

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION)
OF DELMARVA POWER AND LIGHT)
COMPANY FOR APPROVAL OF) PSC DOCKET NO. 11-362
QUALIFIED FUEL CELL PROVIDER)
PROJECT TARIFFS)
(FILED AUGUST 19, 2011))

ORDER NO. 8025

AND NOW, this 6th day of September, 2011:

I. BACKGROUND

1. On July 7, 2011, the Governor of the State of Delaware signed into law amendments (the "Amendments") to the Renewable Energy Portfolio Standards Act (the "REPSA") that add Delaware-manufactured fuel cells to the REPSA and will allow energy output from such fuel cells to be considered a resource eligible to fulfill a portion of a Delaware Public Service Commission-regulated electric utility's renewable energy credit requirements under REPSA. The Amendments are part of a comprehensive State economic development and renewable energy program in which a new form of baseload generation will be added in Delaware.

2. The Amendments create a regulatory framework whereby the Commission-regulated electric company and the Qualified Fuel Cell Provider¹ will jointly submit tariffs that enable and obligate the

¹ A Qualified Fuel Cell Provider is "an entity that: a. By no later than the commencement date of commercial operation of the full nameplate capacity of a fuel cell project, manufactures fuel cells in Delaware that are capable of being powered by renewable fuels, and b. prior to approval of required tariff provisions, is designated by the

Commission-regulated electric company, as the agent for collection and disbursement, to collect from its customers non-bypassable charges for incremental site preparation, filing, administrative and other costs incurred by the Qualified Fuel Cell Provider. 26 Del. C. §§364(b), (c). Furthermore, under the Amendments, the tariff, at a minimum, must provide for the following:

- A project of 30 MW nominal nameplate, and future potential additions of up to an additional 20 MW nominal nameplate, not to exceed a total of 50 MW nominal nameplate or 1,152 MWh per day averaged on an annual basis. The total allowable 50MW of nominal nameplate shall be reduced by any customer sited installations referred to in § 353 (d)(2) of this title or additional installations of Qualified Fuel Cell Provider fuel cells. Any additional MW beyond the 30MW project made pursuant to this Section and § 353 (d)(2) of this title must be reviewed and approved by the Commission (*id.* §364(d)(1)a.);
- At least a 20-year term of service from commercial operation of the completed Qualified Fuel Cell Provider Project (*id.* §364(d)(1)b.);²
- That the cost to customers of the Commission-regulated electric company for each MWh of output produced by the project, on a levelized basis at the time of our approval, does not exceed the highest cost source for combined energy, capacity and environmental attributes that we have approved for inclusion in the Commission-regulated electric company's renewable portfolio as of January 1, 2011 (*id.* §364(d)(1)c.);
- That the non-bypassable charges to be collected from customers and distributed to the Qualified Fuel Cell Provider will also compensate it for its fuel costs to produce such output and will reduce compensation to the Qualified Fuel Cell Provider for any revenues it receives

Director of the Delaware Economic Development Office and the Secretary of DNREC as an economic development opportunity." 26 Del. C. §352(16).

² "Qualified Fuel Cell Provider Project" means a fuel cell power generation project located in Delaware owned and/or operated by a Qualified Fuel Cell Provider under a tariff approved by the Commission pursuant to § 364 (d) of this title."

for such output sold in the PJM or any successor market (*id.* §364(d)(1)d.);

- A requirement that the Qualified Fuel Cell Provider must sell all energy, capacity, and ancillary services that the Qualified Fuel Cell Provider Project ("QFCPP") produces, and any other output available or that becomes reasonably available to the Qualified Fuel Cell Provider during the term of the QFCPP, into the PJM or any PJM successor market. To the extent any additional output that the QFCPP produces, including but not limited to any product or environmental attribute from the project, becomes available for sale in the PJM Market, PJM successor market, or a market other than PJM or a PJM successor market, the Qualified Fuel Cell Provider and the Commission-regulated electric company shall jointly propose additional provisions to the tariff designed to reduce the cost of the QFCPP to the Commission-regulated electric company's customers (*id.* §364(d)(1)e.);
- The Commission-regulated electric company shall, on behalf of the QFCPP, collect from its customers, through the non-bypassable charge provided for in 26 Del. C. §§364(b) and (c), any positive difference between the sum of (i) the price for each MWH of output produced by the QFCPP plus (ii) the cost of fuel to produce such output plus (iii) any costs incurred by the Commission-regulated electric company arising out of the QFCPP minus the amount received by the Qualified Fuel Cell Provider for the market sale of its output, and shall distribute such amount to the Qualified Fuel Cell Provider (*id.* §364(d)(1)f.);
- A distribution mechanism whereby the Commission-regulated electric company shall, on behalf of the QFCPP, distribute to its customers from the QFCPP any positive difference between the amount received by the QFCPP for the market sale of its output minus the sum of (i) the price established for each MWH of output from the QFCPP plus (ii) the cost of fuel to produce such output plus (iii) any costs incurred by the Commission-regulated electric company arising out of the QFCPP (*id.* §364(d)(1)g.);
- An average efficiency level that the fuel cells in a project must maintain (*id.* §364(d)(1)h.);
- A definition of the role of the Commission-regulated electric company solely as the agent of the QFCPP for the collection of funds and disbursement of such collected funds to the Qualified Fuel Cell Provider and to its customers (*id.* §364(d)(1)i.);

- The mechanism through which the Commission-regulated electric company, on behalf of the QFCPP, shall collect from its customers, through the non-bypassable charge provided for in 26 Del. C. §§364(b) and (c), any difference between the sum of (i) the price for each MWH of output produced by the project plus (ii) the cost of fuel to produce such output plus (iii) any costs incurred by the Commission-regulated electric company arising out of the QFCPP minus the amount received by the Qualified Fuel Cell Provider for the market sale of its output (*id.* §364(d)(1)j.);
- The mechanism through which the Commission-regulated electric company, on behalf of the QFCPP, shall distribute to its customers, through bill credits, any positive difference between the amount received by the Qualified Fuel Cell Provider for the market sale of its output minus the sum of (i) the price established for each MWH of output from the project plus (ii) the cost of fuel to produce such output plus (iii) any costs incurred by the Commission-regulated electric company arising out of the QFCPP (*id.* §364(d)(1)k.);
- A provision that protects a Qualified Fuel Cell Provider from any future changes to the REPSA that would prevent a Qualified Fuel Cell Provider providing service under approved tariff provisions from recovering all amounts approved in such tariff. Such a provision must also include the Commission-regulated electric company's obligation, in the event of any such change to the REPSA, to collect from its customers amounts necessary to disburse to the Qualified Fuel Cell Provider the full amount that we have approved in the pre-existing tariff for each MWH of output produced by the QFCPP (*id.* §364(d)(1)l.); and
- In the event of a force majeure event that prevents the Qualified Fuel Cell Provider from supplying output from at least 80% of the QCFPP's capacity, or a full or partial interruption in fuel supply to the QFCPP, a mechanism through which, (a) during the event of force majeure, the Commission-regulated electric company shall, on behalf of the QFCPP, collect from its customers and transfer to the Qualified Fuel Cell Provider, a maximum of 70% of the price per MWH of output affected by the event of force majeure, and during an interruption in fuel supply, the Commission-regulated electric company shall, on behalf of the QFCPP, collect from its customers and transfer to the Qualified Fuel Cell Provider 100% of the price per MWH of output affected by the interruption; and (b) during the force

majeure event or interruption in fuel supply, the Commission-regulated electric company will continue to receive the full reduction in renewable portfolio standards that would have been provided by the output but for the force majeure event or interruption in fuel supply (*id.* §364(d)(1)m.).

3. In addition, the Qualified Fuel Cell Provider and the Commission-regulated electric utility have the right to amend the proposed tariff prior to a Commission decision pursuant to amended §364(d)(3). However, once approved by the Commission, such tariff provisions cannot be altered, except in limited circumstances, without the agreement of both the Commission-regulated electric company and the Qualified Fuel Cell Provider (*id.* §364(d)(5)).

4. In accordance with the Amendments, we must either approve or reject all tariff filings as proposed, and we may not alter the proposed tariff or impose any condition(s) on the tariff. In determining whether to approve or deny the tariff, we must first ensure that the above provisions have been satisfied. Additionally, we shall consider the QFCPP's incremental cost to customers, applying at least the following factors:

- Whether the QFCPP utilizes innovative baseload technologies (*id.* §364(d)(2)a.);
- Whether the QFCPP offers environmental benefits relative to conventional baseload generation technologies (*id.* §364(d)(2)b.);
- Whether the QFCPP promotes economic development in the State (*id.* §364(d)(2)c.); and
- Whether the tariff as filed promotes price stability over the project term (*id.* §364(d)(2)d.).

II. THE APPLICATION

5. Pursuant to the Amendments, on August 19, 2011, Delmarva Power & Light Company ("Delmarva") filed an application for approval of a new electric tariff - Service Classification QFCP-RC and a new gas tariff - Service Classification LVG-QFCP-RC (the "Application"). Delmarva intends to use the proposed tariffs in conjunction with a planned QFCPP that will use fuel cells manufactured by Bloom Energy Corporation ("Bloom"). As widely reported in the local media, Bloom plans to locate a fuel cell manufacturing and testing facility on the former site of the Chrysler facility in Newark, Delaware, creating up to 900 jobs at the manufacturing facility and up to 600 jobs from Bloom suppliers.³ The proposed tariffs were accompanied by the prefiled testimony of several witnesses from Delmarva, ICF Resources, LLC, Bloom, and the Delaware Department of Natural Resources and Environmental Control.

6. Witness Joshua Richman, Bloom's Vice President of Business Development, states that the Bloom QFCPP will use a combination of debt and equity financing that requires, among other things, construction to commence in 2011 so that certain investors may be eligible for a federal cash grant in lieu of the Federal Investment Tax Credit for assets that begin construction in 2011. The Application requests our approval by October 18, 2011 to provide adequate time for construction to begin.

³ Application, at Testimony of Joshua Richman, Bloom Energy, at page 5.

III. PROCEDURE

7. At our regularly-scheduled meeting on August 23, 2011, our Executive Director briefed us on the Application and particularly on Delmarva's request for an expedited schedule to obtain a decision from us on October 18, 2011. The Executive Director advised us that the Application and prefiled testimony had been uploaded to the Commission's website, and that public notice of the Application had been published in The News Journal and the Delaware State News that very day, providing the public with notice that the intervention deadline was September 6, 2011; that public comment sessions would be held in Dover on September 27, 2011, in Wilmington on September 28, 2011 and in Georgetown on September 29, 2011; and that the Commission would hold an evidentiary hearing on October 18, 2011, which date was subject to change. He inquired whether we would authorize an expedited schedule, which would contemplate holding an evidentiary hearing before us on October 18, 2011. We agreed that we would attempt to accommodate the request for expedition.

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

1. That a docket to consider the Application of Delmarva Power and Light Company for approval of a new electric tariff - Service Classification QFCP-RC and a new gas tariff - Service Classification LVG-QFCP-RC is hereby opened.

2. That this docket will be placed on an expedited schedule, with the goal of holding an evidentiary hearing on October 18, 2011 during our regularly-scheduled meeting. We may start the meeting at

an earlier time to accommodate the longer time required to conduct a full evidentiary hearing and hold deliberations. We expressly caution the participants, however, that this date is subject to change depending on how the docket proceeds. The time and date of the evidentiary hearing will be published according to the requirements of 29 *Del. C.* §10122.

3. That we ratify the contents of the public notice published in The News Journal and the Delaware State News on August 23, 2011, which established an intervention deadline of September 6, 2011, and public comment sessions on the dates and at the locations set forth therein.

4. That, pursuant to 26 *Del. C.* §502, Hearing Examiner Mark Lawrence is designated as the Hearing Examiner for this matter. Hearing Examiner Lawrence shall conduct or supervise such proceedings in this matter as he deems necessary or appropriate. Hearing Examiner Lawrence is delegated the authority to grant or deny petitions to intervene. Hearing Examiner Lawrence is also delegated the authority to determine the manner and content of any additional public notice he deems necessary or appropriate. Hearing Examiner Lawrence shall also conduct the evidentiary hearing before us that is currently scheduled for October 18, 2011.

5. That Delmarva is hereby placed on notice that the costs of this docket will be assessed to it pursuant to 26 *Del. C.* §§114(b) and 364(c).

6. That the Commission reserves the jurisdiction and authority to enter such further orders in this docket as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jeffrey J. Clark
Commissioner

ATTEST:

/s/ William F. O'Brien
Executive Director