

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 2013 PROGRAM FOR THE) PSC DOCKET NO. 12-526
PROCUREMENT OF SOLAR RENEWABLE ENERGY)
CREDITS (FILED NOVEMBER 20, 2012))

ORDER NO. 8450

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND FINAL OPINION IN SUPPORT OF ORDER NO. 8281**

AND NOW, this 10th day of September, 2013, the Public Service Commission ("Commission") issues the following findings and opinion in support of Order No. 8281 dated January 22, 2013:

Summary of the Evidence

1. On November 20, 2012, pursuant to 26 *Del. C.* §351 *et seq.*, Delmarva Power & Light Company ("Delmarva") filed an application (the "Application") with the Commission which requested approval of its 2013 Program for the Procurement of Solar Renewable Energy Credits (the "2013 Program").

2. The 2013 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 RECs¹ and SRECs² necessary for compliance with respect to all energy delivered to Delmarva's distribution customers beginning in compliance year 2012 (June 2012 - May 2013).

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

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

3. The 2013 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. See 26 Del. C. §§360(d), (d)(2), and (d)(3). The 2013 Program is also based on the 2012 Pilot Program for the Procurement of Solar Renewable Energy Credits (the "Pilot Program")³ which the Taskforce developed and which Delmarva submitted on September 16, 2011, to the Commission for approval.

4. On November 8, 2011, the Commission conducted an evidentiary hearing and approved the Pilot Program with certain modifications via Order No. 8075. Later, the Commission issued its Final Findings, Opinion, and Order on December 20, 2011, via Order No. 8093.

5. The Commission retained a consultant (Meister Consultants Group, Inc. or "Meister") to conduct an independent review of the Pilot Program to determine whether a long-term SREC contracting process should continue, and if so, to examine any associated issues. See Order No. 8093, ¶1.c. Meister provided the Commission with its independent review in the form of a report dated August 3, 2012.

6. In the Application, Delmarva requested that the Commission schedule the matter for decision on December 18, 2012, or as soon thereafter as possible. Delmarva also stated in its "Report in Support of its Application for Approval of the 2013 Program for the Procurement of Solar Renewable Energy Credits" filed on November 20, 2012 ("Delmarva's Report"), that the Taskforce has recommended that the

³ See PSC Docket No. 11-399.

next auction for SRECs begin no later than March 31, 2013, for the compliance year starting June 1, 2013. Delmarva's Report at p. 7.

7. On December 18, 2012, via Order No. 8254, the Commission ordered Delmarva to give public notice of the Application in two newspapers on or before December 21, 2012, and to file affidavits of such publication on or before January 4, 2013. See Order No. 8254, ¶1.

8. The Commission also ordered that the deadline for written comments and petitions to intervene was January 4, 2013, and that Mark Lawrence was designated as the hearing examiner for this matter for the sole purpose of granting or denying intervention petitions and for admission of counsel pro hac vice. See Order No. 8254, ¶2.

9. The Order further directed that the Commission Staff ("Staff") prepare a report on the Application and submit to the Commission recommendations regarding the Application and the 2013 Program on or before January 11, 2013. See Order No. 8254, ¶3.

10. Delmarva filed affidavits of publication regarding the Application on December 28, 2012, and January 2, 2013.

11. On January 3, 2013, the Caesar Rodney Institute ("CRI") filed a petition to intervene in this matter.

12. On January 4, 2013, the Delaware Department of Natural Resources and Environmental Control Division of Energy and Climate ("DNREC") filed a petition to intervene in this matter and also filed "Comments of Robert Underwood, Energy Program Administrator for the DNREC Division of Energy & Climate, on Delmarva Power and [sic] Light's Application for the Procurement of Solar Renewable Energy

Credits" which strongly supported the 2013 Program and recommended that the Commission promptly approve such program.

13. On January 8, 2013, the Division of the Public Advocate ("DPA") filed its statutory notice of intervention in this matter.

14. On January 11, 2013, Staff filed its report regarding the Application and the 2013 Program ("Staff's Report"). Staff's Report included a discussion of a review of all of the details of the 2013 Program for compliance with Staff's previous recommendations on the Pilot Program as well as compliance with the Taskforce's recommendations. Staff's Report also outlined the merits of the 2013 Program and supported the key elements of the 2013 Program with a few suggested changes and recommendations.

15. On January 10, 2013, CRI filed its comments on the 2013 Program. CRI's comments supported the 2013 Program but suggested that the \$50.00 per SREC payment in contract years 13 to 20 be changed to \$25.00 per SREC.

16. On January 15, 2013, Hearing Examiner Lawrence granted the petitions to intervene of DNREC and CRI.

17. On January 22, 2013, The Public Service Commission conducted a public evidentiary hearing on the Application.

18. Glenn Moore of Delmarva Power testified that the Pilot Program and the auction that followed went extremely well, that the RECs⁴ had been procured, and that Delmarva was on a constant basis to receive those RECs⁴. Tr. at p. 10, LL 19-23. Mr. Moore further testified that although Delmarva only requested approval of year two,

⁴ The Pilot Program procurement was for solar RECs.

the objective was to create a program that could be repeated year-after-year with minimal change. Tr. at p. 11, LL 6-10. Mr. Moore explained that Delmarva sought to procure 8,000 RECs over the next three to five years via the 2013 Program. Tr. at p. 12, LL 6-8. Mr. Moore further explained that the major change in the auction for 2013 compared to the auction in 2012 was that this year's auction was not limited to bidders interconnected to the grid with a brand new system. Tr. at p. 12, LL 9-17. In the 2013 auction, 4,000 RECs will come from new systems interconnected after February 2, 2012.⁵ Tr. at p. 12, LL 13-16. Another 3,000 RECs will come from systems interconnected prior to February 2, 2012,⁵ and 1,000 will be taken from the spot market. Tr. at p. 12, LL 16-20.

19. Mr. Moore further testified 2013's auction will have three tiers⁶ instead of four tiers, and the three tiers will be separated into 1,200 RECs for the extremely small residential, 1,400 RECs for medium size, and 1,400 RECs for large. Tr. at p. 13, LL 9-15. The 2013 auction will occur in the March/April time frame. Tr. at p. 16, LL 8-9. Also, there will be no administratively-set prices in the 2013 auction. Tr. at p. 14, LL 4-6. The contracts have a 20-year term with the first seven years as the price of the bid and the remaining thirteen years set at \$50 per REC per year per year. Tr. at p. 14, LL 7-10.

⁵ According to the "State of Delaware 2013 Program for the Procurement of Solar Renewable Energy Credits," page 7: "New Systems are systems with final interconnection approval after the first date of the proceeding auction process (i.e. April 2, 2012)."

⁶ The 2013 auction had 3 tiers for new systems instead of the 4 tiers for new systems in the Pilot Program.

20. Pamela Knotts, the Regulatory Policy Administrator for Staff, testified that she reviewed the Application and that she compared the Application against the Taskforce's auction proposal and against the Meister Consultant Group's evaluation. Tr. at p. 20, LL 1-8. She recommended that the definition of "required metering" as set forth in Appendix B of the Transfer Agreement, Page 22, should be changed so as to be consistent with and match the definition of "required meter" as set forth in the 2013 Program, Section 6.7. Tr. at p. 22, LL 19-23. She further recommended that a disclaimer be included in Appendix A of the Bid Application to make SREC owners aware of the risks associated with selling the SRECs. Tr. at p. 23, LL 12-16 and 19-21. She testified that Staff received comments from SREC owners who believed that they would receive the tier one administrative price of \$260 per SREC if they entered the solicitation and comments from others who were under the misperception that the price of the SRECs used for the return on investment was a guaranteed price. Tr. at p. 24, LL 5-1. Ms. Knotts was questioned about the basis of the \$50 payment per year in the remaining thirteen years of the contract, and she responded that based on the Meister report used in the reported [sic] photovoltaic system annual operating and maintenance cost and one inverter replacement during the 20-year period, Staff calculated an approximate cost of \$50 per SREC. Tr. at p. 26, LL 1-5. Staff further recommended that the independent consultant hired to evaluate the 2013 program also review the fixed price per SREC. Tr. at p. 26, LL 6-8. Upon questioning by David Stevenson of CRI about the effect to ratepayers, Ms. Knotts referred

to the testimony of Mr. Moore who stated that the first seven years of a contract would be the return on investment and the remaining thirteen years would be to keep the system operational, which would be a benefit to ratepayers. Tr. at p. 28, LL 15-21. When asked about data to establish that any system had not been maintained because of lack of SREC value, Ms. Knotts stated that there was a lack of data because the first system was certified in 2006 or 2007. Tr. at p. 28, L 24 and p. 29, LL 1-3.

21. The DPA supported the modifications proposed by Staff because the administrative price, which was basically a guarantee, had been eliminated. Tr. at p. 30, LL 10-22.

22. Mr. Stevenson of CRI testified that this proposed program is much better than the Pilot Program. Tr. at p. 31, LL 9-10. Mr. Stevenson shared a concern that the \$50 per SREC on the remaining thirteen years was too high in light of relevant market data. Tr. at p. 31, LL 19-21, p. 32, LL 1-20. Mr. Stevenson proposed that this price be reduced to \$25 per SREC, which would benefit ratepayers. Tr. at p. 32, 18-20. If the cost were going to be \$50, it was unfair for the ratepayers to pick up the entire cost. Tr. at p. 33, LL 19-24, p. 34, LL 1-6.

23. Mr. Noyes and Mr. Underwood of DNREC testified in support of the 2013 Program and testified about the process that developed the program criteria. Tr. at p. 37, LL 17-19, p. 38, LL 12-14 and 19-21, p. 39-41).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

24. The Application requests the Commission's approval of the 2013 Program.

25. The Commission must determine whether the proposed 2013 Program complies with the RESPA. The purpose of RESPA is to "establish a market for electricity from [renewable energy resources] in Delaware, and to lower the cost to consumers of electricity from these resources." 26 *Del. C.* §351(c). RESPA further acknowledged that a market for renewable energy resources in Delaware would improve air quality and public health; increase electric supply diversity; protect against price volatility and supply disruption; improve transmission and distribution; and create new economic development opportunities. 26 *Del. C.* § 351(b).

26. To meet these objectives, RESPA requires retail electricity suppliers, such as Delmarva, to purchase from Eligible Energy Resources (as defined in RESPA) to meet a portion of their annual retail load. RESPA sets forth the minimum percentage of retail energy sales to end-users that must come from Eligible Energy Resources, including solar photovoltaics, which increases over time to a requirement of 25% in 2025. 26 *Del. C.* § 354(a).

27. RESPA was amended in 2010 to create the Taskforce for the purpose of "making recommendations about the establishment of trading mechanisms and other structures to support the growth of renewable energy markets in Delaware." 26 *Del. C.* §360(d).

28. The Taskforce is comprised of the DPA and members appointed by the Secretary of the DNREC; the Commission; Delmarva; the Delaware

Electric Cooperative; municipal electric companies; the Sustainable Energy Utility ("SEU"); and the Delaware Solar Energy Coalition. 26 Del. C. §360(d)(1).

29. The Taskforce was charged with making recommendations about and reporting on trading mechanisms to support the growth of renewable energy markets, particularly establishing a balanced market mechanism for REC and SREC trading and establishing the deployment of solar energy technologies with the least impact on retail electricity suppliers, municipal electric companies, and rural electric cooperatives.

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

30. The Commission finds that the 2013 Program is in the public interest and meets the criteria of RESPA. Based on the evidence presented and comments submitted, the Commission approves the Application, with the changes set forth in Order No. 8281 (January 22, 2013).

31. The Commission accepts Staff's recommendation that the 2013 Program be changed to include Staff's proposed language for a disclaimer statement that would be incorporated into the form of bid application (e.g., Appendix A to the Application - Form of Bid Application) or incorporated into a separate document. Such form of bid application or separate document would have to be signed by the solar system owner. The disclaimer language would also need to be included on the website page for the auction conducted by the SEU's administrative contractor.

32. The Commission accepts Staff's recommendation that the definition of "Required Meter," which is set forth in Appendix B of the Application (Transfer Agreement), page 23, be revised as set forth in Staff's Report.

33. The Commission also accepts Staff's recommendation that an independent consultant be hired by the Commission to evaluate the 2013 Program on the criteria listed in Staff's Report and that this evaluation, in the form of a report, should be submitted to the Commission as soon as possible after the solicitation, but no later than 6 months after the 2013 solicitation.

34. The Commission also accepts Staff's recommendation that if and when Delmarva seeks recovery of the costs for the 2013 Program in a future Commission proceeding, Delmarva will be required to justify any SEU-related costs above what ratepayers would have paid had Delmarva managed the solicitation itself and had Delmarva not used the SEU as a contractual intermediary.

35. The Commission believes that CRI raises good points that the remaining thirteen years could be set at \$25 per year; however, taking into account the cooperative work of the Taskforce, we agree with the \$50 price for those remaining years. We further believe that this is an issue that the consultant should evaluate and consider going forward to determine whether this is, in fact, the most effective price to achieve the goals of the 2013 Program.

36. That Delmarva is hereby placed on notice that the costs of the proceedings will be charged to it under the provisions of 26 Del. C. §114(b)(1).

