

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
DELMARVA POWER AND LIGHT COMPANY)
FOR APPROVAL OF SOLAR RENEWABLE)
ENERGY CREDIT CONTRACTS AS SREC) PSC DOCKET NO. 10-198
SUPPLY SOURCES FOR STANDARD OFFER)
SERVICE CUSTOMERS (Filed June 1, 2010)

ORDER NO. 7788

This 15th day of June, 2010, the Delaware Public Service Commission (the "Commission") determines and orders the following:

1. On June 1, 2010, Delmarva Power and Light Company ("DP&L") filed an application (the "Application") with the Commission, pursuant to Section 1007 of the Electric Utility Retail Customer Supply Act ("EURCSA") and the Renewable Energy Portfolio Standards Act, 26 Del. C. §§351 *et seq.* ("REPSA"), for approval of two Solar Renewable Energy Credit ("SREC") contracts for the procurement and sale of SRECS necessary to serve its standard offer service ("SOS") customers.

2. On June 4, 2010, DP&L filed a Motion to Expedite the schedule in this proceeding (the "Motion").

3. By way of background, 26 Del. C. §1007(b) gives SOS providers the ability, among other things, to enter into contracts for procurement of power necessary to serve their SOS customers. In order to take such action the SOS provider must either file an application with the Commission or (if, as here, DP&L is the SOS provider) have such action approved as part of its §1007(c) integrated resource plan. If the SOS provider chooses to seek approval under §1007(b), as DP&L has done here, then the Commission must hold an evidentiary hearing on

the request and approve the request if it finds that "such action is in the public interest." 26 *Del. C.* §1007(b).

4. The EURCSA requires at least 30% of DP&L's resource mix for SOS supply to be comprised of purchases made through the regional wholesale market, but provides that DP&L may use a mix of resources to meet its SOS supply obligations. In Order No. 7199 issued in PSC Docket No. 06-241, the Commission directed DP&L to use a portfolio approach to meet its SOS supply obligations.

5. The REPSA was enacted in recognition of the benefits of renewable energy resources to the public, and is intended to establish a market for electricity from renewable resources in Delaware. 26 *Del. C.* §§351(b), (c). Section 354(a) of the REPSA requires that the total retail sales of each Retail Electricity Product (defined as "an electrical energy offering that is distinguished by its generation attributes and that is offered for sale by a retail electricity supplier or municipal electric company to end-use customers," see 26 *Del. C.* §352(20)) include a minimum percentage of electric energy sales generated from renewable resources and solar photovoltaics. If a retail electricity supplier or municipal electric company does not have sufficient renewable energy credits ("RECs") and solar renewable energy credits ("SRECs") to meet the compliance year obligations, it is required to pay into the Delaware Green Energy Fund an "alternative compliance payment" that represents the difference between the credits available and used in the compliance year and the credits that were

necessary to meet the compliance year's requirement(s). *Id.* at §358(c). The minimum requirements set forth in the REPSA are:

Compliance Year (begins June 1)	Minimum Cumulative % from Solar Photovoltaics	Minimum Cumulative % from Eligible Energy Resources
2010	0.018	5.5
2011	0.048	7.0
2012	0.099	8.5
2013	0.201	10.0
2014	0.354	11.5
2015	0.559	13.0
2016	0.803	14.5
2017	1.112	16.0
2018	1.547	18.0
2019	2.005	20.0

26 *Del. C.* §354(a).

6. Since the REPSA requirements became effective in 2007, DP&L has been obtaining the vast majority of its SRECs through the reverse auction process for SOS load, in which wholesale energy providers supply energy and other required products to DP&L's SOS customers. The bidders were required to include SRECs in their bids. In Order No. 7432 (August 19, 2008) issued in PSC Docket No. 04-391 the Commission granted DP&L's request to remove the wholesale energy providers' obligation to include the necessary SRECs. Thereafter, DP&L began searching for another source to obtain some or all of the necessary SRECs. The two contracts for which DP&L seeks approval herein are a result of that search.

7. As described in the Application, DP&L is participating in the Dover Sun Park project with the City of Dover, the Delaware

Municipal Electric Corporation ("DEMEC") and the Sustainable Energy Utility ("SEU"). DP&L seeks approval of two contracts in this docket. The first contract is between DP&L and White Oak Solar Energy, LLC ("White Oak"). White Oak is the developer that the City of Dover selected pursuant to an RFP process, to construct the solar facility. Pursuant to this contract, DP&L will purchase from White Oak the RECs and all other environmental attributes (collectively, the "Attributes") associated with approximately 70% of the solar facility's annual output, less the Attributes associated with up to 5500 MWh per year to be purchased by the SEU, during each of the first four years of the facility's commercial operation. DP&L's purchase obligation is limited to 14,500 MWh per year for the first four years and 16,500 MWh per year thereafter; however, if more is available from the facility after the City of Dover and the SEU have receive their respective allocations, DP&L has the option to purchase all or any portion of the remainder at the contract price. The SREC price is fixed for the term of the contract at \$216.70 per SREC/MWH. The contract has a duration of 20 years of commercial operation, but DP&L is not obligated to purchase any Attributes before December 1, 2010.

8. The second contract for which DP&L seeks approval is one between DP&L and the SEU. According to DP&L, the size of DP&L's purchase obligation in the initial years of the White Oak contract posed a risk to DP&L that some of the purchased SRECs would expire before they could be used. The SEU has the statutory ability to bank

SRECs; while the SRECs are banked with the SEU, the time counting toward their expiration is tolled. Therefore, DP&L entered into a contract with the SEU in which the parties agreed that the SEU will take 40% of DP&L's 70% SREC share from the solar facility for the first four years of the facility's commercial operation, and that DP&L will repurchase those SRECs in years 5 and 6.

9. In its Application and Motion, DP&L seeks a decision regarding approval of the contracts before July 31, 2010. This request for expedition is to accommodate White Oak, whose financing for construction is dependent on Commission approval of that contract. According to the direct testimony filed with the Application and the Motion, unless and until the contract is approved, White Oak bears the risk of cost escalation with respect to the facility's construction and equipment because it will not be able to lock in prices or financing terms until such approval is obtained. (Direct Testimony of Joe Gorberg filed on June 1, 2010 at 7-8; Motion at 2-3). Furthermore, if Commission approval is received by July 31, 2010, White Oak believes that the facility will be operational by July 2011, which is important because July is a primary month for solar generation. (Gorberg Testimony at 8; Motion at 3).

9. While Staff is sympathetic to DP&L's request to expedite the proceeding, it cannot support the Motion. In its response dated June 4, 2010 to the Motion, Staff pointed out that the circumstances that permitted the Commission's expeditious consideration of the

Company's proposed land-based wind contracts in Docket No. 08-205 were particularly conducive to such expeditious consideration, and those circumstances are not present here. Specifically, Staff points out that it already had a consultant engaged in reviewing wind-based power in connection with the Bluewater Wind proceeding, and that consultant was very familiar with the issues presented in Docket No. 08-205. No such solar power proceeding is pending here, and Staff has indicated that it does not have the in-house expertise to evaluate the Application on its own and will need to retain a consultant. Staff also points out that even if the Commission approves the retention of a consultant, the consultant cannot begin work until a purchase order has been issued by the State. However, the State accounting system is being shut down for implementation of a new accounting system, and no purchase orders will be processed until implementation of the new system is complete; therefore, any consultant retained will not be able to begin work until its purchase order has been processed. While Staff may be able to obtain approval of the purchase order on June 23, it points out that this will leave it only 29 days before the July 22, 2010 Commission hearing (which is the last one in July prior to the end of the month) to perform an investigation, conduct discovery and prepare a report - a time frame that Staff argues is insufficient.

10. Staff and the Division of the Public Advocate pledge to work with the Company to move the docket through to Commission consideration as quickly as possible, and to that end has proposed a

schedule premised on its consultant's ability to begin work on June 23, 2010 and on the Company's timely and complete responses to discovery:

Date	Activity
Wednesday, June 30, 2010	Deadline for petitions to intervene (per Delmarva's proposal)
Thursday, July 1, 2010	Staff issues discovery requests
Wednesday, July 7, 2010	Other parties issue discovery requests
Monday, July 12, 2010	Delmarva responds to discovery requests from Staff
Thursday, July 15, 2010	Delmarva responds to discovery requests from other parties
Tuesday, August 3, 2010	Staff files report
Tuesday, August 10, 2010	Parties respond to Staff report and other comments
Tuesday, August 17, 2010	Evidentiary hearing before Commission

Staff notes that this schedule would complete the proceeding in less time than it took to complete Docket No. 08-205 and while this schedule provides for Commission deliberation only 12 business days beyond the July 31st requested expedited date, those 12 days are critical in evaluating the impact on ratepayers of the two contracts.

11. After consideration of the parties' contentions, hearing oral argument, and deliberating in open session,

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF
NO FEWER THAN THREE COMMISSIONERS:**

1. That the Commission hereby initiates this docket to review Delmarva Power and Light Company's June 1, 2010 application for approval of two contracts for the purchase and sale of solar renewable energy credits, pursuant to 26 Del. C. §1007(b).

2. That the Motion to Expedite is denied in part and granted in part as discussed hereafter.

3. That the Commission denies the Company's Motion to the extent that it seeks a resolution of the docket on or before July 31, 2010, in light of the circumstances as described by Staff that make such a schedule infeasible.

4. That the Commission grants the Motion to the extent that it will direct that the proceedings be expedited according to the schedule proposed by Staff, *with the understanding that if Staff does not receive approval of the purchase order for the consultant on June 23, 2010, the schedule may need to be revised.* We will designate Senior Hearing Examiner Ruth Ann Price to maintain a service list of parties and interested persons and oversee the proceeding. The hearing to determine whether the Application should be approved will be held before the Commission directly rather than being presented initially to the Hearing Examiner. Senior Hearing Examiner Price shall have the authority to rule on all intervention petitions submitted. Ms. Price shall also address any scheduling revisions and rule on any discovery disputes that may arise.

5. That Delmarva Power and Light Company shall publish the notice of its application in the form attached hereto as Exhibit "A" in the following newspapers, on the designated dates, in two-column format outlined in black:

Monday, June 21, 2010 (The News Journal)

Tuesday, June 22, 2010 (Delaware State News)

Delmarva Power & Light Company shall file proof of such publication on or before July 22, 2010.

7. That the Secretary of the Commission shall deliver the attached form of notice by Internet e-mail to each participant on the service list in PSC Docket No. 06-241.

8. That Delmarva Power and Light Company is hereby notified that it will be charged the costs of this proceeding under 26 *Del. C.* §114(b).

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

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

PSC Docket No. 10-198, Order No. 7788 Con't

/s/ Dallas Winslow _____
Commissioner

/s/ Jeffrey J. Clark _____
Commissioner

ATTEST:

/s/ Alisa Carrow Bentley _____
Secretary

E X H I B I T "A"

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SERVICE CUSTOMERS (Filed June 1, 2010))

PUBLIC NOTICE REGARDING APPLICATION OF DELMARVA POWER AND LIGHT
COMPANY FOR APPROVAL OF TWO SOLAR RENEWABLE ENERGY CREDIT CONTRACTS AS
SREC SUPPLY SOURCES FOR STANDARD OFFER SERVICE CUSTOMERS

On June 1, 2010, Delmarva Power and Light Company ("DP&L") filed an application (the "Application") with the Delaware Public Service Commission (the "Commission"), pursuant to Section 1007 of the Electric Utility Retail Customer Supply Act ("EURCSA") and the Renewable Energy Portfolio Standards Act, 26 Del. C. §§351 et seq. ("REPSA"), for approval of two Solar Renewable Energy Credit ("SREC") contracts for the procurement of SRECS necessary to serve its standard offer service ("SOS") customers. DP&L also has asked for expedited consideration of its Application. On June 15, 2010, the Commission opened this docket to consider the Company's Application and authorized expedited consideration thereof.

In accordance with 26 Del. C. §1007(b), the Commission will conduct a public evidentiary hearing on the Application on **Tuesday, August 17, 2010 at 1:00 p.m., or, in the event the schedule requires modification, on a date to be determined** subsequently. The

evidentiary hearing shall be held at the Commission's office, 861 Silver Lake Boulevard, Suite 100, Cannon Building, Dover, DE 19904. After taking evidence at such hearing, the Commission will approve one or both of the proposed contracts if it finds that "such action is in the public interest." 26 Del. C. §1007(b).

The currently-approved schedule is set forth below:

Date	Activity
Wednesday, June 30, 2010	Deadline for petitions to intervene (per Delmarva's proposal)
Thursday, July 1, 2010	Staff issues discovery requests
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Monday, July 12, 2010	Delmarva responds to discovery requests from Staff
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Please note that this schedule is subject to change and you should contact the Commission for information concerning the schedule.

The Commission now solicits written comments regarding the two contracts and on the question of whether Commission approval would be in the public interest. Comments must be filed with the Commission and served on all parties on or before August 2, 2010 as follows:

Delaware Public Service Commission 861 Silver Lake Blvd., Suite 100 Cannon Building Dover, DE 19904 Attention: Docket No. 10-198 alisa.bentley@state.de.us	Todd L. Goodman, Esquire Delmarva Power and Light Company\ 800 King Street P.O. Box 231 Wilmington, DE 19899 Attention: Docket No. 10-198 todd.goodman@pepcoholdings.com
Division of the Public Advocate Kent Walker, Esquire Deputy Attorney General 820 N. French Street, 6 th Floor Wilmington, DE 19801 Attention: Docket No. 10-198 kent.walker@state.de.us	

You must file the original and 10 copies of your written comments with the Commission, and serve another copy by mail on the above-referenced representatives of DP&L and the Public Advocate. Alternatively, you may file and serve your comments electronically as an electronic mail attachment, followed by the filing and service of a single paper copy with the Commission and the representatives of DP&L and the Public Advocate.

You may also ask to be allowed to intervene as a party in the matter. To do so, you must file a petition to intervene under Rule 21 of the Commission's Rules of Practice and Procedure. That petition must be filed with the Commission on or before **June 30, 2010**.

You can contact the PSC about this matter at 1-800-282-8574 (toll-free in Delaware) or (302) 736-7500 (text telephone also) or you may send questions by e-mail to john.farber@state.de.us. If you are

disabled and need assistance in participating in this matter, please contact the PSC to discuss such assistance.