

**BEFORE THE PUBLIC SERVICE COMMISSION**

**OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION OF )  
DELMARVA POWER & LIGHT COMPANY FOR )  
APPROVAL OF THE 2016 PROGRAM FOR ) PSC DOCKET NO. 15-1472  
THE PROCUREMENT OF SOLAR RENEWABLE )  
ENERGY CREDITS )  
(FILED OCTOBER 8, 2015) )

**FINDINGS, OPINION, AND ORDER NO. 8890  
DATED SEPTEMBER 6, 2016**

BEFORE COMMISSIONERS: J. DALLAS WINSLOW, Chair  
JOANN T. CONAWAY, Commissioner  
KIM DREXLER, Commissioner  
HAROLD B. GRAY, Commissioner  
MIKE C. KARIA, Commissioner

APPEARANCES:

FOR THE APPLICANT, DELMARVA POWER & LIGHT COMPANY:

PAMELA J. SCOTT, ESQ.

FOR THE DELAWARE PUBLIC SERVICE COMMISSION STAFF:

BRENDA R. MAYRACK, ESQ.  
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FOR THE COMMISSION:

JULIE DONOGHUE, ESQ.  
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Delaware Department of Justice

FOR THE DELAWARE DIVISION OF THE PUBLIC ADVOCATE:

REGINA IORII, ESQ.  
Deputy Attorney General  
Delaware Department of Justice

FOR INTERVENOR DELAWARE DEPARTMENT OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL

DEVERA SCOTT, ESQ.  
Deputy Attorney General  
Delaware Department of Justice

**PROCEDURAL BACKGROUND**

1. On October 8, 2015, pursuant to 26 *Del. C.* § 351 *et seq.*, Delmarva Power & Light Company ("Delmarva") filed an application (the "Application") with the Public Service Commission of the State of Delaware ("Commission") requesting approval of its 2016 Program for the Procurement of Solar Renewable Energy Credits (the "2016 Program"). See Hearing Ex. 1.

2. The 2016 Program is based on requirements set forth in the Renewable Energy Portfolio Standards Act ("REPSA"), which was enacted in 2007 and amended in subsequent years. See 26 *Del. C.* §§ 351 - 364. The 2011 Amendments made Delmarva responsible for procuring renewable energy credits ("RECs")<sup>1</sup> and solar renewable energy credits ("SRECs")<sup>2</sup> necessary for compliance with respect to all energy delivered to Delmarva's distribution customers beginning in compliance year 2012 (June 2012 - May 2013).

3. The 2016 Program is based on recommendations of the Renewable Energy Taskforce (the "Taskforce"), which is charged with making such recommendations to the Commission and other entities.<sup>3</sup> See

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<sup>1</sup> A "REC" is defined in 26 *Del. C.* § 352(18).

<sup>2</sup> An "SREC" is defined in 26 *Del. C.* § 352(25).

<sup>3</sup> 26 *Del. C.* § 360(d)(2) provides, in pertinent part, that the Taskforce is charged with making recommendations about and reporting on the following and matters related thereto: a. Establishing balanced markets mechanisms for REC and SREC trading; b. Establishing REC and SREC aggregation mechanisms and other devices to encourage the deployment of renewable, distributed renewable, and solar energy technologies in Delaware with the least impact on retail electricity suppliers, municipal electric companies and rural electric cooperatives; c. After an analysis by the Taskforce, the annual progress towards achieving the minimum cumulative percentages for all renewable energy resources including, but not limited to, solar and other eligible energy resources and making appropriate recommendations based upon deliberate and factual analysis and study; d. Minimizing the cost for complying with any portion of this subchapter based upon deliberate and factual analysis and study; e. Establishing revenue certainty for appropriate investment in

26 Del. C. §§ 360(d), (d) (2), and (d) (3). The 2016 Program is also based on the Pilot Program,<sup>4</sup> the 2013 Program,<sup>5</sup> the 2014 Program,<sup>6</sup> and the 2015 Program<sup>7</sup> (collectively the "SREC Programs") for the Procurement of Solar Renewable Energy Credits, which the Taskforce developed and which the Commission previously approved.

4. Pursuant to Order No. 8808 (November 3, 2015), Delmarva gave public notice of the Application, the evidentiary hearing date, and various deadlines by causing notice to be published in the legal classified section of The News Journal and Delaware State News newspapers on November 6, 2015. See Hearing Ex. 2.

5. Pursuant to Order No. 8808 (November 3, 2015), a deadline for filing written comments on the Application and for any petitions to intervene pursuant to 26 Del. Admin. C. §1001-2.9.2 was established as Monday, November 30, 2015, and an evidentiary hearing on this matter was scheduled to occur at the regularly-scheduled Commission meeting on Tuesday, December 15, 2015.

6. The Delaware Division of the Public Advocate ("DPA") exercised its statutory right to intervene on November 16, 2015. The Department of Natural Resources and Environmental Control ("DNREC")

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renewable energy technologies, including, but not limited to, consideration of long-term contracts and auction mechanisms; f. Establishing mechanisms to maximize in-state renewable energy generation and local manufacturing; and g. Ensuring that residential, commercial, and utility scale photovoltaic and solar thermal systems of various sizes are financially viable and cost-effective investments in Delaware.

<sup>4</sup> The Commission approved the Pilot Program via Order Nos. 8075 (November 8, 2011) and 8093 (December 20, 2011) in PSC Docket No. 11-399.

<sup>5</sup> The Commission approved the 2013 Program via Order Nos. 8281 (January 22, 2013) and 8450 (September 10, 2013).

<sup>6</sup> The Commission approved the 2014 Program via Order Nos. 8551 (April 15, 2014) and 8629 (September 9, 2014).

<sup>7</sup> The Commission approved the 2015 Program via Order Nos. 8717 (March 3, 2015) and 8764 (July 21, 2015).

was the only other party to file a petition for leave to intervene, which was granted by Hearing Examiner R. Campbell Hay in Order No. 8881 (April 19, 2016).

7. The DPA was the only party to file written comments before the November 30, 2015 deadline. See Hearing Ex. 3. However, various written public comments were filed after the November 30, 2015 deadline in advance of the evidentiary hearing scheduled for December 15, 2015. Approximately 130 comments appeared to oppose approval of the Application or ask the Commission to "vote no" on this docket. See Hearing Ex. 4. Two comments were supportive of the Application, noting that minimal additional costs for consumers were acceptable to increase the reliance on renewable and solar energy in Delaware. See Hearing Ex. 5.

8. On December 4, 2015, Delmarva, by letter, requested that the Commission cancel the December 15, 2015 evidentiary hearing and delay consideration of this matter until early 2016, after DNREC promulgated final regulations regarding the *Implementation of the Renewable Energy Portfolio Standards Cost Cap Provisions*, as the implementation of the regulations might impact the SREC auction. On December 9, 2015, Staff, by letter, supported Delmarva's request. On December 10, 2015, DNREC, by letter, supported Delmarva's request. The DPA did not oppose Delmarva's request.

9. At the December 15, 2015 Commission meeting, the Commission considered and granted Delmarva's request to cancel the December 15, 2015 evidentiary hearing and delay consideration of this matter until early 2016.

10. On March 9, 2016, Delmarva, by letter, requested that the Commission schedule an evidentiary hearing for this matter on May 3, 2016.

11. At the April 5, 2016 Commission meeting, the Commission considered and granted Delmarva's request to schedule an evidentiary hearing for this matter on May 3, 2016, which Staff, the DPA, and DNREC supported. The Commission memorialized this decision in Order No. 8876 on April 19, 2016.

12. On April 15<sup>th</sup>, 2016, notice of the May 3, 2016 evidentiary hearing and deadline for written comments, which was extended to 12 noon on May 3, 2016, was published in The News Journal and the Delaware State News. See Hearing Ex. 6. No additional comments were filed in advance of the May 3, 2016 evidentiary hearing.

13. On May 3, 2016, the Commission conducted an evidentiary hearing in this matter, deliberated, and approved Delmarva's Application. The Commission<sup>8</sup> adopted Order No. 8884 on May 3, 2016 by a vote of 4-0, as a minute order memorializing the decision, noting that the Commission would enter a full Findings, Opinion, and Order setting forth the reasoning for its decision at a later date. This is the Findings, Opinion, and Order setting forth the reasoning for our decision on May 3, 2016.

**I. DELMARVA'S APPLICATION**

**a. Delmarva's Position**

14. At the evidentiary hearing, Delmarva presented Glenn Moore, Regional Vice-President for Delmarva, as a witness in support of the

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<sup>8</sup> Commissioner Conaway did not attend the May 3, 2016 meeting.

Application. Mr. Moore testified that as Delmarva's representative on the Taskforce, the Taskforce completed its review of the 2015 auction and made its recommendation for the 2016 SREC Program in the summer of 2015. Tr. at 24:10-26:22; 31:1-3. Delmarva filed this Application, based on the Taskforce recommendations, on October 8, 2015. Tr. at 31:1-3.

15. Mr. Moore further provided testimony concerning the outcome of the 2015 auction. He stated that the 2015 auction was "evenly bid" and "well subscribed" for each tier, and that the price was an average of \$78.78 for all 12,000 SREC, which included 9,000 SRECs plus an optional 3,000 SRECs which Delmarva could and did procure in the auction at the lowest possible price. Tr. at 27:2-28:2. Mr. Moore stated that Delaware "has probably the lowest by far of the rates for [SREC] contracts around the region," compared for instance to "[o]ur sister company over in New Jersey [where] the average price per contract of REC is over \$240." Tr. at 28:14-21.

16. Mr. Moore noted that there were two changes in Delmarva's Application, as compared to the 2015 Program. First, the allowance of discretionary SRECs to be procured at an appropriate price would increase from 3,000 to 6,000, for a total of 15,000 SRECs. Tr. at 29:10-17. Second, the break point between Tier 1 and Tier 2 was decreased from 30 kilowatts to 25 kilowatts. Tr. at 29:18-22.

17. Mr. Moore acknowledged that consideration of the Application was continued in December 2015 in light of the fact that the rules around RPS cost caps had not yet been completed nor had the

calculation been performed concerning a potential freeze. Tr. At 31:4-20.

18. Mr. Moore also acknowledged the concerns raised by the DPA with respect to the Application, including allowing utility-scale participation in the auction, ameliorating historically higher prices for Tier 2 small commercial installations, and addressing the treatment of residential solar leasing programs, and agreed that the Taskforce and Delmarva's next application would likely consider these issues for the 2017 auction. Tr. at 32:8-35:17.

19. During cross-examination, Mr. Moore testified that protecting consumers from price volatility, in addition to securing the lowest price, was another factor in determining the number of SRECs to be procured in the auction. Tr. at 38:1-46:9. Mr. Moore also testified that minimizing the costs of the Program is a criterion of the auction, but not the only one. Tr. at 38:19-24. He further specified how this was addressed by Delmarva having discretion when it obtains auction results as to whether it will buy any RECs. Tr. at 40:4-15. Mr. Moore testified that "if, at some point, we believe that the RECs get to be prohibitively expensive, Delmarva will simply cut off the auction and buy whatever that number of RECs recommends". Tr. at 41:1-4. In response to cross examination, Mr. Moore also stated that there are risks associated with purchasing in the spot market, as the price could potentially be higher than the price obtained through an auction process. Tr. At 44:17-20; 45:9-24.

**b. Staff's Position**

20. At the evidentiary hearing, Staff presented Joseph DeLosa, Public Utilities Analyst, as a witness. Mr. DeLosa testified in support of Delmarva's Application, noting that Staff had participated in the Taskforce's review and approval of the 2016 Program, which was now reflected in Delmarva's Application. Tr. at 50:15-19; 49:9-24. Mr. DeLosa testified that the two significant changes in the Application - 1) increasing from 12,000 to 15,000 the SRECs that Delmarva may procure through long-term contracts; and 2) reducing the break point between the lowest and middle system tiers from 30 kilowatts to 25 kilowatts to be consistent with Delmarva's Net Metering Tariff Rider Leaf No. 102 - did not cause Staff any concern in its review regarding approval of the Application. Tr. at 45:15-49:8. Mr. DeLosa recommended that the Commission approve the Application because it was "thoroughly vetted" and ultimately approved by the Taskforce, and because it was largely similar to the program approved in 2015 by the Commission. Tr. at 50:15-51:11.

**c. DPA's Position**

21. At the evidentiary hearing, the DPA presented David Stevenson, a consultant with Alternative Strategies Consultants, as a witness. Mr. Stevenson adopted the comments previously filed by the DPA as "accurate at the time they were filed" on November 30, 2015, but noted that since "DNREC has finalized the cost cap regulation and has decided [there] will be no freeze." Hearing Ex. 3; Tr. at 55:8-56:3. As such, the "cost caps have not been exceeded." Tr. at 56:2-3. Mr. Stevenson did not testify that the Commission should reject

Delmarva's Application, expressed concern about the cost of the SREC Procurement Program in general and potential increasing cost of SRECs in the 2016 SREC auction and beyond. Mr. Stevenson testified that the SREC program as currently configured is likely increasing the average residential consumer's bill by \$0.50 to \$1.00 per year. Tr. at 82:13-14. He observed that Tier N1 average weighted bids increased from \$53.44 in the 2014 auction to \$60.40 in the 2015 auction. Likewise, Tier N2 increased from \$88.84 in 2014 to \$96.00 in 2015. Exh. 3 at 10. Mr. Stevenson testified that the problem would be potentially much worse in 2017, as the federal Investment Tax Credit was scheduled to be eliminated for residential systems and to decrease from 30% to 10% for commercial systems at the end of 2016. If the federal subsidy was replaced with higher SREC prices, SREC prices could be as high as \$205.00 for Tiers N1 and N2 and \$115.00 for Tier N3. *Id.* at 11. Mr. Stevenson stated that the Commission should consider a cost cap for the 2017 SREC Procurement Plan. *Id.* Mr. Stevenson suggested that the 2017 Program should consider increasing SREC procurement from utility-scale systems, reducing the Tier 2 pricing, merging Tier N2 with Tier N3, and encouraging mechanisms to take advantage of the leasing business model to potentially lower the cost of SRECs to minimize the cost to ratepayers. Tr. at 57:15-58:3; Exh. 3 at 11-12.

**d. DNREC's Position**

22. At the evidentiary hearing, DNREC presented Robert Underwood, DNREC Division of Energy and Climate Program Administrator and Chair of the Renewable Energy Taskforce, as a witness. Mr. Underwood testified that the Taskforce had "met three times after the

2015 auction to review the results of the auction and design the 2016 auction", and that the 2016 Program "recommended by the ... Taskforce reflects a consensus of stakeholders." Tr. at 74:2-9. The 2016 Program is "a result of four years of policy discussions" among the stakeholders and "is based on the successful templates established in the last three auctions, and is designed to maintain a stable, competitive market for the next several years." Tr. at 74:23-75:7. Mr. Underwood further testified that DNREC supports the Commission's approval of Delmarva's Application because it would, "create a fair and competitive SREC market ... as well as continue to promote a growing supply of SRECs to exert the downward pressure on compliance costs". Tr. at 75:14-22.

23. DNREC also presented Thomas Noyes, Principal Planner for Utility Policy for the DNREC Division of Energy and Climate, as a witness. Mr. Noyes testified in support of Delmarva's Application as submitted, noting that Delaware's SREC programs going back to 2013 have "creat[ed] a stable market," "promote[d] growing supply," and lower[ed] SREC prices" and that the "2016 Program is the result of carefully considered adjustments to the last three programs, includes added flexibility" for Delmarva to purchase via long-term contracts or the spot market. Tr. at 77:23-79:4.

## **II. DISCUSSION & DECISION**

24. During deliberations, the Commission noted that it would like to see the Taskforce consider the concerns raised by the DPA and acknowledged by Delmarva regarding controlling costs for consumers, allowing utility-scale participation in the auction, ameliorating

historically higher prices for Tier 2 small commercial installations, and addressing the treatment of residential solar leasing programs, during the 2017 Taskforce process and as part of Delmarva's subsequent application. Tr. at 87:21-89:21.

25. The Commission recognized, however, that none of the parties opposed approval of the Application and that "the possibility of the price going up a dollar over the next year" was not a reason to reject the Application. Tr. at 89:22-23.

### **III. ORDER**

**AND NOW**, this 6th day of September, 2016, the Delaware Public Service Commission ("Commission") determines and orders the following, by the affirmative vote of not fewer than three Commissioners:

1. The Commission, having reviewed the record in this case, including the Application, testimony, and oral argument at the evidentiary hearing held May 3, 2016, and having deliberated in public at that May 3, 2016 evidentiary hearing, grants approval of Delmarva's Application regarding the 2016 Program.

2. The Commission strongly encourages the Taskforce to address the issues raised by the DPA and acknowledged by Delmarva during this proceeding, which include controlling costs for consumers, allowing utility-scale participation in the auction, ameliorating historically higher prices for Tier 2 small commercial installations, and addressing the treatment of residential solar leasing programs, during the 2017 Taskforce process and in Delmarva's subsequent application.

3. 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:**

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Chair

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Commissioner

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Commissioner

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ATTEST:

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Secretary