

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE PETITIONS OF)
THE DELAWARE DIVISION OF THE PUBLIC)
ADVOCATE AND THE CAESAR RODNEY)
INSTITUTE TO REQUEST THE PUBLIC)
SERVICE COMMISSION TO AMEND 26 DEL.)
ADMIN. C. § 3008-3.2.21 TO ISSUE)
REGULATIONS GOVERNING WHEN A FREEZE)
OF THE MINIMUM PERCENTAGES OF)
ELIGIBLE ENERGY RESOURCES AND SOLAR)
PHOTOVOLTAICS MAY BE DECLARED)
PURSUANT TO 26 DEL. C. § 354(i) and)
(j))
(FILED OCTOBER 2, 2015 AND OCTOBER)
12, 2015))

PSC DOCKET NO. 15-1462

ORDER NO. 8807

AND NOW, this 3rd day of November, 2015, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, on October 2, 2015, the Delaware Division of the Public Advocate ("DPA") filed a Petition requesting that this Commission open a docket to amend 26 Del. Admin. C. § 3008-3.2.21 to issue regulations governing when a freeze of the minimum percentages of eligible energy resources and solar photovoltaics may be declared pursuant to 26 Del. C. § 354(i) and (j);

WHEREAS, on October 12, 2015, the Caesar Rodney Institute ("CRI") submitted a Petition requesting that the Commission amend 26 Del. Admin. C. § 3008-3.2.21 to issue regulations governing when a freeze of the minimum percentages of eligible energy resources and solar photovoltaics may be declared pursuant to 26 Del. C. § 354(i) and (j) and supporting the DPA's Petition;

WHEREAS, on October 27, 2015, the Delaware Department of Natural Resources and Environmental Control ("DNREC") filed a Petition for Leave to Intervene in this docket;

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WHEREAS, on October 27, 2105, DNREC and Commission Staff filed a Joint Motion requesting that the Commission deny the Petitions of DPA and CRI, with a proposed form of order, and close this docket;

WHEREAS, in May 2011, the Commission adopted regulations implementing procedural requirements as authorized by 26 *Del. C.* § 354(i) and (j) at 26 *Del. Admin. C.* § 3008-3.2.21. The Petitioners had ample opportunity to raise the issues in their current Petitions during the Commission's rulemaking process during 2011 in the context of Regulation Docket No. 56 but did not attempt to address their current concerns at that time;

WHEREAS, in adopting 26 *Del. Admin. C.* § 3008-3.2.21, this Commission expressly noted in Order No. 7933 that it had considered but declined to adopt regulations addressing the cost calculations now at issue;

WHEREAS, DNREC, after receiving a properly filed petition per 26 *Del. C.* § 10114, has already initiated a process to promulgate regulations and has proposed regulations specifying the cost calculations for freezing the minimum cumulative solar photovoltaic and eligible energy resource requirements as authorized by 26 *Del. C.* § 354(i) and (j), pursuant to its authority under 29 *Del. C.* § 8003(7). DNREC's Division of Energy & Climate's rulemaking proceeding has yielded an open, transparent process in which a variety of interested parties, including Commission Staff, the DPA, the CRI, the

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environmental community and others have had a forum to express their views and influence the proceedings.

WHEREAS, 26 *Del. C.* § 354(i) and (j) require that the State Energy Coordinator in consultation with the Commission may determine whether a freeze should be implemented, and if so, whether it should subsequently be lifted, and further state that DNREC's Division of Energy and Climate will determine whether the 3% and 1% cost caps have been reached.

WHEREAS, the Commission has reviewed the Petitions filed by the DPA and the CRI and the Joint Motion of DNREC and Staff; and

WHEREAS, the Commission finds that the relief requested by DPA and CRI is unwarranted and not allowable under 26 *Del. C.* § 354(i) and (j) and that the relief requested by DNREC and Staff is appropriate;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. DNREC's Petition for Leave to Intervene is granted.
2. The relief requested by DPA and CRI in their Petitions is denied.
3. The relief requested by DNREC and Staff is granted, and this docket shall be closed forthwith.
4. 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:

Chair

Commissioner

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary