

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
DELMARVA POWER & LIGHT COMPANY FOR)
APPROVAL OF THE 2013 PROGRAM FOR THE) PSC DOCKET NO. 12-526
PROCUREMENT OF SOLAR RENEWABLE ENERGY)
CREDITS (FILED NOVEMBER 20, 2012))

ORDER NO. 8281

AND NOW, this 22nd day of January, 2013, the Public Service Commission ("Commission") determines and orders as follows:

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

WHEREAS, the 2013 Program is based on requirements set forth in the Renewable Energy Portfolio Standards Act ("REPSA") which was enacted in 2007 and amended in subsequent years. See 26 *Del. C.* §§351-364. The 2011 Amendments made Delmarva responsible for procuring RECs¹ and SRECs² necessary for compliance with respect to all energy delivered to Delmarva's distribution customers beginning in compliance year 2012 (June 2012 - May 2013); and

WHEREAS, the 2013 Program is based on recommendations of the Renewable Energy Taskforce (the "Taskforce") which is charged with making such recommendations to the Commission and other entities. See 26 *Del. C.* §§360(d), (d)(2), and (d)(3). The 2013 Program is also

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

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

based on the Pilot Program for the Procurement of Solar Renewable Energy Credits (the "Pilot Program")³ which the Taskforce developed and which Delmarva submitted on September 16, 2011, to the Commission for approval; and

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

WHEREAS, per Order No. 8093, the Commission retained a consultant (Meister Consultants Group, Inc. or "Meister") to conduct an independent review of the Pilot Program to determine whether a long-term SREC contracting process should continue, and if so, to examine any associated issues. See Order No. 8093, ¶1.c; and

WHEREAS, Meister provided the Commission with its independent review in the form of a report dated August 3, 2012; and

WHEREAS, in its Application, Delmarva requested that the Commission schedule the matter for decision on December 18, 2012, or as soon thereafter as possible. Delmarva also stated in its "Report in Support of its Application for Approval of the 2013 Program for the Procurement of Solar Renewable Energy Credits" filed on November 20, 2012 ("Delmarva's Report"), that the Taskforce has recommended that the next auction for SRECs begin no later than March 31, 2013, for the compliance year starting June 1, 2013. Delmarva's Report at p. 7; and

³ See PSC Docket No. 11-399.

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

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

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

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

WHEREAS, on January 3, 2013, the Caesar Rodney Institute ("CRI") filed a petition to intervene in this matter; and

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

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

WHEREAS, on January 8, 2013, the Division of the Public Advocate filed its statutory notice of intervention in this matter; and

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

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

WHEREAS, on January 15, 2013, Hearing Examiner Lawrence granted the petitions to intervene of DNREC and CRI; and

WHEREAS, on January 22, 2013, we conducted a public evidentiary hearing on the Application and, based on the evidence presented and comments submitted, determined to approve the Application. Among other things, we discussed and accepted Staff's recommendation that the 2013 Program be changed to include Staff's proposed language for a disclaimer statement that would be incorporated into the form of bid application (e.g., Appendix A to the Application - Form of Bid Application) or incorporated into a separate document. Such form of

bid application or separate document would have to be signed by the solar system owner. The disclaimer language would also need to be included on the website page for the auction conducted by the SEU's administrative contractor; and

WHEREAS, we also accept Staff's recommendation that the definition of "Required Meter" which is set forth in Appendix B of the Application (Transfer Agreement), page 23, be revised as set forth in Staff's Report; and

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

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

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

1. That Delmarva's Application for approval of the proposed 2013 Program for Procurement of Solar Renewable Energy Credits is granted, with the changes to the 2013 Program as noted above and, if any, that we accepted during deliberations.

2. That the Commission will enter a formal Findings and Opinion in support of this Order at a later date.

3. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Jeffrey J. Clark
Commissioner

Commissioner

ATTEST:

/s/ Alisa Carrow Bentley
Secretary