

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
DELMARVA POWER & LIGHT COMPANY FOR)
APPROVAL OF QUALIFIED FUEL CELL) DOCKET NO. 11-362
PROVIDER PROJECT TARIFFS)
(FILED MAY 31, 2013))

ORDER NO. 8394

AND NOW, this 18th day of June, 2013, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, 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 added Delaware-manufactured fuel cells to the REPSA and allowed energy output from such fuel cells to be considered a resource eligible to fulfill a portion of a commission-regulated electric company's renewable energy credit requirements under REPSA; and

WHEREAS, on August 19, 2011, in PSC Docket No. 11-362, Delmarva Power & Light Company ("Delmarva") filed an application for approval of a new section for Service Classification QFCP-RC¹ in its existing electric tariff (the "QFCP-RC Tariff Sections") and a new section in its existing gas tariff for Service Classification LVG-QFCP-RC pursuant to the Amendments; and

WHEREAS, on October 18, 2011, the Commission issued Order No. 8062 which approved the new QFCP-RC Tariff Sections; and

¹ "Service Classification QFCP-RC" is defined in Delmarva Power & Light Company, P.S.C. Del. No. 8 - Electric, Original Leaf No. 74r, Section Q.

WHEREAS, on December 1, 2011, the Commission signed Order No. 8079, which, among other things, adopted Order No. 8062 and set forth the full Commission's full analysis and reasoning in support of its approval of the QFCP-RC Tariff Sections; and

WHEREAS, pursuant to the QFCP-RC Tariff Sections, Delmarva is serving in its mandatory role as a collection agent for the QFCP.² In compliance with the QFCP-RC Tariff Sections, Delmarva files monthly filings with the Commission to account for the varying QFCP-RC Charge;³ and

WHEREAS, on May 31, 2013, Delmarva filed certain proposed tariff revisions to the QFCP-RC Tariff Sections and requested that the Commission approve such revisions. See the revised proposed tariff revisions which are attached as Exhibit "A". Delmarva asserted in its filing that these tariff revisions are necessary to ensure that the QFCP-RC Tariff Sections will be technically consistent with the operating requirements of PJM Interconnection LLC ("PJM"); and

WHEREAS, Delmarva also asserted in its filing that effective June 1, 2013, the fuel cell generation units of Diamond State Generation Partners LLC ("DSGP") will be treated as PJM capacity resources because DSGP has now become eligible to sell capacity and receive revenues from PJM from that sale;⁴ and

² "QFCP" is the acronym for "Qualified Fuel Cell Provider" which is defined in 26 Del. C. §352(16).

³ QFCP-RC Charge is defined in Delmarva Power & Light Company - P.S.C. Del. No. 8 - Electric, Original Leaf No. 74r, Section Q.

⁴ Section C in the QFCP-RC Tariff Sections requires that DSGP actively participate in capacity auctions to maximize PJM revenues. See Delmarva Power & Light Company - P.S.C. Del. No. 8 - Electric, Original Leaf No. 74a - 74b, Section C.

WHEREAS, because DSGP is now a capacity resource, DSGP is required by PJM to sell its generation into the day-ahead market.⁵ The QFCP-RC Tariff Sections currently provide that the QFCP Generator must sell 100% of the output produced from the Facility into the PJM real-time energy market.⁶ Hence, Delmarva has proposed that the QFCP-RC Tariff Sections be revised to include that DSGP will sell 100% of the output produced from the Facility into the PJM real-time energy market and/or the PJM day-ahead energy market; and

WHEREAS, because the QFCP-RC Tariff Sections require both Delmarva and DSGP to agree to any proposed tariff revisions, Delmarva submitted with its filing a written agreement between Delmarva and DSGP regarding the proposed tariff revisions. See the attached Exhibit "B" which is the agreement between Delmarva and DSGP regarding the proposed tariff revisions; and

WHEREAS, the Commission Staff ("Staff") has reviewed Delmarva's filing and the proposed tariff revisions. Staff believes that these revisions are necessary to correct inconsistencies between the Service Classification QFCP-RC sections of Delmarva's Electric Tariff and PJM's operating rules. In addition, Staff believes that the revenues received from the PJM energy markets help offset the QFCP costs and thereby reduce the QFCP-RC Charge. Therefore, the tariff revisions will benefit ratepayers. Although bidding into the day-ahead market has the potential to impact the ultimate rate, Staff believes that at this point the change to the ratepayers would be de minimis because

⁵ See PJM Manual 11: Energy & Ancillary Services Market Operations, Revision 60, June 1, 2013, Section 2.1, Page 16.

⁶ Id.

the average annual day-ahead and real-time energy prices are nearly convergent. Therefore, Staff recommends that the Commission approve these tariff revisions;

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

1. That the Commission has reviewed the proposed tariff revisions filed by Delmarva Power & Light Company ("Delmarva") on May 31, 2013, which are attached as Exhibit "A", and finds that because of changed circumstances and the need to correct inconsistencies between Delmarva's existing Electric Tariff⁷ and the operating rules of PJM Interconnection LLC, the proposed tariff revisions are hereby APPROVED.

2. That the Company is hereby placed on notice that the costs of the proceedings will be charged to it under the provisions of 26 Del. C. §114(b)(1).

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:

/s/ Dallas Winslow
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

⁷ See Delmarva Power & Light Company, P.S.C. Del. No. 8 - Electric, Original Leaf Nos. 74 - 74r.

EXHIBIT "A"

PROPOSED TARIFF REVISIONS TO DELMARVA POWER & LIGHT COMPANY
P.S.C. DEL. NO. 8 - ELECTRIC
FIRST REVISED LEAF NOS. 74a AND 74f
REDLINED AND CLEAN VERSIONS

P.S.C. DEL. NO. 8 - ELECTRIC

P.S.C. DEL. NO. 8 - ELECTRIC

QUALIFIED FUEL CELL PROVIDER PROJECT-RENEWABLE CAPABLE POWER PRODUCTION

(Continued)

B. Commencement of Service -- (Continued)

QFCP Generator shall have entered into all agreements and made all filings and other arrangements necessary for the transmission and delivery of the Energy from the Facility to the Delivery Point;

QFCP Generator shall have obtained all necessary authorizations from FERC to sell Energy at market-based rates as contemplated by this Service Classification and shall be in compliance with such authorization;

QFCP Generator shall have provided the Company with written evidence that all of the preceding conditions have been satisfied, and

PSC approval of this Service Classification shall have occurred and shall have become final and non-appealable and the Delaware Fuel Cell Amendments shall be in full force and effect.

C. Sales of Energy, Capacity, Other Available Product

(1) Energy Sales. QFCP Generator shall be solely responsible for arranging, scheduling with PJM and other Transmitting Utilities, and delivering, marketing and selling Energy from the Facility. The Company shall not purchase, for either itself or its customers, any Energy from the Facility. QFCP Generator shall be solely responsible for any and all costs and charges incurred in connection therewith, whether imposed pursuant to standards or provisions established by FERC, any other Governmental Authority or any Transmitting Utility, including transmission costs, scheduling costs, imbalance costs, congestion costs, operating reserve charges (day-ahead and balancing) and the cost of firm transmission rights, if such firm transmission rights are procured by QFCP Generator. QFCP Generator will sell 100% of the output produced from the Facility in the PJM real time market, or the PJM day ahead market if required by PJM, at the Delivery Point.

Capacity Sales. QFCP Generator or its Market Participant will actively participate in all PJM RPM Base Residual and Incremental capacity auctions (if incremental participation is necessary to maximize capacity revenue) and must bid the maximum allowable capacity under PJM RPM rules at the lowest price permitted under applicable law and regulations. In the event that PJM rules or market procedures change or that reasonable opportunities arise to realize greater capacity revenue, the QFCP Generator and the Company will exercise good faith efforts to agree to a proposed joint amendment to this Service Classification designed to increase PJM-derived capacity revenues in an effort to reduce overall costs to customers while maintaining the overall economic benefits to QFCP Generator. The Company shall not purchase, for either itself or its customers, any capacity from the Facility.

QFCP Generator shall exercise good faith efforts to maximize Market Revenues consistent with C (1)-C (2) above.

QUALIFIED FUEL CELL PROVIDER PROJECT-RENEWABLE CAPABLE POWER PRODUCTION

(Continued)

H. Billing and Disbursement (Continued)

(2) Billing. Unless otherwise agreed to by the QFCP Generator and the Company, on or before the fifteenth (15th) day of each month (or the first Business Day thereafter), QFCP Generator shall deliver to the Company, via electronic transmission or other means agreed to by the Company, an invoice ("Invoice") for the immediately preceding month that sets forth: (a) the disbursements to the QFCP Generator based on the Disbursement Rate, (b) less the proceeds from sale of any Products by the QFCP Generator (net of any negative disbursements from Energy sales) (c) plus the QFCP's Fuel Cost pursuant to gas delivery service under Company's Service Classification LVG-QFCP-FC, and (d) any other credits, charges, liabilities and reductions in disbursement, including any reduction in disbursement for gas usage above the Target Heat Rate as set forth in C. (5) above, and any adjustments and outstanding amounts due pursuant to prior Invoices. The Company shall disburse to QFCP Generator or QFCP Generator shall disburse to the Company, as the case may be, the total amount due pursuant to such Invoice no later than the final business day of the month during which such Invoice is issued (such day, the "Monthly Settlement Date").

(3) Disbursement. All disbursements shall be made by "Electronic Funds Transfer" (EFT) via "Automated Clearing House" (ACH), to a bank designated in writing by the Company or QFCP Generator to which disbursement is owed, by 11:59:59 pm EPT on the Monthly Settlement Date. Disbursement pursuant to an Invoice shall not be deemed an admission or waiver with respect to any matter related to such Invoice or the charges reflected therein.

(4) Interest. Interest on delinquent amounts (including amounts determined to be owed as a result of the resolution of a billing dispute) shall be calculated at the Interest Rate: (a) from the original due date (or, for amounts not properly invoiced, the date that would have been the due date if such amounts were properly invoiced) to the date of disbursement; or (b) in the case of reimbursement obligations, from the date an over disbursement was received until the date of reimbursement.

(5) Set-Off. Each of the Company and QFCP Generator shall have the right to set-off any undisputed amounts owed by the other against any undisputed amounts that it owes to such Party.

(6) Auditing PJM Energy and Capacity Sales. On or before the tenth (10th) Business Day following the end of each period during the Services Term, QFCP Generator shall provide Company with a monthly report documenting PJM revenues. The report shall include MWHs produced by day, daily PJM real time or day ahead price at the Delivery Point, total daily and monthly energy revenues, monthly capacity revenues, monthly ancillary services revenues by revenue type, other monthly PJM revenues, and any other information reasonably requested by the Company. The QFCP Generator shall provide to the Commission and the Company (a) a monthly report setting forth the Market Revenues received in the prior month; and (b) an annual report documenting its good faith efforts to maximize Market Revenues. The QFCP Generator shall cooperate in good faith with any inquiry or direction of the Commission or the Company with respect to possible means of increasing Market Revenues on commercially reasonable terms.

QUALIFIED FUEL CELL PROVIDER PROJECT-RENEWABLE CAPABLE POWER PRODUCTION
(Continued)

B. Commencement of Service – (Continued)

QFCP Generator shall have entered into all agreements and made all filings and other arrangements necessary for the transmission and delivery of the Energy from the Facility to the Delivery Point;

QFCP Generator shall have obtained all necessary authorizations from FERC to sell Energy at market-based rates as contemplated by this Service Classification and shall be in compliance with such authorization;

QFCP Generator shall have provided the Company with written evidence that all of the preceding conditions have been satisfied, and

PSC approval of this Service Classification shall have occurred and shall have become final and non-appealable and the Delaware Fuel Cell Amendments shall be in full force and effect.

C. Sales of Energy, Capacity, Other Available Product

(1) Energy Sales. QFCP Generator shall be solely responsible for arranging, scheduling with PJM and other Transmitting Utilities, and delivering, marketing and selling Energy from the Facility. The Company shall not purchase, for either itself or its customers, any Energy from the Facility. QFCP Generator shall be solely responsible for any and all costs and charges incurred in connection therewith, whether imposed pursuant to standards or provisions established by FERC, any other Governmental Authority or any Transmitting Utility, including transmission costs, scheduling costs, imbalance costs, congestion costs, operating reserve charges (day-ahead and balancing) and the cost of firm transmission rights, if such firm transmission rights are procured by QFCP Generator. QFCP Generator will sell 100% of the output produced from the Facility in the PJM real time market, or the PJM day ahead market if required by PJM, at the Delivery Point.

Capacity Sales. QFCP Generator or its Market Participant will actively participate in all PJM RPM Base Residual and Incremental capacity auctions (if incremental participation is necessary to maximize capacity revenue) and must bid the maximum allowable capacity under PJM RPM rules at the lowest price permitted under applicable law and regulations. In the event that PJM rules or market procedures change or that reasonable opportunities arise to realize greater capacity revenue, the QFCP Generator and the Company will exercise good faith efforts to agree to a proposed joint amendment to this Service Classification designed to increase PJM-derived capacity revenues in an effort to reduce overall costs to customers while maintaining the overall economic benefits to QFCP Generator. The Company shall not purchase, for either itself or its customers, any capacity from the Facility.

QFCP Generator shall exercise good faith efforts to maximize Market Revenues consistent with C (1)-C (2) above.

QUALIFIED FUEL CELL PROVIDER PROJECT-RENEWABLE CAPABLE POWER PRODUCTION

(Continued)

H. Billing and Disbursement (Continued)

(2) Billing. Unless otherwise agreed to by the QFCP Generator and the Company, on or before the fifteenth (15th) day of each month (or the first Business Day thereafter), QFCP Generator shall deliver to the Company, via electronic transmission or other means agreed to by the Company, an invoice ("Invoice") for the immediately preceding month that sets forth: (a) the disbursements to the QFCP Generator based on the Disbursement Rate, (b) less the proceeds from sale of any Products by the QFCP Generator (net of any negative disbursements from Energy sales) (c) plus the QFCP's Fuel Cost pursuant to gas delivery service under Company's Service Classification LVG-QFCP-FC, and (d) any other credits, charges, liabilities and reductions in disbursement, including any reduction in disbursement for gas usage above the Target Heat Rate as set forth in C. (5) above, and any adjustments and outstanding amounts due pursuant to prior Invoices. The Company shall disburse to QFCP Generator or QFCP Generator shall disburse to the Company, as the case may be, the total amount due pursuant to such Invoice no later than the final business day of the month during which such Invoice is issued (such day, the "Monthly Settlement Date").

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EXHIBIT "B"

AGREEMENT REGARDING NON-SUBSTANTIVE CHANGE TO DELAWARE'S QUALIFIED
FUEL CELL PROVIDER TARIFF



A PHI Company

Todd L. Goodman
Associate General Counsel

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P.O. Box 6066
Newark, 19714-6066

302.353.7979 – Business Cell
302.429.3786 – Telephone
302.429.3801 – Facsimile

May 20, 2013

Via Electronic Mail

Martin J. Collins
Vice President, Corporate Development
Bloom Energy Corporation
1252 Orleans Drive
Sunnyvale, CA 94089

Re: Agreement Regarding Non-Substantive Change
To Delaware's Qualified Fuel Cell Provider Tariff

Dear Marty:

As you will recall, the legislation in Delaware enabling the output from fuel cells manufactured in Delaware to be used to satisfy certain renewable energy requirements provides that the Qualified Fuel Cell Provider (QFCP) Tariff cannot be modified unless agreed upon in writing by both the QFCP and Delmarva Power. We have been informed by the QFCP, Diamond State Generation Partners, LLP (DSG), that a non-substantive change is needed to the QFCP Tariff to make the QFCP Tariff consistent with DSG's mandatory obligations under the PJM Tariff and PJM Operating Agreement.

From the time that DSG's fuel cell generating units at Brookside and Red Lion began operating in 2012, they have been selling generation into the PJM real time market. Effective June 1, 2013, DSG's fuel cell generation units will be treated as PJM capacity resources as the result of DSG now becoming eligible to sell capacity¹. As capacity resources, DSG must now participate in the PJM day ahead market. The issue with the QFCP Tariff is that it currently

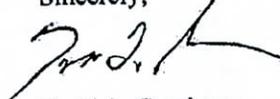
¹ Note that the Tariff Section ___ requires DSG to actively participate in capacity auctions to maximize PJM revenues.

provides that the "QFCP Generator will sell 100% of the output produced from the Facility in the PJM real time market." Technically, therefore, the QFCP tariff does not permit DSG to sell into the PJM day ahead market, which it must do as of June 2013.

DSG has asked us to file the necessary materials with the Delaware Public Service Commission to request this non-substantive change to the Delaware QFCP Tariff. I have attached the language we recommend hereto, with the brief proposed additional language shown in red underlined text on Annex A. Because the QFCP Tariff requires both the QFCP and Delmarva Power to agree to any proposed tariff changes, Delmarva asks DSG to execute this document, where indicated below, to confirm the QFCP's agreement to this proposed non-substantive QFCP Tariff modification pursuant to the express terms of Annex A. The signature by Delmarva indicates Delmarva's agreement to the proposed change.

The undersigned understand and agree that if this change is not approved by the Delaware Public Service Commission, the QFCP Tariff shall nonetheless remain in effect.

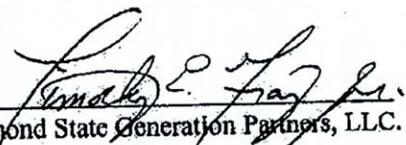
Sincerely,



Todd L. Goodman

att: Proposed QFCP Tariff Revision

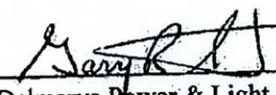
cc: Gary Stockbridge (with att)
James Jacoby (with att)


Diamond State Generation Partners, LLC.

By: Timothy E. Gray, Jr.

Its: Vice President

Dated: 5/22/13


Delmarva Power & Light Company

Gary R. Stockbridge, Regional President

Dated: 5/21/13