

Delaware Public Service Commission's Comments on DNREC's Division of Energy and Climate's Implementation of Renewable Energy Portfolio Standards Act Cost Cap Provisions

The Delaware Code permits the State Energy Coordinator, in coordination with the Commission, to freeze the minimum cumulative solar photovoltaics or 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 1% or 3% respectively of the total retail cost of electricity for retail electricity suppliers during the same compliance year. See 26 *Del. C.* §§354(i) and (j). The Commission, via its Staff, has prepared for submission to the State Energy Coordinator these comments and revisions to the Division of Energy and Climate's ("Division") proposed regulations regarding the implementation of the REPSA cost caps. The Commission respectfully requests that the Division consult with the Commission and its Staff prior to republishing these rules if the Division does not agree with these comments and revisions.

2.0 Definitions

As a common practice words or terms that are not used in the regulation do not have to be defined i.e. RPS Load.

In 2010 the statute was amended to include 26 *Del. C.* § 354(e) which states that beginning with compliance year 2012 the commission-regulated electric companies shall be responsible for procuring RECs and SRECs to comply with the RPS requirements. Pursuant to 26 *Del. C.* §354(i)and (j) the freeze only applies to regulated utilities and not all retail electric suppliers, therefore the definitions should reflect that premise.

There is a difference in definitions in the statute concerning the qualified fuel cell provider and the qualified fuel cell provider *project*. The qualified fuel cell provider ("QFCP") refers to the entity that manufactures fuel cells; the qualified fuel cell provider project ("QFCPP") means the fuel cell power generation. Delmarva's ratepayers pay for the QFCPP or the generation aspect. This should be clarified throughout the document.

3.0 Application

As previously stated PSC Staff believes these rules should pertain to only the Commission-Regulated Electric Company as per 26 *Del. C.* §354(i) and (j). In these sections the statute refers to the "total retail cost of electricity" without defining it which is one of the reasons for the creation of these rules. In 26 *Del. C.* §363(f) and (g) the statute also refers to the provisions for municipal electric companies and rural electric cooperatives in determining the costs of complying with the renewable energy requirements. However for the municipals and rural electric cooperatives the statute defines the total cost as the "purchased power" of

the utility. This differs from the “total retail cost of electricity”. We believe that the legislators meant this distinction and therefore the total costs must be defined differently. Since this regulation only defines the “total retail cost of electricity” it must pertain to only the Commission-Regulated Electric Company not the municipals or cooperatives.

5.0 Determination by the Director

26 *Del. C.* §354(i) and (j) assigns the Commission a consulting role with the State Energy Coordinator (Director of Division of Energy and Climate) in determining whether to freeze the RPS requirement and whether the freeze should be lifted. Section 7.3 of this regulation includes the Commission in that role for determining whether to lift the freeze, however the rules should be amended to also include the Commission in the consulting role when the freeze is determined.

Section 5.7 states that the externality benefits may be considered. Staff respectfully suggests that the externally benefits used should be consistent with the Commission-Regulated Electric Company’s currently filed IRP.

8.0 Administration

As stated above only the Commission-Regulated Electric Company should be responsible for providing the information for the respective compliance year since the determination of the freeze only applies to them.

Conclusion

The **Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions** will provide a valuable directive for the calculations to balance the impact of the renewable energy portfolio standards on the ratepayer with the benefits derived from renewable attributes and generation. This rule should exact the derivation and keep the costs for renewables from exceeding a reasonable value upon the ratepayer. The Commission staff is committed to working with the Division of Energy and Climate and all stakeholders to ensure the applicable rules are balance between the interests the Delaware General Assembly finds that renewables contribute to the public at large and the costs that are paid by the ratepayers.