BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF INTEGRATED RESOURCE	)	
PLANNING FOR THE PROVISION OF STANDARD	)	
OFFER SERVICE BY DELMARVA POWER &	)	**PSC DOCKET NO. 12-544**
LIGHT COMPANY UNDER	)	
***26 DEL. C.* §1007 (c) & (d)**	)	
(OPENED DECEMBER 7, 2012)	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS
OF THE
HEARING EXAMINER

DATED: June 2, 2014

MARK LAWRENCE
SENIOR HEARING EXAMINER

TABLE OF CONTENTS

Page

I. APPEARANCES 1

II. BACKGROUND 2

A. Procedural History of the 2012 IRP. 2

B. Comments Of The Parties 4

a. Commission Staff (Appendix Tab 1) 5
b. DPA (Appendix Tab 2) 6
c. DNREC's Comment (Appendix Tab 3) 8
d. MAREC (Appendix Tab 4) 9
e. CRI's Comment (Appendix Tab 5) 10
f. SEU Comment (Appendix Tab 6) 10
g. Delmarva Reply Comments (Appendix Tab 7) 11

III. DELMARVA'S SUMMARY OF WORKING GROUP MEETINGS 13

Exhibits

Exhibit "A" - 2012 Integrated Resource Plan (IRP) of Delmarva Power & Light Company-Unsealed Version

Exhibit "B" - Delmarva's Summary of Working Group Meetings Held In This Docket

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF INTEGRATED RESOURCE PLANNING FOR THE PROVISION OF STANDARD OFFER SERVICE OF DELMARVA POWER & LIGHT COMPANY UNDER *26 DEL. C.* §1007(c) & (d) (OPENED DECEMBER 7, 2012)	)))))	**PSC DOCKET NO. 12-544**

FINDINGS of FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF THE HEARING EXAMINER

Mark Lawrence, duly appointed Hearing Examiner in this Docket pursuant to *26 Del. C.* §502 and *29 Del. C.* Ch. 101, by Commission Order No. 8259 dated December 18, 2012, reports to the Commission as follows:

I. APPEARANCES

On Behalf of Delmarva Power & Light Company ("Delmarva" or "the Company"):

BY: TODD L. GOODMAN, ESQ., Associate General Counsel
PAMELA J. SCOTT, ESQ., Assistant General Counsel
TODD A. COOMES, ESQ., Richards, Layton & Finger, P.A.

On behalf of the Public Service Commission Staff ("Staff"):

BY: JAMES McC. GEDDES, ESQ., Ashby & Geddes
JULIE M. DONOGHUE, ESQ., Deputy Attorney General

On behalf of the Division the Public Advocate ("DPA"):

BY: REGINA A. IORII, ESQ., Deputy Attorney General

On behalf of Delaware Department of Natural Resources and Environmental Control ("DNREC"):

BY: RALPH K. DURSTEIN, ESQ., Deputy Attorney General

DAVID L. ORMOND JR., ESQ., Deputy Attorney General

On behalf of Mid-Atlantic Renewable Energy Coalition ("MAREC")

BY: BRUCE H. BURCAT, Executive Director

On behalf of Caesar Rodney Institute ("CRI"):

BY: David T. Stevenson, Director, Center for Energy Competiveness

On behalf of Sierra Club:

BY: Andrew R. Groff, Executive Committee Member, Delaware Chapter

On behalf of Calpine Mid-Atlantic Energy, LLC. ("Calpine")

BY: C. DAVID LAMOREAUX, ESQUIRE, Senior Counsel

II. BACKGROUND

A. Procedural History of the 2012 IRP.

1. The Electric Utility Retail Customer Supply Act of 2006 ("EURSCA") requires Delmarva Power & Light Company ("Delmarva" or the "Company") to bi-annually file an Integrated Resource Plan ("IRP") with the Delaware Public Service Commission (the "Commission"), the State Energy Office, the Controller General and the Director of the Office of Management & Budget. In the IRP, Delmarva is required to "systematically evaluate all available supply options during a 10-year planning period in order to acquire sufficient, efficient and reliable resources over time to meet its customers' needs at a minimal cost," "set forth [Delmarva's] supply and demand forecast for the next 10-year period," and "set forth the resource mix with which [Delmarva] proposes to meet its supply obligations for that 10-year-period…." (26 *Del. C.* §1007(c) (1)).

2. On December 7, 2012, Delmarva filed its 2012 IRP as required by EURSCA. Pursuant to Order No. 8259 dated December 18, 2012, the Commission opened this Docket to perform its oversight and review of the IRP. In Order No. 8259, the Commission appointed me as the Hearing Examiner to: a) conduct the proceedings; b) develop the evidentiary record; c) publish any required or necessary public notices; and d) file my proposed findings and, if necessary, proposed recommendations concerning Delmarva's 2012 IRP. (*Id* at ¶9.) Public notice of the filing of Delmarva's IRP was published on February 1, 2013 in The News Journal, and on February 2, 2013 in the Delaware State News.

3. On March 4, 2013, pursuant to the parties' request that the parties be permitted to conduct working group meetings discussing the IRP, I suspended the filing dates for comments required by PSC Order No. 8259. In PSC Order No. 8327 (March 19, 2013), the Commission granted Staff's Motion to Modify the Procedural Schedule. The Commission extended the deadline for filing initial comments to June 1, 2013, and June 30, 2013 for reply comments. In Order No. 8327, The Commission permitted me to "address all scheduling matters for the duration of this docket." Subsequently, I again extended the initial comment deadline to September 16, 2013, with responsive comments being due October 16, 2013.

4. On January 8, 2013, pursuant to 29 *Del. C.* §8716, the Division of the Public Advocate (the "Public Advocate") intervened in this docket. Due to the Public Advocate's resignation, on March 18, 2013, the Office of the Attorney General of the State of Delaware

("DAG's) Office filed a Motion to Intervene on behalf of the Public Advocate's Office. By PSC Order No. 8330 (March 21, 2013), the DAG's Office was permitted to intervene. On July 2, 2013, the DAG's Office withdrew its appearance and the new Public Advocate, David L. Bonar, was substituted as a party.

5. Petitions for intervention were received and granted for six (6) entities: DNREC, NRG, MAREC, Calpine, CRI and the Sierra Club. All parties actively participated in this docket.

6. On April 10, May 1, May 14, June 3, and July 31, 2013, the Company, Staff, the Public Advocate's office and the remaining parties conducted five (5) technical working group meetings as to the docket's issues. (DPL Summary dated April 28, 2014.) These meetings were publicly noticed in the Commission's agenda.

7. On March 27, 2014, I requested that the parties provide me with a summary of what occurred at their working group meetings. On April 29, 2014, Delmarva provided a "Summary of Working Group Meetings Held In This Docket." No other party provided a summary. Delmarva's Summary is attached hereto as Exhibit "B."

B. <u>Comments Of The Parties</u>

8. Pursuant to PSC Order No. 8259, in early October, 2013, comments were received from Commission Staff, DPA, DNREC, the Sierra Club, CRI, MAREC and Delaware's Sustainable Energy Utility ("SEU").[1]

[1] Although it originally filed public and sealed versions of the IRP, Delmarva unsealed the IRP on March 8, 2013.

a. <u>Commission Staff (Appendix Tab 1)</u>[2]

9. The Commission Staff prepared a detailed evaluation of Delmarva's 2012 IRP filing. Staff's evaluation was filed with the Commission in a report dated October 1, 2013.

10. Staff made five (5) recommendations:

1. Staff recommends a study by an independent consultant with recommendations to lower the cost of electricity in Delaware. This study would consider current and proposed PJM rules that would affect the cost of electricity in Delaware. These recommendations would be focused on the rate impact for Delmarva ratepayers, but also take into consideration the overall effect on the cost of electricity in the state.

2. Staff recommends that Delmarva in its subsequent IRP filing no longer rely on the broad technical potential as a starting point for Combined Heat and Power estimates or include in the IRP Reference Case the assumption of SEU programs to achieve the 15% legislatively-mandated energy savings goal. Should approval of cost recovery for energy efficiency programs come before the Commission in the future, Staff would recommend that the Rate Impact Measure Test be used as a guideline.

3. Delmarva should also consider alternative approaches to dynamic pricing in addition to modifications to the existing programs (such as revising/lowering the level of the savings credit) to avoid differences between PJM revenues and the current program implementation costs.

4. Staff recommends that no RECs or SECs beyond the level prescribed by the 2010 legislation be purchased by Delmarva, except for specific reasons when RECs/SRECs may be banked to fulfill the minimum cumulative percentage requirements in a subsequent compliance year.

5. Staff also recommends that as soon as possible after the approval of the rule making concerning the cost caps for RECs and SRECs, the Division of Energy and

[2] For the convenience of the reader, a complete copy of the comments submitted by the Interveners is included as an Appendix to this report. The "Tab __" reference provides the number of the tab where the text of the referenced comments can be found in the Appendix.

> Climate and Delmarva determine if the RPS obligation exceeds the cost caps for the compliance year when the regulation becomes effective. (Staff Report, pp.18-19.)

b. <u>DPA (Appendix Tab 2)</u>

11. The DPA (and CRI) argue that the statutory requirement of filing an IRP every two (2) years should be eliminated. (DPA, pg.1; CRI, pg.2.) Alternatively, DPA argues that if the requirement cannot be eliminated entirely, the Company's IRP filing should be consistent with the same five (5) year cycle employed in the preparation of the Delaware Energy Plan (DPA at pgs.9-10).

12. As to eliminating the IRP, the DPA argued as follows:

> "Overall, the Public Advocate believes that the IRP requirement should be abolished. In a deregulated supply situation such as Delaware's, in which the incumbent electric utility no longer owns any generation facilities, every supplier of electricity – not simply the electric distribution company subject to this Commission's regulation – has an incentive to obtain wholesale energy for resale at the lowest possible costs consistent with the obligations under the Renewable Energy Portfolio Standards Act (the "REPSA") and consistent with the obligations to which it is subject as a member of the independent system operator, PJM Interconnection, Inc. ("PJM"). Although there are several energy suppliers operating in Delaware (third-party competitive suppliers, the Delaware Electric Cooperative ("DEC"), municipal utilities such as the Cities of Dover, Newark and New Castle), only Delmarva is subject to the IRP requirement and therefore only Delmarva customers bear the significant expense of the IRP process." "From 2006 through 2012, Delmarva has incurred over $4.9 million in expense associated with the IRP process." ((DPA, pp. 1,6; citations omitted.)

13. The DPA then described three (3) statutory requirements, and the discovery of plentiful and reasonably priced natural gas, as the reasons to eliminate the IRP:

> "Much of how Delmarva obtains its supply is governed by factors wholly outside the IRP process. Statutory mandates regarding procurement and types of supply and EPA and PJM mandates limit the extent to which Delmarva can exercise discretion in obtaining its supply portfolio. And the availability of relatively inexpensive shale gas has had a major impact on the supply resources that Delmarva obtains.
>
> *Statutorily-Imposed Requirements*. There are at least three statutory requirements that affect Delmarva's selection and evaluation of supply options. First, the Energy Utility Restructuring Act of 1999 explicitly requires Delmarva to purchase at least 30% of its resource mix through the regional wholesale market through a bid procurement or auction process overseen by the Commission.
>
> Since at least 2004, Delmarva has obtained 30% of its supply through a competitive reverse auction process for laddered three-year supply contracts that places no restrictions on the energy mix of the supply procured therefrom. Price is the sole consideration.
>
> Furthermore, as a result of the General Assembly's enactment of the REPSA in 2005, Delmarva and third-party electric suppliers are obligated to develop a "minimum level" of renewable supply resources in their supply portfolios, which is accomplished through their purchase of renewable energy credits ("RECs") and solar renewable energy credits ("SRECs").
>
> Finally, as noted above, in 2011, the General Assembly amended the REPSA to include fuel cells within the definition of "eligible energy resources" able to generate RECs and/or SRECs and obligated Delmarva to purchase energy supplied by a qualified fuel cell provider project.
>
> And perhaps most important, the discovery of vast reserves of shale gas throughout the continental United States has caused a sharp decrease in natural gas prices, which in turn has caused natural gas generation to displace generation produced from other fossil fuels. (DPA, pp. 3-5)

14. As to requiring that the IRP be filed every five (5) years, the Public Advocate argued:

"Moreover, the Public Advocate struggles to understand the rationale for requiring an IRP every two years, given that the State's energy plan (which affects every Delawarean) is only updated every five years. At the very least, the duration between IRPs could be lengthened to correspond with the submission of the state's energy plan and/or the IRP could be included as part of that plan." (DPA, p.10.)

15. According to the DPA:

"[i]n 2003, the General Assembly enacted the Delaware Energy Act. One of the policies behind the Energy Act was "… the development of a comprehensive state energy policy which will ensure an adequate, reliable and continuous supply of energy and which is protective of public health and the environment and which promotes [Delaware's] general welfare and economic well-being." The Energy Act has subsequently been amended to create the State Energy Office within the Department of Natural Resources and Environmental Control; a Cabinet Committee on Energy, which serves the Governor in an advisory capacity; the Governor's Energy Advisory Council, which is tasked with "monitor[ing] Delaware's energy system, identify[ing] and propos[ing] actions to enhance Delaware's energy system and provid[ing] counsel to the Governor on promoting an economic, reliable and competitive energy market for all Delaware consumers"; and the Sustainable Energy Utility.

Importantly for purposes of these comments, the Governor's Advisory Council is responsible for "spearheading the updating of the Delaware Energy Plan every five years……." It seems redundant (not to mention wasteful) for Delawareans who are also Delmarva customers to pay for an energy plan every five years and an IRP every two years." (DPA, pp.9-10; citations omitted.)

c. <u>DNREC's Comment (Appendix Tab 3)</u>

16. DNREC's position is as follows:

"DNREC's policy is to support the development of cleaner, less expensive and more reliable electricity for Delaware. The 2012 IRP supports

> these policy objectives by illuminating and expanding our understanding of all the costs of our energy supply, particularly those environmental costs and benefits known as externalities, which do not show up on customers' bills but nevertheless affect also Delawareans.
>
> The 2010 and 2012 IRPs have broken new ground in considering externalities in resource planning, and DNREC commends Delmarva for its innovation in this area. By including externalities and a broader economic analysis of energy efficiency and renewable energy, the IRP provides us with a more complete picture of all of the costs and benefits of the energy Delmarva procures for Delaware ratepayers.
>
> To further fill in the total policy picture, DNREC proposes that the next IRP (1) expand the externality analysis to include a more complete picture, including the cost of carbon emissions, (2) present a more complete picture of the economic costs and benefits of our energy supply by including analysis of the avoided costs and price suppression effects of renewable energy, and (3) update the consideration of energy efficiency programs and policies." (DNREC, pp.1-2.)

d. <u>MAREC (Appendix Tab 4)</u>

17. The Mid-Atlantic Renewable Energy Coalition ("MAREC") submitted comments generally in favor of Delmarva's IRP recommendations. However, MAREC did express concerns over Delmarva's RFP process for procurement of renewable energy sources. MAREC proposes that Delmarva include a competitive RFP provision in its IRP that would solicit at least 100 MW of new wind energy capacity, (MARAC, p.14.) According to MAREC, these wind contracts would aid in resource price stabilization and help Delmarva meet its increasing RPS requirements.

e. <u>CRI's Comment (Appendix Tab 5)</u>

18. CRI recommends that the Company pursue a long term contract for onshore wind energy. (CRI, p.1.)

19. CRI also seeks that Delmarva construct on-site generation:

> "DP&L should adjust the demand forecast upward and take steps to increase power procurement at the lowest cost to meet the higher demand. DP&L has a successful Energy Efficiency program in Maryland where it has invested $43 million to save 117 gigawatt-hours a year of electricity. We can project an investment of about $350 million would be needed to meet the energy efficiency goal. This is about the investment needed to build a 300 megawatt combined cycle natural gas generating plant. The IRP includes a scenario for such a plant and it is projected to save residential ratepayers about $21/month, just balancing the estimated cost of missing the energy efficiency goal. DP&L should consider building such a facility to maintain price stability for its customers. Reliability would also improve with local generation plus the lower transmission losses from local generation should count toward the energy efficiency goal." (*Id.*)

f. <u>SEU Comment (Appendix Tab 6)</u>

20. The SEU admits that it is underfunded to adequately help Delmarva meet the EERS target:

> "The SEU's current funding sources and authorities are not sufficient to achieve the EERS targets. While the SEU can issue bonds for limited use by state agencies, including school districts, the SEU's direct funding from its RGGI allocation is projected to be between $8 million to $12 million annually. By contrast, the EERS workgroup reported the average of estimates of the statewide cost to achieve the 15% EERS target to be in the neighborhood of $374 million.
>
> The EERS workgroup report recognized that current energy efficiency program funding was inadequate to achieving EERS targets, stating:

> The statute sets mandatory savings targets, time limits, and efficiency charge limits for the accomplishment of the statute directive. The Workgroup finds that Delaware is unlikely to achieve the legislated efficiency targets given the current and prospective funding levels and the high participation rates that would be necessary to meet such a short timeline. Modifications are required in some or all of the following: 1) funding for efficiency investments; 2) efficiency targets; and/or 3) the timeframe to accomplish the targets." (SEU, p.2.)

g. <u>Delmarva Reply Comments (Appendix Tab 7)</u>

21. On October 16, 2013, Delmarva filed its Reply Comments to the comments filed by the parties. Delmarva's Reply Comments did not undertake to refute item by item the assertions of the parties. Rather, Delmarva's Reply Comments addressed the parties' more important concerns, and Delmarva put forward its plan for the next steps for the IRP process.

22. Before providing its Comments, however, Delmarva's overall summary of the IRP process was:

> "All of the intervening parties who submitted comments had actively participated in the working group meetings. None of the comments submitted by the intervening parties claimed or suggested that the IRP failed to meet the EURCSA requirements or the requirements of the Regulations, that the IRP was administratively incomplete or that the IRP should not be ratified by the Commission. Rather, most of the comments provide suggestions for ways to improve any future IRP process and/or content. (Delmarva, Reply pp.2-3.)

23. Delmarva's Conclusions and Recommendations are:

<u>Conclusions and Recommendations</u>

> "Delmarva Power appreciates the continuing active participation of the intervening parties in the IRP working group process. Based on the comments

received on September 16, 2013, Delmarva Power suggests the following steps as a path forward in this docket:

1. The Commission ratify the IRP as meeting the requirements of 26 *Del. C.* §1007 and 26 *Del. Admin. C.* §3010.

2. An informal collaborative sub-group of the IRP working group should be created to provide input into the assumptions needed for Delmarva Power to prepare an internal forecast of the expected energy and demand reductions to be achieved over the relevant planning horizon. Assuming that the next IRP is to be submitted December 1, 2014, such a forecast of energy and demand reductions would need to be initiated in early 2014 and substantially completed by no later than July 1, 2014.

3. The sub-group of the IRP working group could also consider Staff's recommendations concerning [Combined Heat & Power] and Dynamic Pricing.

4. The forecast described in item 2 above can be used to update Delmarva Power's RPS compliance plan.

5. No additional long-term commitments for renewable resources are needed for Delmarva Power's RPS compliance plan at this time.

6. In light of facilities coming on line in the very near future, there is no need for Delmarva Power to begin planning for the construction of a 300 MW gas fired generation facility at this time.

7. The IRP working group is an appropriate forum to address Staff's concerns with the prices paid for electric energy by Delmarva Power's SOS customers.
8. Unless and until the regulatory provisions are amended, Delmarva Power will continue to include an evaluation of externalities as part of the next IRP.

9. Unless and until the statutory provisions are amended by the General Assembly, Delmarva Power will continue to submit an

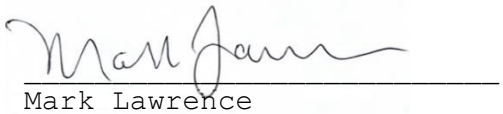
> IRP pursuant to the schedule set forth in EURSCA. Under the existing statute, the next IRP will be filed on or before December 1, 2014." (Delmarva Reply, pp.10-11.)

III. DELMARVA'S SUMMARY OF WORKING GROUP MEETINGS.

24. On April 29, 2014, pursuant to my request, Delmarva filed its Summary of the Working Group Meetings, which is attached as Exhibit "B." hereto. This Summary seeks that the Commission approve the IRP as filed. Since the parties have not agreed upon a settlement, I assume that some or all of the parties intend to make oral argument to the Commission regarding their respective positions. Therefore, I do not make any recommendations and have not prepared a proposed Order. There is ample evidence that the requirements for public investigation and comment had been satisfied under 26 *Del. C.* §3010.9.2.

Dated: June 2, 2014

Respectfully Submitted



Mark Lawrence
Senior Hearing Examiner