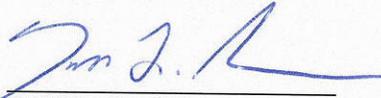


In the Matter of
PROPOSED RULES TO IMPLEMENT 26 Del. C. § 354(i) & (j)

Delmarva Power & Light Company (“Delmarva”) appreciates the opportunity to participate in this rule making process and recognizes the significant efforts by both the Department of Natural Resources and Environmental Control (“DNREC”) and the participants in the workshops that preceded the publication of these Proposed Rules. The purpose of these comments by Delmarva is to identify edits that should be made to permit the Proposed Rules to be implemented efficiently, accurately, and as intended under 26 Del. C. § 354 (i) & (j). Delmarva has not reviewed the Proposed Rules for the purpose of ensuring that all definitions and terms utilized in the Proposed Rules are consistent with those used in the enabling legislation. Delmarva understands that several other participants in this process have performed a review for that purpose (including Staff of the Public Service Commission) and that comments related to those reviews have been provided to DNREC.

Delmarva’s suggested edits are reflected below in underlined and strikethrough text. The reasons for each edit are set forth in margin comments adjacent to each proposed edit.

Respectfully Submitted,



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Dated: January 15, 2014

Delmarva Power & Light Company’s Requested Edits to
PROPOSED RULES TO IMPLEMENT 26 Del. C. § 354(i) & (j)

1.0 PURPOSE

These rules govern how the Director of the Division of Energy & Climate (Director) and the Division of Energy & Climate (Division) administer their obligations under 26 Del. C. § 354(i) & (j). The statute directs when and whether the Director may institute a freeze on the implementation of the Renewable Energy Portfolio Standards as provided for in 26 Del. C. § 354(a).

2.0 APPLICATION

2.1 These rules shall apply only in the case of retail electric supply delivered over the distribution facilities of an electric distribution utility regulated by the Public Service Commission. These rules shall not apply to electric supply provided by either (a) an exempted municipal electric company or a municipal utility (as set forth in 26 Del. C. § 363) or (b) an exempted rural electric cooperative (as set forth in 26 Del. C. § 363).

2.2 These rules will be applied beginning in compliance year 2013, as defined in 26 Del. C. §§ 352(3) and 354(a).

3.0 DEFINITIONS

As used in these rules:

"Alternative compliance payment" means a payment of a certain dollar amount per megawatt hour, which a retail electricity supplier or municipal electric company may submit in lieu of supplying the minimum percentage from Eligible Energy Resources required as defined and set by 26 Del. C. §§ 352(1) and 358(d).

"Average QFCP offset cost" means the dollar amount to be attributed to the cost of a MWh of output from a QFCP during a compliance year.

"Avoided system costs" means reductions in electric generation, transmission or distribution costs.

"Compliance year" means the calendar year beginning with June 1 and ending with May 31 of the following year, for which a retail electricity supplier or municipal electric company must demonstrate that it has met the requirements of this subchapter.

"Division" means the Division of Energy & Climate, the successor agency to the Delaware Energy Office.

"Director" means the Director of the Division of Energy & Climate, who is considered the State Energy Coordinator for the purpose of these rules.

"End-use customer" means a person or entity to whom electrical energy at retail prices is delivered over the distribution facilities of an electric distribution utility regulated by the PSC.

"Exempt load" means the retail customer load of a retail electrical supplier that is either exempt from RPS compliance or supplied by a third party supplier.

"Externality benefits" means reductions in environmental, health and mortality costs.

"Freeze" means suspension of the annual increase in REC and SREC percentage requirements of enforcement or implementation of the RPS as provided for under 26 Del. C. §§ 352(3) & 354(a), (i) and (j).

"Green Energy Fund" means the grant program authorized under 29 Del. C. § 8057.

"Non-exempt load" means the retail customer load of a retail electrical supplier that is not

Comment [G,T1]: Delmarva believes this change is necessary to reflect what a discretionary freeze would actually do. A freeze would not suspend enforcement of the RPS. A freeze would simply suspend further annual increases in percentage increases until the freeze is lifted.

subject RPS compliance or supplied by a third party supplier.

"PJM" or "PJM interconnection" means the regional transmission organization that coordinates the movement of wholesale electricity in the PJM region, or its successors at law.

"Price suppression effects" means reductions in energy costs due to competitive pressures from renewable resources.

"PSC" means the Delaware Public Service Commission.

"Qualified fuel cell project" or "QFCP" shall mean an entity defined by 26 Del. C. § 352(17) and authorized to receive surcharge payments paid by customers of an electric distribution company under 26 Del. C. § 364(d)(1)f., g., j., & k. and a tariff approved by the PSC.

"REC costs of compliance" means the total costs expended by retail electric suppliers or electric distribution utilities to achieve the applicable RPS percentage standards for RECs during a particular compliance year.

"REC offset hours" and "SREC offset hours" mean the MWh of output from a QFCP that is utilized under 26 Del. C. § 353(d) to offset or fulfill the number of RECs and SRECs that might otherwise be required to be surrendered to meet REC and SREC percentage requirements in a compliance year.

"REC percentage requirements" and "SREC percentage requirements" mean the renewable energy portfolio requirements for each compliance year as set forth in 26 Del. C. § 354(a).

"Renewable Energy Credit" or "REC" means the instrument defined by 26 Del. C. § 352(18) used to demonstrate compliance with the percentage requirements set forth in 26 Del. C. § 354(a).

~~"Renewable Energy Credit payment amounts" or "REC payment amounts" means the dollar amounts expended to produce or procure RECs that are utilized to meet REC percentage requirements in a particular compliance year.~~

Comment [S,WR2]: This term is not used in the Proposed Rules. Accordingly, a definition is not needed.

"Renewable Energy Cost of Compliance" means the total costs expended by retail electric suppliers or electric distribution utilities to achieve the applicable RPS percentage standards for all renewable energy during a particular compliance year.

"Retail electricity supplier" means a person or entity that sells electrical energy to end-use customers delivered over the distribution facilities of an electric distribution utility regulated by the PSC.

"RPS" means the renewable portfolio standard, the minimum percentage requirements of eligible energy resources and solar photovoltaics established under 26 Del. C., § 354.

"RPS load" means the total volume of electricity sold or delivered during a compliance year, excluding sales or deliveries made to any industrial customer (as designated by the PSC) with a peak demand in excess of 1,500 kilowatts.

"Solar alternative compliance payment amounts" mean the dollar amounts expended for alternative solar compliance payments as defined and set by 26 Del. C. §§ 352(24) and 358(e)).

"Solar Renewable Energy Credit" or "SREC" means the instrument defined by 26 Del. C. § 352(25) used to demonstrate compliance with the percentage requirements set forth in 26 Del. C. § 354(a).

~~"Solar Renewable Energy Credit amounts" or "SREC payment amounts" mean the dollar amounts expended to produce or procure SRECs that are utilized to meet SREC percentage requirements in a particular compliance year.~~

Comment [S,WR3]: This term is not used in the Proposed Rules. Accordingly, a definition is not needed.

"Solar Renewable Energy Cost of Compliance" means the total costs expended by retail electric suppliers or electric distribution utilities to achieve the applicable RPS percentage standards for solar photovoltaic renewable energy during a particular compliance year.

"Surcharge payments" means the dollar amounts (whether positive or negative) paid to, or received by, customers of DP&L from a QFCP and DP&L under 26 Del. C. § 364(d)(1) and an implementing tariff approved by the PSC.

"Third party supplier" means an electricity supplier that sells power to end-use customers delivered over the distribution facilities of an electric distribution utility regulated by the PSC.

"Total Retail Costs of Electricity" means the total costs billed to customers by retail electric suppliers and the electric distribution utilities to produce, purchase, distribute and deliver retail energy to serve the non-exempt load during a particular compliance year.

Comment [G,T4]: Because DPL prepares bills for all its distribution customers, DPL has the total bill cost to customers for all three components (generation, transmission and distribution irrespective of the customers supplier).

4.0 CALCULATION OF THE COST OF COMPLIANCE

4.1 The Division shall calculate the Renewable Energy Cost of Compliance, the Solar Renewable Energy Cost of Compliance and the Total Retail Cost of Electricity.

4.2 The Division shall calculate the Renewable Energy Cost of Compliance for a particular compliance year to be (a) the total of contributions to that portion of the Green Energy Fund used to support the development of renewable resources, plus (b) the cost of RECs and SRECs retired to satisfy the RPS requirement, plus (c) all Alternative Compliance Payments, plus (d) the cost of QFCP offsets to the RPS.

4.3 The Division shall calculate the Solar Renewable Energy Cost of Compliance for a particular compliance year to be (a) the total of contributions to that portion of the Green Energy Fund used to support the development of photovoltaic renewable resources, plus (b) the cost of SRECs retired to satisfy the RPS requirement, plus (c) all Alternative Compliance Payments for the solar photovoltaic requirement, plus (d) the cost of QFCP offsets to the photovoltaic carve-out.

4.4 The Division will determine the Total Retail Costs of Electricity as all customer costs for non-exempt load customers for a particular compliance year.

5.0 DETERMINATION BY THE DIRECTOR

5.1 The Director shall review the calculations of the Division.

5.2 If the Division calculations show that the Renewable Energy Cost of Compliance is equal to or greater than 3 percent of the Total Retail Cost, the Director shall determine whether a freeze should be implemented.

5.3 If the Division calculations show that the Solar Renewable Energy Cost of Compliance is equal to or greater than 1 percent of the Total Retail Cost, the Director shall determine whether a

freeze should be implemented.

5.4 In making a determination, the Director may consider the (a) overall energy market conditions, (b) avoided cost benefits from the RPS, (c) externality benefits of changes in energy markets, and (d) economic impacts of the deployment of renewable energy in Delaware.

5.4.1 Overall market conditions may include shifts in energy prices, long term market trends, adjustments for short term fluctuations, changes in compliance costs, consumer benefits of other state energy policies such as the implementation of energy efficiency programs, and the overall cost of energy to consumers.

5.4.2 Avoided cost benefits from the RPS may include avoided system costs and price suppression effects attributable to the deployment of renewable energy.

5.4.3 Externality benefits of changes in energy markets may include externality savings in health and mortality costs due to policies promoting cleaner energy in Delaware and regional energy generation.

5.4.4 Economic development benefits may include the overall economic activity attributed to jobs created by the development of renewable energy in Delaware.

6.0 IMPLEMENTATION

6.1 If a freeze is imposed under section 5.0 above, the Director will declare the freeze and notify, electronically and by mail, all licensed retail electric suppliers that have ongoing transitional retail contracts and electric distribution utilities that filed reports on RPS compliance. The Director will also (a) provide notice of the freeze to the PSC, and (b) publish notice of such freeze in the next appropriate issue of the Delaware Register of Regulations.

Comment [G,T5]: This change will ensure that all retail electric suppliers who have an ongoing RPS obligation under transitional contracts are notified of a freeze. If only suppliers "that filed reports on RPS compliance" are notified, certain retail suppliers could, potentially, be missed.

6.2 In implementing a freeze under these rules, existing contracts for the production or delivery of RECs, SRECs, renewable energy supply or other environmental attributes shall not be abrogated.

7.0 LIFTING OF A FREEZE

7.1 If a freeze has been imposed, the Division will calculate compliance costs, using the methods described in Section 4.0 of these rules.

7.2 The Director will review the calculation and determine whether to lift a freeze using the methods and criteria described in Section 5.0 of these rules.

7.3 The Director may determine when and whether to lift a freeze in consultation with the Commission.

7.4 If a freeze is lifted, the Director will promptly notify, electronically and by mail, all licensed retail electric suppliers that have ongoing transitional retail contracts and electric distribution utilities that filed reports on RPS compliance. The Director will also (a) provide notice of the freeze to the PSC, and (b) publish notice of such freeze in the next appropriate issue of the Delaware Register of Regulations.

Comment [G,T6]: DPL files its RPS report with the Commission 120 days after the close of the RPS compliance year. Reports to DPL from retail suppliers are often not provided to DPL until 110 days after the close of the RPS compliance year. Therefore, the entire 120 days is necessary for the Commission filing. DPL will need the additional 30 days after its Commission RPS filing ($120 \text{ days} + 30 \text{ days} = 150 \text{ days}$) to calculate the cost of that compliance, as necessary for compliance with these draft Rules.

8.0 ADMINISTRATION

8.1 Within 15090 days after the end of any compliance year, each retail supplier and electric

distribution company shall submit to the Division in writing and electronically the following information for the applicable compliance year:

(a) the Renewable Energy Cost of Compliance for that retail supplier or electric distribution utility for that compliance year;

(b) the Solar Renewable Energy Cost of Compliance costs for that retail supplier or electric distribution company for that compliance year;

(c) the Total Retail Costs of Electricity for that retail supplier or electric distribution company for that compliance year.

(d) the total MWh of output (either actual or deemed) produced by a QFCP during the compliance year;

(e) the total amount of surcharge payments paid by its customers during the compliance year;

(f) the calculation of the average QFCP offset cost for the compliance year under section 7.0; and

(g) the number of output hours that it would allocate to SREC and REC offset hours for the compliance year.

8.2 Within 30 days from receipt of the information described in Section 8.2 from each retail supplier and electric distribution company the Division shall calculate the cost of compliance as described in Section 4.0 of these Regulations and present the results to the Director.

8.3 Within 30 days of receipt of the calculations of the cost of compliance from the Division, the Director shall make a determination as described in Section 5.0 of these regulations and present to the Registrar for publication.

8.4 The public will have 30 days from the publication of the Director's determination to offer comment. The Director may alter or amend the determination based on review of the public comments.

8.5 The Director shall make a final determination and present to the Registrar for publication within 15 days of receipt of public comments. The determination shall be effective upon its publication.