

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 A PILOT PROGRAM FOR) PSC DOCKET NO. 11-399
THE PROCUREMENT OF SOLAR RENEWABLE)
ENERGY CREDITS)
(FILED SEPTEMBER 16, 2011))

ORDER NO. 8048

AND NOW, this 3rd day of October, 2011:

I. LEGISLATIVE BACKGROUND

1. In 2007, the Governor approved and signed into law the Renewable Energy Portfolio Standards Act, 26 *Del. C.* §§351-364, ("REPSA"), the purpose of which was to "establish a market for electricity from [renewable energy resources] in Delaware, and to lower the cost to consumers of electricity from these resources." *Id.* §351(c). The General Assembly and the Governor concluded that establishing a market for renewable energy resources in Delaware would benefit the State through "improved regional and local air quality, improved public health, increased electric supply diversity, increased protection against price volatility and supply disruption, improved transmission and distribution performance, and new economic development opportunities." *Id.* §351(b).

2. REPSA requires retail electricity suppliers, such as Delmarva Power and Light Company ("Delmarva" or the "Company"), to purchase energy from Eligible Energy Resources (as that term is defined in REPSA) to meet a portion of their annual retail load. REPSA sets forth the minimum percentage of retail energy sales to end-

users that must come from Eligible Energy Resources, including solar photovoltaics ("solar PVs"). *Id.* §354(a). For compliance year 2011, the Minimum Cumulative Percentage from Eligible Energy Resources is 7.0% and the Minimum Cumulative Percentage from solar PVs is 0.20%. *Id.* The percentage of retail energy to be supplied from Eligible Energy Resources increases over time, reaching a requirement of 25% in compliance year 2025. *Id.*

3. In 2010, the General Assembly amended REPSA to create the Renewable Energy Taskforce (the "Taskforce"), consisting of eleven members, to "mak[e] recommendations about the establishment of trading mechanisms and other structures to support the growth of renewable energy markets in Delaware." *Id.* §360(d). Four of the eleven members were appointed by the Secretary of the Delaware Department of Natural Resources and Environmental Control ("DNREC"); one by the Public Service Commission (the "Commission");¹ one by Delmarva; one by the Delaware Electric Cooperative (the "Cooperative"); one by municipal electric companies ("DEMEC"); one by the Sustainable Energy utility ("SEU"); one by the Delaware Public Advocate (the "Public Advocate"); and one by the Delaware Solar Energy Coalition (the "DSEC"). *Id.* §360(d)(1). The Taskforce was charged with making recommendations about and reporting on, *inter alia*, the following:

¹ Chair McRae was the Commission's designated representative on the Taskforce, but because she would be on the panel that was determining whether to approve the Taskforce's final recommendations, she abstained from voting on any Task Force proposal.

- a. Establishing a balanced market mechanism for Renewable Energy Credit ("REC") and Solar Renewable Energy Credit ("SREC") trading;
- b. Establishing REC and SREC aggregation mechanisms and other devices to encourage the deployment of solar energy technologies in Delaware with the least impact on retail electricity suppliers, municipal electric companies and rural electric cooperatives;
- c. Minimizing the cost for complying with REPSA;
- d. Establishing revenue certainty for appropriate investment in solar renewable energy technologies, including consideration of long-term contracts and auction mechanisms;
- e. Establishing mechanisms to maximize in-state solar renewable energy generation and local manufacturing; and
- f. Ensuring that residential, commercial and utility scale photovoltaic and solar thermal systems of various sizes are financially viable and cost-effective instruments in Delaware.

4. The Taskforce held its initial meeting on September 2, 2010 and, at that time, created a subcommittee to provide recommendations to the Taskforce. The subcommittee's voting members were Delmarva, DNREC, the Cooperative, the DSEC, the SEU and DEMEC. In addition to the subcommittee members, other persons regularly attended the subcommittee meetings, including members of the Commission Staff,

members of the Public Advocate's Office, Dr. Lado Kurdgelashbilli from the University of Delaware and additional representatives from the solar industry. Since its formation, the subcommittee has met almost weekly for a year to consider the issues as required by REPSA.

5. At our regularly-scheduled meeting on September 6, 2011, our Executive Director advised us that Delmarva would be submitting this application and that it would request an expedited schedule in order to obtain a final Commission decision in October. At that time of that briefing, the application was expected to be filed shortly. We agreed that we would attempt to accommodate a request for expedition, and that we were amenable to a process similar to that being requested for the application to approve tariffs certifying Bloom Energy Corporation as a Qualified Fuel Cell Provider, whereby we would appoint a Hearing Examiner to manage the pre-hearing process but the final hearing would be held directly before us.

II. THE APPLICATION

6. On September 16, 2011, Delmarva filed the application for approval of a pilot program for SREC procurement. In its application, Delmarva requests that the Commission schedule the matter for decision on October 31, 2011, or as soon thereafter as possible, so that the public bidding contemplated by the pilot program for compliance year 2011 can begin immediately. (Application at ¶22).

7. Delmarva states that it took the subcommittee almost a full year to develop the SREC Procurement Pilot Program (the "Program").

(*Id.* at ¶6). Initially, it has been designed to meet only the SREC requirements for compliance year 2011. It is subject to ongoing evaluation and revision to ensure that it is operating and meeting the goals that REPSA set for the Taskforce. (*Id.* at ¶8). The Program will conduct a public solicitation for SRECs for different categories of solar generators based on their capacity, using a bid form that the Taskforce developed. (*Id.* at ¶9). The SEU will administer all aspects of the bid process for each utility that participates in the Program. This allows the SEU to take advantage of its banking rights under REPSA by procuring the SRECs from the various generators and reselling them to participating utilities, and also centralizes management of the Program in one entity rather than several. (*Id.*).

8. Delmarva states that it intends to participate in the Program and is currently negotiating with the SEU. (*Id.* at ¶10). So far, Delmarva is the only participating utility. (*Id.*).

A. SPECIFICS OF THE PROGRAM

9. The Program creates four tiers of solar generators (one of which has two levels) from which the SEU will solicit bids and procure SRECs. (*Id.* at ¶11). Based on Delmarva's projected load for compliance year 2011,² the SEU will procure SRECs for Delmarva from the various generator tiers as follows:

Tier	Generating Unit Size	# of SRECs (MWh)	% of Total SRECs
Tier 4	≥ 2MW	10,600	48%

² As previously noted, Delmarva is currently the only participating utility; thus, the estimates are based on its projected need for SREC compliance in 2011.

Tier 3	>500kW - ≤ 2MW	4,500	20.4%
Tier 2	>50kW - ≤250kW	2,000	18.2% total for both subtiers
Tier 2B	>250kW - ≤500kW	2,000	
Tier 1	≤50kW	2,972	13.4%
TOTAL		22,072 MWh	100%

(*Id.* at ¶13).

10. Delmarva has a contract to procure SRECs from the Dover Sun Park, which is a Tier 4 generator. As a result, Delmarva has no need for additional Tier 4 SRECs and will not procure SRECs from Tier 4 generators during the Program's first year. (*Id.* at ¶12).

1. Standard Transfer Agreement

11. The Taskforce developed a standard Transfer Agreement that the SEU will execute with each solar generator selected through the public bidding process. (*Id.* at ¶14). Each Transfer Agreement will have a 20-year term. The standard Transfer Agreement will ensure consistency across all projects and reduce transaction costs. (*Id.*).

2. Bids

12. Bids will be accepted only from projects having a completed and accepted Solar System Interconnection Application dated after December 10, 2010; this requirement is intended to ensure that the Taskforce is meeting its goal of supporting the growth of renewable energy markets in Delaware. (*Id.* at ¶15). Regardless of tier, each bidder will be required to provide a binding estimate of the SREC quantity its proposed facility will generate. If a Tier 1 or 2 generator produces more than 110% of its estimated SRECs, the SEU will have the option to determine whether to purchase the surplus SRECs.

However, a Tier 3 generator that produces more than 110% of its estimated SRECs will be permitted to retain them and sell them in whatever manner it wishes. This arrangement produces a level of certainty regarding the number of SRECs to be procured pursuant to the Program. (*Id.* at ¶16).

3. Procurement from Tiers 1 and 2A Generators

13. The SEU's solicitation for proposals from Tiers 1 and 2A generators will remain open for five days. The SEU is responsible for reviewing all applications and ensuring compliance with Program requirements. If the SEU receives proposals exceeding the number of SRECs required, it will employ a lottery system to procure the SRECs, giving preference to generators that have claimed both the Delaware Equipment Bonus and the Delaware Workforce Bonus. (*Id.* at ¶17). The SEU will pay a base price of \$260 per SREC to successful Tier 1 generators and \$240 per SREC to successful Tier 2A generators for Years 1-20, and \$50 per SREC to generators in both tiers in Years 11-20. (*Id.* at ¶18; Exhibit 1 at §8.2).³

4. Procurement from Tiers 2B and 3 Generators

14. Tiers 2B and 3 are subject to a competitive bidding process. The SEU will also be responsible for administering the process and awarding Transfer Agreements to the lowest bidders. To qualify for the Program, a Tier 2B or Tier 3 bid must contain a fixed per-SREC price for the first ten years of the Transfer Agreement, and

³ The Program includes alternative bid prices of \$235 per SREC to Tier 1 generators and \$175 per SREC to Tier 2A generators for projects that received a Green Energy Program grant under the program in effect prior to December 10, 2010.

in Years 11-20 is subject to the same \$50 per SREC price as Tiers 1 and 2A generators. (Application at ¶19; Exhibit 1 at §7.2). If the SEU receives multiple bids at the same price, it will allow the bidders five business days to reduce their bid price. (Application at ¶20). If there is still a tie, the SEU will award contracts based on specific requirements set forth in the Program. (*Id.*; Exhibit 1 at §7.2). The SEU is not obligated to accept any Tier 2B or 3 bid whose price exceeds \$280 per SREC. If the SEU is inclined to accept such a bid, the electric provider (currently, only Delmarva) has the sole discretion to determine whether to seek approval from the Commission to pass this cost through to ratepayers, and if it receives such approval, whether to authorize the SEU to execute a Transfer Agreement based on that bid price. (Exhibit 1 at §7.2).

III. PROCEDURE

15. As mentioned earlier, Delmarva requests that a decision be made by the end of October or as soon as possible thereafter so as to enable the public bidding under the Pilot Program to begin in time for the results to apply to REPSA compliance year 2011. We are also aware that public notice was published in *The News Journal* and the *Delaware State News* on September 23, 2011, establishing October 6, 2011 as the intervention deadline and October 19, 2011 at 7:00 p.m. as the date and time for the public comment session to be held at our Dover office. Written public comment is due on October 21, 2011. As set forth below, and to enable the program, if approved, to take place under the preferred schedule, we ratify the schedule outlined in the

public notice and we will expedite the remainder of the schedule to the extent practical, without sacrificing meaningful participation by interveners or the public.

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 Pilot Program for the Procurement of Solar Renewable Energy Credits is hereby opened.

2. That this docket will be placed on an expedited schedule, with the expectation that the evidentiary hearing will be conducted directly before the Commission after the parties and the public have been provided adequate time for review and comment on the proposed program. The time and date of the evidentiary hearing will be determined at a later date and will be published according to the requirements of 29 *Del. C.* §10122.

3. That we ratify the public notice published in The News Journal and the Delaware State News on September 23, 2011, establishing an intervention deadline of **October 6, 2011** and a public comment session on **October 19, 2011**, commencing at 7:00 p.m. at the Commission's hearing room, 861 Silver Lake Blvd., Suite 100, Dover, Delaware 19904.

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 will be scheduled at a later date.

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).

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/ Dallas Winslow
Commissioner

/s/ Jeffrey J. Clark
Commissioner

Commissioner

ATTEST:

/s/ Alisa Carrow Bentley
Secretary