

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 2014 PROGRAM)
FOR THE PROCUREMENT OF SOLAR) PSC DOCKET NO. 14-41
RENEWABLE ENERGY CREDITS)
(FILED JANUARY 27, 2014))

ORDER NO. 8629

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND FINAL OPINION IN SUPPORT OF ORDER NO. 8551**

AND NOW, this 9th day of September, 2014, the Delaware Public Service Commission ("Commission") issues the following findings and opinion in support of Order No. 8551, dated April 15, 2014.

Summary of the Evidence

1. On January 27, 2014, pursuant to 26 Del. C. §351 et seq., Delmarva Power & Light Company ("Delmarva") filed an application (the "Application") with the Commission requesting approval of its 2014 Program for the Procurement of Solar Renewable Energy Credits (the "2014 Program").

2. The 2014 Program is based upon the requirements set forth in the Renewable Energy Portfolio Standards Act ("REPSA") as enacted in 2007 and subsequently amended. See 26 Del. C. §§351 - 364. The 2011 Amendments made Delmarva responsible for procuring RECs and SRECs 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 2014 Program is based on recommendations from 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 2014 Program is also based upon the Pilot Program for the Procurement of Solar Renewable Energy Credits (the "Pilot Program") that the Taskforce developed and the Commission approved on November 8, 2011 in Order No. 8075, as well as the 2013 Program for the Procurement of Solar Renewable Energy Credits (the "2013 Program") which the Taskforce developed and which the Commission approved on January 22, 2013 in Order No. 8281.¹

4. In its Application in this docket, Delmarva requested that the Commission schedule the matter for decision no later than February 20, 2014. (Application at 9). In its "Report in Support of its Application for Approval of the 2014 Program for the Procurement of Solar Renewable Energy Credits" filed on January 27, 2014 and attached to the Application as Exhibit D ("Delmarva Report"), Delmarva stated that the Taskforce had recommended that the next SREC auction begin no later than May 31, 2014 for the compliance year starting June 1, 2014. (Delmarva Report at 8.)

5. On February 20, 2014, in Order No. 8535, the Commission ordered Delmarva to provide public notice of the Application in two newspapers on or before February 28, 2014, and

¹ See PSC Docket Nos. 11-399 and 12-526, respectively.

to file affidavits of such publication on or before the start of the evidentiary hearings for this matter. See Order No. 8535, ¶1. The Commission also set March 21, 2014 as the deadline for written comments and petitions to intervene, and designated Mark Lawrence 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. *Id.* at ¶¶2-3. Finally, the Commission directed Commission Staff ("Staff") to prepare a report on the Application and submit its recommendations regarding the Application and the 2014 Program on or before April 4, 2014. *Id.* at ¶4.

6. Delmarva filed the affidavits of publication evidencing advertisement of the Application on December 28, 2013, and January 2, 2014.

7. On February 10, 2014, the Division of the Public Advocate (the "DPA") filed its statutory notice of intervention in this matter. The DPA filed comments ("DPA Comments") on the 2014 Program on February 11, 2014. The DPA stated that the 2014 Program was consistent with the REPSA, with one exception. According to the DPA, the 2014 Program prohibited lower bids from tiers N2 and N3 from replacing higher bids in the combined N1/E1/E2 tier to protect new projects in the N1 tier. (DPA Comments at 3). The DPA cautioned that this could be a costly mistake, and recommended that the Commission amend the proposed 2014 Program to allow lower bids from tiers N2 and N3 to replace

higher bids from E1 and E2 bidders to ensure that ratepayers were not paying more than necessary for these SRECs. *Id.*

8. On March 21, 2014, 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 Approval of the 2014 Program for the Procurement of Solar Renewable Energy Credits," which strongly supported the 2014 Program and recommended that the Commission promptly approve it.

9. On April 4, 2014, Staff filed its report ("Staff's Report") regarding the Application and the 2014 Program. Staff's Report included a review of the details of the 2014 Program for compliance with Staff's previous recommendations on the 2013 Program, as well as compliance with the Taskforce's recommendations. Staff's Report also outlined the merits of the 2014 Program and supported the key elements of the 2014 Program with a few suggested changes.

10. On April 14, 2014, Hearing Examiner Lawrence granted DNREC's petition to intervene.

11. On April 15, 2014, the Commission conducted a public evidentiary hearing on the Application.

12. Glenn Moore, Delmarva's Regional Vice President, testified that the 2013 Program and the auction that followed it, which formed the basis for the 2014 Program, was very well run,

with robust competition resulting in lower prices than in the previous year. Tr. at 13. Mr. Moore testified that the proposed 2014 Program differed from the 2013 Program in only minor ways: (1) small new systems and all existing systems had been combined into one tier; (2) the administratively set price for the SRECs for years 8-20 had been reduced from \$50 per SREC to \$35 per SREC; and (3) the 2014 Program established the benefit of using local manufacturing and/or local labor as the first tiebreaker in the event of a tie. Tr. at 14-16.

13. Mr. Moore also testified about the Staff and DPA comments regarding suggested modifications to the 2014 Program, as well as items to consider for 2015. *Id.* at 17-24. He suggested that these modifications be further vetted by the Taskforce before the Commission took any action. *Id.* at 19.

14. Toni Loper, a Staff Public Utilities Analyst, testified that she had reviewed the Application and compared it against the Taskforce's auction proposal, the Delaware Code and applicable law. *Id.* at 66. After summarizing Staff's Report, she testified that Staff supported the 2014 Program with some recommended changes. *Id.* at 68. These included the implementation of an auction application fee, the inclusion of an anti-competitive behavior provision in the bid application and/or Transfer Agreement, and the retention of an independent consultant to review the auction process, the 2014 Program and its results. *Id.* at 69. Ms. Loper testified that the reason for recommending an application fee, which she estimated would raise

approximately \$21,850, was to help offset the costs of administering the 2014 Program. *Id.* at 70. She testified that Staff did not believe that the implementation of an application fee would impact the bid price or people's decision to submit a bid, but that she had not performed any analysis to support her position. *Id.* at 74. She indicated that Staff would not be opposed to deferring this issue for consideration by the Taskforce for 2015. *Id.*

15. The DPA presented David Stevenson of Alternative Strategies Consulting, LLC as its witness. Overall, Mr. Stevenson testified that he supported the 2014 Program and that it was just and reasonable. *Id.* at 84-85. As set forth in the DPA's written comments, however, Mr. Stevenson testified that there had been a notable lack of bids in tiers E1 and E2 in the 2013 Auction, and expressed concern that this would repeat itself in the 2014 Auction. If so, Mr. Stevenson predicted that winning bids in tiers E1 and E2 would be very high compared to winning bids in other tiers. *Id.* at 80. To address this concern, Mr. Stevenson recommended amending the proposed 2014 Program either to allow lower bids from tiers N2 and N3 to replace higher bids from E1 and E2 bidders or to include a trigger price to eliminate the possibility of high prices for SRECs in tiers E1 or E2. *Id.* at 82; (DPA Comments at 3.) Mr. Stevenson further supported Staff's recommendation to impose an application fee. *Tr.* at 83.

16. Thomas Noyes, Principal Planner for Utility Policy DNREC Division of Energy and Climate, and Robert Underwood,

Program Administrator for DNREC Division of Energy and Climate, testified in support of the 2014 Program and testified about the process through which the Taskforce developed it. *Id.* at 34-49. Mr. Underwood testified that DNREC strongly supported the 2014 Program as being just, fair and in the public interest and recommended its approval as submitted. *Id.* at 50. He testified that the 2014 Program reflected a broad consensus of stakeholders and responded to policy concerns and questions that DNREC, Staff, the DPA and others had raised. *Id.* at 37. He further testified that the Taskforce had carefully considered the 2014 Program's structure so as to provide diversity among system sizes, while using bids and small competitive tiers to impose price discipline on larger tiers. *Id.* at 37. Mr. Noyes provided an analysis of the results of the 2013 auction serving as the basis for the 2014 Program, and testified that in considering changes to the 2014 Program, DNREC felt that such proposals should be weighed against REPSA's requirements, economic principles, the Taskforce's deliberations, and the success of the 2013 auction. *Id.* at 41-47. He provided an analysis of the results of the 2013 auction as a basis for the 2014 Program.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

17. The Application requests the Commission's approval of the 2014 Program.

18. The Commission has jurisdiction over this matter pursuant to 26 *Del. C.* subch. III-A, "Renewable Energy Portfolio Standards."

19. The Commission must determine whether the proposed 2014 Program complies with REPSA. For the reasons that follow, we find that the 2014 Program is in the public interest and meets the criteria of REPSA. Therefore, based upon the evidence presented and comments submitted, we approve the Application as submitted, as set forth in Order No. 8551 (April 15, 2014).

20. The purpose of REPSA 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). REPSA 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).

21. To meet these objectives, REPSA requires retail electricity suppliers such as Delmarva to purchase a minimum percentage of sales² from Eligible Energy Resources (as defined in REPSA) to meet a portion of their annual retail load. REPSA was amended in 2010 to create the Taskforce. 26 *Del. C.* §360(d). It is 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

² REPSA 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)

solar energy technologies with the least impact on retail electricity suppliers, municipal electric companies, and rural electric cooperatives. *Id.* Its members include representatives of the DPA, the Commission, Delmarva, the Delaware Electric Cooperative, municipal electric companies, the Sustainable Electric Utility, the Delaware Solar Energy Coalition, and members appointed by the DNREC Secretary, *Id.* §360(d)(1).

22. We considered Staff's and the DPA's recommended modifications to the 2014 Program; however, we conclude that the Taskforce, which is statutorily charged with establishing the auction parameters that are ultimately presented to us, should evaluate Staff's and the DPA's recommendations in the first instance, and, therefore, we decline to adopt them.

AND NOW, BY THE AFFIRMATIVE VOTE OF NO FEWER THAN THREE COMMISSIONERS, IT IS HEREBY ORDERED THAT:

1. The 2014 Program is approved as submitted for the reasons expressed above.

2. 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:

/s/ Dallas Winslow
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Jeffrey J. Clark
Commissioner

/s/ Harold B. Gray
Commissioner

Attest:

/s/ Alisa Carrow Bentley
Secretary