

1 DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL
2 OF THE STATE OF DELAWARE
3 DIVISION OF ENERGY & CLIMATE

4

5 RE: Implementation of Renewable)
6 Energy Portfolio Standards Cost)
7 Cap Provisions)

8

9 The Cannon Building
10 PSC Hearing Room
11 861 Silver Lake Boulevard
12 Dover, Delaware 19904

13 Wednesday, January 6, 2015
14 6:00 p.m.

15

16 BEFORE: Lisa Vest, Hearing Officer

17
18
19 -- Transcript of Proceedings --

20
21 WILCOX & FETZER
22 1330 King Street
23 Wilmington, DE 19801
24 (302) 655-0477
www.wilfet.com

1 MS. VEST: If everybody could take
2 their seats, we are going to go ahead and start
3 tonight's proceedings. Can everybody hear me?

4 I want to thank you all for coming
5 out on this incredibly cold evening. For those of
6 you who may not have seen me before, my name is Lisa
7 Vest, and the DNREC Secretary has designated me to
8 be the hearing officer for tonight's proceedings.

9 I want to give a little protocol here
10 before we begin tonight. This is actually the
11 second of two hearings that we have had in this
12 matter.

13 The Department has been in the
14 process of promulgating or attempting to promulgate
15 these proposed regulations for well over a year. We
16 went to a hearing last January, almost to the day.
17 Comment was offered.

18 The record was kept open for a short
19 amount of time following that hearing, and
20 afterwards the Department really reviewed and
21 reflected upon the comments, and there were some
22 significant changes that were made to these proposed
23 regs, such that we felt it necessary to go to a
24 second hearing so we could thoroughly vet the

1 changes that were made so the public was aware.

2 That is why we are here tonight.

3 It's still a proposed regulation. There has not
4 been any decision made by the department with regard
5 to promulgating these. But it is a revision to what
6 was initially proposed last year, so that's why we
7 are here tonight.

8 The Department is going to have a
9 brief presentation to kind of explain where we are
10 at in this whole process and what these regs are now
11 being -- the format that they are now in.

12 And following their presentation and
13 the introduction of their exhibits into the record,
14 we will go ahead and open up the floor to anyone
15 that's here tonight that wishes to offer formal
16 comment for the record.

17 If you have not already done so, I
18 would ask that you sign in. There are sign-in
19 sheets right there. When the Department is done
20 with its presentation, I will just go in the order
21 that people signed up to speak. And I would ask
22 that everybody try to keep it to about five minutes
23 a piece just for efficiency and time purposes
24 tonight.

1 If you do have your comments in
2 written format, that's wonderful. You can, by all
3 means, just provide those written comments to me. I
4 will enter them right into the formal hearing
5 record, and then you can take your five minutes and
6 sort of give a summary for the benefit of the record
7 and for the benefit of other people that are here
8 tonight.

9 Again, no decision has been made by
10 the Department. The purpose here is twofold. We
11 are here to vet the changes that were made to these
12 proposed regulation from last year, and also to be
13 the venue in which people can offer comment for the
14 record.

15 I should also note that following the
16 conclusion of tonight's hearing, the record will
17 remain open for an additional 15 days. So in the
18 event that you might hear something tonight and you
19 want to offer comment on those matters that are
20 spoken about tonight, you can feel free to provide
21 comment up through close of business on Thursday,
22 January 22.

23 That being said, I'm going to turn
24 the matter over to the responsible division staff

1 that are here for the beginning of tonight's
2 proceedings.

3 MR. NOYES: Good evening. Today's
4 hearing is to discuss proposed -- a revised proposed
5 regulation for the implementation of the Renewable
6 Energy Portfolio Standards Cost Cap Provisions.

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

13 The DNREC Division of Energy and
14 Climate proposes rules to govern the implementation
15 of Renewable Energy Portfolio Standards Cost Cap
16 Provisions, 26 Delaware Code 354 (i) and (j) of the
17 Renewable Energy Portfolio Standards Act, or REPSA.

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

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

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

5 The hearing on this matter was held
6 January 7, 2014. Subsequently, the DNREC Division
7 of Energy and Climate asked the Deputy Attorney
8 General assigned to this matter whether the
9 3 percent and 1 percent caps in 26 Delaware Code 354
10 (i) and (j) refer to a cumulative increase or a
11 year-over-year increase. The Deputy Attorney
12 General assigned to this matter advised that the
13 statute provides for year-over-year increases.

14 The proposed regulation has been
15 rewritten to reflect this opinion. This significant
16 change requires that the proposed regulation be
17 republished and a second hearing be held, which is
18 why we are here tonight.

19 The revised proposed regulations
20 published in the Register of Regulation on
21 December 1, 2014. The proposed regulation has been
22 available for public review and comment at the
23 Department's Division of Energy and Climate office
24 in Dover and online at -- I have got a long URL --

1 excuse me -- it's the December 1st Register of
2 Regulations.

3 A legal notice regarding the
4 availability and publication of the proposed
5 regulation and the schedule of tonight's hearing was
6 published in the News Journal and the Delaware State
7 News on December 14, 2014.

8 The Division of Energy and Climate
9 welcomes all comments from the public. Since this
10 hearing is considered a continuation of the previous
11 hearing, all comments submitted up until the
12 previous hearing are already part of the record.

13 We are submitting the following
14 documents for the record here this evening:

15 First, all comments received since
16 the last hearing, including attachments; the
17 transcript of the hearing held January 8, 2014; the
18 Register Notice published in the Delaware Register
19 of Regulations dated December 1, 2014; and the
20 hearing notice from the Delaware Register of
21 Regulations, again dated December 1, 2014; affidavit
22 of publication of the proposed regulation and the
23 schedule of today's hearing in the News Journal and
24 Delaware State News dated December 14, 2014; a

1 summary of the legal review on whether the 3 percent
2 and 1 percent cost caps refer to a cumulative
3 increase or year-over-year increase; my opening
4 statement, which I'm reading to you right now; and
5 the Power Point presentation which you see up on the
6 screen.

7 I'm going to give these to the
8 hearing officer, and then we will be opening this up
9 for comment.

10 MS. VEST: Let the record reflect
11 that the exhibits, as identified just now by
12 Department staff, are hereby entered into the formal
13 hearing record.

14 As Mr. Noyes said, all of the prior
15 comment, as well as all of the prior exhibits that
16 were entered this time last year at the initial
17 public hearing, are already in the record, so this
18 is just a continuation of the process that was begun
19 last January.

20 Does the Department have any
21 additional comment it wishes to make at this time?

22 MR. NOYES: No, we do not.

23 MS. VEST: Okay. Could you do me a
24 favor and grab the sign-up sheets.

1 MR. NOYES: Oh, yes.

2 MS. VEST: Since the Department has
3 concluded their presentation, we will now move
4 forward and open the floor to anybody that wishes to
5 offer formal comment for the record.

6 I'm just going to go down the sign-up
7 sheet as you guys put your names in. So the first
8 person that indicated that they wished to speak was
9 Chad Tolman. Mr. Tolman?

10 MR. TOLMAN: I am going to pass.
11 Thank you.

12 MS. VEST: You are going to pass?

13 MR. TOLMAN: Yes.

14 MS. VEST: Okay. David Stevenson.

15 MR. STEVENSON: Yes. Thank you. I
16 have a copy of my -- I have a couple copies, in
17 fact.

18 MS. VEST: Wonderful. Thank you.

19 MR. STEVENSON: Just a one-pager this
20 time. These are additional comments to comments I
21 made earlier in this process. Delaware Code Chapter
22 26, Section 34 (j) states, "The formula for the
23 percentage cost of the RPS program to determine if a
24 freeze has been triggered simply says the total cost

1 of complying with this requirement during a
2 compliance year exceeds 3 percent of the total
3 retail cost of electricity for retail electricity
4 suppliers during the same compliance year."

5 So it's pretty straightforward. The
6 percentage is basically, for example, the first year
7 we are going to look at is 2013 compliance year, so
8 it's the RPS compliance cost for compliance year
9 2013 divided by the retail cost of electricity for
10 compliance year 2013.

11 I don't see any room for any other
12 interpretation. I'm going to be interested to see
13 Mr. Noyes's summary from the Attorney General's
14 Office.

15 So on the sheet I give an example.
16 Let's say that the compliance cost was seven bucks
17 and the month-per-month and the total retail cost
18 was 135. You do a simple division. In this case
19 it's 5.2 percent.

20 All right. And also it's exactly
21 what is said in Section 4 of the freeze
22 implementation rules. And also if you go back and
23 listen to the debate on the floor, which I have done
24 when the bill was passed, you can hear Secretary

1 O'Mara responding to Tom Kovach, Representative
2 Kovach, that this was going to be an absolute
3 circuit breaker, that if the 3 percent were
4 exceeded, we would freeze the -- freeze the RPS, and
5 that, in fact, it was only going to cost 50 cents a
6 month.

7 Well, here we are today. It's
8 approaching \$8 a month. And according to our
9 friends at Delmarva Power, in 2014 the IRP, it's
10 going to \$14 a month.

11 So here we are Section 4 agrees with
12 the code, but now we get to Section 5. And all of a
13 sudden the formula changes to the compliance cost
14 for 2013 compliance year minus the compliance cost
15 for 2012 divided by the total cost -- retail cost of
16 the electricity.

17 So now you have got \$7 minus whatever
18 the number was for 2012 divided by the 135 a month,
19 and you are at 3 percent instead of 5.2. Now, those
20 are made-up numbers. I don't know what the numbers
21 actually are.

22 But it just gives you an example.
23 This was a very simple wording. I don't see -- I'm
24 going to ask specifically, Mr. Noyes, to get not

1 just the summary -- I'm going to have a copy of the
2 summary of the Attorney General's -- but I would
3 like the complete opinion from the Attorney General
4 to see where he is getting or she is getting this
5 idea that there is anything more complex than
6 dividing A by B.

7 Secondly, Section 5 creates this
8 amazing group of reasons why we should not freeze
9 that's optional for the Director to decide based on
10 half a dozen things that are not mentioned in the
11 code. It doesn't mention anything about things that
12 raise the cost -- for example, you are going to lose
13 jobs because the cost of electricity goes up.
14 That's not mentioned anywhere in deciding whether to
15 have a freeze or not. So I would like to see this
16 legal opinion.

17 And, secondly, I assume by now, based
18 on the recording in Section 8, the administrative
19 section, the timing for figuring out the 2013
20 compliance year cost is December 31, 2014, 180 days
21 after the compliance year closed.

22 I'm assuming that DNREC has done a
23 calculation by this time. If not, I would be
24 shocked. I would like to see a copy of the

1 calculations.

2 And while we are waiting for this
3 material that I have asked for, I think we need to
4 extend comment period until after we have seen these
5 things so we can analyze it and respond
6 intelligently to the new information that was
7 presented tonight.

8 But thank you very much.

9 MS. VEST: Thank you, Mr. Stevenson.
10 Is there anyone else at this time that wishes to
11 offer comment for the record? Okay. Mr. Stevenson,
12 I will take your request for an extension of the
13 comment period under advisement. I appreciate you
14 offering your comment and certainly providing the
15 written comment for us tonight.

16 I'm going to go ahead and mark the
17 written comments that you gave as Stevenson Exhibit
18 Number 2, since you already previously had offered
19 comment last year.

20 At this point, since we don't have
21 anybody else right now that wishes to speak, but we
22 have a situation where the hearing was noticed to go
23 until 8:00 p.m., I'm just going to take a break. We
24 are going to go off the record right now. There may

1 be other people coming later.

2 You are certainly free to go at this
3 point if you don't want to offer comment, or you can
4 feel free to stick around.

5 But we are going to go off the record
6 for now, and I will come back on the record at
7 approximately five of eight to see if anybody else
8 has showed up that wishes to offer comment or
9 anything else needs to be submitted at that time.

10 So we will be taking a break of about
11 an hour and change right now.

12 (Recessed until 7:08 p.m., at which
13 time some members of the public asked if
14 they could put a statement on the record.)

15 MS. VEST: If everybody would take
16 their seats back. I'm going to go ahead, even
17 though we still have approximately 50 more minutes
18 before 8:00.

19 There have been a couple of you that
20 have indicated you would like to make a couple quick
21 additional comments. So, that being said, I'm going
22 to go ahead and go back on line at this point so
23 that we can get those comments in the record. And
24 then, as soon as the comments are made, of course

1 you all are welcome to stay or leave. It's
2 completely your prerogative.

3 But I do know that Mr. Stevenson had
4 wished to make some additional comments.

5 MR. STEVENSON: Yes. Thank you, and
6 I will be brief.

7 I've got the document that was
8 offered, the summary of the legal opinion. I would
9 note one particular sentence, "Interpreting the
10 statute so that the minimum cumulative requirement
11 refers to the cumulative increase from the beginning
12 of the program would lead to an unreasonable or
13 absurd result because at that rate the statutory
14 compliance schedule could not be achieved."

15 I would point out that starting from
16 2012 to 2025, 3 percent a year compounds to
17 47 percent. I think that's equally absurd that the
18 Legislature would intend for a 47 percent increase.
19 We are talking about \$65 a month for a residential
20 customer.

21 I will remind everybody of the rather
22 bitter dispute on the last base case for Delmarva
23 Power that argued for months and months and months,
24 and is still not settled, over two or three dollars

1 minimum.

2 So I think it's equally absurd. And
3 I don't put a lot of faith in the summary one. I'm
4 still asking for the complete -- the complete
5 opinion.

6 Thank you.

7 MS. VEST: Thank you, Mr. Stevenson.
8 And I apologize for making everybody wait.

9 Also indicating that they wanted to
10 offer some comment, Mr. Tolman, I believe you wanted
11 to say a couple words?

12 MR. TOLMAN: Yes. So my name is Chad
13 Tolman.

14 MR. NOYES: Could you come up here?

15 MR. TOLMAN: Yes. My name is Chad
16 Tolman. I'm a physical chemist by training, and I
17 have been reading, writing, and speaking about
18 energy and climate change for a period over 25
19 years.

20 I was the Energy Chair of the
21 Delaware Chapter of the Sierra Club for eight years,
22 and I'm now a Co-Chair of the New Castle County
23 Congregations of Delaware Interfaith Power and
24 Light, a faith response to climate change, and the

1 Climate Chair of the League of Women Voters of
2 Delaware. I'm also on the US L WV Climate Change
3 Task Force.

4 The comments I am going to make
5 tonight are my own, because we have a formal process
6 within the League for clearing comments of this sort
7 for the record. But I'm hoping that we can get
8 comments written and approved by our committee and
9 the board and submitted in time to get them in as
10 part of the public record.

11 I very much support what DNREC is
12 trying to do with regard to dealing with these caps
13 on the increasing requirements for renewable energy
14 in the renewable energy portfolio standards.

15 I think the RPS is an important tool
16 for Delaware to increase the amount of energy that
17 comes from renewable energy sources for electricity
18 generation, and I think it's very, very critical
19 because, as a result of my service on the Sea Level
20 Rise Advisory Committee for the state, I'm very
21 aware that Delaware is extremely vulnerable to the
22 effects particularly of the sea level rising and
23 coastal storms.

24 And I'm really afraid that, unless we

1 can become a leader in developing our renewable
2 energy resources and getting away from fossil fuels,
3 Delaware is going to basically disappear in time.
4 It's going to take time before we are completely
5 flooded, but at the rate we're going now in this
6 country and in the world, we will have so much
7 carbon in the atmosphere by the end of the century,
8 it will be very difficult to avoid not melting all
9 of the ice.

10 And if that happens, the sea level
11 will rise eventually by 265 feet; so, basically,
12 Delaware will be gone except for the strip along the
13 Pennsylvania border. So it's very, very critical
14 and important that we make progress as rapidly as
15 possible to get away from fossil fuels and develop
16 our renewable energy resources.

17 And we have considerable resources
18 both in solar PV and offshore wind that I think we
19 really need to develop as far as electricity
20 generation is concerned.

21 And I think we also need to put a
22 price on carbon so that we also can cover emissions
23 from burning gasoline and diesel fuel, because they
24 contribute significantly to our carbon emissions.

1 So I would like to see DNREC
2 supported in requiring that the 3 percent, 1 percent
3 thresholds for freezing the increasing standards
4 apply on an annual year-by-year basis rather than a
5 cumulative basis.

6 And I also think that the Division
7 Director for Energy and Climate needs to have a lot
8 of latitude in deciding when to put on a freeze and
9 when to take it off, because there is a lot more
10 involved than just the simple cost to electrical
11 consumers that shows up on their electricity bills.
12 You know, economists have this term called
13 "externalities," which are basically costs to
14 society that don't show up in the direct
15 transaction. The cost to Delaware from both the
16 health effects of burning fossil fuels and the
17 damage due to climate change, especially sea level
18 rise, are going to dwarf the costs of putting in
19 renewable energy to the citizens of Delaware.

20 So I commend Tom and the work of the
21 Energy and Climate Division on what they are trying
22 to do here, and I strongly support what they are
23 doing. And I hope we can get a statement to that
24 effect from the League of Women Voters of Delaware.

1 Thank you.

2 MS. VEST: Thank you, Mr. Tolman.

3 And Ms. Pertzoff, I think you wanted to say a few
4 words, as well?

5 MS. PERTZOFF: Yes. Thank you. My
6 name is Lisa Pertzoff. Actually, if it matters for
7 the record, my legal name is Elizabeth. I'm not
8 sure with this identity crisis thing.

9 I'm co-chair of the Environmental
10 Committee of the League of Women Voters of Delaware,
11 and also a board member of the league.

12 I did not hear about this issue until
13 two or three days ago, and so have been remiss in
14 getting the word around.

15 I would like the time limit for
16 public comment to be extended for the following
17 reason: We do not meet until -- our committee does
18 not meet until the 23rd of this month, and I'm
19 hoping that by e-mail we will be able to get a
20 statement together on which we can agree. The
21 League works on a consensus basis.

22 But, after it clears our committee,
23 assuming that it does, it then has to go to the
24 state board, because it's a statewide issue, and

1 that takes a little bit more time.

2 In fact, they have told me on pain of
3 death they better have 48 hours to act on it or they
4 won't.

5 And so I would -- I would request
6 that the public comment period be extended through
7 the first week in February, if that is at all
8 feasible.

9 My own personal opinion, and I'm
10 speaking now as Lisa Pertzoff, support the effort
11 that DNREC is making, and I agree with everything
12 that Dr. Tolman just said. And I thank you for your
13 time.

14 MS. VEST: Thank you, ma'am.

15 And, as I said before, I will
16 certainly take the request to extend the comment
17 period under advisement.

18 Is there anybody else that wishes to
19 offer comment at this time? Okay. I'm so sorry to
20 do this. I'm going to have to go back off the
21 record at this point. I need to stay until 8:00 due
22 to the way it was noticed. We have a legal
23 obligation to be here.

24 So at this point we are going to go

1 back off. Assuming that no one else wishes to
2 speak, we will simply go on the record at 8:00 just
3 to confirm that all comment has been received.

4 If you all wish to stay, you are
5 certainly welcome to, but you are also free to
6 leave.

7 And at this point the record is
8 definitely open for additional comment through close
9 of business on January 22. I will take the
10 requests, again, under advisement. And if a
11 decision is made to extend the comment period, I
12 will be sure to get notice out regarding that
13 matter. So we will go off at this time again.

14 (Recessed until 8:00 p.m.)

15 MS. VEST: We are going to go back on
16 the record at this point. The meeting was scheduled
17 to run from 6:00 p.m. to 8:00 p.m., so we were
18 legally obligated to stay for that amount of time.

19 According to my cell phone, it is now
20 8:00 p.m. There are no longer anyone here from the
21 public, and all comment that was offered has already
22 been given for the record in this matter.

23 So we are going to go ahead and
24 conclude the hearing at this time. I thank the

1 Department staff for their efforts in this matter.

2 The meeting is adjourned.

3 (Concluded at 8:00 p.m.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

1 CERTIFICATE

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

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

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and affixed my seal of office on this 8th day of
17 January 2015.

18
19
20
21 _____
22 Lorena J. Hartnett
23 Registered Professional Reporter
24