

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) )

**FINAL FINDINGS, OPINION AND ORDER NO. 8093**

**BEFORE COMMISSIONERS:** JOANN T. CONAWAY, Acting Chair  
JAYMES B. LESTER, Commissioner  
J. DALLAS WINSLOW, Commissioner  
JEFFREY J. CLARK, Commissioner

**ON BEHALF OF THE APPLICANT, DELMARVA POWER & LIGHT COMPANY**  
**("Delmarva"):**

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**("Staff"):**

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**ON BEHALF OF THE DIVISION OF THE PUBLIC ADVOCATE ("Public Advocate"):**

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**ON BEHALF OF INTERVENOR CAESAR RODNEY INSTITUTE ("CRI"):**

**DAVID T. STEVENSON**  
**Director, Center for Energy Competitiveness**

**ON BEHALF OF INTERVENOR DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL ("DNREC"):**

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**I. INTRODUCTION**

1. On November 8, 2011, the Delaware Public Service Commission (the "Commission") conducted an evidentiary hearing on Delmarva's Application for Approval of a Pilot Program for the Procurement of Solar Renewable Energy Credits (the ("Application")). Delmarva proffered oral testimony from Glenn Moore, Vice President, Delmarva Region, and Lado Kudgelashvili, Ph.D., a Policy Fellow from the University of Delaware's Center for Energy and Environmental Policy. DNREC proffered oral testimony from Carolyn D. Snyder, Ph.D., Director of DNREC's Division of Energy & Climate. CRI proffered oral testimony from David T. Stevenson, Director of CRI's Center for Energy Competitiveness. Staff proffered oral testimony from Barry J. Sheingold, President of New Energy Opportunities, Inc. ("NEO"), a consulting firm that focuses on the procurement and sale of electric power and other products from generation facilities, especially those

using renewable resources.<sup>1</sup> All witnesses were subject to cross-examination. We admitted eight exhibits into the record from Delmarva, Staff, DNREC and CRI. See Attachment A.

2. At the conclusion of the closing statements, we closed the record, consisting of the eight exhibits and a 175-page transcript. We then deliberated in open session and voted unanimously to approve the Pilot Program with certain modifications. See Order No. 8075. We stated in Order No. 8075 that we would enter a formal Findings and Opinion in support of this Order at a later date. This Order is the final Findings, Opinion and Order of the Commission.

## II. LEGISLATIVE BACKGROUND

3. In 2007, the Renewable Energy Portfolio Standards Act ("REPSA") was enacted. 26 Del. C. §§351-364. Its purpose 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).

4. REPSA requires retail electricity suppliers such as Delmarva Power & Light Company ("Delmarva" or the "Company") to meet a

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<sup>1</sup> The Public Advocate did not sponsor any written or oral submissions, but cross-examined the other participants' witnesses and presented argument to the Commission.

portion of their annual retail load through energy purchases from Eligible Energy Resources ("EERs") (which includes solar photovoltaics ("solar PVs")). REPSA sets forth minimum percentages of retail energy sales to end-users that must come from EERs. *Id.* §354(a). For compliance year 2011, the Minimum Cumulative Percentage from EERs is 7.0% and the Minimum Cumulative Percentage from solar PVs is 0.20%. *Id.* The percentage of retail energy sales to be supplied from EERs increases over time. *Id.*

5. In 2010, REPSA was amended (the "2010 Amendments") to create the eleven-member Renewable Energy Taskforce (the "Taskforce") 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). The 2010 Amendments directed the Taskforce to make these recommendations to us and to and other entities (to the extent those entities have authority, including the Secretary of the Delaware Department of Natural Resources and Environmental Control ("DNREC"), rural electric cooperatives' boards of directors, and pertinent local regulatory authorities), and further instructed us (and other entities) to adopt rules and regulations or policies based on the Taskforce findings.<sup>2</sup> Four members were appointed by the DNREC Secretary; one by the Public Service Commission (the "Commission");<sup>3</sup> one by Delmarva; one by the Delaware Electric

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<sup>2</sup>26 *Del. C.* §360(d)(3).

<sup>3</sup>Former 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 proposal. Chair McRae has since resigned from the Commission.

Cooperative ("DEC"); one by the municipal electric companies ("DEMEC"); one by the Sustainable Energy Utility ("SEU"); one by the Delaware Public Advocate ("Public Advocate"); and one by the Delaware Solar Energy Coalition ("DSEC"). *Id.* §360(d)(1). The 2010 Amendments charged the Taskforce with making recommendations about and reporting on, *inter alia*, the following:

- 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 REPSA compliance costs;
- 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 PV and solar thermal systems of various sizes were financially viable and cost-effective instruments in Delaware.

*Id.* §360(d)(2).

6. We are not required to adopt the Taskforce's recommendations *per se*, but we have been directed to act based on the Taskforce's work.

7. The 2010 Amendments further contain provisions designed to encourage renewable energy projects that employ Delaware labor and use Delaware-manufactured products:

A retail electricity supplier shall receive an additional 10% credit toward meeting the renewable energy portfolio standards established pursuant to this subchapter for solar or wind

energy installations sited in Delaware provided that a minimum 50% of the cost of renewable energy equipment, inclusive of mounting components, are manufactured in Delaware.

A retail electricity supplier shall receive an additional 10% credit toward meeting the renewable energy portfolio standards established pursuant to this subchapter for solar or wind energy installations sited in Delaware provided that the facility is constructed and/or installed with a minimum of 75% in-state workforce.

26 *Del. C. §§356(d), (e)*. Thus, a retail electricity supplier will receive credit for 11 SRECS for each 10 MWh of a solar PV project that qualifies for one 10% credit, and 12 SRECs if the project qualifies for both 10% credits.

8. The 2010 Amendments also increase and extend the required minimum percentage of SREC purchases by retail electricity suppliers; increase the Solar Alternative Compliance Price ("SACP");<sup>4</sup> and require municipal utilities and DEC either to comply with REPSA or to develop and implement a comparable program beginning in 2013.<sup>5</sup>

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<sup>4</sup>26 *Del. C. §§354(a), (b), (f)*.

<sup>5</sup>26 *Del. C. §363*. Another provision gives the State Energy Coordinator the discretion to freeze the minimum cumulative SREC purchase obligation under certain circumstances.

The State Energy Coordinator in consultation with the Commission, may freeze the minimum cumulative solar photovoltaics requirement for regulated utilities if the Delaware Energy Office determines that the total cost of complying with this requirement during a compliance year exceeds 1% of the total retail cost of electricity for retail electricity suppliers during the same compliance year. . . . The total cost of compliance shall include the costs associated with any ratepayer funded state solar rebate program, SREC purchases, and solar alternative compliance payments.

9. In July 2011, Governor Markell signed into law Senate Bill No. 124, which amended REPSA once again (the "2011 Amendments"). 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).<sup>6</sup> The 2011 Amendments also authorize reductions in Delmarva's REC and/or SREC obligations with respect to energy delivered by a Qualified Fuel Cell Provider Project if we approve such a project. On October 18, 2011, we did approve electric and natural gas tariffs obligating Delmarva ratepayers to pay for the output of a 30 MW Qualified Fuel Cell Provider Project proposed in association with a planned fuel cell manufacturing plant to be built by Bloom Energy Corporation.<sup>7</sup>

**III. DEVELOPMENT OF THE PROPOSED PILOT PROGRAM**

10. The Taskforce held its initial meeting on September 2, 2010. On September 15, 2010, the Taskforce created a subcommittee to provide recommendations to the entire Taskforce regarding how to implement the solar carve-out. Exh. 5 at 3; Exh. 6 at 6. Delmarva, DNREC, DEC, DSEC, SEU and DEMEC were the subcommittee's voting members. Exh. 6 at 6-7. Delmarva and DSEC were the most continuously

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26 Del. C. §354(i).

<sup>6</sup>26 Del. C. §354(e) provides: "Beginning with compliance year 2012, Commission-regulated electric companies shall be responsible for procuring RECs, SRECs and any other attributes needed to comply with subsection (a) of this section with respect to all energy delivered to such companies' end use customers."

<sup>7</sup>Docket No. 11-362, Order No. 8062 (October 18, 2011). The Fuel Cell Project could have an impact on Delmarva's future SREC purchase obligations.

active subcommittee members, although others (including members of the Commission Staff and Public Advocate's Office, Dr. Kudgelashvili, and solar industry representatives) regularly attended subcommittee meetings. *Id.* at 7. The subcommittee met almost weekly for a year to consider the issues identified in the 2010 Amendments. *Id.*

11. Two outside organizations offered analyses of the economic costs and benefits of the RPS in general and the solar carve-out in particular. Exh. 5 at 3.

12. Initially, the subcommittee tentatively agreed to a Pilot Program consisting of four tiers: Tier 1 for projects of up to 50 kW; Tier 2 for projects of up to 500 kW; Tier 3 of up to 2 MW; and Tier 4 for projects greater than 2 MW.<sup>8</sup> The subcommittee also tentatively agreed that contracts would be for 20 years, with the last 10 years (for all tiers) having a price of \$50/SREC. *Id.*

13. Dr. Kudgelashvili assisted the subcommittee in modeling Tier 1 and 2 project prices. SREC prices for Tiers 1 and 2 would be administratively-determined; Tiers 3 and 4 would be competitively bid and the lowest qualified bids would be selected. The Tier 1 and 2 prices for the first 10 years of \$290/SREC and \$270/SREC, respectively (both assuming receipt of the 10% Delaware workforce credit) were based on assumptions regarding project capacity factor (energy output as a function of kW size of installation), initial capital costs, ongoing operating costs, financing costs, tax treatment, and size and timing of Delaware Energy Office Green Energy Program ("GEP") grants.

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<sup>8</sup>We approved Delmarva's SREC purchase agreement with the Dover Sun Park Project and the associated SREC purchase agreement with the SEU in Docket No. 10-198, Order No. 7836 (September 7, 2010).



The Tier 1 price further assumed that the average installed cost per watt would be \$6.00 - the same assumption that DSEC used in an October 2010 presentation to the Taskforce. *Id.*<sup>9</sup>

14. In December 2010, Staff retained NEO to assist with its Taskforce participation. NEO and Staff attended subcommittee meetings and raised the following issues:

- The basis for the number of tiers and the size cut-off points between tiers;
- Whether Tiers 1 and 2 should be competitively bid;
- The Tier 1 and 2 prices; and
- Whether it was cost effective for the SEU to administer the procurement process and be the contracting party.

*Id.* at 7-8.

15. NEO synchronized the subcommittee's model with its own model, and thereafter discussed the proposed administratively-set Tier 1 and 2 prices with the subcommittee. After reviewing the assumptions used and exploring the data on installed costs, including Energy Office data for solar PV grant applications, the subcommittee agreed to recommend reduced Tier 1 and 2 prices of \$270/SEREC and \$250/SREC, respectively.<sup>10</sup> 61% of the proposed 11,472 SRECs/year that Delmarva planned to purchase were to be at administratively determined prices in Tiers 1 and 2; the remainder would be subject to competitive bidding in Tier 3. *Id.* at 8.

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<sup>9</sup>DSEC, Delivering on the Promise of Clean Energy for Delaware, Renewable Energy Taskforce, 10/7/2010 at 8, <http://www.dnrec.delaware.gov/energy/information/Lists/Delaware%20Renewable%20Energy%20Task%20Force%20Calendar/Attachments/11/DSEC%20Jobs%20Overview%2010.07.2010.pdf>.

<sup>10</sup><http://www.dnrec.delaware.gov/energy/information/Lists/Delaware%20Renewable%20Energy%20Task%20Force%20Calendar/Attachments/10/Delaware%20Pilot%20SREC%20Procurement%20Process.pdf>.

16. In the summer of 2011, additional data on national trends and information specific to Delaware and Pennsylvania became available, which showed that the decline in capital costs for solar PV projects was continuing. Delaware and Pennsylvania spot market prices were also declining sharply, reflecting an excess of supply over demand and decreases in the cost of solar PV projects. Furthermore, reported long-term competitively-bid SREC prices conducted by Pennsylvania had declined from \$257 (March 2010) to \$199 (March 2011) to \$149 (June 2011). *Id.*

17. The release of this data spurred further negotiations between Staff and the subcommittee members. These negotiations concluded with Tier 2 being divided into two sub-tiers: (a) Tier 2A for projects between 50-250 kW, which would have an administratively set price of \$240/SREC for the first 10 years; and (b) Tier 2B for projects between 251-500 kW, which would be competitively bid. *Id.* Additionally, the subcommittee reduced the proposed Tier 1 price to \$260 for the first 10 years. After these changes, 56.7% of the SRECs to be purchased will be competitively bid, and the remaining 43.3% will be purchased under administratively-set prices. *Id.*

**Table 1:** Key Terms of Pilot Program

Tier	System Size	# of SRECs/Year	\$ Price for 1st 10 Years	% of Total SRECs
1	≤ 50 kW	2,972	\$260	25.9%
2A	> 50 kW to 250 kW	2,000	\$240	17.4%
2B	> 250 kW to 500 kW	2,000	Lowest qualified bids	17.4%
3	> 500 kW to 2 MW	4,500	Lowest qualified bids	39.2%
4	> 2 MW	0	Lowest qualified bids	0.0%
<b>TOTAL</b>		<b>11,472</b>		<b>100.0%</b>

18. There are eligibility requirements for participating in the Pilot Program. First, if the project has an aggregate nameplate rating

of at least 100 kW (DC) at standard test conditions ("STC"), then the applicant must own, lease, control or be the direct assignee of all SRECs created by the project. If the project's aggregate nameplate rating is less than 100 kW at STC, the applicant must own, lease, control or be the direct assignee of all the SRECs created by that project *and* at least one other EER. Exh. 3 at Ex. 1 (Recommendations of the Renewable Energy Taskforce) at §4.2. Second, any other party that intends to participate in the Pilot Program must submit a joint application with an entity that has executed agreements to control the SRECs produced by two or more projects. *Id.* Third, the project must have received approval of its "Accepted Completed Solar System Interconnection Applications" dated December 1, 2010 or later. *Id.* at §4.3. Fourth, a project that has received supplemental funding from a public source is ineligible. *Id.*<sup>11</sup>

19. Each application must include binding estimates of the project's annual energy output and annual SREC production level. A project that claims a bonus for Delaware labor or Delaware-sourced equipment must describe the equipment and/or identify the contractor or workforce upon which its claim is based, and binding SREC output estimates for the project must include the bonus(es). A project that does not claim the bonus at the time of application cannot claim it later, and a project that claims a bonus to which it is not entitled will be in default under the Transfer Agreement. *Id.* at §5.2.

20. All applicants must provide a bid deposit (in the form of cash, letter of credit or bid bond) equal to \$100 per kW (DC) of the

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<sup>11</sup> Projects that have received GEP grants or grants in lieu of investment tax credits may still participate, however. *Id.* at §4.3.

project's nameplate rating at STC, although the deposit will be waived for EER-certified projects. The SEU will hold the deposits. Deposits will be returned or released promptly if the application is rejected; if the Transfer Agreement is terminated based on an interconnecting utility's imposition of a charge other than a standard interconnection fee; or upon completion and commencement of the project's operation on or before the Guaranteed On-Line Date and posting of performance credit support. An applicant will forfeit its deposit and its SREC Transfer Agreement will be terminated if it falsely claims entitlement to either the Delaware workforce or equipment bonus. If a project comes on line after its Guaranteed On-Line Date, the deposit will be used to pay liquidated damages, and any remaining balance will be returned after the project's commencement and operation and posting of performance credit support. Cash deposits will not earn interest. *Id.* at §5.3.

21. Standardized Transfer Agreements will be used to minimize transaction costs. *Id.* at Article 6 and Appendix B. The standardized Transfer Agreement includes provisions regarding the term of the agreement; the quantity of SRECs that the SEU must purchase; the price thereof; required utility interconnections; guaranteed on-line date and delay damages if that date is not met; payment for SRECs; metering; grant of a security interest to the SEU to secure obligations under the Agreements; project maintenance and inspections; conditions under which performance may be excused; default and remedies therefor; and replacement of the owner representative. *Id.* In addition, there are different terms for different tier bidders. Tier 3

bidders have minimum obligations to produce SRECs on an annual basis (subject to force majeure conditions), and are required to provide supplemental credit support in the form of cash, a letter of credit or other collateral acceptable to the SEU. Tier 1 and 2 bidders are not subject to these requirements. Tier 2 and 3 projects will be paid monthly, while Tier 1 projects will be paid quarterly. See SREC Transfer Agreement.

22. The SEU will solicit, evaluate and award bids and execute agreements to purchase SRECs and other environmental attributes from qualifying projects. *Id.* at Article 7. Transfer Agreements for Tier 1 and 2A projects will be awarded on a "first-come, first-served" basis, while Tier 2B and 3 bids will be awarded on the basis of lowest price. *Id.* at §§7.1, 7.2. The Taskforce anticipates that the SEU will select a third party to perform some or all of its duties with respect to the Pilot Program. If it does so, the process for selecting that agent and the choice of the particular agent will be subject to the consent of the participating retail electricity suppliers. Exh. 3 at Ex. 1 (Recommendations of the Renewable Energy Taskforce) at §4.1 & n. 7.

23. According to Delmarva, using the SEU to administer the contracts is beneficial because: (1) the Pilot Program has the potential to be a statewide program, so a single administrator will be cost-effective and efficient; (2) the SEU is already familiar with SREC contracts through its involvement in the Sun Park project; (3) Delmarva will not need to be involved with potentially hundreds of contracts; and (4) the SEU's favorable banking rights are available to the participating utilities. Exh. 4 at 11. So far, however, Delmarva

is the only utility participating in the Pilot Program. Exh. 3 at ¶10. As of the time of the November 8, 2011 evidentiary hearing, however Delmarva had not finalized the contract with the SEU. Tr. at 41.

24. On August 22, 2011, the Taskforce voted to approve and recommend the Pilot Program to the Commission. Exh. 5 at 3.<sup>12</sup> Dr. Snyder, the Chair of the Taskforce, testified that the Pilot Program is designed to meet several of REPSA's key requirements: (1) establishing a balanced market for REC and SREC trading; (2) establishing revenue certainty for investments in solar renewable energy technologies (including consideration of long-term contracts and auction mechanisms); and (3) establishing mechanisms for maximizing in-state solar renewable energy generation and supporting the development of small, medium and large-scale projects. *Id.*

#### **IV. DELMARVA'S APPLICATION**

25. On September 16, 2011, Delmarva filed an application (the "Application") for approval of the Pilot Program. The Pilot Program has been designed to meet only the SREC requirements for compliance year 2011. (Application at ¶8). Delmarva requested us to schedule the matter for decision on October 31, 2011, or as soon thereafter as possible, so that competitive bidding for compliance year 2011 could begin immediately. *Id.* at ¶22.

#### **V. COMMENTS ON THE PROPOSED PILOT PROGRAM**

##### **A. Staff**

26. Staff submitted a report prepared by its consultants NEO and La Capra Associates, Inc. Staff concluded that the Pilot Program

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<sup>12</sup>The Commission abstained from voting. Exh. 5 at 3.

complied with the REPSA amendments establishing the Taskforce and constituted a reasonable balancing of the statutory objectives and the competing interests. Exh. 6 at 3. Although the Pilot Program was "not ideal," Staff stated that it was an "acceptable compromise" for purposes of a one-year pilot as long as two changes were made: (1) applying the alternate prices to projects that receive higher GEP grants than the subcommittee considered in determining the administrative base prices; and (2) allowing Tier 1 and 2A bidders to submit bids in Tiers 2B and 3, which are subject to competitive bidding. *Id.* at 2-3.

27. There were no objections to allowing Tier 1 and 2A projects to submit bids in the higher tiers. However, Delmarva objected to limiting projects that may have received higher GEP grants than the subcommittee considered in determining the administrative prices to receiving the lower alternate price. It contended that the subcommittee discussed and considered many variables in pricing, including the possibility that a project might have received a higher GEP grant, and it was neither necessary nor appropriate to revisit any one variable that went into determining the prices. Exh. 8 at 2.

28. Staff explained that the subcommittee developed the alternate prices based solely on Delmarva's GEP applicable to applications submitted prior to December 10, 2010 (grants for 25% of capital costs), even though projects located in the service territories of DEC and some of the municipal utilities (which may participate in the Pilot Program) may have received higher grants under those entities' GEPs compared to Delmarva's current GEP (a

tiered approach ordinarily resulting in less than a 20% grant for a residential project). Exh. 6 at 26. At the evidentiary hearing, Staff witness Sheingold described how the Pilot Program would overcompensate a project that received a higher GEP grant from a non-Delmarva entity if it received the higher administratively-set base price for its SRECs. Tr. at 130-35. DNREC's Dr. Snyder supported this proposed change to the Pilot Program. Tr. at 96-98.

29. Notwithstanding its conclusion that the proposed Pilot Program satisfied the REPSA goals and balanced the stakeholders' competing interests, Staff identified specific issues with the Pilot Program in order for the Commission to "render a fully informed decision." Exh. 6 at 3.

30. (a) *Long-Term Contracts*. Staff observed that as of October 23, 2011, spot market prices for Delaware and Pennsylvania SRECs were \$90 and \$25, respectively, raising the question why we should approve a procurement program in which SRECs would be purchased under long-term contracts. *Id.* at 10. Staff explained that the current low spot market SREC prices reflect a glut of SRECs relative to demand and declining costs for solar PV modules. Staff further noted that REPSA includes the competing goals of minimizing RPS compliance costs and establishing revenue certainty for renewable energy project investments, and long-term contracts are a well-established mechanism in the electric industry for providing a level of revenue certainty. Consequently, Staff concluded that the Pilot Program's provision for long-term contracts was consistent with the 2011 Amendments' general intent. *Id.*



31. (b) *Total SRECs to be Procured.* The next issue was whether the 11,472 total annual SRECs that Delmarva would procure through the Pilot Program was appropriate in light of its SREC purchase obligations under the Sun Park project, the transition toward purchasing SRECs based on its distribution load rather than its SOS load, and the potential reductions to its SREC purchase obligations as a result of the Bloom fuel cell project. Delmarva forecasted that it would need to purchase 1,182 SRECs in compliance year 2011, zero SRECs in compliance year 2012, 6,557 SRECs in compliance year 2013 and 20,678 SRECs in compliance year 2014 to meet its RPS obligations. *Id.* at 11, citing Delmarva Response to Staff Data Request No. 7. Staff noted that these forecasted numbers were flexible because Delmarva can use the Bloom fuel cell MWh production to reduce either its REC or SREC obligations under REPSA. *Id.* Staff opined that if Delmarva continues to purchase SRECs through long-term contracts, then it makes sense for it to procure a certain number of SRECs on the spot market to minimize costs and to allow owners of existing projects to sell SRECs at other than "'bottom of the barrel' prices." *Id.* at 11-12.

32. (c) *Tiers.* Staff observed that the proposed tiers (and the administratively-set prices for the smaller tiers) are inconsistent with REPSA's cost minimization goal, but are consistent with the goals of creating jobs and ensuring that various-sized systems were financially viable. *Id.* at 12. In this regard, Staff suggested that when we review the Pilot Program, we should consider combining Tiers 2A and 2B and Tiers 3 and 4 and restructuring the kW break point between Tiers 1 and 2 from 50 kW to 10-20 kW (especially if

administratively-set prices will remain in place for Tier 1). *Id.* at 12-13. As to the latter suggestion, Staff noted that projects from 10-50 kW are likely to be built for businesses with the ability to depreciate the capital investment for tax purposes if they own the projects, and are more likely to have third-party ownership and financing with at least some economies of scale (as well as the ability to use tax depreciation). *Id.* at 13.

33. (d) *Administratively-Set Prices.* Administratively-set prices do not permit ratepayers to obtain the advantages of declining module and system costs. *Id.* at 17. Staff noted that Pennsylvania and New Jersey use competitive bidding regardless of project size. *Id.* at 14. Staff was for the most part unpersuaded by Delmarva's arguments in favor of administratively-set prices for the smaller tiers. *Id.* at 17-19. Nevertheless, Staff acknowledged that administratively-set prices provide a level of revenue certainty for renewable energy investments, and concluded that the Taskforce's compromise was acceptable for a pilot program. *Id.* at 19-20. In future reviews of the Pilot Program, however, Staff recommended that we consider setting the price for smaller projects based on the winning bids for larger projects (with an adder if one is justified). Staff stated that such a mechanism would combine the benefits of competitively-determined prices and the reduction in transaction costs for smaller projects. *Id.* at 20.

34. (e)(1) *Contract Term and Pricing Structure.* Staff found the proposed 20-year contract term to be within the typical range of long-term SREC contracts. *Id.* However, Staff called the pricing structure - a much higher price for the first ten years and a flat \$50 price for

the last ten years - "unusual." *Id.* Although it concluded that the proposed pricing structure was reasonable for purposes of the Pilot Program, it was concerned about using such a structure in the future because it reduced the seller's incentive to perform in the last ten years of the contract. *Id.* at 20-21.

35. (e)(2) *Tier 1 and 2A Prices.* As discussed previously, Staff noted that the costs of solar modules and systems continue to decline, and contended that administratively-set prices do not "provide the advantages of a competitive market where the most efficient, attractive projects are successful" and where the lower prices are "usually substantially better than average." *Id.* at 23.

36. (e)(3) *Comparison to Market Rates for Long-Term Contracts.* Delmarva used the results of solicitations conducted in 2010 in Pennsylvania and New Jersey, the 2010 Sun Park PPA and the Vermont feed-in tariff to support its contention that the Tier 1 and 2A administratively-set prices were competitive with long-term SREC contract prices for larger projects. Staff rejected Vermont as a good indicator of the current regional market because it is not in this region and even if it were, its rate applied to both energy and environmental attributes. *Id.* at 24. Staff also rejected the 2010 price comparisons as good indicators of the current market because of the substantial decrease in solar PV costs over the last year. Staff pointed to the significant decline in the results of a Pennsylvania utility's SREC solicitations between March 2010 and August 2011 (average price decreased from \$257 to \$108); the steep reduction in New Jersey spot market prices (from \$600 to \$200); and the results of

recent solicitations in New Jersey (where SREC prices had historically been high relative to the region due to limited supply compared to demand). *Id.* at 25.

37. (f) *Amount of SRECs to be Procured by Tier.* According to Staff, DSEC proposed the number of SRECs to be procured per tier based on the results of a July 2011 survey. Staff's independent review showed that a substantial portion of projects in various tiers had been built since October 1, 2010, but it was "difficult" to predict how many applications and bids would be submitted once the Pilot Program was opened. Staff observed that in New Jersey's two most recent solicitations (in which Delmarva affiliate Atlantic City Electric participated), projects up to 50 kW represented 56% of the winning bids in number of projects and 5% in terms of kW of installed capacity. In contrast, Pilot Program Tier 1 projects are expected to comprise 94% of the total number of projects and 25% of the installed capacity. *Id.* at 27-28. Although this suggested that Tier 1 projects might be overrepresented, this was not unreasonable for a pilot program. However, Staff recommended addressing this issue "with more care in any future program," noting that Tiers 1 and 2A's high administratively-set prices could cause developers to downsize projects to attempt to secure a higher price rather than competitively bid a larger project, which then could make the bidding in Tiers 2B and 3 less robust. *Id.* at 28. Staff noted that these concerns would be alleviated if there were competitive bidding for all tiers. *Id.*

38. (g) *SEU Involvement.* Staff questioned why the SEU's involvement was necessary given that Delmarva was the only utility

participating in the Pilot Program. Staff observed (and Delmarva admitted) that Delmarva's affiliate Atlantic City Electric does not engage a third party as the contracting party. *Id.* at 29; Tr. at 59. Staff also suggested that the "double outsourcing" (to the SEU, which would then retain a third-party contractor) could increase costs, both in terms of administrative costs and a potential risk premium in competitively-bid SREC prices. . Exh. 6 at 29-30.<sup>13</sup> On the other hand, Delmarva has experience managing solicitations, purchasing SRECs and administering contracts, and has the in-house capability and facilities to do so, and the Commission has experience overseeing the competitive procurement processes that Delmarva conducts. *Id.* at 30. However, the SEU does not appear to have any of this "corporate infrastructure" or experience in administering the procurement and contract process - if it did, there would be no need for it to retain a third-party administrator. Furthermore, Staff pointed out that the SEU's involvement could delay the launch of the Pilot Program, and this has indeed occurred: as of the date of the evidentiary hearing, the contract between Delmarva and the SEU had not been finalized, and Delmarva witness Moore admitted that the Pilot Program was not likely to commence until sometime in 2012. Tr. at 79. Staff was not convinced by Delmarva's justifications for the SEU's involvement,

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<sup>13</sup>At the evidentiary hearing, Delmarva witness Moore testified that the estimated annual cost of the SEU's involvement would be approximately \$50,000-\$60,000, but the contract with the SEU had not yet been finalized. Tr. at 69, 79. He further admitted that this estimate did not include the amount that the SEU would pay to a third-party administrator whose costs would then be passed on to Delmarva and its ratepayers. *Id.* at 70. A risk premium might result if solar PV investors had concerns about the SEU's lack of creditworthiness and the strength of Delmarva's backstopping of the SEU's SREC Transfer Agreement obligations pursuant to the DPL/SEU contract.

noting that they would have greater force if more than one utility were participating in the Pilot Program; if there were any real advantage to the SEU's banking rights (use of the SEU's banking rights are not expected to be part of the DPL/SEU contract, in any event; and if Atlantic City Electric were not already administering many small contracts. Exh. 6 at 31. Consequently, Staff recommended that we put Delmarva on notice that when it seeks recovery of Pilot Program costs, it will be required to establish that using the SEU was no more expensive than if Delmarva had performed the administrative duties itself. *Id.* at 36; Tr. at 138.

39. (h) *Standard Contract Terms and Conditions.* Staff acknowledged the industry consensus that standard contracts are best for small projects because they minimize transaction costs. *Id.* While Staff had concerns regarding DSEC's level of involvement in developing and recommending the administratively-set prices, it found that DSEC's participation in developing the standard contract was appropriate and beneficial. *Id.* at 31-32. Staff also supported the standard contract's bid deposit provisions and procurement process, observing that they provided additional assurance that applications and bids would result in constructed projects. *Id.* at 32.

40. Finally, Staff recommended that we retain a consultant to review and evaluate the Pilot Program, as we do for the SOS procurement process. *Id.* at 33. In Staff's view, such a review is "especially important" given that Delmarva is outsourcing the procurement, contracting and administrative responsibilities to the SEU. Staff noted that there was a proposal made during the

subcommittee negotiations to have the subcommittee members (primarily Delmarva and DSEC) assume the monitoring and review responsibilities, to which Staff "strongly objected" because "[i]n [its] experience, it is uniformly the case that industry members, including trade associations, are not involved in the monitoring of procurement processes, nor are they primarily involved in the review and evaluation of these processes." *Id.* Although the Taskforce (led by DNREC) intends to monitor and evaluate the Pilot Program, Staff suggested that its role in that process should be advisory only, and we should independently review the Pilot Program. *Id.*

41. Staff then addressed evaluation of the Pilot Program. It posed several questions and criteria pertinent to that evaluation,<sup>14</sup> and identified several policy issues for consideration in the review,<sup>15</sup> including: (1) the extent to which Delmarva should enter into long-term SREC purchase contracts relative to spot market SREC purchases; (2) from a planning standpoint, how the potential reduction of Delmarva's SREC purchase obligations as a result of the Bloom project will be managed with respect to entering into long-term SREC purchase contracts; and (3) the process for making future decisions that have competitive implications, such as allocating SREC quantities among tiers and setting prices. *Id.* at 34.

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<sup>14</sup>See attached Exhibit B.

<sup>15</sup>Dr. Snyder also identified several policy issues to be considered in the Pilot Program review and evaluation. These will be identified in our discussion of DNREC's comments, *infra*.

**B. DNREC**

42. DNREC submitted comments from Dr. Snyder, the Chair of the Taskforce. Exh. 5 at 1. Dr. Snyder described the process by which the subcommittee and then the Taskforce approved the Pilot Program for recommendation to the Commission (*id.* at 1-3) and outlined the key provisions of the Pilot Program. *Id.* at 4-5.

43. Dr. Snyder then identified several outstanding policy issues requiring further consideration:

- Minimizing the impact to ratepayers from the Pilot Program design, given achievement of the other REPSA objectives (which Dr. Snyder called the "most important" policy issue).
- Ongoing analysis of the in-state economic development impacts of the Pilot Program's design and its progress in meeting REPSA's goal of maximizing in-state solar renewable energy generation and local manufacturing.
- The treatment of pre-existing solar installations in Delaware. Dr. Snyder noted that these installations are not eligible for the Pilot Program in light of REPSA's focus on sustaining the solar market, learning the most from this market and the current separate spot market. She testified that future procurement programs should address how these installations can sell their SRECs, especially if the procurement process will subsume the Delaware spot market.
- The current Pilot Program and any future programs should sufficiently account for any state or federal incentives that a project may receive. Specifically, systems receiving larger GEP incentives should not receive the same SREC price as those that received lower incentives.
- Evaluation of the program must continue to focus on the correct balance between administratively-set prices and competitively-bid prices. Each has advantages depending on the situation and the evaluation criteria, and the correct balance in future years will require careful consideration.
- Pricing, tier sizing and SREC allocations between tiers will require updating in future years in order to continue to meet the REPSA goals as more is learned about the Delaware solar market.



(*Id.* at 6-7).

44. Dr. Snyder testified that the subcommittee designed the Pilot Program to meet REPSA's goals by establishing a balanced market mechanism for REC and SREC trading; establishing revenue certainty for solar energy technology owners; and establishing mechanisms to maximize in-state solar renewable energy generation. The Pilot Program was vetted in eleven public meetings and represents a compromise among various different stakeholders. Dr. Snyder urged us to approve the Program with the modification proposed by Staff regarding alternate pricing, which she testified had been a "repeated concern" of DNREC's. *Id.* at 7; Tr. at 95-96. She also supported Staff's recommendation that we independently evaluate the Pilot Program. Tr. at 97.

**C. CRI**

45. David Stevenson testified on behalf of the CRI. CRI concluded that "[t]he timing of the proposed SREC Pilot Procurement Program is so inappropriate we respectfully recommend Delmarva Power withdraw the Application!" CRI at 1. It based this conclusion on the following contentions. First, CRI argued that solar module process have decreased by 50% in the last year and could decrease further as global subsidies are removed. Lower prices will lead to higher sales in all tiers; however, the reduced prices have not had sufficient time to be reflected in installation process in Delaware. *Id.* Second, CRI stated that high initial out-of-pocket costs have been a primary obstacle to solar power sales, but with new leasing options available, Tier 1 sales will increase. *Id.* Third, there is sufficient current and

new 2011 capacity to supply enough SRECs for Delmarva to meet its RPS requirements (with banking) until 2023, and all tiers will be oversubscribed. *Id.* Fourth, auction prices for SRECs have declined from approximately \$300 to \$100 and the "overwhelming" new supply is likely to reduce prices even further, so there is no danger that Delmarva will be forced to pay an SACP. *Id.* Fifth, the proposed SREC prices, including the SEU fees and the 10% bonus for using Delaware installers, could result in an effective price of \$290/SREC, which is a \$190 premium over the current spot market price. *Id.* Finally, the estimates of new jobs created ignore jobs that are lost due to higher electric prices; including this factor shows that each added Tier 1 installation job costs 1.8 jobs elsewhere. *Id.*

46. CRI then addressed the REPSA goals that the Pilot Program was designed to satisfy, and concluded that the Pilot Program either did not accomplish those goals or did so no better than other available options. *Id.* at 1-5.

47. (a) *Least administrative impact on electric suppliers.* CRI acknowledged that the Pilot Program accomplished this goal - but so did purchasing SRECs on the spot market. *Id.* at 1.

48. (b) *Minimize cost of RPS compliance.* CRI argued that the evidence was "overwhelming" that buying SRECs at auction would result in lower prices for Delmarva ratepayers. According to CRI, the estimated number of SRECs available in 2011 is 16 times greater than the number necessary to meet RPS requirements, so there is "no chance" that Delmarva would have to pay the ACP "any time soon..." *Id.* at 2. CRI asserted that auction prices are likely to decrease further, and

that the Pilot Program's \$190/SREC premium could cost Delmarva's ratepayers \$160 million by 2025. While CRI conceded that the Pilot Program serves the legislative objective of minimizing impact on retail electric suppliers,, buying SRECs on the spot market accomplishes the same thing. Finally, CRI observed that many competitive businesses deal with the bid to sale closure ratio, and solar installers would have to put internal systems in place to deal with this just as other industries have. *Id.*

49. (c) *Establish revenue certainty for solar system buyers.* CRI contended that high initial costs (anywhere from \$35,000 to \$50,000) are the main reason that more solar systems are not sold. It pointed to a University of Delaware study showing that most potential customers want a 2-3 year payback period, but even with subsidies the current payback period is 5-9 years. *Id.* That study also demonstrated that consumers are troubled by the high initial cost and the uncertainty of realizing a return, and the Pilot Program does nothing to address the high initial costs. CRI argued that reducing initial system costs is the fastest way to increase solar system sales, and lower subsidies and competitive bidding will reduce initial costs. Lower initial costs will also reduce the costs to taxpayers of funding grants and tax credits, and to ratepayers paying for SRECs. Lower initial costs will also make more money available to spur the overall economy. Finally, new leasing options available as a result of a \$280 million grant from Google will also reduce initial costs. *Id.*

50. (d) *Maximizing in-state generation and manufacturing.* CRI cited a study by the Vote Solar Initiative (an industry advocacy

group) showing that supplying Delaware's entire SREC requirement through 2019 with Tier 1 projects versus the expected mix of project sizes would add nine jobs per MW of new solar capacity. However, the study did not consider the negative effect of higher electric rates on jobs. CRI asserted that the added cost of Delmarva buying SRECs at higher than spot market prices (1250/MW) according to the Vote Solar study) could be as high as \$237,000 per year, or \$2.38 million over ten years. CRI asserted that a study it sponsored (The Cost and Economic Impact of Delaware's Renewable Portfolio Standard) shows that \$147,000 of electric premium eliminates one job elsewhere; thus, the negative impact of the higher electric rates from the Pilot Program would be a net loss of 16 jobs. Moreover, CRI argued that Delaware projects would be unlikely to be able to sell their SRECs in other states because those states had either closed their borders to SREC trading or projects in those states would produce more SRECs than necessary to meet RPS requirements in those states. *Id.* at 2-3.

51. (e) *Ensuring that solar systems of all sizes are financially viable.* Despite the rapid decrease in solar system costs over the past few years, the reduction in subsidies for high solar panel prices and the concomitant reduction in initial costs for buyers, CRI argued that the Pilot Program supports higher installed costs, which discourages use. *Id.* at 4-5.

**VI. PUBLIC COMMENT**

52. On October 19, 2011, we held a public comment session at our Dover office.<sup>16</sup> Employees of Delmarva and members of our Staff, DNREC, and the Public Advocate's office were present. Approximately 30 Delaware residents attended. At the beginning of the session, a DNREC representative who was also involved in the Taskforce provided an overview of the Application.

53. Members of the public who spoke during the public comment session argued both for and against the Pilot Program. There were three distinct groups of speakers: solar installers/developers and homeowners who had installed solar PV systems; environmentalists; and citizens concerned with additional increases in their electric bills. Solar installers/developers and homeowners who had installed solar PV systems supported the Pilot Program, citing the economic benefits to Delaware, the stability that long-term contracts offer solar PV owners, and the fair return on capital that the administratively-set Tier 1 and 2 prices provide system owners. Environmentalists praised the idea that the Pilot Program could bring more localized renewable energy to Delaware and provide economic benefits in terms of job creation. The last group of commenters expressed their desire not to subsidize solar PV system owners through higher-than-market SREC

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<sup>16</sup>Because the Taskforce meetings were open to the public and included time for public comment, the parties agreed that we need only schedule one public comment session.

prices. They also objected to the administratively-set SREC prices on the ground that they were not market prices.<sup>17</sup>

54. In addition to the comments at the public comment session, we received nine written comments via e-mail and U.S. mail from the Vote Solar Initiative, DSEC, Blue Skies Solar and Wind Power (a Delaware installer), five residential homeowners who had installed solar panels, and a health consultant. Most of the written comments favored the Pilot Program. The one exception was the Vote Solar Initiative which, while generally in favor of the Pilot Program, questioned "the appropriateness of a standard pricing structure for capturing the competitive forces of the marketplace" in a declining cost market for solar PV system costs. *Vote Solar Initiative comments*, p. 5. Other written comments suggested that the Pilot Program would provide economic benefits to Delaware; provide balanced job creation; protect ratepayers from the chance of Delmarva having to pay an SACP; enhance solar PV system affordability by making systems financeable; and reduce SREC market price volatility.

## **VII. DISCUSSION AND OPINION**

55. The following discussion reflects our unanimous findings and conclusions regarding the proposed Pilot Program.

56. REPSA §§360(d)(2) and (d)(3) require the Taskforce to make recommendations to us (among others) on the following matters:

- Establishing balanced market mechanisms for REC and SREC trading (26 Del. C. §360(d)(2)a.)

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<sup>17</sup> At times the comments veered off track: for example, there was discussion about the existence of global warming and the future of nuclear energy.

- Establishing REC and SREC aggregation mechanisms and other devices to encourage the deployment of renewable, distributed renewable and solar energy technologies in Delaware with the least impact on retail electricity suppliers, municipal electric companies and rural electric cooperatives (*id.* §360(d)(2)b.)
- The annual progress towards achieving the minimum cumulative percentages for all renewable energy resources including, but not limited to, solar and other eligible energy resources and making appropriate recommendations based upon deliberate factual analysis and study (*id.* §360(d)(2)c.)
- Minimizing the cost for complying with any portion of this subchapter based upon deliberate and factual analysis and study (*id.* §360(d)(2)d.)
- Establishing revenue certainty for appropriate investment in renewable energy technologies, including, but not limited to, consideration of long-term contracts and auction mechanisms (*id.* §360(d)(2)e.)
- Establishing mechanisms to maximize in-state renewable energy generation and local manufacturing (*id.* §360(d)(2)f.) and
- Ensuring that residential, commercial and utility scale photovoltaic and solar thermal investments of various sizes in Delaware are financially viable and cost-effective investments in Delaware (*id.* §360(d)(2)g.)

57. As previously mentioned, some of these goals conflict with one another. As CRI pointed out, minimizing RPS compliance costs can be done by purchasing SRECs on the spot market, where prices are currently lower than they have ever been. But purchasing on the spot market does not establish revenue certainty for investment in renewable energy technologies or maximize in-state renewable energy generation and local manufacturing. The Taskforce understood the tension among some of the §360(d)(2) goals, and has tried to address that tension in the Pilot Program that it is recommending to us. We commend the Taskforce for its efforts. As we have observed, there were

many competing interests that had to be addressed in some way in order to present a proposal to which a majority of the Taskforce members could agree. No doubt some Taskforce members would have preferred a different Pilot Program, but that is the nature of collaboration and compromise.

58. REPSA §360(d)(3) further directs us to either promulgate rules and regulations or adopt policies based on the Taskforce's findings. 26 Del. C. §360(d)(3). While the Legislature has directed us to act based on the Taskforce's work, nothing in §360 requires us to approve the Pilot Program exactly as it has been proposed. Thus, we may adopt policies that differ from those set forth in the proposed Pilot Program if we believe they are warranted.

59. Furthermore, we agree with DNREC and Staff that if we modify the Pilot Program, nothing in REPSA requires the Taskforce to reconsider the Pilot Program as we (or any other of the bodies to whom recommendations are presented) have modified it.

60. We are sympathetic to the CRI's warning that an "inertia factor" leaves programs in place once they are implemented (even if they are only implemented experimentally). We assure the CRI that we intend to closely review the Pilot Program, and that if it does not appear to be achieving REPSA's goals, we will take what we consider to be appropriate action. We are also cognizant of the CRI's claim that the Pilot Program does not contain any metrics against which its success or failure can be adequately evaluated; however, we believe that the policy issues and specific metrics identified in DNREC's and Staff's submissions will provide sufficient tools for evaluating it.



61. We find from the evidence presented that, with the two changes proposed by Staff and in which DNREC concurs, and with the clear understanding that we will review it after it has been in effect for one year, the proposed Pilot Program adequately balances the matters the Taskforce was instructed to address. While we may have reached a different conclusion as to how to achieve the REPSA goals had we been writing on a clean slate, we find that the Taskforce's recommended program (with the modifications described below) is reasonable for purposes of a pilot program.

62. We specifically conclude that the two changes that Staff proposed should be incorporated into the Pilot Program. We understand that Staff's recommendation that smaller projects in the administratively-bid tiers be permitted to submit competitive bids in the competitively-bid tiers if they so choose is non-controversial.

63. Next, we direct Delmarva to modify the Pilot Program to include Staff's proposed change regarding the alternate price. We are persuaded by Staff's testimony that allowing Tier 1 and 2A projects that received higher GEP grants than were assumed in the determination of the alternate prices to receive the higher administratively-set price will overcompensate these projects. We are sympathetic to Delmarva's argument that the Taskforce discussed and considered many variables in determining the Tier 1 and 2A administratively-set prices and the alternate prices. However, we are cognizant of the fact that only Delmarva's ratepayers are responsible for the subsidy to solar projects that the Pilot Program represents, and we do not believe that those ratepayers should be providing an even greater subsidy in the

form of the higher administratively-set price to certain projects that received higher grants than the grant level assumed in the SREC price calculation. The fact that Dr. Snyder, who was the Taskforce Chair, was also concerned about this issue, raised it in DNREC's comments (Exh. 5 at 6) and agrees with Staff's proposed modification supports our conclusion.

64. We understand the concerns about administratively-set prices for the smaller tiers, and the level of those administratively-set prices, but we emphasize that this *is* only a *pilot* program. We intend to review the Pilot Program, and in this review we would expect to address the following questions (among others): whether a long-term SREC contracting program should continue to exist; tiering; competitive bidding versus administratively-set pricing; re-evaluation of the assumptions that went into the administratively-set prices, such as cost per watt; and impact of the SEU's involvement on costs charged to Delmarva ratepayers. With respect to the latter concern, we specifically caution Delmarva that we will closely examine the costs associated with the SEU's involvement when Delmarva applies for rate recovery of the Pilot Program costs, and that we will not approve recovery of any costs that are over and above what it would have cost Delmarva to administer the Pilot Program itself, unless such costs are fully justified.

**VII. ORDER**

**AND NOW**, this 20<sup>th</sup> day of December, 2011, IT IS HEREBY ORDERED BY THE UNANIMOUS VOTE OF THE COMMISSIONERS:

1. That the Application of Delmarva Power & Light Company for Approval of a Pilot Program for the Procurement of Solar Renewable Energy Credits is hereby approved, with the following modifications:

- a. Projects of all sizes are permitted to submit competitive bids;
- b. Tier 1 and 2A projects that received (or have applied to receive) GEP grants higher than the amount of such grants assumed in calculating the administratively-set base prices are not eligible to receive the higher administratively-set base price, but rather shall receive the lower alternate price; and
- c. The Commission will retain a consultant 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, including but not limited to:
  - (1) whether procurements should be by tiers, and if so, the number of tiers and cut-off points between tiers;
  - (2) whether there should be competitive bidding for all projects or all tiers;
  - (3) whether administratively-set pricing should be used, if so, for which tier or tiers, and if so, the process by which pricing should be determined (including an assessment of the inputs and assumptions that go into the model by which administratively-set prices are developed); and
  - (4) the effect of the SEU's involvement on the Pilot Program's administration and costs.

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

BY ORDER OF THE COMMISSION:

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Chair

/s/ Jaymes B. Lester  
Commissioner

/s/ Joann T. Conaway  
Commissioner

/s/ Dallas Winslow  
Commissioner

/s/ Jeffrey J. Clark  
Commissioner

ATTEST:

/s/ Alisa Carrow Bentley  
Secretary

**EXHIBIT A**

**PUBLIC SERVICE COMMISSION OF DELAWARE**

**EXHIBIT LOG**

**APPLICANT: Delmarva Power & Light Company:**

**DOCKET NO. 11-399 (Filed September 16, 2011)**

**(SREC Procurement Program)**

<b>EXHIBIT NUMBER</b>	<b>DATE PROFFERED</b>	<b>DATE ENTERED</b>	<b>SPONSOR</b>	<b>DESCRIPTION</b>
1	11/8/11	11/8/11	STAFF	AFFIDAVITS OF PUBLICATION OF PUBLIC NOTICE OF APPLICATION AND PUBLIC COMMENT SESSION FROM THE NEWS JOURNAL AND DELAWARE STATE NEWS
2	11/8/11	11/8/11	STAFF	AFFIDAVITS OF PUBLICATION OF NOTICE OF EVIDENTIARY HEARING FROM THE NEWS JOURNAL AND DELAWARE STATE NEWS
3	11/8/11	11/8/11	DELMARVA	DELMARVA POWER & LIGHT COMPANY'S APPLICATION FOR APPROVAL OF A PILOT PROGRAM FOR THE PROCUREMENT OF SOLAR RENEWABLE ENERGY CREDITS FILED SEPT. 16, 2011
4	11/8/11	11/8/11	DELMARVA	REPORT OF DELMARVA POWER & LIGHT COMPANY IN FURTHER SUPPORT OF DELMARVA POWER & LIGHT COMPANY'S APPLICATION FOR APPROVAL OF A PILOT PROGRAM FOR THE PROCUREMENT OF SOLAR RENEWABLE ENERGY CREDITS FILED OCT. 4, 2011
5	11/8/11	11/8/11	DNREC	COMMENTS OF CAROLYN SNYDER, PH.D, DIRECTOR OF DNREC'S DIVISION OF ENERGY & CLIMATE, ON THE PILOT PROGRAM FOR THE PROCUREMENT OF SOLAR RENEWABLE ENERGY CREDITS DATED OCT. 21, 2011
6	11/8/11	11/8/11	STAFF	REPORT ON DELMARVA POWER'S APPLICATION FOR APPROVAL OF A PILOT PROGRAM FOR THE PROCUREMENT OF SOLAR RENEWABLE ENERGY CREDITS PREPARED FOR STAFF FILED OCT. 26, 2011
7	11/8/11	11/8/11	CRI	CAESAR RODNEY INSTITUTE'S REVISED EVALUATION OF THE DELMARVA POWER & LIGHT COMPANY'S SREC PILOT PROCUREMENT PROGRAM FILED OCT. 28, 2011
8	11/8/11	11/8/11	DELMARVA	RESPONSE OF DELMARVA POWER & LIGHT COMPANY TO COMMENTS OF PUBLIC SERVICE COMMISSION STAFF AND INTERVENOR CAESAR RODNEY INSTITUTE

## EXHIBIT B

### QUESTIONS AND CRITERIA PERTINENT TO THE SREC PROCUREMENT PROCESS

- Did the SEU/Delmarva conduct an adequate process to inform prospective applicants of the solicitation?
- Was the response to the solicitation robust? With respect to which tiers?
- Did the SEU/Delmarva provide an adequate forum to answer bidder/applicant questions, including use of a bidders conference and written questions and answers?
- What was the process for the SEU/Delmarva to answer bidder questions?
- How did the SEU/Delmarva exercise oversight over the solicitation process?
- What was the process for making decisions regarding interpreting/making changes to the solicitation documents and/or timing of the solicitation due to unexpected issues arising?
- Was the solicitation conducted in a timely fashion? If not, what caused delays?
- Did the SEU/Delmarva include a process for obtaining feedback from prospective and actual bidders/applicants? If so, what was the nature of the feedback received?
- Was the solicitation fairly and effectively administered?
- What role did the SEU's contractor play? Who was responsible for overseeing the contractor?
- How did the SEU/Delmarva obtain assurance that the SEU's contractor would adequately perform its job and not be subject to conflicts of interest?
- Did the SEU's contractor perform its role adequately?
- What were the administrative costs associated with the solicitation?
- Based on the conduct and results of the solicitation, what aspects of the solicitation proved to be problematic? How could this be improved for the next solicitation?