

**In The Matter Of:**

*State of Delaware Department of Natural Resources  
Division of Energy & Climate*

---

*ITMO: Implementation of Renewable Energy  
January 8, 2014*

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DEPARTMENT OF NATURAL  
RESOURCES & ENVIRONMENTAL CONTROL  
DIVISION OF ENERGY & CLIMATE

.. . . . .

-- PUBLIC HEARING --

IN THE MATTER OF: )  
 )  
Implementation of Renewable Energy )  
Portfolio Standards Cost Cap Provisions )

.. . . . .

PSC HEARING ROOM  
Cannon Building  
861 Silver Lake Boulevard  
Dover, Delaware 19904

Wednesday, January 8, 2014  
6:00 p.m.

.. . . . .

BEFORE: LISA A. VEST, Public Hearing Officer  
Department of Natural Resources &  
Environmental Control

.. . . . .

-- Transcript of Proceedings --

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1 MS. VEST: Okay. We are going to go  
2 ahead and begin tonight's proceedings. I want to  
3 thank everybody for coming out this evening.

4 For those of you who do not know me, my  
5 name is Lisa Vest, and the DNREC Secretary has  
6 designated me to be hearing officer for tonight's  
7 proceedings.

8 We are here this evening for a sole  
9 purpose, and that is to receive comment regarding the  
10 Department's proposed regulations. These regulations  
11 at issue tonight are Proposed Rules to Implement 26  
12 Delaware Code Section 354, Sections I and J.

13 A little bit of protocol on how we will  
14 go forward this evening. After a few introductory  
15 remarks by myself, I'm going to turn it over to  
16 responsible department staff. They will be entering  
17 exhibits for the benefit of the record and, I  
18 believe, providing a brief presentation that will be  
19 available on the screens.

20 After that, I will open the floor to  
21 anyone that wants to offer comment, again for the  
22 benefit of the record. There is a sign-up sheet that  
23 is over at the tables where Tom is just walking past  
24 now. If you do wish to speak, I would ask that you



1 provide your name and contact information so that we  
2 have that, again for the record.

3 And then, once the Department's  
4 presentation is done, I will just go straight down  
5 the list, and we will recognize those that wish to  
6 offer comment as they are noted on the sign-in sheet.

7 The other thing that I wanted to make  
8 sure everybody is aware of is that no decision is  
9 being made tonight. Again, the sole purpose of  
10 tonight's meeting is simply to receive comment, if  
11 any wishes to be offered, regarding the issues  
12 surrounding these regulations that are being  
13 proposed.

14 The record will remain open for  
15 approximately two full weeks following tonight, so  
16 that if there are any supplemental comments that wish  
17 to be offered in writing, that certainly can be done.

18 All comments bear the same weight,  
19 whether they are received tonight at the time of the  
20 hearing or whether they come in within the next  
21 couple of weeks. But the record will remain open for  
22 submission of comment through close of business on  
23 January 24, which is a Friday afternoon.

24 That being said, I am going to turn the



1 matter over to Department personnel for the  
2 Department to begin their presentation.

3 MR. UNDERWOOD: Hi. Good evening. My  
4 name is Rob Underwood, Program Administrator for the  
5 Division of Energy and Climate. Thank you,  
6 everybody, for coming out tonight.

7 One thing that I will add to is the  
8 Power Point presentation tonight will be part of the  
9 official record. So, if anybody wants to get a copy  
10 of it, that will be part of the official record.

11 I do have for the official record 16  
12 exhibits that I will quickly go through. Several of  
13 the exhibits are a conglomeration of several letters,  
14 so I will just go over the title and kind of what the  
15 letters are about instead of naming each individual  
16 letter, which would keep us here probably all night.

17 So I have 16 exhibits that I am going to  
18 put into the official record.

19 Exhibit 1 is several correspondences  
20 related to the drafting of the REPSA regulations  
21 dated from November 11 -- or pardon me -- November of  
22 2011 through September of 2012.

23 Exhibit Number 2, Department's Start  
24 Action Notice 2012-03 dated April 16, 2012.



1                   Exhibit Number 3, Rule Making Workgroup  
2 agenda, meeting notes, and Power Point dated  
3 August 6, 2012.

4                   Exhibit Number 4, Rule Making Workgroup  
5 agenda, meeting notes, Power Point dated  
6 September 28, 2012.

7                   Exhibit Number 5, written comments by  
8 Dr. Chad Tolman dated August 5, 2012.

9                   Exhibit Number 6, "Full cost accounting  
10 for the life cycle of coal," in "Ecological Economic  
11 Review," dated -- pardon me. There is no date, but  
12 it is part of the New York Academy of Sciences 1219,  
13 Pages 73 through 98.

14                  Exhibit 7 is a memo from Jeremy Firestone to  
15 the Department dated October 19, 2012.

16                  Exhibit Number 8 is direct testimony of  
17 Bruce -- and I'm going to pronounce his last name  
18 probably incorrectly -- do you want to give me a hand  
19 with that? Burcat, B-U-R-C-A-T. Thank you. I did not  
20 want to get that one wrong.

21                  MR. BURCAT: That wasn't even that hard.

22                  MR. UNDERWOOD: Yeah, but I just didn't  
23 want to mess it up.

24                  MR. BURCAT: It can be pronounced



1 several different ways.

2 MR. UNDERWOOD: Yeah, and I didn't want  
3 to be one of the ones to butcher it.

4 UNIDENTIFIED VOICE: You should hear  
5 what we used to call him!

6 MR. UNDERWOOD: We will save that for --

7 MR. BURCAT: Yeah, that's off the  
8 record. (Laughter)

9 MR. UNDERWOOD: That was before the  
10 Public Utilities Commission of Ohio, January 31,  
11 2013.

12 Exhibit Number 9 is a Register Notice  
13 for Start Action Notice 2012-03, which was published  
14 in the Delaware Register of Regulations dated  
15 December 1, 2013.

16 Exhibit Number 10 is affidavit of  
17 publication of the proposed regulation and the  
18 schedule for today's hearing that was posted in the  
19 News Journal and the Delaware State News on  
20 December 11, 2013.

21 Exhibit Number 11, correspondence  
22 between Gary Myers and the Department dated from  
23 December 4, 2013 through January 7, 2014.

24 Exhibit Number 12 is a transcript of the



1 Senate debate on Senate Substitute Number 1 for  
2 Senate Bill Number 119 on June 22, 2010.

3 Exhibit Number 13 is a transcript of the  
4 House debate on Senate Substitute Number 1 for Senate  
5 Bill Number 119, also on June 29, 2010.

6 Exhibit 14 is Delaware Public Service  
7 Commission's comments on the proposed RPSA  
8 regulations approved by the PSC on January 7, 2014.

9 Exhibit Number 15 is the opening  
10 statement which Tom Noyes is about to give, dated  
11 January 8, 2014.

12 And last but not least, like I started  
13 out saying, tonight's Power Point presented by Tom  
14 Noyes also dated January 8, 2014.

15 Those are the 16 exhibits that I am  
16 going to put into the official record tonight. They  
17 are all right here in this binder or this little  
18 folder. And I will make sure that it is available  
19 for everybody to review. And it will be part of the  
20 official record for tonight.

21 At this time I'm going to go ahead and  
22 give the microphone over to Tom Noyes, Principal  
23 Planner for the Department. And he will go through  
24 the presentation, and then we will open it up to the



1 public comment. Thank you.

2 MR. NOYES: Good evening. Tonight's  
3 hearing is to discuss the proposed regulation for the  
4 Implementation of Renewable Energy Portfolio  
5 Standards Cost Cap Provisions.

6 My name is Thomas Noyes. I am Principal  
7 Planner for Utility Policy for the Division of Energy  
8 and Climate of the Department of Natural Resources  
9 and Environmental Control, or DNREC. I am the  
10 responsible staff member for this proposed  
11 regulation.

12 The DNREC Division of Energy and Climate  
13 proposes rules to govern the Implementation of  
14 Renewable Energy Portfolio Standards Cost Cap  
15 Provisions per Delaware Code 26, 354 (i) and (j) of  
16 the Renewable Energy Portfolio Standards Act,  
17 shortened to REPSA. We call it REPSA sometimes.

18 These provisions were adopted as part of  
19 the Senate Substitute 1 to Senate Bill 119, which was  
20 passed by the General Assembly in 2010.

21 The proposed regulation directs how the  
22 Division of Energy and Climate calculates the cost of  
23 compliance with the RPS, how the director of the  
24 Division of Energy and Climate determines whether and



1 when to impose a freeze in implementation of the RPS  
2 under REPSA, and how the Director of the Division of  
3 Energy and Climate determines whether and when to  
4 lift a freeze.

5 For the purposes of this regulation, the  
6 Division of Energy and Climate is considered the  
7 successor agency to the Energy Office, and the  
8 Director of the Division of Energy and Climate is  
9 considered the Energy Coordinator.

10 The Division of the Energy and Climate  
11 welcomes all comments from the public. Written  
12 comments will be accepted through the close of  
13 business January 24, 2014.

14 The proposed regulation has been  
15 available for public review and comment at the  
16 Department's Division of Energy and Climate Office in  
17 Dover and online at -- there is a big, long website,  
18 but this will be available to you.

19 The proposed regulation was published in  
20 the Delaware Register of Regulations on December 1,  
21 2013. A legal notice regarding the availability and  
22 publication of the proposed regulation and the  
23 schedule of today's hearing was published in the News  
24 Journal and the Delaware State News on December 11,



1 2013.

2 As Rob said a moment ago, this statement  
3 I just presented is part of the record. So thank  
4 you. And I will hand it back to the hearing  
5 examiner --

6 MR. UNDERWOOD: Are you going to do the  
7 Power Point?

8 MR. NOYES: Oh, I ran right by it!

9 MR. UNDERWOOD: Yep.

10 MR. NOYES: Okay. June 2010, amendments  
11 to the Renewable Energy Portfolio Standards Act were  
12 adopted that included a Cost Cap Provision that set  
13 3 percent total RPS cost and 1 percent solar PV cost  
14 compared to the total retail cost of electricity.

15 Regulatory process: Start Action Notice  
16 was signed on April 16, 2012. In August and  
17 September of 2012, workgroup sessions were held with  
18 a number of stakeholders to discuss the issues  
19 involved.

20 December 1, 2013, proposed regulations  
21 were published in the Register. The proposed  
22 regulations, as I noted a moment ago, cover the  
23 calculating the cost of compliance, how the Director  
24 might determine whether and when to close a freeze,



1 and when and whether the Director might determine to  
2 lift a freeze of the RPS.

3 We will leave contact information up  
4 here. And, again, public comments are accepted until  
5 January 24, 2014. Thank you.

6 MS. VEST: Does that conclude the  
7 Department's presentation?

8 MR. NOYES: Yes, it does. Thank you.

9 MS. VEST: A little housekeeping here.  
10 Let the record reflect that exhibits one through 16,  
11 as identified by Department staff just now, are  
12 hereby entered into the record.

13 At this point I am going to open the  
14 floor for anyone that wishes to offer comment. And  
15 I'm just going to go down the sign-up sheets in the  
16 order that they were put in.

17 When I do recognize you, I don't know if  
18 we have one miche -- I guess that one. Is that one  
19 on?

20 MR. NOYES: Yes, it should be.

21 MS. VEST: Just for the benefit of the  
22 court reporter, because again it's important to get  
23 it all for the record, I would ask that when you are  
24 recognized, approach that miche, list any



1 affiliations that you are with or whether you are  
2 just an individual citizen.

3 And just in fairness, I just would like  
4 everybody to be as precise and concise as possible.  
5 I'm thinking five, ten minutes tops per person. And  
6 also, if there are any written comments that  
7 accompany your verbal comments at this time and you  
8 wish to enter them into the record, I'm more than  
9 happy to do that, as well.

10 And, again, the record will remain open  
11 for additional comments. If something gets said  
12 tonight that sparks you and you wish to go ahead and  
13 enter them, we can certainly do that.

14 UNIDENTIFIED VOICE: I guess I did not  
15 see the sign-up sheets, so --

16 MS. VEST: Well, there is three people.  
17 Can I go to you as number four?

18 UNIDENTIFIED VOICE: Okay.

19 MS. VEST: Okay. Rather than pass it  
20 back and forth, we will do it that way. Thank you.  
21 Starting from the top of the list, Jeremy Firestone.

22 PROFESSOR FIRESTONE: Good evening. My  
23 name is Jeremy Firestone. I'm a professor at the  
24 University of Delaware in the College of Earth,



1 Ocean, and Environment, and the director of the  
2 University's Center for Carbon-Free Power  
3 Integration.

4 In general, I want to say I think the  
5 proposed rules are well thought out, but I think  
6 there are a number of areas where they depart  
7 explicitly from the statute. In other cases, I think  
8 they could be clarified.

9 I do want to say that the rules  
10 appropriately provide the Division Director with  
11 discretion of whether or not to implement a freeze  
12 once the determination has been made that the  
13 threshold has been reached.

14 So I'm going to just sort of summarize,  
15 make my comments. They are more set out in full in  
16 written comments that I have just provided for the  
17 record.

18 So, first, the departures: The proposed  
19 rules, I believe, inappropriately in Section 4.21  
20 include costs related to the Green Energy Fund in  
21 compliance costs.

22 I think Section 354(j) is very clear.  
23 It talks about the cost of complying with this  
24 requirement. The Green Energy Fund is found in an



1 entirely different part of the code in Title 29  
2 rather than Title 26, which is the Act. And so I  
3 think that that's not an inappropriate inclusion.

4 Second, the 354(j) only grants the  
5 Division Director the discretion to freeze after  
6 consultation with Public Service Commission. The  
7 proposed rules, however, fail to provide such  
8 consultation and does have to be modified.  
9 After-the-fact notification to the Public Service  
10 Commission is not sufficient.

11 Third, the statute is clear that the  
12 Director may only consider a freeze if the cost of  
13 compliance -- and it uses the word "exceeds" the  
14 3 percent threshold. The proposed rules in both  
15 Section 5.2 and 5.3 provide that he or she may do so  
16 if the costs are equal to or greater. But, again,  
17 the rules -- the statute says it has to exceed 3  
18 percent.

19 Fourth, the proposed rules in Section  
20 7.3 provide that the Director "may determine when and  
21 whether to lift the freeze." However, the statute  
22 again is clear that the Division Director doesn't  
23 have that discretion; rather, the freeze "shall be  
24 lifted" if the total cost of compliance can



1 "reasonably be expected to be under the threshold."

2 So, if it can be reasonably expected,  
3 then there is no discretion; it just has to be  
4 lifted.

5 So those are the departures.

6 Clarifications, second: And I want to  
7 talk about the abrogation of contracts. I think that  
8 DNREC is to be commended for including that in  
9 implementing the freeze in Section 6.2, "existing  
10 contracts shall not be abrogated." I think that's a  
11 good first step, but it assumes that a freeze could  
12 be implemented in all circumstances where existing  
13 contracts are not abrogated.

14 I think, instead, there should be a new  
15 section in the rules, which I just titled Section 9,  
16 because the rule -- proposed rules ended at Section  
17 8, called "Abrogation of Contracts," and then DNREC  
18 simply state, "Notwithstanding any other provision in  
19 these rules, existing contracts for the production  
20 and delivery of RECS, et cetera, et cetera, shall not  
21 be abrogated." So I think that's a clearer, cleaner  
22 way to handle it.

23 In my earlier comments which were  
24 earlier tonight admitted into the record, I put in a



1 number of considerations that I thought DNREC should  
2 consider when determining whether or not to implement  
3 a freeze. And I would ask that the rules either be  
4 clarified to explicitly include each of the criteria  
5 or to clarify that they are embodied within the  
6 concepts that are there.

7 So these would include -- and these are  
8 considerations about whether to implement a freeze --  
9 the absolute dollar change in average consumer bills  
10 adjusted for inflation since June 2010.

11 So, because the provision was added for  
12 the protection of consumers, the change in the cost  
13 of energy that consumers are paying, as adjusted by  
14 inflation, is relevant.

15 So if we are now paying less than we  
16 were back in 2010, even if the threshold was  
17 exceeded, then the fears of the General Assembly  
18 would not have materialized and consumers would not  
19 be unduly burdened by renewable energy credits.

20 The second criteria would be the  
21 percentage of renewable energy credits held. There  
22 is a vast difference between paying 3 percent of your  
23 bill towards renewable injury credits if, say,  
24 Delmarva Power is holding RECs equal to 3 percent of



1 load than if it's holding RECs equivalent to  
2 24 percent of load. Indeed, at 24 percent of load,  
3 they would effectively have one-eighth the impact per  
4 megawatt hour that they would at 3 percent. So the  
5 absolute number of RECs is important.

6 The third criteria would be the absolute  
7 cost of RECs in the year in question as a percentage  
8 of total retail costs.

9 So the cost of RECs to consumers at any  
10 given moment in time is relevant. Thus, with the  
11 jurisdictional threshold of 3 percent, it's relevant  
12 as to whether the threshold -- whether we are now at  
13 3.1 percent or if you are at 10 percent.

14 So, you know, just because you conceded  
15 the threshold, you have done it just by a smidgen,  
16 and you might just say, "Well, it's not really worth  
17 putting in a freeze." But, if it's this huge impact,  
18 then you would think that you would be more likely to  
19 put in a freeze.

20 Fourth, the incremental year-to-year  
21 increased cost of RECs. Consumers are not just  
22 concerned about the total cost, but they are  
23 concerned about price spikes.

24 Indeed, you know, we had the earlier



1 legislation after the 59 percent rate hikes, which  
2 resulted from 100 percent supply increase. And then  
3 we got changes to the law because consumers are  
4 concerned about rate spikes, people can't plan.

5 And so it's relevant whether REC costs  
6 in a year that pushed you over the threshold, the  
7 total REC costs increased by a dollar per household  
8 per month or if it was five dollars or what have you.

9 The fifth criteria would be the  
10 cumulative cost of RECs as a percentage of total  
11 retail costs since program inception.

12 When the Public Service Commission  
13 considers long-term contracts, it considers long-term  
14 effects on consumers. It doesn't just look at what's  
15 going to happen in a given year. And I think DNREC  
16 should, as well. Because, from a consumer  
17 standpoint, the two data facts of what's happened  
18 over the course of a contract to one's wallet is  
19 relevant.

20 And then, lastly, the reason why RECs  
21 costs increased is the percentage of total retail  
22 costs is also important. REC costs can increase as  
23 the percentage of total retail costs because REC  
24 costs increased or because other costs have



1 decreased, or both.

2 So is it that REC costs have gone, you  
3 know, way up, or is it just that energy supply costs  
4 have gone down because of increased production of  
5 natural gas?

6 A freeze would have greater  
7 justification if the threshold has been exceeded  
8 because REC costs increased and have pushed us way  
9 over this threshold from 2010 than if the cost of a  
10 supply decreased; since, again, the purpose of the  
11 provision is to guard against consumers paying too  
12 much for RECs. Not too much for energy, but too much  
13 for RECs.

14 So those are my general comments. I  
15 won't go into the whole argument over "may" versus  
16 "shall." I think that it's -- I think -- covered  
17 quite in detail in my October 2012 comments which I  
18 also appended to my comments that I just submitted  
19 for the record.

20 But I think case law and laws of  
21 statutory construction are quite clear on this point,  
22 and that DNREC unquestionably has and was given  
23 discretion and not given discretion would be poor  
24 policy as well. So thank you very much for allowing



1 me to speak.

2 MS. VEST: Thank you, Mr. Firestone.  
3 Let the record reflect that Mr. Firestone -- or  
4 should I say Dr. Firestone?

5 PROFESSOR FIRESTONE: I actually prefer  
6 Professor (Laughter). Whenever I hear doctor, I  
7 think of my father who is an orthodontist. (Laughter)

8 MS. VEST: Well, let the record reflect  
9 that the documents that were presented to me by  
10 Professor Firestone, I have marked as Firestone  
11 Exhibit Number 1, and they are formally entered into  
12 the record. And thank you, sir, for your comments.

13 The next person in line is Todd Goodman.

14 MR. GOODMAN: Good evening, ladies and  
15 gentlemen. Thank you. I am here with -- I'm with  
16 Delmarva Power and Light Company.

17 And also here with me tonight sitting  
18 next to me is Rick Swink. Rick is -- he is sort of  
19 our -- he manages the renewable portfolio that we  
20 have to maintain to meet our load and also is  
21 involved in a lot of reports we file with the Public  
22 Service Commission, developing them. And, you know,  
23 as a result, he often works with DNREC on those  
24 issues.



1           We also have here today Jim (inaudible).  
2           Jim does a lot of this work, as well, and does a lot  
3           of the day-to-day management of the contracts.

4           And Kristin (inaudible) who also does a  
5           lot of the similar things as Jim day to day. And  
6           they have come down here because they are interested,  
7           generally very interested in this. And I think  
8           that's a great thing to have people that are actually  
9           interested in what we are doing.

10          So our focus here today was not to do an  
11          analysis. I mean, obviously, Professor Firestone did  
12          a very careful analysis of compliance with laws and  
13          regulations. I know that the Public Service  
14          Commission staff did the same thing. I was at a  
15          presentation they did yesterday.

16          So all we did is we looked at these  
17          rules to see if they caused, you know, any kind of  
18          problem mechanically for the obligations that  
19          Delmarva will have to fulfill under them.

20          I do want to comment that we were  
21          involved with this. We participated in the working  
22          group sessions that started quite sometime ago. And  
23          I would like to comment that, I mean, DNREC did do a  
24          heck of a lot of work on this, and it shows how hard



1 they worked on this. And there were a lot of other  
2 people who participated, some of whom are in the room  
3 here today, who did a lot of work on this, as well.

4 So it was actually enjoyable to see that  
5 there was interest in this and that comments were  
6 taken, considered, and there was back and forth. And  
7 it's, you know -- we get involved in a lot of rule  
8 makings. Quite a few of them are like that, and  
9 quite a few are not. This is one where there was  
10 involvement, and you can tell by the quality of the  
11 work here.

12 So we just have a few comments that we  
13 think -- I will file these officially. Maybe I can  
14 hand out a few, if you want to see them. They are  
15 very brief. I know certain people are very  
16 interested in this. (Handing out) Anyone else?

17 MS. VEST: I will take hers at the end  
18 and enter it in, if that is what you wish. Do you  
19 want to have that entered as a comment?

20 MR. GOODMAN: Sure. I think it might be  
21 cleaner if we provide -- I noticed --

22 MS. VEST: You can do that later.

23 MR. GOODMAN: Yeah. The first thing I  
24 noticed was that I didn't title it that it was



1 Delmarva's.

2 MS. VEST: The record is open through  
3 the 24th, so you can feel free to get it.

4 MR. GOODMAN: Okay. And you will see  
5 this is very brief. And what we did is we used that  
6 old draft changes.

7 So if you turn to the second page, the  
8 definition of freeze kind of jumped out at me. As  
9 drafted, it said that there would be a suspension of  
10 the enforcement of the RPS. And what it really is is  
11 that it would just be a suspension of the annual  
12 increases.

13 So the statute says that when a  
14 freeze -- if the Secretary uses his or her discretion  
15 to implement a freeze, it would freeze it at the  
16 current percentage in effect that year until it comes  
17 off.

18 And Dr. Firestone -- Professor Firestone  
19 talked about when, you know, it would come off of.  
20 This guy talked about it. (Pointing at Professor  
21 Firestone. Laughter)

22 So we think that just makes it a little  
23 more accurate. I think that's what was intended.

24 And then Mr. Swink pointed out -- you



1 will see the next one on the page -- that you don't  
2 really have to define renewable energy credit payment  
3 amounts because it's not used in here. So Rick  
4 thought that might be helpful. I don't think it's  
5 necessary to strike it, but, you know.

6 And then you will see that again on the  
7 next page on solar renewable energy credit amounts.  
8 Mr. Swink says it's not used in here, so you don't  
9 really need it. But, again, it's not really a  
10 critical area.

11 The next thing you will see on that same  
12 page three is we added "billed to customers." And we  
13 added "and the electric distribution utilities."

14 The second part first is -- well, I will  
15 let -- you know, Rick, why don't you explain your  
16 concern?

17 MR. SWINK: Yeah. There's three  
18 definitions of costs that are required of the retail  
19 suppliers and the EDC to provide. And the first two  
20 are the solar compliance costs and REC compliance  
21 costs. And in those definitions they say the retail  
22 suppliers and the electric distribution utility  
23 provide the information. And the last one, it left  
24 out "and the electric distribution utility" in that



1 definition.

2 And in trying to figure out what we are  
3 capable of providing in a reasonable fashion, one of  
4 the best numbers that we can get is actually what we  
5 bill customers.

6 Taking into account that I think the  
7 staff has comments where they said that they don't  
8 think the retail suppliers need to provide anything.  
9 If we go to what costs that we bill customers, which  
10 is actually the customer costs in defining the total  
11 cost, then we actually bill the customers for the  
12 retail supplier, so we know what the retail supplier  
13 has charged, and we know what we charge, so we have  
14 all the costs to make the calculations that are  
15 required to calculate the one and three percent, and  
16 without going to the retail suppliers.

17 There is one minor issue with  
18 transitional contracts, but we might be able to have  
19 a look around about that too.

20 But just trying to be more specific as  
21 to what costs we, or we as a retail supplier, will be  
22 providing to DNREC.

23 MR. GOODMAN: In a sense, it simplifies  
24 it and makes it easier to implement for both utility



1 suppliers and DNREC, obviously as a result of  
2 customer costs.

3 MR. SWINK: If we tried to base it on  
4 revenues, then we would have to consider costs that  
5 we billed that we didn't get, and it would complicate  
6 the calculation.

7 MR. GOODMAN: On the next page under  
8 6.0, you will see we added the word "licensed" and we  
9 struck "that filed reports on RPS compliance." Why  
10 don't you just --

11 MR. SWINK: As it's written down, the  
12 information, once the decision was made, would be  
13 posted to the electric distribution company and the  
14 retail suppliers who file compliance reports, in fact  
15 in the year they are doing the calculation. Well,  
16 there could be a retail supplier that shows up that's  
17 new that wouldn't get that information, so I thought  
18 it would be better if this was provided to the EDC  
19 and to all licensed retail suppliers. That would get  
20 all the possible suppliers.

21 MR. GOODMAN: And they would all get the  
22 information, and no one would be left out.

23 MR. SWINK: Yeah.

24 MR. GOODMAN: On the next page, 7.4, it



1 looks like those changes were made for the exact same  
2 reason, just to make sure that all licensed suppliers  
3 got the information, not just ones who had filed  
4 reports.

5 And I think that's just, again, just  
6 make sure that everyone gets the information and you  
7 don't end up with FOIA or other complaints against  
8 DNREC or the public utility.

9 On 8.1, and I tried to put the  
10 explanation over in the comment section there, it  
11 requires that the filing with DNREC within 90 days  
12 after the compliance year ends.

13 We compiled and filed an RPS report,  
14 which is not the cost -- it's, you know, the RECs  
15 that were required and all that -- within 120 days.  
16 And the reason we can't do it quicker than that is  
17 because the suppliers, some of them don't give us the  
18 information we need until 110 days.

19 So even getting it in within 120 days is  
20 tough. And that, again, is not the costs. So we  
21 would ask to add another 30 days for us to, you know,  
22 compile all the costs that we incur, that the  
23 suppliers, that we then billed out to customers as we  
24 described a moment ago.



1 I don't think it would be possible to do  
2 an accurate job in less than that amount of time. So  
3 we would ask that, again, to make sure that it's  
4 accurate, done correctly, if we could change that 90  
5 days to 150 days.

6 And if you needed further explanation as  
7 to why it's necessary, we would be more than happy.

8 MR. SWINK: One addition to that is we  
9 calculated from the 150 days adding the 30, all the  
10 additional periods that were specified to the point  
11 where the Director publishes the final decision  
12 whether to freeze or not. And that would be on  
13 February 15, on or around February 15, which would be  
14 prior to us having to calculate our rates and give us  
15 time to publish the rates for next year and the price  
16 compare for other suppliers for the next year.

17 MR. GOODMAN: So that's all we have. We  
18 just wanted the things we thought were necessary to  
19 make it run properly.

20 Again, thank you for -- not only for  
21 letting us speak here tonight, but for all the  
22 involvement that you not only gave us but so many  
23 people throughout the last year or so this was done.  
24 It's a good example of a good way to get something



1 done.

2 MS. VEST: Very good. Thank you,  
3 Mr. Goodman. And, sir, just so we have your name,  
4 could you spell your last name?

5 MR. SWINK: S-W-I-N-K.

6 MS. VEST: Just for the benefit of the  
7 court reporter and the record. And we are not  
8 entering what you passed out into the record,  
9 correct, because you are going to be providing a  
10 formal?

11 MR. GOODMAN: Yeah. We will do that.

12 MS. VEST: Okay.

13 MR. GOODMAN: We will provide it  
14 formally, and I can actually title it appropriately.

15 MS. VEST: Excellent. Thank you,  
16 Mr. Goodman. Moving along, David Stevenson.

17 MR. STEVENSON: I am filing this  
18 tonight. I will give you a copy.

19 MS. VEST: Okay.

20 MR. STEVENSON: And I will simply  
21 summarize what I have written here. Good evening.  
22 Dave Stevenson with the Caesar Rodney Institute. I  
23 have participated in workshop meetings and now have  
24 some comments about the rules that were suggested



1 here.

2 Section 3.2, DNREC intends to use the  
3 2013 compliance year. That means we will not have a  
4 decision on a freeze, particularly if we adopt the  
5 changes Delmarva has just suggested of adding another  
6 60 days, until January 15 of 2015.

7 We believe that's too long to wait to  
8 protect ratepayers, because there is a lot of  
9 evidence that we may have already exceeded the  
10 freeze. I would suggest using the 2012 compliance  
11 year.

12 The second reason for that is it allows  
13 a shakedown of something that's already happened. We  
14 should have all the information available for 2012.  
15 And if there are problems with the calculation, they  
16 can be figured out quickly before -- we don't have to  
17 wait another year and a half to come back to try to  
18 solve that problem.

19 Section 4.2.2. There needs to be a  
20 method to calculate the cost of renewable energy  
21 credits, specifically for some of the wind farms that  
22 Delmarva has contracted energy with. I highlight the  
23 100 megawatts Synergics Wind Energy Farm. The RECs  
24 are included in the cost of power, which was sold at



1       \$81 a megawatt hour, plus two and a half percent per  
2       year.

3                   I asked this question during the  
4       workshop and never got an answer and didn't get an  
5       answer in this rule making of how you're going to  
6       figure out what the premium cost is for that wind  
7       farm.

8                   AES probably, on top of the REC price,  
9       probably has a premium, as well, that should be  
10      included.

11                  Section 4.4, which talks about the divisor,  
12      basically, and says we are going to use the entire  
13      retail cost as the divisor for this calculation.

14                  It would seem to me that it should be the  
15      retail supply portion only, that the distribution and  
16      transmission costs are the same for renewable and  
17      non-renewable. The only part that has a difference is  
18      the supply charge. And that the divisor should just be  
19      the supply charge and not include distribution and  
20      transmission.

21                  Sections 5.2 and 5.3 talks about the Director  
22      having discretion to waive the RPS freeze if the  
23      1 percent or three percent annual caps are exceeded.  
24      With due deference to the professor, the lawyers I talk



1 to say "may" in this case means "shall," that the  
2 Director does not have discretion; that, in fact, in  
3 testimony during the process of legislating this, the  
4 Secretary, the Director, and others promised the  
5 legislators that this would be a circuit breaker, that  
6 it would be an absolute switch that would be pulled if  
7 the cap was exceeded.

8 So we can get into that argument. If DNREC  
9 does not decide to change the rule, maybe we will have  
10 to get some lawyers involved.

11 Section 5.4: The RPS legislation established  
12 no allowance for the Director to consider specifically  
13 market conditions, avoided costs, externalities, or  
14 economic impacts.

15 These are all made up out of thin air, number  
16 one. And, number two, they are extremely  
17 challengeable. Any one of these issues can have a very  
18 lengthy debate. I have made such a debate on this  
19 document.

20 To me, depending on your point of view, these  
21 can be calculated three different ways. And those  
22 specific items are simply created out of thin air as to  
23 give the Director authority to waive, which he doesn't  
24 have in the first place.



1 I will not go through all the details of the  
2 argument. That can be read by DNREC and others.

3 I will mention one point, and that was  
4 brought up also by Professor Firestone. The cost of  
5 power has come down because of natural gas prices.  
6 That does not mean that the RECs should be given a  
7 waiver because the cost of power has come down and the  
8 one and three percent is made on a lower divisor. That  
9 was not the intent of the Legislature. It was  
10 regardless of what the electric price was, it was to be  
11 a circuit breaker.

12 And, finally, I make a general comment. I  
13 participated in the working group meetings. And I and  
14 others made the points that have just been made, and  
15 they were all ignored.

16 DNREC basically had a plan to start with.  
17 They have moved ahead with it. And I suspect that  
18 after the public comments tonight, they will ignore  
19 them, as usual, publish it in the Register, and this  
20 will become the rule.

21 And I just am very disappointed. I agree  
22 with Mr. Goodman that the workshops were very helpful,  
23 they were open. But to ignore the inputs from those  
24 workshops is a travesty. Thank you.



1 MS. VEST: Thank you, Mr. Stevenson.  
2 Let the record reflect that the document provided to  
3 me just now has been marked as Stevenson Exhibit  
4 Number 1 and is entered into the record.

5 Moving along, could you identify  
6 yourself sir, for the record?

7 MR. BURCAT: Sure. My name is Bruce  
8 Burcat, and I am the Executive Director of an  
9 organization called the Mid-Atlantic Renewable Energy  
10 Coalition, which we call MAREC. MAREC appreciates  
11 the opportunity to comment in this process to help  
12 develop regulations to implement the cost cap  
13 provision as provided in the 2010 legislation.

14 I did want to give you just an idea of  
15 who MAREC is. It's a membership organization  
16 consisting of leading wind developers, wind turbine  
17 manufacturers, service companies, non-profit  
18 organizations, and a transmission company.

19 We have developed a number of -- our  
20 members have developed a number of the wind farms  
21 that are in operation in the region. Many of the  
22 turbines at these projects were manufactured by MAREC  
23 members.

24 As a result of the enactment of Senate



1 Substitute Bill Number 1 for Senate Bill Number 119  
2 in 2010, Delaware's Renewable Portfolio Standard was  
3 amended to increase and extend the compliance  
4 requirements of the RPS, providing renewable energy  
5 projects have employed Delaware workers and utilized  
6 locally manufactured projects and included a  
7 provision that could have the State Energy  
8 Coordinator, in consultation with the Public Service  
9 Commission, freeze the RPS solar compliance  
10 requirement if a one point percent cost threshold is  
11 exceeded or freeze the non-solar RPS compliance  
12 requirement if the 3 percent cost threshold is met.

13 We have reviewed the proposed regulation  
14 and believe, to a large extent, that it is consistent  
15 with the statutory authority provided in the enacting  
16 legislation.

17 The cost cap should be applied without  
18 repeating the intent of the original RPS legislation,  
19 which mandates the procurement of a minimal level of  
20 renewable resources in the State's electricity supply  
21 portfolio for purposes of achieving a number for  
22 important goals, such as increased electric supply  
23 diversity, reduced price volatility, new economic  
24 development opportunities, and improved air and



1 health quality, among other stated benefits.

2 We have several specific comments on the  
3 regulation which we will outline in more detail in  
4 our written comments, but I will briefly touch on  
5 them at this time.

6 We will also provide a few more details  
7 that we're not discussing here in our written  
8 comments, but we will have those filed prior to the  
9 deadline.

10 Under definition, and it's in Section  
11 2.0 of the regulation, we think there might be an  
12 error, and it may just be the way we are reading  
13 this, but there might be an error in the definition  
14 of "non-exempt load" definition.

15 It does not appear to be consistent with  
16 its use in Section 4.4 of the regulation and the  
17 definition of total retail cost of electricity under  
18 2.0.

19 If you move to that definition,  
20 non-exempt load, I think what's confusing -- and  
21 maybe we are just misreading this -- is it states  
22 that non-exempt load means the retail customer load  
23 of a retail electric supplier that is not subject to  
24 RPS compliance or supplied by a third-party supplier.



1           If you move to 4.4, that seems to be --  
2           that seems to be the load -- the non-exempt load is  
3           actually the load that should be counted. If you  
4           move to 4.4, it says, "The Division will determine  
5           the Total Retail Costs of Electricity as all customer  
6           costs for non-exempt load customers for a particular  
7           compliance year."

8           Going back to the non-exempt load, I  
9           just think there is -- I'm not saying that it's  
10          inappropriate. I just think the language needs to be  
11          tweaked a little bit to make it sound more  
12          appropriate. It just doesn't seem to cover -- I  
13          think the word "not" is just not appropriate use  
14          here. So it will be provided in more detail in our  
15          full comments that we are providing. And I will also  
16          be glad to talk to DNREC personnel, if appropriate,  
17          between now and the 24th, as well.

18          In Section 4.2.1, which addresses the  
19          use of the Green Energy Fund resources -- and  
20          Dr. Firestone talked about that -- we think that  
21          should be limited to a greater degree than what's  
22          mentioned in the proposed regulation.

23          While it appears correct to include the  
24          portion of funds that are attributable to renewable



1 energy, renewable energy projects, there seems to  
2 be -- there needs to be a clear demonstration that  
3 these funds have been directly funded by rate bearers  
4 and not come from sources such as REGI funds or other  
5 potentially funding pots currently available or not  
6 even yet known at this time.

7 So we do think that there needs to be  
8 some limitations on that particular provision. And,  
9 again, we will talk about that more fully in our  
10 comments that we will be filing.

11 We do strongly agree with the use of  
12 bloom energy costs for compliance and the calculation  
13 of the renewable energy costs of compliance. Because  
14 bloom energy offsets or associated RECs do not fall  
15 into the category of being considered attributes of  
16 an ineligible energy resource, as they are derived as  
17 a result of fuel cell technology utilizing natural  
18 gas. Those costs should not count towards the cost  
19 cap, in our opinion.

20 It is also evident that the bloom  
21 arrangement which resulted in special legislation to  
22 deal with the one project, or a couple projects, I  
23 guess, was meant to be judged from a cost perspective  
24 on a different basis than envisioned by the cost cap



1 provisions of the RPS law.

2 In fact, Section 364(d)(1)(c) placed a  
3 distinction cap cost restriction of the bloom  
4 arrangement which had to be met prior to Public  
5 Service Commission approval, which is a long-term  
6 arrangement.

7 Section 5.0: We do support the  
8 Director's discretion to potentially not impose the  
9 freeze if the 3 percent or 1 percent threshold is met  
10 in a particular year.

11 The language in 26 Delaware Code,  
12 Section 354(j) states that if the 3 percent threshold  
13 is exceeded during a compliance year, the State  
14 Energy Coordinator, the Director, in consultation  
15 with the Commission, may freeze minimum RPS  
16 compliance requirement for that year.

17 There are two key indicators in the  
18 statute that make this a discretionary act by the  
19 Director. And I totally disagree with Mr. Peterson  
20 of the Caesar Rodney Institute, that it is  
21 unambiguous that the permissive word being used, the  
22 word "may," was used in that context rather than the  
23 mandatory word "shall." If the word "shall" was  
24 used, we would be having a different discussion.



1                   Secondly, the fact that the Director  
2 needs to consult with the Public Service Commission  
3 would be irrelevant if it was an automatic freeze.  
4 So it doesn't appear to be appropriate to use any  
5 kind of Director automatic freeze, because there are  
6 clearly -- there is clearly language that would  
7 indicate otherwise, strongly indicate otherwise.

8                   Okay. Finally, MAREC believes that the  
9 use of various factors such as energy market  
10 conditions, avoided cost benefits for renewables,  
11 externally benefits and economic development impacts  
12 from renewable energy development are reasonable and  
13 justifiable, given the clear discretion provided in  
14 the Act.

15                   We will elaborate more on these factors  
16 in our written comments. But I did want to mention  
17 that there are numerous studies outlining the price,  
18 reducing impacts of renewable energy when it  
19 participates in the wholesale markets, like in PJM  
20 and, more even recently, very recently in the past  
21 couple of months, a study by PGM that it had, through  
22 its consultant, confirmed as part of the study that  
23 the integration of significantly greater amounts of  
24 renewable energy onto its system would, in fact,



1 cause significant price reductions for consumers,  
2 end-use consumers.

3 So there are a number of studies that  
4 support this, and so I don't think it's one-sided, as  
5 Mr. Peterson had said. But, clearly, it's, I think,  
6 one-sided in the other direction.

7 I wanted to thank you for the  
8 opportunity to comment on this process, and I look  
9 forward to commenting some more when we file the  
10 comments prior to the deadline. Thank you very much.

11 MS. VEST: Thank you, sir. At this  
12 point I have gone through all of the lists that have  
13 been provided me. Is there anyone else here that  
14 wishes to offer comment before we conclude for this  
15 evening?

16 Okay. I want to thank everybody for  
17 being respectful to the opinions that were voiced  
18 tonight.

19 Again, as I said in the beginning, the  
20 record will remain open from now through close of  
21 business, which is 4:30 State time on Friday,  
22 January 24.

23 Comments that come in at any point  
24 between now and then all bear the same weight. They



1 will all be incorporated into the record, and they  
2 will all be given review prior to a final decision in  
3 this matter.

4 Again, thank you all for coming out this  
5 evening. The meeting is adjourned.

6 (Concluded at 6:55 p.m.)

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CERTIFICATE

I, Lorena J. Hartnett, a Notary Public and Registered Professional Reporter, do hereby certify that the foregoing is an accurate and complete transcription of the proceeding held at the time and place stated herein, and that the said proceeding was recorded by me and then reduced to typewriting under my direction, and constitutes a true record of the testimony given by said witnesses.

I further certify that I am not a relative, employee, or attorney of any of the parties or a relative or employee of either counsel, and that I am in no way interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office on this 15th day of January 2014.

\_\_\_\_\_  
  
\_\_\_\_\_

Lorena J. Hartnett  
Registered Professional Reporter

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