

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

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

**DELMARVA POWER AND LIGHT COMPANY'S RESPONSE TO STAFF'S REPORT
ON DELMARVA POWER'S REQUEST FOR APPROVAL OF SOLAR RENEWABLE
ENERGY CREDIT CONTRACTS**

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On May 28, 2010, Delmarva Power & Light Company (“Delmarva Power” or “Delmarva”) filed its Application for Approval of a Solar Renewable Energy Credit Contract with White Oak Solar Energy, LLC as an SREC Source For Standard Offer Service Customers and a Solar Energy Credit Sale/Repurchase Contract with the Delaware Sustainable Energy Utility (the “Application”). After exchanging voluminous discovery, the Delaware Public Service Commission Staff filed its Report on Delmarva Power’s Request for Approval of Solar Renewable Energy Credit Contracts (the “Staff Report”) on August 6, 2010. Delmarva Power respectfully responds to the Staff Report as follows:

I. Staff’s Opinion that the Terms of the White Oak Contract are Reasonable and in the Public Interest.

1. The Staff Report, prepared by New Energy Opportunities, Inc. (“NEO”) and La Capra Associates, Inc. (“La Capra”) concludes that “the pricing and terms and conditions of the DPL/White Oak Contract are reasonable and in the public interest.” (Staff Report at p. 3). However, NEO finds that the White Oak contract is reasonable and in the public interest for reasons different than those set forth by Delmarva Power. Specifically, the Staff Report takes issue with the RFP process conducted by the City of Dover and finds that it was not a robust one. (Staff Report at p. 3). While Delmarva appreciates the conclusion that the White Oak Contract is reasonable and in the public interest, it disagrees with some of the analysis set forth in the Staff Report.

2. First, much of the criticism of the Dover RFP process contained in the Staff Report results from the fact that the Dover RFP was an “all source” RFP, rather than one limited to solar PV. (Staff Report at p. 10). Historically, however, the use of such a process has not been a cause for concern. Delmarva Power has previously entered into contracts resulting from “all source” RFPs, including the Bluewater Wind PPA, and such contracts have been approved

by the Commission. Accordingly, Delmarva Power disagrees that an “all source” RFP is not an appropriate mechanism by which to enter into long-term energy contracts, including contracts for renewable energy.

3. As set forth more fully in the pre-filed testimony, the Dover RFP was conducted by Pace Global Energy Services (“Pace”), an entity with substantial experience in conducting such an RFP. Furthermore, Delmarva Power spent considerable time reviewing the RFP process with Pace and the City of Dover and found that the RFP was appropriately conducted and resulted in a competitive bid from White Oak Energy, LLC.¹ Delmarva, therefore, disagrees with the conclusion that the RFP process was not sufficient under the circumstances.

4. Second, the Staff Report also suggests that Delmarva Power should have conducted its own RFP and included the four companies it had previously identified as potential players in the solar market. (Staff Report at p. 8). There are, however, several problems with this suggestion. As the Staff Report notes, the solar PV projects that were being discussed at the time were all 2 MW or less in capacity, significantly smaller than the 10 MW solar PV facility that will be built by White Oak. (Staff Report at p. 8). Because, as the Staff Report recognizes, the price for SRECs must reflect the cost of developing, financing and building the solar PV project minus the value of the energy and capacity produced, Delmarva does not believe it is reasonable to assume that proceeding with a 2 MW RFP would have resulted in a proposal that was comparable to the 10 MW project at the Dover Sun Park. In addition, the White Oak Contract requires Delmarva Power to purchase SRECs only and not the underlying energy or capacity. While it might be possible to issue an RFP for SRECs only, that would not be typical

¹ While the White Oak proposal was the only solar PV proposal received, it was not the only solar proposal received in response to the RFP. The RFP was, therefore, obviously understood by the responding parties to invite projects involving renewable energy, including solar.

and would likely result in the developer charging a premium to reflect the developer's need to manage the energy and capacity generated. Delmarva Power believes, therefore, that any RFP calling for SREC proposals only would not result in proposals comparable to the proposed White Oak Contract.

5. Finally, given that Delmarva Power had reviewed the Dover RFP process and decided to begin negotiations with White Oak, Delmarva Power does not believe it would have been reasonable or appropriate to issue an RFP for a 2 MW solar PV project at that time. Issuing such an RFP for purposes of obtaining "market" data when Delmarva Power had no intention of awarding a contract is not consistent with Delmarva Power's business practices and may have harmed Delmarva Power's reputation in the marketplace.

6. For these reasons, Delmarva Power maintains that the Dover RFP process was a robust one and that Delmarva Power's decision not to issue its own RFP was reasonable. Nonetheless, Delmarva Power agrees with the conclusion of the Staff Report that the pricing and terms of the White Oak Contract are reasonable and in the public interest. Delmarva Power respectfully requests that the White Oak Contract be approved in its entirety.

II. Staff's Opinion that the SEU Contract is No Longer Necessary.

7. In addition to the White Oak Contract, Delmarva Power also seeks approval of a Solar Energy Credit Sale/Repurchase Contract with the Delaware Sustainable Energy Utility (the "SEU Contract"). As explained in the testimony of Glenn Moore, the SEU has been given very flexible banking privileges through legislation. (Glenn Moore Testimony at pp. 11-12). At the time Delmarva Power executed the SEU Contract on April 22, 2010, Delmarva Power faced a risk that some of the SRECs purchased in the early years of the White Oak Contract would expire before they could be used. (Glenn Moore Testimony at p. 11). As a result, the SEU

Contract provides that the SEU would purchase up to 5,500 SRECs/year in years 2011-2014 for use by Delmarva in compliance years 2015 and 2016. (See William Swink Testimony at p. 5).

8. As noted in the Staff Report, on July 28, 2010, Governor Markell signed into law Senate Substitute Bill No. 1 for Senate Bill No. 119, amending the Delaware Renewable Energy Portfolio Standards Act (“REPSA”) in several material respects (the “REPSA Amendments”). Of relevance to this proceeding, the REPSA Amendments substantially increased Delmarva Power’s obligations to purchase SRECs beginning in 2011. (Staff Report at p. 2). As a result, it is possible that Delmarva Power could use, without the need for the special SEU banking privileges, all of the SRECs it is obligated to purchase under the White Oak project.

9. As a result of this change in law, the Staff Report recommends that the SEU Contract be terminated² or that the amount of SRECs to be purchased and banked by the SEU be decreased by 90%.

10. Even with the change in law, however, Delmarva Power believes the SEU Contract is reasonable and in the public interest in the format executed on April 22, 2010. While the SEU Contract was initially necessary to ensure that Delmarva Power did not allow SRECs to expire that it purchased under the White Oak Contract, the SEU Contract remains in the public interest because it allows Delmarva Power to be a robust player in the emerging solar power market in Delaware and allows Delmarva Power to fulfill its SREC obligations in future years at the current fixed price in the SEU Contract.

11. As stated in the testimony of Glenn Moore, Delmarva Power is the largest potential customer for SRECs in the State and “for the Delaware solar market to be viable,

² If the SEU contract is terminated, Delmarva Power would be liable for any out-of-pocket costs incurred by the SEU as a result of such termination pursuant to the terms of its financing

Delmarva must procure SRECs on an ongoing and largely uninterrupted basis.” (Glenn Moore Testimony at p. 11). The Staff Report explicitly recognizes that cancelling the SEU Contract would mean that Delmarva would not need to be in the market for SRECs until 2012. (Staff Report at p. 32, Table 7). The SEU Contract is necessary to preserve Delmarva Power’s position as a player in the SREC market so that such a market can develop beginning now rather than in 2012 or some later date.

12. Delmarva Power’s position here is specifically supported by the policy language contained in REPSA. In addition to acknowledging the environmental and clean energy benefits of a solar market in the declaration of policy, REPSA specifically provides:

It is therefore the purpose and intent of the General Assembly in enacting the Renewable Energy Portfolio Standards Act to establish a market for electricity from these resources in Delaware, and to lower the cost to consumers of electricity from these resources.

26 *Del C.* § 351(c). Without Delmarva Power in the marketplace for at least another two years, it will be difficult to achieve the stated policy objectives of REPSA, including lowering the cost to consumers.

13. Further, the SEU Contract would allow Delmarva Power to purchase SRECs in 2015 and 2016 at prices fixed in today’s market rather than at prices negotiated in the future when demand (and, most likely prices) will have increased. Indeed, the Staff Report acknowledges that the REPSA Amendments substantially increase the number of SRECs Delmarva Power and other utilities will need each year (See Staff Report at p. 26, Table 5).³

agreements. Delmarva Power is presently unaware whether there would be any such liability to the SEU as a result of such termination.

³ While it is possible that Delmarva Power’s SREC requirement could be subject to the “freeze” provisions contained in the REPSA Amendments, it is impossible to forecast whether, to what extent or how such a freeze would be implemented.

Under the SEU Contract, Delmarva Power customers would likely benefit from Delmarva Power's ability in compliance years 2015 and 2016 to purchase 11,000 banked SRECs per year at fixed prices established in today's market. The SEU Contract not only allows Delmarva Power to become an immediate player in the Delaware solar market but also ensures some further pricing stability for the SRECs needed over the next several years.

14. Approval of the SEU Contract in conjunction with the White Oak Contract will enable Delmarva Power to fulfill a substantial portion of its SREC obligations at a reasonable cost while also requiring Delmarva Power to remain a key player in the market for SRECs. Accordingly, the SEU Contract is reasonable and in the public interest and should be approved.

WHEREFORE, for the foregoing reasons and those stated in the pre-filed testimony, Delmarva Power respectfully requests that the White Oak Contract and SEU Contract be approved in their entirety as both contracts are reasonable and in the public interest.

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