DELMARVA POWER & LIGHT COMPANY
QUALIFIED FUEL CELL PROVIDERS – RENEWABLE CAPABLE
DELAWARE PSC DOCKET NO. 11-362
Comments of the Public Advocate

We will not bore you with another rendition of the history of this proceeding. Nor will we try and confuse you with a false level of precision that is the result of the massive amounts of data and analysis that has been performed. The history is factual and the results, since they are forecasts with a multitude of interrelated assumptions we feel comfortable stating that each of them is wrong.

This decision in this case must, of necessity, include some evaluation of the models that use estimated numbers and the assumptions underlying the inputs. We do not envy this Commission's charge to labor under the rigorous legislative guidance encapsulated in the law.

We recognize that others will argue and posture about the quantification of the "values" that flow from the minds and education of bright people, working hard, under stressfully short time constraints. Bluntly, we think that portion of the case is necessary to comply with the Commission's fiduciary duty and the expectations of the citizens---it cannot and should not be the basis of the Commission's determinations…because you know and we know that over the next 21 years; heck, over the next 18 months, things will not be as we predict and therefore are of value but of limited use in policy deliberations.

We wish to comment on four specific areas that we hope will provide the Commission with what we see, are the important issues to ponder.
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The Legislation Does Not Create An Equitable Distribution of Costs Recovery

We fully understand that this section is superfluous to the instant issue before you. Our statutory charge and sense of fairness requires, at the risk of boring you, a restatement of our position. When the benefits and opportunities will accrue to all citizens in Delaware, all Delawareans should share in the costs and risks of an action of this nature.

We do not, and cannot, blame DEMEC or the Co-op for being excluded from responsibility for ponying up their fair share of this project. But it is patently unfair that only Delmarva ratepayers will shoulder the burden of the costs for this action. If one remembers the adage that a rising tide lifts all boats, about 30% of the energy users in Delaware will share in any positive consequences of this contract, but will have NO risk if it fails.

Alas, this is beyond the Commission's control. We mention it in the hope that one day we will be successful in arguing that Delmarva ratepayers should not be subsidizing non-PSC regulated energy utilities.

Unlimited Price Movement in the Contract Gives Us Pause.

We are not naïve about the difficulties of financing projects of this nature, especially in today's capital markets. We cannot demand that investors flock to Delaware to spend their capital. It is clear that the people who analyzed this contract are simply unwilling to take an unmitigated risk.

Our initial thoughts were that this particular provision might skew the risk-reward paradigm unfavorably for ratepayers. Upon reflection, we see fuel cost volatility being the most likely driver of price changes. There are other pricing adders but for the purposes of evaluation, if we address the fuel risk (and one other we will speak to in a minute), we believe the others are manageable. It did not take long to link a mitigating factor to the fuel pricing.

As a matter of course, Bloom produced energy will be sold into the PJM markets. While not everywhere and always a truism, the energy price in PJM is directly linked to fuel prices. In fact, in most instances, the marginal units in PJM are gas fired units. Thus, it is a very reasonable assumption that fuel price increases will be substantially mitigated by the energy offset as the Bloom supply will also demand a higher price.

Finally, while we would be hesitant to bet the house on a fairly stable or slowly increasing gas price, the Marcellus shale discovery has the potential to provide serious amounts of natural gas well beyond our lifetimes. Those predicting rapidly increasing gas prices should have learned something about forecasting---it will not be accurate. At one point gas futures prices were reaching the low teens. The shale supply caused a 150 to 200% reduction in the prices of those futures over a short period of time. History does tend to repeat itself---but not necessarily in the way some would have us believe. So, increased gas prices will be offset to some degree by the increased revenues from energy sales.

Force Majeure or What If Something Bad Happens?

The Force Majeure provision in the contract, at first glance, looked like it gave away the store to Bloom. I've read lots of contracts and don't recall ever seeing one in which a company gets paid at the levels in the Bloom deal if it doesn't produce.

There are other less Force Majeurish level considerations, including unavailability of parts and gas supply interruptions. However, what we say about the big bad things, like a hurricane, applies as well to the less drastic sources of production shutdowns. If one looks to this provision as an insurance policy, there is no question in our minds that it certainly helps to finance the deal.

Once again, however, there is a mitigating consideration. Even if the ratepayers are expected to provide the financial assurances associated with such a clause, it is not a charitable contribution. Delmarva (and its customers) will continue to be able to claim the full reduction in RECs as if the facility had not experienced the outage. Again a concern that has been mitigated but not eliminated.

The Economic Development Imperative

Despite the brevity of the treatment afforded to the issues of unknowable financial results for this long term contract and a pretty high level evaluation of some of the provisions that we would view as potentially fatal constructs in the contract, we are left with the basic question: does the potential for economic development outweigh the costs (and hence risks) of the complicated, interdependent terms of the contract? There are surely costs that will be paid by Delmarva's ratepayers, costs that are unknown. To our minds the diminishment of these costs are mitigated to the point where they no longer raise a specter a financial Armageddon and become simply another set of financial parameters that should not be dispositive of the case.

The issue then boils down to the economic development potential of the contract. We considered the fairly rigorous backstops should the commitments to jobs not come to fruition, the potential for a manufacturing facility and the not insignificant adder to the State's recognition as a leading edge technology center where revolutionary research can be translated into reality. Not just ivory tower musings but where thought and production coexist. Where the end result is concrete in the ground, highly evolved materials and processes, heightened productivity in an industry already reaping some of the benefits of cost declines.

The economy remains in the doldrums. Budget deficits are everywhere. The Feds continue to be gridlocked by irrational adherence to party affiliations and philosophies. **If we do not invest in Delaware, why would anyone else**?

And the Public Advocate believes that these jobs and project are just that…an investment in our quality of life. Yes there is a cost to this investment…analogous to a down payment or seed money. There are also other positive factors associated with this particular form of generation. And we expect that a successful demonstration of this technology will catalyze more of the same and create an atmosphere of creative problem solving---no small reputation enhancement.

Moreover some of the more mundane features that have non-mundane implications include the very high capacity factors; the base load characteristics of the facility (e.g. no intermittency), distributed generation capabilities that will reduce in transmission needs and collocation of the supply source with the demand. It takes advantage of the value of a relatively fixed price energy supply available during the most expensive peak hours, a less flamboyant but important cost issue.

This project represents this State's willingness to take risks. As someone said, " If you never leave the shore, you'll probably be safe for a while but you'll never discover new lands." Bloom, with its opportunities as well as its foibles, again presents this Commission's and this State's aa chance to demonstrate commitment to bettering our quality of life…and that is what this is all are about, isn't it?

The Public Advocate recommends that the Commission approve the tariff.