation Assistance Program Appeals Board proceedings; and deliberations of the State Human Relations Commission, Industrial Accident Board, Tax Appeals Board, and Victims’ Compensation Assistance Program Appeals Board for any case decision governed by the Administrative Procedures Act. 29 *Del. C.* §10004(h).

“QFCPP”) can be used to fulfill Delmarva’s renewable energy credit (“REC”) and solar renewable energy credit (“SREC”) requirements. *See 26 Del. C. §353(d)*. Thus, in exchange for Delmarva being required to purchase the energy output from a QFCP (and for Delmarva customers being required to pay for that energy), Delmarva may use that energy purchase to reduce the amount of RECs and SRECs it would otherwise have to purchase.

In the 2014 Proposed Rules, DNREC included definitions for “Average QFCP Project offset cost” and “Qualified fuel cell provider project.” Those definitions have been removed from the 2015 Revised Rules.

The 2014 Proposed Rules also included “the cost of QFCPP offsets” in Sections 4.2 and 4.3 as part of the Renewable Energy Cost of Compliance and the Solar Renewable Energy Cost of Compliance. This was appropriate because Section 353(d) provides that energy produced by qualified fuel cell provider projects can be used to fulfill the REPSA requirements at a rate of 1 REC for every MWh of energy generated, and a ratio of 6 MWh of RECs per 1 MWh of SRECs. *26 Del. C. §353(d)*. These provisions have been removed from the 2015 Revised Rules.

In other proceedings, DNREC has specifically recognized that Delmarva uses the energy purchased from the QFCP to satisfy its REC and SREC requirements as permitted by *26 Del. C. §353(d)*. Its current proposal to remove any mention of the QFCP Project and the QFCP offsets directly contradicts the position that DNREC took in PSC Docket No. 13-250, and directly contradicts the manner in which the cost of renewable compliance has been presented to Delmarva customers, both on their bills and on Delmarva’s website.

Docket No. 13-250 commenced with three state legislators asking the Commission to break out certain costs being paid by Delmarva customers in individual line items on Delmarva’s customers’ bills. One of those costs was the cost of the QFCP Project. During workshops conducted in that docket, Delmarva proposed to identify renewable compliance charges, Green Energy Fund costs, and Low Income charges separately. Delmarva’s proposal noted that the July 1, 2014 implementation date was dependent on achieving the parties’ consensus and Commission approval by April 29, 2014, and further stated that “[c]onsensus must include DNREC, due to the currently ongoing DNREC rulemaking proceeding for the purpose of determining the cost of the Renewable Portfolio Standard compliance” *See In the Matter of the Legislative Petition for Review and Recommendations on Delmarva Power & Light Company Utility Bill Transparency* (Filed June 20, 2013), Docket No. 13-250, Order No. 8556 (April 29, 2014) at Exhibit A, p. 2.

DNREC originally opposed separately identifying *any* renewable compliance costs on customers’ bills, but ultimately did not object to Delmarva’s proposal because DNREC was “partially satisfied that the language on the bill and the accompanying website were helpful in providing meaningful information for customers.” Docket No. 13-250, Letter dated September 8, 2015 from Thomas A. Noyes, DNREC’s Principal Planner for Utility Policy, Division of Energy and Climate, to Jason R. Smith, Case Manager (hereafter “September 8 Letter”), p. 1.⁵ Thus, the consensus that Delmarva sought was achieved. And DNREC reiterated that consensus before the Commission on April 29, 2014:

⁵The September 8 Letter is attached as Exhibit A.

I would like to point out that DNREC favors bill transparency as the one agency tasked with informing the public of the cost of RPS compliance. ... And DNREC is finalizing regulations on that.

But part of that regulation is, we have the duty by statute to tell people what the RPS costs.

So, one of our concerns has been, *let's try and make the reporting as consistent from one thing to the next*. And we will be working with the parties going forward to harmonize that.

(Docket No. 13-250, April 29, 2014 Transcript at 354-55) (emphasis added).⁶

The Commission approved Delmarva's proposal as submitted (and attached it to its Order),⁷ but held the docket open to allow for the parties to determine if any additional charges could be further broken out on customers' bills.

As a result of Order No. 8556, Delmarva's website has contained the following description of the renewable compliance charge since approximately July 2014:

RESPA [sic] compliance is achieved through three general categories of clean energy generation: (1) solar, (2) general renewable energy resources, and (3) Delaware Qualified Fuel Cells.

1. Solar: Solar energy (also known as "photovoltaic energy") is electrical energy created by converting the sun's energy to electricity. RESPA [sic] provides that a certain minimum percentage of total RESPA compliance must come from solar energy sources.

2. General Renewable Energy: In addition to solar, RESPA [sic] defines renewable energy as coming from various sources, including: wind energy, tidal and wave energy, geothermal energy, hydroelectric energy, methane capture and other resources.

3. Delaware Qualified Fuel Cells: In 2011, REPSA was amended to permit the use of generation from certain fuel cells to achieve REPSA compliance. REPSA refers to these fuel cells as "Qualified Fuel Cells." Qualified Fuel Cells must (1) be manufactured in Delaware and (2) be capable of being powered by renewable fuels. A company known as Bloom Energy met the requirements to be a Qualified Fuel Cell provider in Delaware by building a new fuel cell assembly plant in Newark, Delaware and building two fuel cell generation sites in Delaware. The Qualified Fuel Cells in Delaware manufactured by Bloom Energy

⁶The pertinent pages of the transcript are attached as Exhibit B.

⁷Commission Order No. 8556 is attached as Exhibit C.

are currently used to meet approximately 50% of the Delaware RESPA compliance requirements.

* * *

The Renewable Compliance Charge, which appears within the Delivery Charge section of Delmarva Power's bills, represents the cost Delmarva Power incurs in meeting the requirements of the Renewable Energy Portfolio Standards Act (or "REPSA"). *This charge includes costs of clean energy generation discussed above: (1) solar and general renewable energy, and (2) Delaware Qualified Fuel Cells.*

1. Solar and General Renewable Energy: The monthly costs of purchases from solar and general renewable energy sources are established annually after review and approval by the Delaware Public Service Commission.

2. Delaware Qualified Fuel Cells: The monthly cost of purchases from Delaware Qualified Fuel Cells is established on a monthly basis after review and approval by the Delaware Public Service Commission. You can find the monthly charges per kilowatt hour for the purchase of solar, general renewable energy resources and Delaware Qualified Fuel Cells for 2014 [here](#).

<http://www.delmarva.com/my-home/choices-and-rates/delaware/the-renewable-energy-portfolio-standards-act-and-the-renewable-compliance-charge/> (emphasis added).

Additionally, effective with bills rendered on and after July 1, 2015, Delmarva has included separate line items for the Low Income, Green Energy Fund, and Renewable Compliance charges. The Renewable Compliance charge that is separately broken out on customers' bills includes the three categories identified on Delmarva's website: solar, general renewable energy, and Delaware Qualified Fuel Cells.

In subsequent workshops in Docket No. 13-250, the main bone of contention was whether the QFCP costs should be identified separately on customers' bills. Delmarva and DNREC objected to identifying QFCP costs separately, and the parties were unable to reach consensus. After the conclusion of the workshops, Mr. Noyes stated DNREC's position that the QFCP costs should *not* be broken out separately from the renewable compliance charge already identified on customers' bills because there is a "relationship between QFCP costs and REPSA compliance costs." September 8 Letter at p. 2. He wrote that "*QFCP costs are incurred to meet a portion of DPL's RPS requirement, which reduces the number of RECs and SRECs DPL needs to buy to meet the requirement.*" September 8 Letter at p. 2 (emphasis added). He concluded that "[r]ather than break all [sic] of the resources used for RPS compliance, DNREC sees it as appropriate to report REPSA compliance as one cost" *Id.*

The Docket No. 13-250 Case Manager was apparently persuaded by DNREC's position. In recommending that the Commission decline to identify the QFCP costs separately on customer bills, the Case Manager stated:

The QFCP project is an item that is presently embedded in the Renewable Compliance Charge, which was already been removed from the Distribution Charge in Phase I to provide better clarity for the cost of compliance with Delaware's Renewable Energy Portfolio Standards Act ("REPSA"). At issue here is that the QFCP project is just one of many projects that encompass the Renewable Compliance Charge. Other projects include major wind projects, the Dover SunPark, the Delaware Solar Program and many more. Since the Renewable Compliance Charge involves a variety of energy sources, with projects on both a large and small scale, it is not feasible to list out every single project for disclosure on the bill. Singling out one particular project when there are many other projects that comprise the Renewable Compliance Charge does not appear to be in the Delmarva customers' best interests.

Docket No. 13-250, Staff Memorandum dated October 15, 2015 at 8.⁸

The Commission is scheduled to hear argument and deliberate in Docket No. 13-250 on December 3, 2015. If the Commission accepts the Case Manager's recommendation that no separate breakout of QFCP costs is required, its decision is likely to be based at least in part on DNREC's contention that the QFCP Project offsets/costs are included in the REPSA compliance costs.

DNREC has consistently taken the position that the QFCP offsets are costs of complying with the REPSA. It should not be heard to claim otherwise now. The only reason that it seeks to remove QFCP offset costs from the calculation of REPSA compliance costs in this iteration of the regulations (when all previous iterations included them as REPSA compliance costs and when it has consistently represented to the Commission that the cost of REPSA compliance includes QFCP offsets) is because doing so furthers its goal of ensuring that the REPSA compliance costs will never reach the thresholds for freezing the REPSA requirements.

In the absence of the legislatively-permitted offsets Delmarva would have to purchase RECs and SRECs to meet its obligations; therefore, the cost of the QFCP offsets should be included in calculating the cost of compliance with REPSA for purposes of determining whether the cost caps of Sections 354(i) and (j) have been met. Omitting these costs reduces the cost of REPSA compliance compared to the total retail cost of electricity for retail electric suppliers, and makes it appear that it costs less to comply with the REPSA than it actually does. Since the QFCP energy is used to satisfy Delmarva's renewable energy obligations, its cost must be included in calculating the REPSA compliance costs.

⁸The Case Manager's Memorandum is attached as Exhibit D.

V. Sections 2.0, 4.2, 4.3 and 4.4: Assuming *Arguendo* That DNREC Has the Authority to Promulgate Regulations to Implement 26 Del. C. §§354(i) and (j), The Proposed Rules' Definition of "Total Retail Costs of Electricity" Should Not Include the Costs of Transmission, Distribution or Delivery of Electricity – But If Those Functions Remain In the Definition, They Should Be Added to the Definition of "Renewable Energy Costs of Compliance" to Enable a Fair Comparison.

The DPA made this argument in opposing the 2014 Proposed Rules. DNREC ignored it.

DNREC's proposed definition of "Total Retail Costs of Electricity" includes costs associated with the transmission, distribution and delivery of electricity. This is improper. Sections 354(i) and (j) are concerned solely with *supply* of electricity, not with transmission, distribution or delivery of electricity. As a result of deregulation, those functions were unbundled. The "Total Retail Costs of Electricity" should include only those costs related to the supply function.

The DPA prefers removing the transmission, distribution and delivery costs from the definition of "Total Retail Costs of Electricity." That definition could instead be called "Total Retail Costs of Electricity Supply." We submit that this change more accurately reflects the statutory language (which is limited to renewable energy mandates) and certainly is more consistent with the intent of the sponsors of the amendments to Section 354, who emphasized over and over again that the sections provided a "circuit breaker" to protect ratepayers in the event the renewable energy mandates became too expensive (defined by the General Assembly as the 1% increase for solar and 3% for eligible energy resources).⁹

If DNREC is determined to include transmission, distribution and delivery costs in the "Total Retail Costs of Electricity," then transmission, distribution and delivery costs should also be included in the definition of "Renewable Energy Costs of Compliance" and in Sections 4.2 and 4.3 of the Proposed Rules. Since renewable energy also has to be transmitted, distributed and delivered, these costs are appropriately included in the definition *if* they are also included in the "Total Retail Costs of Electricity." Their inclusion would enable a true "apples to apples" comparison of "Renewable Energy Costs of Compliance" with "Total Retail Costs of Electricity" such that the only difference between the two would be the costs associated with the renewable energy mandates. Excluding transmission, distribution and delivery costs from the definition of "Renewable Energy Costs of Compliance" but including them in the definition of "Total Retail Costs of Electricity" will almost guarantee that the 1%/3% thresholds for implementing a freeze pursuant to the provisions of 26 Del. C. §§354(i) and (j) will never be reached.

VI. Sections 5.4-5.8: Assuming *Arguendo* That DNREC Has the Authority to Promulgate Regulations to Implement 26 Del. C. §§354(i) and (j), Sections 5.4 – 5.8 Must Be Deleted.

The DPA made these arguments in opposing the 2014 Proposed Rules. DNREC ignored them.

⁹The transcripts of the discussions in the House and Senate are attached as Exhibits E and F.

A. DNREC Has No Authority to Amend the Statutes to Include Factors That the Statutes Do Not Include In Determining Whether to Declare a Freeze.

Even assuming *arguendo* that Sections 354(i) and (j) give DNREC the authority to promulgate regulations specifying the procedures for determining a freeze of the REPSA requirements (which as we have shown above, they do *not*), Sections 5.4 through 5.8 of the 2015 Revised Rules then go far beyond any authority that the General Assembly gave DNREC.

Under proposed Section 5.4, even if DNREC's calculations show that the increase in the REPSA compliance costs hit their thresholds for implementation of a freeze, DNREC is not bound by those calculations to implement a freeze. Instead, the 2015 Revised Rules *then* state that four additional factors will be considered in determining whether to implement a freeze: (1) the overall energy market conditions (whatever *that* means); (2) the avoided cost benefits from the RPS (whatever *those* are); (3) the externality benefits due to the RPS (whatever *that* means);¹⁰ and (4) the economic impacts of the deployment of renewable energy in Delaware (whatever those may be).

None of these factors appears anywhere in Sections 354(i) or (j). And DNREC cannot amend the statute by including them in the 2015 Revised Rules.

In *Cartanza v. Delaware Department of Natural Resources and Environmental Control*, 2008 WL 4682653 (Del. Super Ct. Oct. 10, 2008), the Chancery Court found that DNREC was not permitted to set its own criteria by which SRA designations were to be made when the enabling statute specifically provided that authority to another body, and in so doing DNREC exceeded the authority delegated to it.

In *In the Matter of an Appeal of the Department of Natural Resources and Environmental Control*, 401 A.2d 93 (Del. Super Ct. 1978), the Superior Court found that the Secretary of DNREC could not:

... under the guise of his regulatory authority, foreclose the permit securing process and the application of the statutory criteria set forth in §6604. To hold otherwise would be to give the Secretary the power to prevent, permanently, any activity in a wetlands area simply through the designation process as opposed to the permit process. *An administrative agency may not adopt regulations which are inconsistent with the provisions of the enabling statute or out of harmony with, or extend the limits of, the Act which created it.*

Id. at 96 (emphasis added).

Similarly, in *Wilmington Country Club v. Delaware Liquor Commission*, 91 A.2d 250, 255 (Del. Super. 1952), the Superior Court found that an agency administering a statute may not,

¹⁰In the 2014 Proposed Rules, this factor was “the externality benefits of changes in energy markets.” For purposes of the DPA’s argument, this changes is a distinction without a difference, since, even as changed, it appears nowhere in either Section 354(i) or (j).

by adoption of a rule or regulation, add to a statutorily-granted right a condition that was not expressly stated in the statute.

If the calculation of “Renewable Energy Cost of Compliance” (calculated according to the changed definitions identified in the first section of these Comments) hits the statutory 1%/3% thresholds, then DNREC, in consultation with the Commission, must determine whether to implement a freeze or not. Neither DNREC nor the Commission has the statutory authority to consider any *other* factors. In this regard, the DPA notes that neither Sen. McDowell, Rep. Williams, nor Secretary O’Mara identified or discussed even one of these factors during the Senate and House debates on the REPSA amendments; rather, all emphasized that the *statutory* provisions would act as a “circuit breaker” in the event that the costs of complying with the increased solar/eligible energy resources in Section 354(a) exceeded the statutory 1%/3% thresholds. In light of this, the DPA submits that proposed Sections 5.4 through 5.8 exceed the authority that the General Assembly provided in 26 *Del. C.* §§354(i) and (j).

B. Even if the Statutes Gave DNREC the Authority to Promulgate These Factors, The Proposed Rules Are Opaque as to What Will Inform DNREC’s Judgment With Respect to Them and Have a Serious Potential To Be Applied Arbitrarily and Capriciously.

Assuming that Sections 354(i) and (j) *did* give DNREC the authority to include conditions not found in the statute (which they do *not*), it is interesting to compare these factors with the three items that the General Assembly specifically included in the total costs of compliance: the costs associated with any ratepayer funded state (solar) rebate program, REC/SREC purchases, and alternative compliance payments. What do these three things have in common? *They can all be easily ascertained.* We can ascertain the total amount associated with ratepayer-funded rebate programs (such as the Green Energy Fund). We can ascertain the cost to Delmarva of the REC/SREC purchases that it must make in a compliance year to meet the REPSA obligations. And we can ascertain how much was paid in alternative compliance payments. *These numbers are “objective benchmark[s].”* See *Gibson v. Sussex County Council*, 877 A.2d 54, 76 (Del. Ch. 2005) (County Council’s rejection of homeowners’ proposed project was arbitrary because there was no objective benchmark against which its “character” judgments could be measured).

But we *cannot* ascertain the amount of the factors set forth in proposed Rule 5.4. There are *no* “objective benchmarks.” Despite the definitions of these factors set forth in Rules 5.5 through 5.8, there is *no* source to which we can look to easily determine the exact cost or benefit of these factors. There is *no* source from which we can easily determine overall energy market conditions. There is *no* source from which we can easily determine the exact cost of the avoided cost benefits from the RPS. There is *no* source to which we can look to easily determine the externality benefits of changes from the RPS. And there is *no* source from which we can easily determine the economic impacts of the deployment of renewable energy in Delaware. These costs will be whatever DNREC, *in its sole discretion*, determines them to be.

Furthermore, despite the items identified in Rules 5.5 through 5.8, the 2015 Revised Rules are opaque with respect to what DNREC *will* consider in determining any of the factors.

By their very language, DNREC is not limited to considering these factors. Rules 5.5 through 5.8 say only that DNREC *may* consider them. Perhaps, then it may also consider other (unidentified) factors. And we will not know which factors DNREC considered because the 2015 Revised Rules do not require it to publish the bases for its conclusion.

Finally, nothing in the 2015 Revised Rules provides transparency as to what weight DNREC will assign to each factor. Is it 25% per factor? Will one factor have more weight than another, and if so, which one? Will the application/weighting of the factors change depending on what compliance year is being considered? We have no idea, because the 2015 Revised Rules don't tell us, and again, they don't require DNREC to publish the bases for its conclusion.

The prior discussion demonstrates that the factors in proposed Sections 5.4 through 5.8 could be applied differently from year to year, and this would be arbitrary and capricious. *See, e.g., Gibson*, 877 A.2d at 76 n.78 (noting that restrictive covenants in a housing development are only upheld when they are “clear, precise and capable of even-handed application, and that such covenants are “suspect” due to their tendency “to be arbitrary, capricious and therefore unreasonable” (citing *Seabrook Homeowners Association, Inc. v. Gresser*, 517 A.2d 263, 268 (Del. Ch. 1968)). The factors identified in the 2014 Revised Rules are neither clear nor precise – and they are capable of *uneven*-handed application.

In summary, even assuming that DNREC has the authority to promulgate these regulations, in identifying factors that it will consider after finding that the 1%/3% thresholds have been met, it has exceeded *any* authority that the General Assembly gave it. The statutes contain no such factors. Even if the General Assembly did give it the authority to consider these factors, there is no source from which anyone can independently verify the costs that DNREC will assign to them, and the 2015 Revised Rules do not require DNREC to explain how it arrived at its decision. DNREC has provided no explanation of how it will apply the factors, the weight it will assign to each factor, or whether the application and/or weight of the factors will change from year to year. These sections must be eliminated from the Final Rules.

VII. Conclusion.

Publicly-available information indicates that the cost caps in Sections 354(i) and (j) have already been met and a freeze should be implemented now. But, assuming that DNREC even has the authority to even promulgate these rules, every version of proposed rules that DNREC has proffered has made it obvious that it is doing everything it can to ensure that a freeze will *never* be declared. This is contrary to the General Assembly's intent. In amending the REPSA to include Sections 354(i) and (j), the General Assembly struck a balance between the goals of promoting renewable resources and ensuring that Delmarva customers could afford to pay their electricity bills. The 2015 Revised Rules – as did the versions preceding it - focus only on the promotion of renewable energy.

Based on the foregoing reasoning and authorities, the DPA submits that DNREC lacks the authority to promulgate the 2015 Revised Rules. Assuming only for the sake of argument that DNREC does have such authority, then the following changes to the 2015 Revised Rules are required:

(1) Sections 5.2, 5.3, 6.1 and 7.3 must be revised to provide that the statutorily-required consultation between DNREC and “the Commission” will be with the actual Public Service Commission, not the Commission’s staff.

(2) The costs associated with Delmarva’s use of the QFCP energy costs to fulfill its REC and SREC requirements must be included in calculating the total cost of compliance with the REPSA. Therefore, the definitions of QFCP and QFCPP that were in the 2014 Proposed Rules should be reinstated, and Sections 4.2 and 4.3 should be revised to include the cost of QFCPP offsets to the RPS and solar carve-out in the cost of compliance with the REPSA.

(3) The definition of “Total Retail Costs of Electricity” must be changed to remove the reference to “transmission, distribution and delivery costs” in the calculation of that total cost. Alternatively, if transmission, distribution and delivery costs remain in the definition of “Total Retail Costs of Electricity,” then the “Renewable Energy Cost of Compliance” must be amended to include “transmission, distribution and delivery costs” to enable a fair comparison.

(4) Sections 5.4 through 5.8 must be removed because the legislation does not identify these criteria as a basis for either supporting or rejecting a freeze. In including them as considerations whether to implement a freeze or not when the statutory percentages would warrant a freeze, DNREC has exceeded the authority provided to it. Even if DNREC did have authority to assess whether a freeze should be implemented after consideration of these factors, the 2015 Revised Rules do not identify how it will apply the factors, the weight it will assign to each factor, or whether the application and/or weight of the factors will change from year to year, and therefore are not capable of clear, precise and even-handed application from year to year.

Respectfully submitted

/s/ Regina A. Iorii

Regina A. Iorii (#2600)

Deputy Attorney General

Delaware Division of Justice

820 N. French Street, 6th Floor

Wilmington, DE 19801

(302) 577-8159

regina.iorii@state.de.us

Counsel for the Delaware Division of the
Public Advocate

Dated: November 13, 2015

EXHIBIT A



STATE OF DELAWARE
DIVISION OF ENERGY & CLIMATE
1203 COLLEGE PARK DRIVE, SUITE 101
DOVER, DELAWARE 19904

Office of Environmental Protection

Phone: (302) 735-3480
Fax: (302) 739-1840

September 8, 2015

Mr. Jason R. Smith
Case Manager
Delaware Public Service Commission
861 Silver Lake Boulevard, Suite 100
Dover, DE 19904

Subject: PSC Docket No. 13-250, Delmarva Power & Light Billing Transparency

Dear Mr. Smith:

DNREC favors the approach proposed by DPL at the last workshop as an appropriate way to provide meaningful information to customers, and respectfully disagrees with the proposal that Qualified Fuel Cell Provider ("QFCP") costs should be further broken out on customer bills as a separate line from the Renewable Compliance Charge.

DNREC has statutory responsibilities relating to two of the line items that were broken out in Phase I of this docket: the Green Energy Fund and the Renewable Compliance Charge. As such, DNREC has a direct interest in seeing that the costs and benefits of these programs are clearly communicated to customers. DNREC believes that it is in the public interest that citizens and ratepayers be well informed about the measurable economic benefits of clean energy, and believes that DPL's proposal is a reasonable approach to providing an appropriate level of detail.

While DNREC initially took exception to the Phase I proposal, in the end DNREC did not object to the consensus, being partially satisfied that the language on the bill and the accompanying website were helpful in providing meaningful information for customers.

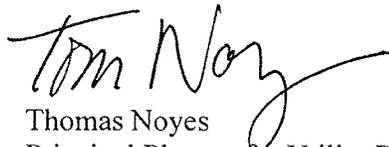
As for breaking out QFCP charges, DNREC notes that (1) there is no hard and fast standard guiding the parties, (2) the QFCP is an integral part of the Renewable Compliance Charge, (3) the parties have agreed that we should avoid information clutter at the expense of clarity, and (4) there is a likelihood that a new energy efficiency charge will be added to bills in the near future.

Delaware's Good Nature depends on you!

- (1) No statutory or regulatory standard has been established here. The closest thing to a standard in this docket would be “the appropriate level of detail contained in Delmarva’s monthly billing statements” (as expressed in the original petition), which suggests that this is a judgment call for the parties to work out rather than an exercise in applying an established standard in which we could unintentionally set a precedent where none now exists.
- (2) We should be mindful of the relationship between QFCP costs and REPSA compliance costs. QFCP costs are incurred to meet a portion of DPL’s RPS requirement, which reduces the number of RECs and SRECs DPL needs to buy to meet the requirement. Rather than break all of the resources used for RPS compliance, DNREC sees it as appropriate to report REPSA compliance as one cost, while providing customers with detailed information on the costs/kWh on the website as DPL proposes.
- (3) Discussions among the parties have often touched on the need to balance the public interest in informing customers with the diminishing returns of providing so much information that it bills become more difficult to understand. The Renewable Compliance Charge encompasses several types of energy sources and a variety of large and small projects. Workshop participants cited phone and cable bills as being so complicated as to become almost incomprehensible.
- (4) DNREC sees a significant possibility that another line for energy efficiency programs proposed through the Energy Efficiency Advisory Council and approved by the Commission could be added to customer bills. This would bring the number of separate lines for public benefit programs to four. DNREC expects to support this new line item, should the program portfolio be approved, as it would reflect a new legislatively mandated program. In doing so, DNREC sees the need to highlight the benefit/cost ratios of the programs and give customers clear information on how to take advantage of the new programs.

For these reasons, DNREC supports DPL’s proposal as providing the appropriate level of detail for customers.

Sincerely,



Thomas Noyes
Principal Planner for Utility Policy
DNREC Division of Energy & Climate

EXHIBIT B

In The Matter Of:
Before The Public Service Commission
In Re: Delmarva Power

Docket No. 13-250
Vol. 6
April 29, 2014

Wilcox & Fetzer, Ltd.
1330 King Street
Wilmington, DE 19801
email: depos@wilfet.com, web: www.wilfet.com
phone: 302-655-0477, fax: 302-655-0497



Original File hmg042914PSCDelmarvaVol6Docket13-250.gd.TXT

Min-U-Script® with Word Index

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

VOLUME 6

IN RE: IN THE MATTER OF :
LEGISLATIVE PETITION FOR :
REVIEW AND RECOMMENDATIONS :
ON DELMARVA POWER & LIGHT : PSC DOCKET
COMPANY UTILITY BILL : NO. 13-250
TRANSPARENCY (FILED JUNE 20, :
2013) :

Public Service Commission Hearing taken pursuant to notice before Gloria M. D'Amore, Registered Professional Reporter, in the offices of the Public Service Commission, 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware, on Tuesday, April 29, 2014 beginning at approximately 1:05 p.m., there being present:

APPEARANCES:

On behalf of the Public Service Commission:
J. DALLAS WINSLOW, CHAIRMAN
JAY LESTER, COMMISSIONER
JOANN CONAWAY, COMMISSIONER
JEFFREY CLARK, COMMISSIONER

WILCOX & FETZER
Registered Professional Reporters
1330 King Street - Wilmington, Delaware 19801
(302)-655-4077
www.wilfet.com



1 APPEARANCES CONTINUED:

2 On behalf of the Public Service Commission
3 Staff:

4 JAMES McC. GEDDES, ESQUIRE

5 On behalf of the Public Service Commission
6 Staff:

7 JULIE DONOGHUE, ESQUIRE

8 On behalf of the Public Service Commission
9 Staff:

10 KATHLEEN MAKOWSKI, ESQUIRE

11 On behalf of the Public Service Commission
12 Staff:

13 ROBERT HOWATT, EXECUTIVE DIRECTOR

14 JANIS L. DILLARD, DEPUTY DIRECTOR

15 ALISA BENTLEY, SECRETARY

16 VIRGINIA JACKSON

17 On behalf of The Public Advocate's Office:

18 DAVE L. BONAR, PUBLIC ADVOCATE

19 REGINA IORII, ESQUIRE

20 On behalf of Delmarva Power & Light Company:

21 TODD GOODMAN, ESQUIRE

22 On behalf of the Department of Natural
23 Resources & Environmental Control:

24 RALPH K. DURSTEIN, III, ESQUIRE

THOMAS NOYES



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(302) 655-0477

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1 APPEARANCES CONTINUED:

2 On behalf of the Caesar Rodney Institute:
3 DAVID STEVENSON, INTERVENOR

4 REPRESENTATIVE JOHN KOWALKO, INTERVENOR

5
6 JOHN NICHOLS, INTERVENOR

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1 period of less than a year as Delmarva makes
2 these adjustments.

3 There is some concern that full
4 disclosure should mean literally that. Not
5 only the cost of alternative energy, renewable
6 energy, but also the benefits.

7 And I would ask that the
8 Commission indulge me and allow Tom Noyes from
9 our Climate and Energy Division to expand upon
10 that.

11 MR. NOYES: Thank you, Mr.
12 Durstein and thank you, Commissioners.

13 To reiterate, DNREC favors full
14 and meaningful bill transparency. And we are
15 going to be joining the other parties in
16 supporting this interim settlement with this
17 Phase I here today.

18 We do have concerns, and with
19 your permission, I would like to just lay out
20 briefly some of our issues going forward, but
21 these we don't see as rising to the level of
22 holding this up.

23 CHAIR WINSLOW: Please proceed.

24 MR. NOYES: Thank you.



1 First of all, a small nitpick.
2 Jason Smith did a fine job did err on one point
3 in his memorandum. Specifically, DNREC never
4 was arguing about the cost of implementing
5 Phase I.

6 Otherwise, I think Jason in his
7 memorandum and in the workshops did a great
8 job. I wanted to clarify. That was an issue
9 for some of the other parties who watched the
10 dollars. That was not one of our issues.

11 I would like to point out that
12 DNREC favors bill transparency as the one
13 agency tasked with informing the public of the
14 cost of RPS compliance. We are tasked by
15 statute. And statutory requirement is found in
16 26 Delaware Code. It is called the cost cap
17 provision. And just about everybody in the
18 room who has been at the table as we worked our
19 way through this. And DNREC is finalizing
20 regulations on that.

21 But part of that regulation is,
22 we have the duty by statute to tell people what
23 the RPS costs.

24 So, one of our concerns has been,



1 let's try and make the reporting as consistent
2 from one thing to the next. And we will be
3 working with the parties going forward to
4 harmonize that.

5 Our principle concern with this,
6 and this again is mostly for future
7 discussions, but I want to let everybody in the
8 room know where we're going, is that we believe
9 the full and meaningful billing transparency
10 needs to look at the larger picture of costs
11 and benefits. And this is not just DNREC
12 saying this.

13 The rationale, the policy
14 rationale for the Renewable Energy Portfolio
15 Standards Act starts with the statement that
16 the General Assembly finds and declares that
17 the benefits of electricity from renewable
18 energy resources are true to the public at
19 large and outlines some of the -- specifies
20 some of those benefits. Improved air quality,
21 public health, increased electricity supply
22 diversity, protection against price volatility
23 and supply disruption, improved transmission
24 distribution performance and new economic



EXHIBIT C

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

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IN THE MATTER OF THE LEGISLATIVE)
PETITION FOR REVIEW AND)
RECOMMENDATIONS ON) PSC DOCKET NO. 13-250
DELMARVA POWER & LIGHT COMPANY)
UTILITY BILL TRANSPARENCY)
(FILED JUNE 20, 2013))

ORDER NO. 8556

AND NOW, this 29th day of April, 2014;

WHEREAS, on June 20, 2013, Representative John Kowalko and State Senators Dave Lawson and Gary Simpson, on behalf of nineteen other members of the Delaware General Assembly, filed a Petition (the "Petition") requesting the Delaware Public Service Commission (the "Commission") to open a docket to review the appropriate level of detail contained in monthly billing statements prepared by Delmarva Power & Light Company ("Delmarva" or the "Company") and sent to its customers; and

WHEREAS, the Petition alleged that customers of Delmarva do not know how much they are being charged each month for various legislatively-mandated initiatives such as the Renewable Energy Portfolio Standards, the Qualified Fuel Cell Provider ("QFCP") project, Low Income Assistance and others; and

WHEREAS, the Commission's general authority under Title 26 of the Delaware Code provides it the right and responsibility to investigate any issue involving the transparency of charges associated with compliance with legislative mandates included in utility customers' bills; and

WHEREAS, at its regularly scheduled Commission Meeting of July 2, 2013, the Commission opened this docket for the purposes of conducting a review to determine the appropriate level of detail regarding the charges associated with legislative mandates that should be included on Delmarva customers' electric bills; and

WHEREAS, the Commission also ordered appropriate public notice of the opening of this docket and allowed interested parties to intervene in order to commence a working group to report back to the Commission on its recommendations regarding utility bill transparency related to Delmarva and its customer billing system; and

WHEREAS, the working group met on October 22, 2013, November 19, 2013, and April 10, 2014 to discuss the issues relating to the appropriate level of detail that should be included on Delmarva's monthly billing statements; and

WHEREAS, after taking into consideration all of the requests made by the parties at the previously held workshops, Delmarva circulated a Proposal (the "Proposal"), which is attached to this order as Exhibit "A", purporting to implement the requested changes in two phases pending Commission approval; and

WHEREAS, Delmarva requests permission from the Commission to implement Phase I of its proposed changes to its customers' electric bills, effective July 1, 2014, that will remove from the Distribution Charge of a customer's bill, and list separately, three (3) additional line items: (1) the Low Income Charge (2) Green Energy Fund; and (3) Renewable Compliance Charges; and

WHEREAS, Phase II of this docket would require the parties to reconvene at a later date to determine which, if any, additional changes can be further broken out after Delmarva's conversion to its new SolutionOne billing system; and

WHEREAS, Delmarva also requests Commission approval of a regulatory asset to capture the costs, estimated at \$23,630, arising out of this docket related to the reprogramming of its existing billing system to specifically identify these charges separately on its customer's bills; and

WHEREAS, the Commission's designated Acting Presiding Officer has provided the Commission with a Memorandum dated April 23, 2014 detailing the working group process, reviewing Delmarva's proposed billing changes and providing the Commission with his recommendations;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. That the Commission approves Delmarva's request to implement the changes to its electric bills in two phases as proposed by the Company effective July 1, 2014.

2. That the Commission approves the creation of a regulatory asset, subject to audit, to recover the costs of reprogramming Delmarva's existing billing system, estimated to be \$23,630, to remove from the distribution charge, and list separately as additional line items, the Low Income Charge, the Green Energy Charge and Renewable Compliance Charges.

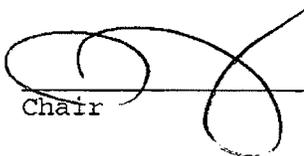
3. That on or before July 8, 2014, Delmarva shall submit a compliance filing to the Commission with the revised tariff sheets reflecting the changes effective July 1, 2014.

4. That on or before December 1, 2014, Delmarva shall submit to the Commission written notification advising it of the status of the implementation of SolutionOne. This notification should include whether or not the Company reasonably believes that SolutionOne will be ready to "go-live" during the first quarter of 2015. If there is reason to believe that SolutionOne will not launch during the first quarter of 2015, then the Company shall provide an explanation for the delay as well as an updated timeframe for when the implementation might be completed.

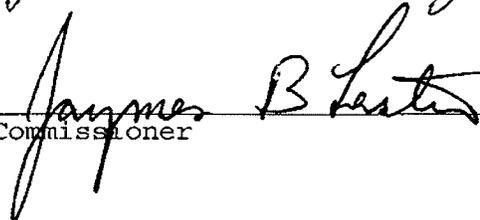
5. That this docket shall be kept open, with the present service list, for the purposes of reconvening the parties at a later date to determine which, if any, additional changes can be further broken out and removed from the Distribution Charge from which they may be presently embedded.

6. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary and proper.

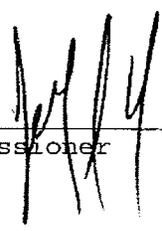
BY ORDER OF THE COMMISSION:


Chair


Commissioner


Commissioner

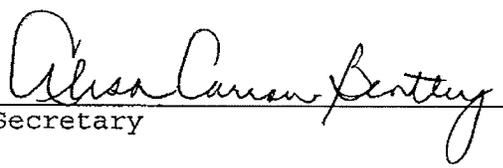
PSC Docket No. 13-250, Order No. 8556 Cont'd



Commissioner

Commissioner

ATTEST:



Secretary

Exhibit "A"

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF DELAWARE

IN THE MATTER OF THE LEGISLATIVE)
PETITION FOR REVIEW AND)
RECOMMENDATIONS ON DELMARVA POWER &) PSC Docket No. 13-250
LIGHT COMPANY UTILITY BILL)
TRANSPARENCY (FILED JUNE 20, 2013))

Proposal of Delmarva Power & Light Company

The parties to this docket have met several times, including workshops on October 22, 2013 and November 19, 2013. The parties are scheduled to meet again on April 10, 2014. Based upon the workshop discussions, it appears that all parties understand and agree as follows:

1. That it is important for customers to be able to better determine what portions of the charges they pay in their Delmarva bills go directly to providing utility services as opposed to the costs that Delmarva is required by law to collect from its customers and pass on to entities other than Delmarva.
2. That currently, there are certain charges that are calculated separately and then added to the Distribution Charge on the bill each month. These charges can be identified and separately listed on customer bills without a significant amount of programming and testing costs. Because these charges are not part of the current Commission-approved Distribution rate design, a Commission rate proceeding is not required to separate these charges from the Distribution Charge.
3. That other legally required charges are embedded in the current Distribution rate design approved by the Commission and as such, identifying the portion(s) of the Distribution Charge attributable to those embedded charges and separating them into individual rates/charges would require an official Commission proceeding, followed by lengthy and costly system programming, testing and other costs.
4. That presently, Delmarva is in the process of converting its current customer information and billing system to a new system known as "SolutionOne." The SolutionOne system is presently scheduled to replace the current system in approximately the First Quarter 2015. For reasons related to programming, testing, regulatory costs and timing, it would be costly and inefficient to incur all of the costs involved in obtaining regulatory approval necessary to identify costs described in Paragraph 3 above, and then programming the current customer information system, when the new SolutionOne system is presently being programmed and is scheduled to go live in 2015.
5. That it would be of benefit to customers to take action now to, as soon as reasonably practicable, to seek Commission approval to make changes to the current customer information and billing system that would enable Delmarva to efficiently identify on its bills the charges described generally in Paragraph 2, above. Once the new SolutionOne system is fully operational, further work necessary to determine other charges that should be separately identified on customer bills will be undertaken by the parties.

Accordingly, based upon the facts developed at the workshops as set forth above, Delmarva proposes that the parties agree to the following, as broken out into two phases:

PHASE - I
Changes to the Delmarva Power Electric Bill Effective July 1, 2014

Delmarva will identify and separately designate on its bills the charges contained in the category of charges described generally in Paragraph 2, above. The changes between current and proposed bills would be as follows:

Current Charges as shown on the bill:

Customer Charge	\$ 9.59
Distribution Charge: First 500 kWh X \$0.036454 Each kWh	\$18.24
Last 812 kWh X \$0.036454 Each kWh	\$29.60
Total Electric Delivery Charges	<u>\$57.43</u>

Proposed Charges to be shown on the bill:

(changes from current billing format are identified in highlighted text)

Customer Charge	\$ 9.59
Distribution Charge: First 500 kWh X \$0.029975 Each kWh	\$14.99
Last 812 kWh X \$0.029975 Each kWh	\$24.35
Low Income Charge: All kWh X \$0.000095 Each kWh	\$ 0.12
Green Energy Fund: All kWh X \$0.000356 Each kWh	\$ 0.47
Renewable Compliance Charges: All kWh X \$0.006028	\$ 7.91
Total Electric Delivery Charges	<u>\$57.43</u>

Delmarva estimates that the cost of programming, testing and other expenses necessary to achieve Phase I is approximately 220 hours of programming at \$23,630. The date of July 1, 2014 implementation is dependent upon: (1) achieving consensus of the parties and (2) Commission approval by April 29, 2014. "Consensus" must include DNREC, due to the currently ongoing DNREC rulemaking proceeding for the purpose of determining the cost of the Renewable Portfolio Standard compliance (pursuant to 26 Del.C. § 354 (i) & (j)). Commission authority must include the approval of a regulatory asset to capture the costs of and on the programming, customer education and other costs arising out of this docket.

PHASE - II
Changes to the Delmarva Power Electric Bill Under SolutionOne

Coincident with a base rate case, or other appropriate Commission proceeding, the parties shall reconvene to determine which, if any, additional charges currently imbedded within the "Distribution Charge" as listed on the current bill will be removed from the Distribution Charge and separately listed on customer bills. The implementation of the proposed Phase II changes will occur after the conversion to the Company's SolutionOne billing system has been successfully completed.

EXHIBIT D



STATE OF DELAWARE

PUBLIC SERVICE COMMISSION
861 SILVER LAKE BLVD.
CANNON BUILDING, SUITE 100
DOVER, DELAWARE 19904

TELEPHONE: (302) 736-7500
FAX: (302) 739-4849

October 15, 2015

TO: The Chair and Members of the Commission

FROM: Jason R. Smith 
Public Utilities Analyst III

SUBJECT: IN THE MATTER OF THE LEGISLATIVE PETITION FOR REVIEW AND
RECOMMENDATIONS ON DELMARVA POWER & LIGHT COMPANY UTILITY BILL
TRANSPARENCY (FILED JUNE 20, 2013) – PSC DOCKET NO. 13-250

Background

On June 20, 2013, Representative John Kowalko, State Senators Dave Lawson and Gary Simpson on behalf of nineteen other members of the Delaware Legislature filed a Petition (the “Petition”) requesting the Delaware Public Service Commission (the “Commission”) to open a docket to review the appropriate level of detail contained in monthly billing statements prepared by Delmarva Power & Light Company (“Delmarva” or the “Company”) for its customers. The Petition alleged that customers of Delmarva do not know how much they are being charged each month for various legislative mandated initiatives such as the Renewable Energy Portfolio Standards, the Qualified Fuel Cell Provider (“QFCP”) project¹, Low Income Assistance and others.

The Commission considered the Petition at its regularly scheduled meeting of July 2, 2013 and found that the issues raised in the Petition concerning the level of detail was within the Commission’s general authority under Title 26 of the Delaware Code, and was an important issue that deserved further review and analysis.

¹ For clarification purposes the Qualified Fuel Cell Provider charge was referred to in the original petition filed by the Delaware Legislature as “Bloom Energy” or “Bloom Charge”. This terminology was used interchangeably throughout the workshop process.

As a result, the Commission issued Order No. 8403 (the "Initial Order") directing the Commission Staff ("Staff") to open a docket and conduct the review to determine the appropriate level of detail that customers should expect in their electric bills. Additionally, the Order appointed Jason Smith as Case Manager with the ability to act as a Presiding Officer for this docket, set a schedule, and perform other administrative duties. The Commission specified, pursuant to Rule 21 of the Commission's Rules of Practice and Procedure, that the Acting Presiding Officer was specifically delegated the authority to grant or deny petitions seeking leave to intervene and for admission of counsel *pro hac vice*. Further, the Commission directed Staff to issue a public notice of the Petition in the legal classified section of The News Journal and The Delaware State News on July 9 and 10, 2013. As well as set a deadline of August 9, 2013 for interested parties to intervene. Lastly, the Initial Order directed Staff to report back to the Commission on the parties recommendations regarding utility bill transparency related to Delmarva and its customer billing system.

Interveners

Four petitions to intervene were filed in this docket. The Division of the Public Advocate ("DPA") filed its statutory notice of intervention on July 2, 2013. The Caesar Rodney Institute ("CRI") filed its petition to intervene on July 11, 2013. Mr. John Nichols ("Mr. Nichols") filed his petition to intervene on July 17, 2013. The Department of Natural Resources and Environmental Control ("DNREC") filed its petition to intervene on July 30, 2013. These petitions to intervene were later granted by PSC Order Nos. 8423, 8428, and 8429 respectively.

Phase I – (June 2013 to April 2014)

The Parties participated in three (3) workshops, held at the Commission's Dover office, at which the parties discussed the issues raised by the Petition. The first of these transcribed workshops occurred on October 22, 2013, followed by a second workshop held on November 19, 2013, concluding with a workshop held on April 10, 2014.

Many topics were discussed at the workshops, including how to coordinate the outcome of this docket with the development and implementation of Delmarva's new billing system known as SolutionOne ("SolutionOne"). Discussions also centered on how the QFCP charge could be better communicated and the feasibility of the creation of a website to supplement or aid in the clarification of Delmarva's billing statements. At the last workshop, it was confirmed that PSC Staff currently posts on the Commission website the monthly filing made by Delmarva and subsequent Staff Memorandum and Order regarding the QFCP.

The remaining discussions centered on determining what items could be easily quantifiable, accurately reflected, and relevant to the interests of the majority of Delmarva's ratepayers.

The Initial Proposal

At the workshop on April 10, 2014, Delmarva presented a proposal (the "Initial Proposal") taking into consideration all of the requests at the previously held workshops while weighing its ability to deliver on such requests. Delmarva proposed implementing the requested changes in two phases.

Phase I included reprogramming changes to Delmarva's electric bill effective July 1, 2014 with an estimated programming expense of approximately \$23,630. The Initial Proposal removed three items that had been previously included in the Distribution Charge of the customers' bill and would then list these items separately. These additional line items would include the addition of the Low Income Charge, Green Energy Fund, and the Renewable Compliance Charges.

The Commission deliberated on this matter on April 29, 2014 and found that the Initial Proposal brought forth by Delmarva was reasonable and would provide immediate resolution to the effort to increase transparency in Delmarva's customers' bills. The Commission adopted Delmarva's Initial Proposal as submitted and the Commission determined that the docket would remain open to allow for the parties to reconvene at a later date to determine if any additional charges can be further broken out and removed from the Distribution Charge.²

Phase II – (June 2015 to Present)

Phase II commenced with the Parties meeting at a workshop held on June 2, 2015, followed by a second workshop on August 25, 2015. The objective of these transcribed workshops was to facilitate a discussion among the Parties to determine which, if any, additional changes should be further broken out on Delmarva's bill, considering that any such changes must be accurately reflected and quantifiable.

A list of the potential line items identified during the workshops included:

- Regional Greenhouse Gas Initiative ("RGGI") costs
 - The State of Delaware is a signatory state to the RGGI, which is a cooperative effort on the part of mid-Atlantic and northeastern states to

² See PSC Order No. 8556 (dated April 29, 2014).

curtail CO₂ emissions from energy generating facilities utilizing fossil fuels. RGGI is established by a Memorandum of Understanding signed by Delaware and other states calling for the development of a program.³

- Qualified Fuel Cell Provider (“QFCP”) project charge
 - This is a non-by passable charge for costs incurred for incremental site preparation, filing, administrative, and other costs incurred by the QFCP, reduced by compensation for any revenues from PJM from the output of the QFCP project and further offset by avoided renewable portfolio standards costs related to otherwise required renewable and/or solar renewable energy credits.⁴
- Depreciation costs
 - The annual depreciation amount is included as an expense for ratemaking purposes. Depreciation is the allocation (or spreading) of the cost of an asset over its useful life.
- Capital costs
 - This term is the amount spent to acquire, build, install or improve long-term assets. This also includes infrastructure costs related to transmission and distribution plant.
- Infrastructure costs
 - Infrastructure costs are in part capital costs as it is assets Delmarva uses to provide utility service to its customers. (i.e. substations, transformers, poles, meters, etc.).
- Reliability investment
 - This is referring to capital expenditures made by Delmarva to improve the performance of its electric system. This can include replacement of aging infrastructure prior to its failure, or restoration efforts to the system after failure or a storm event.
- Resilience investment
 - This can be defined by capital expenditures made by Delmarva that are beyond the normal reliability investments. Typically this can refer for

³ See 7 *Del. C.* § 6043(a)(7) (b)(3).

⁴ Under 26 *Del. C.* §352(17), a "qualified fuel cell provider project" means a fuel cell power generation project located in Delaware owned and/or operated by a qualified fuel cell provider under a tariff approved by the Commission pursuant to 26 *Del. C.* §364(d). Delmarva presently files on a monthly basis with the Commission a copy of the computation of the Service Classification QFCP-RC Charge (“QFCP-RC Charge”) with current factors and reconciliation factors at least thirty days prior to applying such QFCP-RC Charge on customers’ bills. See P.S.C. Del. No. 8 – Electric, Original Leaf No. 74d, Section F.

efforts made to reinforce the electric system to withstand major storm events such as hurricanes or derechos.⁵

- Regulatory costs
 - This refers to the Delmarva costs paid for regulatory coordination with the State of Delaware, PJM, and FERC. This could be viewed to include Commission costs, regulatory expenses, and the State of Delaware Public Utility Tax.⁶
- Net Metering
 - A broad definition of this refers to a service available to an electric consumer who has an eligible on-site generating facility capable of delivering electric to a local distribution facility. This may be used to offset a customer's electric energy provided by the utility during a billing cycle.
- Dynamic Pricing
 - This program is intended to be a mechanism to manage customer consumption of electricity in response to supply conditions. A primary example is when an electric customer reduces their consumption at a critical or peak time.

After the conclusion of the first workshop on June 2, 2015, the Commission Staff submitted data requests to Delmarva in an attempt to facilitate the next workshop discussion. The second workshop discussions centered on the ability of Delmarva to accurately calculate the items previously discussed.

The second workshop demonstrated that much of the requested cost information could not be substantiated due to the way most base rate cases, in the past, have been settled. In most rate case settlements, the amount of the agreed upon additional revenues is not applied to specific items of costs that make up the base rate request. Thus, a majority of these costs cannot be accurately identified as being specifically recovered. To identify the recovery of each cost in future rate cases would require changes in PSC regulatory policy that is outside the scope of this proceeding. Additionally, there would be significant overlap or duplication among capital and infrastructure costs since many of these costs can also improve reliability and resiliency investments.

⁵ A "derecho" is a widespread, long-lived, straight-line wind storm that is associated with a land-based, fast moving group of severe thunderstorms. Delaware experienced the effects of a derecho on June 29, 2012.

⁶ The State of Delaware Public Utility Tax is presently identified as a line item on bills for customers who pay the tax.

With respect to RGGI costs embedded in supply charges, there is no current methodology to accurately determine the cost that ratepayers are actually incurring in the supply portion of their bills. Carbon fueled competitive supply generators in the RGGI states are obligated to purchase RGGI emission credits for the right to emit carbon dioxide. How much of that purchase cost is included in competitive supply bids is unknown. Further, competitive supply generators located outside the RGGI states are not obligated to purchase emissions credits and may well be supplying energy to Delaware customers through Delmarva's SOS rates or other 3rd party supplier rates, in which case there should be no RGGI costs. RGGI costs could only be an estimate and/or would require significant detailed tracking of all energy purchases into Delaware.⁷

The cost of net metering subsidies and how Delmarva customers pay the added costs was also discussed in the workshops. There was general agreement that the policies related to net metering could be more effectively handled in the legislative arena. Likewise, the issues around dynamic pricing, while mentioned as an issue in the workshops, was also acknowledged to be a topic better handled in another forum.⁸

Delmarva offered the Parties a proposal (the "Proposal") attempting to address the items discussed at the prior workshop. Delmarva proposed to include language on the bill to further clarify the QFCP project. Delmarva suggested adding the following language to its customers' bills:

"For information on the cost of different components of your Renewable Compliance Charge, go to www.delmarva.com/uploadedFiles/www.delmarva.com/Pages/my-home/choices-and-rates/Delaware/QFCP.pdf"

If a Delmarva customer were to access that file they would find the same instructions and chart used to calculate the monthly QFCP filing that Delmarva currently makes with the Commission. (See, **Attachment A** of this Memorandum).

Unfortunately, some in the working group felt that Delmarva's Proposal did not address the disclosure of the QFCP charge to their satisfaction and remain steadfast that it should be a line item on Delmarva's bills. The second workshop concluded with the Parties agreeing to take some time to digest the discussion that took place and that if there were going to be any objections to the identification of the QFCP as a line item, then that Party would inform the

⁷ Workshop Transcript, June 2, 2015, Mr. David Stevenson, CRI, Presentation, pages 375-390

⁸ Workshop Transcript, June 2, 2015, Mr. John Nichols, discussion pages 446-460.

participants in writing. Correspondence was received from DNREC, the DPA, Delmarva, Representative Kowalko, Mr. Nichols, and Representative Kowalko and Senator Dave Lawson on their respective positions on this issue. (See, **Attachments B, C, D, E, F, and G**).

Recommendations

In general, the majority of the topics raised in Phase II would require some type of regulatory policy decision that should take place in a separate forum given that there is no feasible way to accurately determine those costs and have them separately broken out on Delmarva's bills. However, there is still existed one issue that could not be agreed upon by the Parties; disclosure of the QFCP project as a line item on the Delmarva customer's bill.

As the Acting Presiding Officer of this proceeding, I feel it is appropriate to provide the Commission with several different scenarios that could resolve this docket, along with my recommendation. The possible scenarios are:

Scenario "A" – Accept that the Commission remains satisfied with the appropriate level of detail contained in the monthly billing statements resulting from changes in Phase I and ordering no further changes to Delmarva's bill at this time.

Scenario "B" – Request that Delmarva list the Qualified Fuel Cell Provider project as an estimated line item that would be further broken out from the Renewable Compliance Charges line of the bill, exclusive of avoided cost savings.

Scenario "C" – Accept and request that Delmarva's make changes to its bill as indicated in its August 25, 2015 Proposal as outlined in Attachment A. This would add language on the bill indicating where the customer can on Delmarva's website review the different components of the Renewable Compliance Charge.

Scenario "D" – An alternative course of action as may be decided upon by the Commission.

After considering the discussions that took place at the workshop, and the comments offered by the Parties, I cannot recommend to the Commission that the QFCP project be identified as a separate line item at this time.

The Commission issued PSC Order No. 8556 (April 29, 2014), which states in pertinent part:

That this docket shall be kept open, with the present service list, for the purposes of reconvening the parties at a later date to determine which, if any, additional changes can be further broken out and removed from the Distribution Charge from which they may be presently embedded. (Paragraph 5 of the Order).

I interpret this as the Commission's primary direction to focus on the removal of items from the Distribution Charge. The QFCP project is an item that is presently embedded in the Renewable Compliance Charge, which was already been removed from the Distribution Charge in Phase I to provide better clarity for the cost of compliance with Delaware's Renewable Energy Portfolio Standards Act ("REPSA"). At issue here is that the QFCP project is just one of many projects that encompass the Renewable Compliance Charge. Other projects include major wind projects, the Dover SunPark, the Delaware Solar Program and many more. Since the Renewable Compliance Charge involves a variety of energy sources, with projects on both a large and small scale, it is not feasible to list out every single project for disclosure on the bill. Singling out one particular project when there are many other projects that comprise the Renewable Compliance Charge does not appear to be in the Delmarva customers' best interests.

Furthermore, the actual QFCP is comprised of four separate factors that make up the actual charge: (1) a fixed disbursement rate; (2) the fuel cost of the natural gas; (3) the revenues derived from PJM energy and capacity sales; and (4) the avoided costs for RECS and SRECS that Delmarva no longer requires for compliance. In addition, true-ups from previous month are often included in the calculations. Thus, even if Delmarva were to provide a separate line item on its bills for the QFCP, it may not necessarily accurately reflect that month's actual charges or credits. The Commission has previously made clear that it does not wish to consider having information on the bill that is potentially inaccurate and is only looking for quantifiable numbers that can be identified as specific and accurate costs so that customers get an improved, not a more complicated, price signal for their energy consumption. Also it should be noted that the Commission presently reviews and approves a monthly tariff filing detailing the calculations of the QFCP charge -- all of which is made publicly available on the Commission's electronic docket system, DelaFile.

Finally, to my knowledge, the Commission Staff does not receive a substantial amount of inquiries from ratepayers relate to the QFCP charges. For those that do contact the Commission regarding QFCP charges, they can easily be connected to a Staff member who is able to assist them regarding their inquiry.

Acting Presiding Officer Recommendation

In summary, based on my review of the issues, and the need to maintain accuracy in Delmarva's bills, I respectfully recommend that the Commission adopt *Scenario "C"* which is the Proposal offered by Delmarva at the August 27, 2015 workshop, attached to this Memorandum as **Attachment A**. I believe that the Proposal provided by Delmarva presents an optimal and well-balanced approach. At this time, this appears to be the most efficient way to provide those few ratepayers who may be interested in seeing their portion of the QFCP charge with a method of how to determine it.

Further, it is my understanding that Delmarva is willing to work with any party to add further clarification on its website regarding its bills. Delmarva has made it clear that it plans to put additional billing information on its website to enable customers who want to learn more about the charges to do so. However, this docket was opened with the intention of clarifying line items on Delmarva's billing statements, not updates to Delmarva's website. Much of the discussion that took place at the workshops centered around who would manage and determine the content of such a website, which caused the working group to lose a little bit of its focus. I would recommend that if a Party has a specific request for something it would like to see on Delmarva's website, then perhaps that Party should reach out to Delmarva and have that discussion outside of this proceeding.

While recommending *Scenario "C"* as the best course of action to maintain the integrity of Delmarva's bills, the addition of the QFCP as a line item on the bill, separated out from other REPSA costs, merely identifies a specific cost that is part of the total REPSA costs. The separate QFCP charge is readily available to customers seeking this information, but as previously noted it is an incomplete picture as an estimate with unknown follow on true-ups and missed avoided cost savings. Provided the Commission is comfortable with the limitations contained in the QFCP charge, it could certainly be separated out as an individual line item as requested by some parties.

Lastly, I would recommend that once the Commission has had the opportunity to hear from all of the Parties and deliberate on this matter, that any final Order close this docket.

EXHIBIT E

In The Matter Of:
State of Delaware - 145th General Assembly
Senate Debate

Senate Substitute No. 1 for Senate Bill No. 119
June 22, 2010

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STATE OF DELAWARE
145th GENERAL ASSEMBLY
SENATE DEBATE

SENATE SUBSTITUTE NO. 1 for SENATE BILL NO. 119

June 22, 2010

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1 THE PRESIDENT: Senator McDowell?

2 SENATOR McDOWELL: Thank you, Mr.
3 President. At this time I'd like to
4 respectfully request that Senate Substitute 1
5 for Senate Bill 119 be adopted in lieu of the
6 original and read in for the purpose of being
7 considered by the Senate.

8 THE PRESIDENT: Senator DeLuca.

9 SENATOR DeLUCA: It's already
10 been adopted in lieu of original, and it's been
11 laid on the table with the bill, so you need to
12 lift the bill from the table in order to work.

13 SENATOR McDOWELL: Mr. President,
14 I move to lift the bill, the Senate Substitute
15 No. 1 from the table, be worked.

16 THE PRESIDENT: Madam Reading
17 Clerk, for purposes of consideration by the
18 Senate, please read Senate Substitute No. 1 for
19 Senate Bill 119 by title only.

20 READING CLERK: Senate Substitute
21 No. 1 for Senate Bill No. 119, sponsored by
22 Senator McDowell, Representative D.E. Williams
23 and others. An Act to Amend Title 26 of the
24 Delaware Code Relating to the Renewable Energy



1 Portfolio Standards.

2 Mr. President, this completes the
3 reading of Senate Substitute No. 1 for Senate
4 Bill No. 119.

5 THE PRESIDENT: Senate Substitute
6 1 for Senate Bill No. 119 is before the Senate.

7 Senator McDowell.

8 SENATOR McDOWELL: Thank you, Mr.
9 President. Mr. President, this act has been a
10 bill that we have worked on pretty feverishly
11 for about six months, and quite intensively for
12 the last two weeks. But it is a bill that will
13 strengthen Delaware's RPS, which is among the
14 better in the country, by increasing and
15 extending the minimum percentage of renewable
16 energy supply. It will provide for stability
17 for the development of renewable energy markets
18 in Delaware and incentivize renewable energy
19 projects that employ Delaware labor and
20 Delaware manufactured products.

21 It also provides consumer
22 protections by limiting any rate impact that it
23 may create.

24 Finally, it provides for



1 municipal electric companies and rural
2 co-operatives to have equitable participation
3 in the RPS and create greater opportunity for
4 renewable energy technologies to reach market
5 parity for the benefit of all Delaware
6 ratepayers.

7 So, so what exactly does it do?
8 It would increase the minimum requirement for
9 renewables by 25 percent by the year 2025. The
10 previous market portfolio was to reach maximum
11 in 2019. So even though we've increased the
12 portfolio, we've extended the time.

13 The same is true of the set-aside
14 for solar photovoltaics. That's increased from
15 2.5 percent to 3.5 percent by the year 2025.
16 It incentivizes renewable energy markets to
17 employ local labor in manufacturing. There is
18 a 10 percent credit for the use of local labor
19 and a 10 percent additional credit for the use
20 of local manufacturing.

21 It provides for ratepayer
22 protection against cost impacts. Any time the
23 cost impact of the photovoltaic goes up by 1
24 percent, the utility involved can push what



1 we like to call a circuit breaker. In other
2 words, they can suspend the program for that
3 year and simply extend the portfolio forward by
4 a year for their utility. This is on a
5 utility-by- utility basis so each one has the
6 right to do that. It creates parity for the,
7 for the utilities in the state, in that they
8 all can participate in this.

9 And finally, it establishes a
10 task force to develop solutions to key market
11 challenges surrounding renewable energy, such
12 as price stability, revenue certainty for
13 investment, local job creation, and a balance
14 of different size projects.

15 So all in all, we believe that
16 this, this bill will keep Delaware in the
17 forefront in the renewable field and lessen our
18 dependence on oil, and particularly foreign
19 imported oil.

20 Mr. President, there is a key
21 formula that I like to cite. It should be in
22 front of all of us each and every day. At the
23 current moment, we are importing foreign oil at
24 the rate of \$300 billion a year. That's \$300



1 billion that flies away from our country never
2 to be seen again.

3 Should we -- should we develop
4 systems like this for alternatives, we will
5 keep that money here. Keeping that money here
6 will recirculate by 3.5 times. That equals 1
7 trillion and 50 billion new dollars in the
8 American economy each year, not Delaware, the
9 American economy. But if you, if you work that
10 out by an accepted figure of 40 percent of all
11 money in the economy goes to salaries and
12 wages, that means \$420 billion more for
13 salaries and wages in the U.S.

14 And then further, if you
15 calculate \$42,000 per salary or wage, you would
16 create 10,000 new jobs by that effort. Divide
17 that by a factor for Delaware, and Delaware
18 would see 42,000 -- I'm sorry, 24,000 new jobs.
19 That's why this measure is really important.

20 Mr. President, I'll be glad to
21 answer any questions. Otherwise --

22 THE PRESIDENT: I have a list.

23 Senator Bunting?

24 SENATOR BUNTING: Thank you, Mr.



1 President. I think some other (Inaudible)
2 stood before me, but I realize that, Senator
3 McDowell, the time effort you've put into this.

4 I think the nature of the
5 seriousness of this legislation, and here we
6 are in the last few days of the General
7 Assembly, this is legislation I think that
8 needs quite a lot of debate. It may have a
9 positive impact and it may have a negative
10 impact on -- particularly on our small
11 businesses in Delaware.

12 I guess that's what the
13 unintended consequences of many things we do
14 here. It may look good on paper, but our
15 surrounding neighbors are not doing the same
16 thing. We have businesses here are -- today
17 are struggling with their overhead cost, and,
18 but I was lobbied today, by being Chairman of
19 Agriculture, by one of the members of the Isaac
20 family, who has a farm operation near Milton,
21 and they're looking forward to this in the
22 realm of solar power and being able to use
23 that, as farmers need diversity today to stay
24 competitive. So I think that's the positive



1 side of it.

2 But I'm just concerned, as most
3 of the small businesspeople I've talked to, as
4 to what possibly unintended consequences on
5 their bottom line is going to be. And some of
6 the goals that you have here are admirable,
7 certainly, but whether they're truly
8 obtainable, you know, I know we all try to
9 reach for something we can't touch sometimes.

10 But in this case, those of us
11 that are struggling, running businesses,
12 realize today we're pitching pennies all over
13 the place and not having -- trying not to lay
14 off anyone. I'm not sure you're hiring here or
15 you're going to be laying off, and that happens
16 to be my concern.

17 I had e-mailed you and asked for
18 possibly this bill wait till January when it
19 had better time for airing and let the general
20 public know exactly what's coming at them. But
21 that's all I have, sir.

22 SENATOR McDOWELL: Mr. President,
23 I understand the senator's feelings. I think
24 some of those are somewhat misplaced in that



1 we -- this bill has been out here for a year
2 now, more than a year now. And we have had --
3 with the stakeholders, we've had many, many
4 series of meetings, and they are essentially
5 all in agreement now that this compromise that
6 we have, as represented by Senate Substitute 1,
7 is a good compromise that we can go forward
8 with.

9 You will note that I mentioned
10 the creation of a group to work on problems as
11 they may or may not develop. We've also built
12 safety valves into this bill. I told you about
13 the circuit breaker that we have put in where
14 any utility who can show that its rates are
15 going up or would go up by 1 percent in case
16 of -- of solar, the retail electric would go up
17 by 1 percent in a year in the cases of solar,
18 or 3 percent in the overall, they could push
19 the circuit breaker and suspend their
20 participation in the program for one year. And
21 so that is a very, very serious rate
22 production -- ratepayer protection.

23 I don't think there's anybody
24 that would contend that if we stick with the



1 status quo, the, the cost of oil and other
2 petroleum-based alternatives is going to go up
3 far more than that. So that there's actually,
4 in developing the alternative of sustainable
5 energy, there is very, very sincere ratepayer
6 protection.

7 I'd also like to say the success
8 that we've already had, and these are proven
9 successes, we have just recently, Delaware has
10 advanced into the top three, I believe, in the
11 nation in the rate per capita of solar that
12 we're installing. And that's -- we've come a
13 long way to get there, and it is the renewable
14 portfolio system that has allowed us to make
15 those advances.

16 But besides that, just being a
17 statistic, here are some numbers that really
18 count. I'm told today that we now have 210
19 solar installers added to the job market in our
20 state. We have 140 factory jobs at Motech that
21 are factory manufacturing jobs, and they are
22 planning very soon to add 70 more. We believe
23 that this expansion of the renewable portfolio
24 will even grow that number.



1 It's a very interesting number,
2 though. When I add those numbers up, I come
3 very close to the average number that we expect
4 to add jobs back at the, at the former Valero
5 plant at Delaware City. And as you may recall,
6 we invest -- we have invested \$40 million in
7 having those jobs returned.

8 These are jobs that we haven't
9 had to invest in. We've had -- we've developed
10 a portfolio system that has brought these jobs
11 to us and the benefits to our ratepayers and to
12 our population.

13 THE PRESIDENT: Senator Bonini.

14 SENATOR BONINI: Thank you, Mr.
15 President. I apologize for my voice. Be very
16 brief.

17 This is command economy. This is
18 exactly what we should not be doing. Senator,
19 how much, on average, is the cost renewable
20 energy versus traditional energy?

21 I'm sorry if I've asked a
22 question, Mr. President.

23 SENATOR McDOWELL: It depends on
24 the type of renewable energy you're talking



1 about. Some of it, some of it is less.

2 SENATOR BONINI: Okay, the
3 average cost as of last week for renewable
4 energy versus traditional energy is about four
5 times.

6 SENATOR McDOWELL: No, sir.

7 SENATOR BONINI: And -- well, I
8 mean, Senator, I can show you the, the
9 statistics. I looked at them last week. It's
10 about four times. This is going to
11 dramatically increase the price of electricity
12 to our businesses and our constituents. And
13 it's simple math. If you require people to buy
14 a more expensive product, and then they're
15 simply going to pass that on to the, to the
16 ratepayers. It's simple math.

17 When the -- I am a big believer
18 in renewable energy, recycling, all those kind
19 of things. But the bottom line is, they're not
20 going to work till the market says they're
21 going to work. And the government can push
22 them all they want. What we're going to do is
23 increase people's electric bills. And this
24 bill absolutely will increase people's electric



1 bills, bottom line. Thank you.

2 SENATOR McDOWELL: Mr. President,
3 I'd just like to say, I think that is not the
4 correct calculations. I'd like to give you
5 some real numbers.

6 Dover SUN Park came in -- which
7 we just announced last week, it's a 50-megawatt
8 solar park. It came in at 9 cents a kilowatt
9 hour, 9 cents. We're paying retail right now
10 about 15 cents.

11 Mr. President, those are figures
12 that don't lie. You can check with the City of
13 Dover. Nine cents is what that 50 megawatts
14 came in at -- I'm sorry, 10 megawatts.

15 THE PRESIDENT: Senator Venables.

16 SENATOR VENABLES: Thank you, Mr.
17 President. Some of the things that I was going
18 to say have already been said. But there's one
19 thing that hasn't been said, and that's about
20 the preference laws that is incorporated in
21 this for manufacturers and also for Delaware
22 labor.

23 Delaware is too small to have
24 preference laws against people from other



1 states, and all it's going to do is set off
2 other states to do the exact same thing. And
3 it works pretty good in a big state, but not a
4 little state like Delaware.

5 The other thing of it is, I think
6 why we don't see anybody here maybe from
7 Delmarva Power & Light or some of the
8 co-operatives or some of the towns is because
9 all of these costs are passed -- {ooh}, passed
10 on to the consumer.

11 And what Senator McDowell is
12 forgetting about, we have a tremendous amount
13 of people that live on fixed incomes that won't
14 be participating in these jobs he's talking
15 about. They'll be stuck with the salaries --
16 or the pensions that they get, and yet their
17 electric bills are going to go up.

18 The figures that I have are more
19 similar, you know, to what Senator Bonini was
20 saying. The average cost of buying electricity
21 from coal or atomic energy is about 7-1/2 cents
22 kilowatt hour. Prices from this ranges from 27
23 cents to 45 cents. And I realize, you know,
24 it's passed on with a number of years, but each



1 year it steps up, and all of those costs are
2 passed on.

3 And I think that if Delmarva
4 Power & Light and these other utilities really
5 cared about what electricity cost, they would
6 be here today to explain to us that these
7 people are going to really have some -- I don't
8 know why we didn't keep it at 20 percent, why
9 we're trying to go on to 30 percent.

10 And I think another thing that
11 Senator Bonini said that I was going to say,
12 it's the wrong time. We just can't keep adding
13 on to these people's expenses to live, not
14 unless you turn this economy around.

15 SENATOR McDOWELL: Mr. President,
16 I just have to speak. I just don't think the
17 numbers that are presented are anywhere near
18 the reality on the page. As a matter of fact,
19 we have operated under a renewable portfolio
20 system now for 2-1/2 years, and there is no
21 evidence that that system has increased the
22 retail cost of electricity one cent.

23 THE PRESIDENT: Senator Connor?

24 SENATOR CONNOR: Thank you, Mr.



1 President.

2 Senator McDowell, am I to assume
3 that during the substitute bill, and the reason
4 it came about, was because there were some of
5 the co-ops, et cetera, of electric had some
6 concerns? So for the record now, most of them
7 are in agreement with what happened? I know
8 there was compromise. Can you speak to that
9 issue, please?

10 SENATOR McDOWELL: Yes. I
11 believe that as of the last report I had,
12 they're all in agreement. We have satisfied
13 all of them. I mentioned some of the things.
14 One of the things that was questioned here was
15 the, the local, local labor, local supply that
16 was one of the things that was -- I don't
17 remember which of the stakeholders asked for
18 that, but it came from them. All of the
19 changes we made came from trying to meet the
20 concerns of the stakeholders.

21 SENATOR CONNOR: I think, if I
22 look at the letter that was dated June 8th from
23 the City of New Castle, it was them that was
24 worried about taking away local control. So



1 that was my one issue that I'm concerned about
2 here. And if you're saying that they -- the
3 compromise was achieved by that substitute,
4 that's, that's where I'm at. I need to know
5 that, sir.

6 SENATOR McDOWELL: They were not
7 specifically at the table. They were at the
8 table in the form of their umbrella group, the
9 Delaware Municipal -- whatever, with McCullar,
10 Pat McCullar is the president of that group.
11 He was at the table, and he has agreed to the
12 compromises that we've made.

13 I -- I don't really see -- I saw
14 that letter. I don't see where we're taking
15 anything away specifically from New Castle,
16 unless, unless -- I just don't know. I don't
17 know what --

18 SENATOR CONNOR: Thank you very
19 much, sir. I appreciate your verification, and
20 I was glad that you were mentioning that
21 Mr. McCullar was there at the table. And it is
22 DEMEC. Thank you so much, sir.

23 SENATOR McDOWELL: DEMEC.

24 THE PRESIDENT: Senator Simpson.



1 Senator Simpson.

2 SENATOR SIMPSON: Thank you, Mr.
3 President.

4 Senator McDowell, I commend you
5 for, for the work you've done on renewable
6 energy in Delaware. You've certainly got us
7 in, in high regards throughout the world,
8 really.

9 However, I do not agree with this
10 bill. Does this bill ensure that the
11 renewables will be produced in Delaware?

12 THE PRESIDENT: Senator McDowell.

13 SENATOR McDOWELL: Not -- well,
14 not entirely. In the whole renewable system --
15 I mean we are in a big picture of electrical
16 supply, and there is a trading that goes on. I
17 don't know that I can address directly, but
18 the -- how many RECs can be purchased out of
19 state or not. It is possible to purchase out
20 of state. You, you generally get a favorable
21 rate in state if you're getting out of state,
22 and you wouldn't get -- for instance, you
23 wouldn't get any of the local percentage boost
24 of credit for manufacturing or for local labor



1 if you went out of state.

2 But now, some states exclude
3 people from out of state from entering their
4 market. But generally, the market is
5 controlled by the PJM, which is a large pool,
6 and it's simply -- it's like having a stock
7 exchange where more participants make a better
8 base.

9 SENATOR SIMPSON: Isn't it true
10 that the majority, vast majority of renewables
11 being consumed in Delaware today are from out
12 of state?

13 SENATOR McDOWELL: I'm not sure I
14 could quantify that. I don't think so, but I
15 don't think I could quantify that. But it --
16 anyplace --

17 SENATOR SIMPSON: Well, well,
18 where would we be in Delaware today generating
19 anywhere near the renewables that are being
20 consumed in the state? Could you give me a
21 couple examples of major producers of
22 electricity in the state from renewables?

23 SENATOR McDOWELL: Oh, sure.
24 The -- let's say -- better yet, get my thoughts



1 together. I wasn't expecting this. But, for
2 instance, Delaware Electric Co-op has --

3 SENATOR SIMPSON: Most of that's
4 out of state.

5 SENATOR McDOWELL: But they have
6 contracts for wind out of state, but they also
7 have contracts for naturally produced gas, that
8 is, landfill gas, in state. They have -- I
9 don't know what they have -- I know they have
10 some solar, I just can't tell you.

11 And in terms of the Delmarva
12 jurisdiction, they have a lot of solar. There
13 are at least five 100-kilowatt systems in
14 place. I don't know how many of the smaller
15 ones, I just -- I don't have those, that data
16 with me. I think --

17 SENATOR SIMPSON: Do you know
18 what percentage we are right now of
19 photovoltaics and wind energy that we are using
20 currently today in Delaware? What percentage
21 and what total?

22 SENATOR McDOWELL: I can't give
23 you the percentage, but I do believe the
24 majority is in state. I do know both Delmarva



1 and, and --

2 SENATOR SIMPSON: Co-op.

3 SENATOR McDOWELL: -- the co-op
4 have bought wind out of state. They both brag
5 about that, they are very proud of that, and
6 they're meeting the non-solar part of the
7 portfolio with a lot of that. They also have
8 contracts. Delmarva has a very big contract,
9 as you know, which we helped work out here in
10 this chamber with the majority leader's help --
11 I mean, sorry, former majority leader, now
12 Pro-Tem, able assistance, and we were able to
13 work out where they will, if it comes on line,
14 be able to buy offshore wind from Delaware.
15 The -- so there's that.

16 SENATOR SIMPSON: Okay.

17 SENATOR McDOWELL: I am certain
18 I'm on sound ground to say the majority of the
19 solar that we are getting is in Delaware, in
20 the jurisdiction of the thing. I mentioned the
21 10 megawatts that Dover has. That, that 10
22 megawatts has taken them past their need for a
23 while.

24 We have the -- we have the



1 Creamside Dairy. I mentioned there's at least
2 five farms that have done 100-kilowatt systems.
3 There are, there are -- University of Delaware
4 is planning 2 megawatts to go on their campus,
5 and that would be in the DEMEC area. We
6 have -- Del Tech is planning -- in the latter
7 stages of planning, the SEU is participating
8 with that, 2 megawatts, Del Tech campuses. And
9 we are expecting a lot more.

10 SENATOR SIMPSON: The energy that
11 we're purchasing from out of state, could you
12 give me the approximate cost of that energy
13 compared to normal sources?

14 SENATOR McDOWELL: Well, I mean,
15 the only thing I know for sure we're buying out
16 of state is the out-of-state wind. I believe
17 those contracts are in the neighborhood of 7 to
18 8 cents. You can beat that a lot with coal, if
19 that's what you want to do. But I'd rather not
20 do that.

21 SENATOR SIMPSON: Well, I think
22 that's a pretty good rate, and you said the SUN
23 Park's rate will be around 7 cents?

24 SENATOR McDOWELL: Nine. About



1 9.

2 SENATOR SIMPSON: Around 9 cents?

3 SENATOR McDOWELL: Yes, sir.

4 SENATOR SIMPSON: Versus?

5 SENATOR McDOWELL: Well the
6 retail, the retail price is, again troubled, as
7 it's different different places, around 15
8 cents. Residential retail price is about 15
9 cents a kilowatt hour --

10 SENATOR SIMPSON: So the SUN Park
11 is less, when it comes on line it will be less
12 than the 15 cents.

13 SENATOR McDOWELL: Well, Dover
14 has yet to add some charges for the lines and
15 wires and a few things like that.

16 SENATOR SIMPSON: Right.

17 SENATOR McDOWELL: But that's
18 their business.

19 SENATOR SIMPSON: I guess what
20 I'm trying to get at is what we're creating
21 with this bill reminds me of an artificial
22 market, much like price control, whereas in a
23 free market, that SUN Park that can do it for 7
24 cents will probably come in less in, in a



1 regular market. And that's what we should be
2 trying to achieve is giving incentives to those
3 companies to invest, like we did Dover, in a
4 SUN Park without creating artificial demand.

5 SENATOR McDOWELL: Well, I will
6 say that the Dover SUN Park could never be
7 built without the renewable portfolio standards
8 that we, we had. And all we are doing is
9 advancing that a little bit to keep us up
10 competitive with our neighbors.

11 In New Jersey -- let me just say,
12 we have increased in this -- we increased in
13 this bill the value of solar RECs to about
14 \$400. They are selling at \$600 in New Jersey.
15 But we believe that because it's -- well, first
16 of all, we, we can't go buy in New Jersey. New
17 Jersey is a restricted market. But, but it's
18 pressure on us, and we believe the 400 will
19 keep us quite competitive and that we'll be
20 able to be installing solar at a beneficial
21 rate as we go along.

22 SENATOR SIMPSON: Thank you.

23 THE PRESIDENT: Senator
24 Bushweller.



1 SENATOR BUSHWELLER: Thank you,
2 Mr. President.

3 A brief point. The City of Dover
4 is in my district. I've been in conversation
5 with city officials, and the city officials
6 have told me that they are okay with SS 1 to SB
7 119.

8 THE PRESIDENT: Senator Sokola.

9 SENATOR SOKOLA: Thank you, Mr.
10 President.

11 There's been some talk of
12 artificial prices and stuff related to this
13 bill, and I want to point out that a number of
14 times throughout this bill it uses the phrase
15 "emission reduction credits and/or allowances."
16 It's three or four times. And we already are
17 actually paying an artificially low price for
18 electricity generated by coal, and that's
19 because we only pay a little bit of the price
20 in our electric bill. We pay a much greater
21 price through our health care dollars through
22 the, the asthma, the respiratory disease, the
23 lung cancer and all those other things. And
24 what that really costs, we don't know. But



1 that's one cost that goes down when we look at
2 this kind of legislation and when we support
3 it. I will be supporting this bill.

4 THE PRESIDENT: How about Senator
5 Venables, then Senator Simpson. Senator
6 Venables.

7 SENATOR VENABLES: Yeah. When
8 Senator McDowell said they had reached
9 agreement with the power companies, I don't
10 know that this is a fact and that's why I'm
11 going to ask the question. I was told that the
12 agreement with the rural electric was basically
13 they're not included in this, and yet, I see
14 that in the bill itself they're mentioned. And
15 the question to him was, are they, rural
16 electric, in agreement with, excluded from this
17 legislation? Is that the settlement?

18 SENATOR McDOWELL: No, they're
19 not. The first time they are. All utilities
20 are included and it has a fairness section.
21 And at first they didn't like that until we
22 discussed the number of things that they felt
23 would make it better for that. The biggest
24 thing and part of which is what I've called the



1 circuit breaker, whereby, if their rates go --
2 start to go up, and they can demonstrate by
3 empirical data that their rates are going up
4 more than or as much as the numbers we have
5 here, which is 3 percent overall, 1 percent for
6 solar, as a result of participating in the
7 solar, their rates go up in one year by 1
8 percent or more, they can push the circuit
9 breaker and they don't have to comply. And
10 that's all of the utilities can do that.

11 SENATOR VENABLES: Is that same
12 agreement made with Delmarva Power?

13 SENATOR McDOWELL: It's with all
14 three.

15 SENATOR VENABLES: With all of
16 them. I wish some of them were here, you know,
17 to answer some questions. This is a different
18 story than I'm getting, you know.

19 SENATOR McDOWELL: Well, Mr.
20 President, there was a problem -- when we
21 negotiated -- we were negotiating last week on
22 this, and one of the problems is a glitch in
23 our system. We did not have Senate Substitute
24 1 up on the system because of a glitch in our



1 system. So people who were negotiating with
2 us, we were saying yes, we've got your concerns
3 covered. They would go to the Internet, and
4 all they would find was Senate Bill 1, not
5 Senate Substitute 1.

6 THE PRESIDENT: Senator DeLuca.

7 SENATOR DeLUCA: Thank you, Mr.
8 President.

9 Senator, it's not a glitch in the
10 system. The bill can't be put out until it's
11 introduced, and that's specifically why I laid
12 it on the table and placed the substitute with
13 the bill, so that it could be put into the
14 system.

15 SENATOR McDOWELL: That's right.
16 But there was, there was some delay in that,
17 and I'll take the responsibility for that. But
18 it caused some misunderstanding across the end
19 of last week and over the weekend.

20 THE PRESIDENT: Senator Simpson.

21 SENATOR SIMPSON: Thank you, Mr.
22 President. I just wanted to respond to Senator
23 Skola. I agree with you a hundred percent.
24 There are hidden costs with coal technology,



1 and I understand that and have been very
2 supportive of renewable energy. But I think
3 that in this case, the market needs to work.
4 And if we'll look at the Delaware Electric
5 Co-op, I wish they were here today, the market
6 is working and they are vastly increasing their
7 use of renewable energy products to provide
8 electricity in Delaware. That's all I'm
9 saying, is let the market work and let's not
10 create an artificial demand, driving up costs
11 for our consumers.

12 SENATOR McDOWELL: Well, I think
13 we are setting up a market mechanism by the
14 renewable portfolio. And supporting Senator
15 Sokola's thought, besides the issues that he
16 brought up, which are a little hard to get the
17 hard measurement, there are a lot of subsidies
18 for conventional fuels. Coal is -- benefits
19 from a, what's called a depletion allowance.
20 It's a huge tax break given to them by the, by
21 the federal government. Now, that, we can't
22 really do anything about that. But what we're
23 doing is levelling the playing field just a
24 little bit here and seeing that we're advancing



1 towards the future.

2 I'd also like to go back to the
3 biggest -- the biggest hidden cost of all is
4 that \$300 billion of our money that we export
5 every year to go away, never to be seen again.

6 Roll call, Mr. President.

7 THE PRESIDENT: Senator Bunting.

8 SENATOR BUNTING: I'll be very
9 quick.

10 We're initially -- we're a net
11 importer of power in Delaware. We cannot
12 produce enough power on our own. So regardless
13 of this legislation, we're going to have still
14 the costs coming to us over the transmission
15 that we're going to pay for from out-of-state
16 producers of power regardless of this
17 legislation, so we're, we're handicapped in the
18 sense that we're driven by whatever the market
19 system is away from here. And I feel also this
20 is going to increase the rates for our existing
21 rateholders when it goes into play.

22 THE PRESIDENT: Senator McDowell.

23 SENATOR MCDOWELL: Mr. President,
24 I don't know whether we are or aren't a net



1 importer. We -- I think, by one measurement,
2 all states are net importers, because Delaware
3 is selling as much outside of Delaware as we
4 are bringing in. So...

5 THE PRESIDENT: Senator Booth.

6 SENATOR BOOTH: Yes. I was
7 wondering, Mr. President, other than the date
8 2013, I was wondering when this bill gets
9 implemented? Is it from the signature of the
10 governor or, you know, what's the starting
11 point? I know there's been a lot mentioned on
12 the floor about consumers' bills and whatnot,
13 and I was wondering when the bill was supposed
14 to start its effect?

15 THE PRESIDENT: Senator McDowell.

16 SENATOR McDOWELL: Well, I'm not
17 sure that I know exactly the answer to that,
18 but I think once it's signed, we -- if I'm
19 correct, and I think I am on this, in 2010 and
20 2011 we are already ahead of the schedule
21 that's produced here, so that it really doesn't
22 much matter. What matters is when we get to
23 2013 and, and then we're -- we have a new
24 schedule.



1 We're under a schedule just like
2 this now, and we are ahead of the numbers that
3 are shown here for 2010 and 2011. So that it
4 doesn't hold much matter exactly when it
5 starts, but you're going to have to meet those
6 numbers.

7 Everybody will be meeting the
8 numbers right now when we -- when the governor
9 signs this into law. But come somewhere
10 between 2011, 2012, maybe as long as 2013, then
11 they won't be, or they have to do something to
12 get up to those numbers.

13 SENATOR BOOTH: I was wondering,
14 Mr. President, on page 4 of 7 at the bottom of
15 the page it talks about 2013 and special
16 provisions for municipal electric companies,
17 and that may elect to exempt itself from the
18 subchapter. So I was just wondering why, I
19 just -- I guess I'm confused a little bit about
20 when the bill starts. You know, in trying to
21 help consumers with their, with their bills,
22 which is what's been mentioned by several
23 senators, I'm just trying to figure when, when
24 do, when do they expect their bills to go up?



1 SENATOR McDOWELL: Well, I don't
2 think anybody's bill has to go up by this. I
3 mean, I would argue that this whole structure
4 will lower people's bills. But, you know, once
5 the economy, once the economy kicks around --
6 because if you look at what happened to energy
7 from four years ago through, through two years
8 ago, you will see that this is a protection,
9 because the one thing about renewables is, you
10 know, A, in case of wind you can make long-term
11 contracts and they don't go up because there's
12 no fuel. And in case of solar, they're very,
13 very passive. Once installed, once the Capex
14 is expended, you don't have any increase at
15 all.

16 SENATOR BOOTH: I know, Mr.
17 President, that that's Senator McDowell's goal
18 is for cheaper and cleaner production of, of
19 electric. But as mentioned earlier, we have
20 the circuit breaker which talks about the cost
21 going up 1 percent. And I think we're at 1
22 percent of the total retail cost of electricity
23 and also at 3 percent, which was the total cost
24 of electricity for retail electric suppliers



1 during the same compliance years, so that it
2 was built into the bill when costs go up that
3 they could pull the circuit breaker.

4 SENATOR McDOWELL: Right.

5 SENATOR BOOTH: So I know there,
6 I know there's costs that are associated with
7 this bill or else you wouldn't have those
8 circuit breakers built into the bill that you
9 were talking about earlier.

10 So I guess that's what confuses
11 me when you say that the, the providers right
12 now will already meet the, the requirements
13 when this bill is signed into law. But I'm
14 just wondering, do the consumers get that
15 protection of the 1 percent and 3 percent
16 circuit breakers that were mentioned earlier?

17 SENATOR McDOWELL: Well, the, the
18 numbers on page 80 -- line 82, 3 and 4 are for
19 the rural electric co-op and the munis, and
20 that's because they have not been in. They're
21 coming in. That's when they actually
22 officially come into this.

23 But the statement I made earlier,
24 I believe it's correct, they're all ahead of



1 these numbers already. So they will come in --
2 at that time it will be probably close whether
3 they're ahead of the number or not. And they
4 can look at what they're going to do or what
5 they're not going to do to meet the goals.

6 SENATOR BOOTH: But that's --
7 okay. Well, thank you, Mr. President.

8 THE PRESIDENT: Senator Bunting.
9 Senator McDowell.

10 SENATOR McDOWELL: Roll call.

11 THE PRESIDENT: Mr. Secretary,
12 could you please call the roll on Senate
13 Substitute No. 1 for Senate Bill No. 119.

14 (Roll call.)

15 THE SECRETARY: Mr. President,
16 the roll call in Senate Substitute numbered 1
17 to Senate Bill numbered 119, 17 yes and four
18 no.

19 THE PRESIDENT: Having received
20 its requirement, majority Senate Substitute 1
21 for Senate Bill No. 119 has passed the Senate.

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CERTIFICATE

STATE OF DELAWARE)
)
NEW CASTLE COUNTY)

I, Julie H. Parrack, Registered Professional Reporter and Notary Public, do hereby certify that the foregoing record, pages 2 to 35 inclusive, is a true and accurate transcript, to the best of my ability, of an electronic recording in the above-captioned matter.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 30th day of December, 2013.



Julie H. Parrack, RMR-CRR



EXHIBIT F

In The Matter Of:

*State of Delaware - 145th General Assembly
House of Representatives Debate*

*Senate Substitute No. 1 for Senate Bill No. 119
June 29, 2010*

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STATE OF DELAWARE

145th GENERAL ASSEMBLY

HOUSE OF REPRESENTATIVES DEBATE

SENATE SUBSTITUTE NO. 1 for SENATE BILL NO. 119

June 29, 2010

TRANSCRIPT OF AN ELECTRONIC RECORDING

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1 THE SPEAKER: Representative
2 Schwartzkopf.

3 REPRESENTATIVE SCHWARTZKOPF:
4 Thank you, Mr. Speaker, staying on the agenda,
5 item No. 5, Senate Substitute 1 for Senate Bill
6 119. Defer to Representative D.E. Williams
7 again.

8 THE SPEAKER: Representative
9 Dennis Edward Williams.

10 REPRESENTATIVE D.E. WILLIAMS:
11 Thank you, Mr. Speaker. Could I have Senate
12 Substitute 1 for Senate Bill 119 read in for
13 the third and final time and brought before the
14 House for consideration?

15 THE SPEAKER: Mr. VanSant, please
16 read in Senate Substitute 1 for Senate Bill 119
17 by title.

18 MR. VANSANT: Mr. Speaker, Senate
19 Substitute No. 1 for Senate Bill No. 119,
20 sponsored by Senator McDowell and
21 Representative D.E. Williams and Representative
22 Kowalko and other senators and representatives,
23 An Act to Amend Title 26 of the Delaware Code
24 Relating to the Renewable Energy Portfolio



1 Standards.

2 Mr. Speaker, this constitutes the
3 third and final reading of Senate Substitute
4 No. 1 for Senate Bill No. 119 by title.

5 THE SPEAKER: Thank you,
6 Mr. VanSant.

7 Representative Dennis Edward
8 Williams, Senate Substitute 1 for Senate Bill
9 119 is before us, sir.

10 REPRESENTATIVE D.E. WILLIAMS:
11 Thank you, Mr. Speaker. This bill strengthens
12 Delaware's renewable portfolio standards first
13 passed in 2004 and revised in 2007 by extending
14 the required minimum percentage of renewable
15 solar and solar energy supply up to 25 percent
16 renewable energy by 2025, including 3.5 percent
17 of that from solar power by 2025.

18 What this bill also does is place
19 a new emphasis on local labor and manufacturing
20 by incentivizing renewable energy projects that
21 employ these resources and, and I think, very
22 importantly, what it adds that the prior
23 versions of this did not have is ratepayer
24 protection by introducing limits of cost



1 impacts on this.

2 If there are no questions, roll
3 call.

4 THE SPEAKER: Seeing none --
5 excuse me, Representative.

6 REPRESENTATIVE KOVACH: Thank
7 you, Mr. Speaker. Open dialogue with the
8 sponsor.

9 THE SPEAKER: Open dialogue with
10 the sponsor, Representative Kovach.

11 REPRESENTATIVE KOVACH: Thank
12 you, Mr. Speaker.

13 This bill moves us in a direction
14 as a state that (Inaudible) for moving into
15 renewable energy, which is commendable. But I
16 guess folks have expressed concerns about the
17 cost. And before we vote on this legislation,
18 I'd like to get some of that information on
19 potential societal costs and benefits on the
20 floor. So I could ask a few questions or do we
21 want to call Secretary O'Mara?

22 REPRESENTATIVE D.E. WILLIAMS:
23 Personal privilege to the floor for the
24 Secretary of DNREC.



1 THE SPEAKER: Would the Secretary
2 of DNREC please come forward, take the podium.
3 Please identify yourself. You're going to have
4 to hold the mic. We're having trouble with the
5 mic. Thank you, sir.

6 SECRETARY O'MARA: Collin O'Mara,
7 Secretary of Natural Resources and
8 Environmental Control.

9 THE SPEAKER: Open dialogue,
10 Representative.

11 REPRESENTATIVE KOVACH: Thank
12 you, Mr. Speaker. Open dialogue with the
13 Secretary.

14 Thank you, Mr. O'Mara, for coming
15 down. I appreciate the time you've put into
16 these energy bills. Most of them have
17 encouraged industry and renewable energy
18 development in Delaware. This bill, while it
19 has -- certainly has laudable goals, has folks
20 concerned, and their concern is mainly over how
21 the increase in requirements for energy
22 companies, the ramping up from the current
23 requirements to increase requirements to buy
24 our energy from renewable sources, which are



1 typically and currently much more expensive,
2 what's that going to do to their bottom line,
3 what's that going to do to their wallet, what's
4 that going to do to their energy bill?

5 SECRETARY O'MARA: Thank you,
6 Representative Kovach, for the question.

7 The current RPS that we have has
8 very similar goals, 20 percent by 2020 and a 2
9 percent solar carve-out by 2020. Those numbers
10 are still preserved in this bill.

11 What we're trying to do is make
12 sure there's price protections in place where
13 there currently are none. And we believe,
14 based on our estimation, that the -- on the
15 high-end estimate that the ratepayer impact
16 will be no more than about 50 cents a month
17 per, per residence. And that's the high-end
18 estimate, assuming costs don't continue to come
19 down as we've seen them move in the last two
20 years. And so we believe there will be very
21 minimal impact.

22 But most importantly, by having a
23 circuit breaker, if you will, an actual price
24 control, whereby if the, if the ratepayer



1 impacts exceed a certain amount, that the
2 entire program freezes in place, we can ensure
3 ratepayers that there won't be any adverse
4 impacts from this legislation.

5 REPRESENTATIVE KOVACH: Thank
6 you, Mr. Secretary.

7 Following up with that question,
8 I guess the concern is that currently, energy
9 from renewable sources, solar, photovoltaic, is
10 more expensive on the average and conceivably
11 significantly more expensive currently than
12 other, you know, coal-based, petroleum-based,
13 fossil fuel-based sources. What -- through
14 this legislation, how are you going to, you
15 know, protect the consumer when you increase
16 the requirement to buy from more expensive
17 sources? What consumer protections are in
18 place to make sure that we're not going to be
19 facing these increased costs?

20 SECRETARY O'MARA: Right. The --
21 so right now there are no price protections in
22 place under current law in the State of
23 Delaware. So this does add, as I mentioned,
24 the circuit breaker that does freeze the



1 program if there are adverse rate impacts.

2 Secondly, that we are not talking
3 about a massive injection of renewable energy
4 beginning in year one. It really is phased in
5 over time, so -- and the goal is that if we are
6 going to have slightly more expensive power,
7 that it's limited in the quantity so it doesn't
8 have rate impacts. Point 2 percent of the
9 entire, entire mix, even if those few kilowatts
10 are actually -- kilowatt hours are a little
11 more expensive, blended across the entire
12 average has very little impact, and at the same
13 time, there are massive job benefits from the
14 legislation.

15 The other, the other piece, this
16 is part of a broader energy strategy for the
17 state, which also includes a very aggressive
18 energy efficiency campaign, which we'll be
19 rolling out in the coming months, and we
20 believe that we can help people save more money
21 and save more energy than any additional rate
22 impacts. And so it's really part of a pairing
23 between additional energy conservation, help
24 people reduce bills, and then also renewable



1 energy which stabilizes costs in the long run,
2 provides environmental benefits and much
3 greater job benefits than the fossil fuels that
4 we currently have in our midst.

5 REPRESENTATIVE KOVACH: So
6 coupled with the -- some of the pieces of
7 legislation that are floating around the House,
8 one of which being net metering which allows an
9 increase over 100 percent of anticipated
10 current usage, how does that -- how does a net
11 metering bill fit in with this legislation
12 to -- you know, what does that do to our
13 businesses, to our alternative energy sources?

14 SECRETARY O'MARA: Right, so in
15 that meeting legislation that we just approved.
16 That you all just approved, really provides
17 opportunities for the -- for individual
18 businesses, particularly farms, in some cases
19 businesses that have multiple meters to produce
20 all of their power from renewable, renewable
21 sources.

22 And so what -- when you put the
23 two bills together, where if you have
24 individuals that want to stabilize their cost



1 by having a very fixed amount, a fixed cost for
2 their solar energy, for example, compared to
3 the variability of fossil fuel prices, what
4 we're doing with this legislation in 119 is
5 creating a steady demand for the utilities and
6 others that actually buy the attributes, the
7 renewable energy credits that are necessary to
8 fulfill their standards under this, so we're
9 creating a market in which there is a demand
10 that the utility is going to meet, and then
11 also putting easy financing mechanisms in
12 place, such as a net metering bill, to allow
13 customers, businesses, farms, to easily take
14 advantage of those opportunities. So really
15 they are a marrying of the, of the two
16 programs.

17 REPRESENTATIVE KOVACH: We're,
18 we're settings -- and this legislation sets
19 some lofty goals for renewable percentages.
20 What, what's our, I guess, current percentage
21 of renewables throughout the state?

22 SECRETARY O'MARA: We're hovering
23 right around a little less than 5 percent right
24 now, which is in line with the current goals.



1 The schedule that you see in the document on
2 the first page of the bill in the minimum --
3 the first to the second column, if you will, is
4 exactly the same as it currently is under law.
5 We're not proposing to change that at all, and
6 so the goal is really to focus on some of the
7 other distributed solutions like, like solar.

8 But between systems that are in
9 state as well as contracts that are signed for
10 wind projects in adjacent states, Delmarva's
11 mix is right around 4 or 5 percent. The co-op
12 has actually done a great job with recent
13 acquisitions of landfill gas contracts as well
14 as wind contracts in other states at prices
15 that are equally competitive to any fossil
16 fuel, and they're hovering somewhere between 10
17 and 12 percent and they're planning on
18 expanding as well.

19 And so we've seen both Delmarva,
20 the co-op and the munis diversify their fuel
21 mix significantly in the last few years, and
22 this mirrors some of that, some of that work.

23 REPRESENTATIVE KOVACH: As far --
24 previous, the previous legislation that you



1 mentioned, it did -- it included our power-
2 generating companies but excluded
3 municipalities and the co-op. This legislation
4 seeks to include those sources of electricity.
5 What's -- I guess what's the effect of that and
6 how is that going to affect these non-
7 traditional sources of power? What's it going
8 to do to those folks' rates?

9 SECRETARY O'MARA: The price
10 protections that we discussed earlier are
11 embedded also in the, in the special language
12 that is carved out for the munis and the, and
13 the co-op. Unlike the previous legislation
14 that allowed basically a full exemption, what
15 this legislation proposes is that the munis and
16 the co-op have a, basically a comparable
17 program that will begin in a few years, because
18 giving them time to get up to, up to speed
19 with, you know, compared to Delmarva that has
20 had a requirement for several years, as well as
21 giving them the flexibility for how to achieve
22 those targets, and we believe that the munis
23 and the co-ops have their own unique governing
24 structure, they do have kind of different,



1 different structures in terms of their business
2 models. And so giving them the flexibility,
3 they still need to achieve a similar, similar
4 performance level, but giving them the
5 flexibility to do so, and as I mentioned, they
6 do the ratepayer protections that we negotiated
7 both with the co-op and DEMEC to make sure that
8 everyone was comfortable with the language that
9 you have before you.

10 REPRESENTATIVE KOVACH: Okay.
11 You mentioned a number of 1 percent. Are you
12 telling me that if rates go up more than 1
13 percent as a result of this legislation, can
14 you -- is that correct, am I understanding
15 correct that the rates go up more than 1
16 percent, what happens?

17 SECRETARY O'MARA: So under the
18 legislation, if the -- as soon as there's a 1
19 percent impact from the solar portion of the
20 bill, the, the target level freezes in place
21 for that entire calendar year and then starts
22 up again after it. You'll never have more than
23 a 1 percent impact in any given year for the
24 solar, for the solar portion of the, of -- the



1 solar requirements as written in the
2 legislation.

3 And that is actually much more
4 stringent and much more -- has much greater
5 ratepayer protection than New Jersey and
6 Maryland, both of which have a 2 percent
7 carve-out, because we believe that we need to
8 protect ratepayers during this tough economic
9 time.

10 REPRESENTATIVE KOVACH: I've
11 heard discussion of comparing the costs of
12 alternate energy with the cost of the fossil
13 fuel-based sources. A lot of times you can get
14 those fossil fuel-based sources cheaper, but
15 then other times demand peaks and the prices
16 peak. What, what would this legislation do in
17 terms of providing price stability in those
18 markets?

19 SECRETARY O'MARA: Right. Do
20 have to say, I feel a little bit like this is
21 my first bill as well, the number of questions.
22 But the one thing -- a little funny, isn't it?
23 I need, I need my jersey on.

24 THE SPEAKER: Mr. Secretary, you



1 want some water? Are you all right? You need
2 a chair? You okay? Thank you, sir.

3 SECRETARY O'MARA: Thank you,
4 sir.

5 One thing, one thing that --
6 bring on the gloves. One thing that it does do
7 is that fossil fuel, fossil fuel prices,
8 because of global markets and kind of the
9 differences in demand, tend to be much -- have
10 much more variability than renewable resources.
11 So where Bluewater Wind in the negotiation that
12 all of you approved a few years ago will have a
13 fairly stable rate for the entire 25 years,
14 solar similar, landfill gas the same.

15 And so what this does is that it
16 provides a stable price point for 25 percent of
17 our energy supply within 15 years. And so you
18 have that stability, while you still have
19 fluctuations in the natural gas and coal
20 markets, I mean we'll provide some additional,
21 some additional stability. And when you
22 combine that with the ratepayer protections, we
23 believe that's a good fit to make sure there
24 are not adverse impacts but we still grow these



1 new industries and jobs in Delaware.

2 REPRESENTATIVE KOVACH: Thank
3 you, Mr. Speaker. Thank you, Mr. Secretary.

4 THE SPEAKER: Representative
5 Kowalko.

6 REPRESENTATIVE KOWALKO: Yes.
7 Open dialogue with the witness?

8 THE SPEAKER: Open dialogue.

9 REPRESENTATIVE KOWALKO: Yeah,
10 and I know there is always a concern about cost
11 comparisons. But wouldn't you agree,
12 Mr. Secretary, that the cost stability can only
13 be guaranteed when there is no, no fuel to be
14 burnt and no commodity to be consumed, and
15 that's the only way you can guarantee a stable
16 price?

17 SECRETARY O'MARA: That is
18 correct.

19 REPRESENTATIVE KOWALKO: And that
20 renewables offer that, and quite frankly, the
21 cost comparison may become soon outdated when
22 you have a -- instead of such as carbon
23 taxation put on the normal fossil fuel
24 generation capacities, that's going to drive



1 that price up, it's only an economic reality,
2 and that this can stay stable because it does
3 not have that kind of penalty enforced upon it?

4 SECRETARY O'MARA: Yes.

5 REPRESENTATIVE KOWALKO: Thank
6 you.

7 THE SPEAKER: Any other questions
8 of the Secretary? Representative Briggs-King.

9 REPRESENTATIVE BRIGGS-KING: Yes,
10 thank you, Mr. Speaker.

11 I have a question for you, and
12 that's regarding, I think this very similar
13 legislation was passed in California a few
14 years ago. Are you familiar with that? Okay.
15 Can you give us a status report on what's
16 actually happened in California since 2007, as
17 far as that goes?

18 SECRETARY O'MARA: Yes. So
19 California does have a similar approach. The
20 goals are slightly more ambitious, and they
21 have, they have actually struggled in some ways
22 to meet some of their targets. The one area
23 that they failed in -- actually two areas, and
24 I was actually involved in, in the legislation



1 a little bit when I was there.

2 They did not put the consumer
3 protections in place that we're talking about,
4 so there have been adverse impacts there
5 because they did not take that step. And the
6 second thing is they did not put enough
7 incentives in for local jobs and local
8 manufacturing, and many of the panels that are
9 being put up in California are actually coming
10 in from overseas. And so we're trying to
11 correct those two mistakes and learn from
12 their, learn from their -- the problems that
13 they've had there so we don't replicate their
14 mistakes.

15 REPRESENTATIVE BRIGGS-KING:

16 Okay, thank you. Because there was just a
17 concern, I know the report was released
18 sometime in May that was alluding to that, and
19 my thing was if we know that California was a
20 leader in this and they've had problems, then
21 we shouldn't compound here in Delaware by doing
22 those things that have been done in California,
23 because there was a hope that it was going to
24 create jobs, and instead of creating jobs, it's



1 actually had a little bit of a negative effect
2 there. So, but thank you.

3 THE SPEAKER: Any other questions
4 for the Secretary? Representative Dennis E.,
5 sir, you've got a question for the secretary?

6 REPRESENTATIVE D.E. WILLIAMS:
7 Just a comment that, would you also agree that
8 solar industry, since we're talking about cost
9 containment, is probably a classic example of
10 economies of scale as they grow that the cost
11 will become level?

12 SECRETARY O'MARA: Yes. And I
13 think one of the great opportunities on the
14 economic development side for the State of
15 Delaware is that there are several companies,
16 many of them are here and have spoken to many
17 of you, both in the, the manufacturing of
18 panels themselves and the technologies that go
19 into them, as well as the apparatus that are
20 used to install them as well as the installers
21 themselves.

22 We have over 200 individuals
23 involved in the solar industry right now. We
24 believe we could easily double that number with



1 this legislation, and then hopefully quadruple
2 it in the coming years as a result of this.

3 THE SPEAKER: Any other questions
4 for the Secretary?

5 Thank you, Mr. Secretary.

6 Representative Dennis E.
7 Williams.

8 REPRESENTATIVE D.E. WILLIAMS:
9 Thank you. Roll call, please.

10 THE SPEAKER: Mr. Chief Clerk,
11 please call the roll on Senate Substitute 1 for
12 Senate Bill 119.

13 (Roll call.)

14 THE SPEAKER: Please announce
15 roll call.

16 THE CLERK: Mr. Speaker, the roll
17 call reveals 28 yes, seven no, six absent.

18 THE SPEAKER: Having received a
19 constitution majority, Senate Substitute No. 1
20 for Senate Bill 119 is declared passed the
21 House.

22 (Conclusion.)

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CERTIFICATE

STATE OF DELAWARE)
)
NEW CASTLE COUNTY)

I, Julie H. Parrack, Registered Professional Reporter and Notary Public, do hereby certify that the foregoing record, pages 2 to 20 inclusive, is a true and accurate transcript, to the best of my ability, of an electronic recording in the above-captioned matter.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 30th day of December, 2013.



Julie H. Parrack, RMR-CRR

