

Comments on Revisions to REPSA Rules (PSC Order No. 8219 (Sept. 18, 2012)),
Regulation Dckt. No. 56

Submitted by Gary Myers
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1. *Minor Typographical Errors*

a) While the Public Utility Act and the Electric Utility Restructuring Act both use the term “electric supplier” to describe electric energy providers, the REPSA statute, as well as the existing REPSA rules, use the term “retail *electricity* supplier” to describe such entities. *See* 26 Del. C. § 352(22), REPSA Reg. § 1.1 “Retail Electricity Supplier.” The proposed § 3.2.3 refers to a “retail electric supplier.” For purposes of consistency, the phrase should be changed to “retail electricity supplier.”

b) In proposed rule § 3.2.3.2 there is a stray “e” included between “End-Use” and “Customers” in the published version of the proposed revisions.

c) In proposed rule § 3.2.3.2.1, one or more words appear to be missing after the phrase “kilowatts and.” The rule now reads:

3.2.3.2.1 Industrial Customers whose peak demand is in excess of 1500 kilowatts and have its electric supply load exempted from the RPS compliance obligations pursuant to 26 Del.C. §353(b) and Sections 1.0, 2.2.1, 2.2.2 shall not be charged the RPS compliance cost permitted by Section 3.2.3.2.

I think the provision needs to be rewritten to include the omitted words and to bring parallel structure to the sentence. In addition, an “and” or other conjunction needs to be inserted in the listing “and Sections 1.0, 2.2.1, 2.2.2.”

2. *Obligations of Retail Suppliers Holding Transitional Contracts*

A retail electricity supplier holding transitional supply contracts (ones where REC procurement still rests with the supplier) continues to have the statutory obligation to inform its customers under such contracts of the costs incurred by it for REPSA compliance for that transitional load. 26 Del. C. § 358(f)(3); REPSA Reg. § 4.3. In fact, DP&L will not likely have available to it the cost figures for such supplier-purchased RECs even though such RECs are to be transferred to DP&L under the transitional process. The REPSA rules should include a specific provision that emphasizes that retail electricity suppliers holding transitional contracts continue to have the obligation to annually disclose their renewable “costs” to their transitional customers. I suggest the following additional rule:

3.2.3.1.6 During the transitional process set forth in section 3.2.3.1 of these

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regulations, a retail electricity supplier subject to a transitional retail contract shall remain responsible for compliance with the provisions of 26 Del. C. § 358(f) (1)-(3) and section 4.0 of these regulations with regard to such retail transactional contract.

3. DP&L's Recovery of REC and SREC Compliance Costs for a Particular Compliance Year

The statutory provisions allow a retail supplier to recover from its customers via a non-bypassable surcharge “actual dollar for dollar costs incurred in complying with a state mandated renewable energy portfolio standard” 26 Del. C. § 358(f)(1). Proposed rule § 3.2.3.2.2 allows DP&L to have such recovery after it has assumed RESPA compliance responsibility for all the electric load distributed to its distribution customers. To ensure a match between compliance obligations for a particular compliance year and compliance costs for that same year, either the proposed rule - or the adopting order - should explicitly emphasize that DP&L can only recover for one compliance year the actual costs that were incurred to satisfy the REPSA requirements for *that compliance year*. In other words, in one compliance year, DP&L cannot charge its customers for costs incurred to procure RECs or SRECs to be “banked” and used or surrendered in some later compliance year. The costs for such “banked” certificates can only be recovered in that later compliance year.

4. REC Equivalents for QFCPP Energy Output

The new proposed rule § 3.2.4 simply refers to 26 Del. C. § 353(d) for determining the REC equivalencies to be awarded for energy output from either an eligible QFCPP or from other Delaware-manufactured fuel cells utilizing non-renewable fuels. This change is appropriate and avoids entangling the Commission into questions whether the Secretary of DNREC has been granted, or can be bestowed, the power to administratively change the statutory formulas for REC and SREC equivalencies outside the triggering events articulated in § 353(d).

However, proposed rule § 3.2.4 does not define what energy output from Delaware (QFCP)-manufactured fuel cells is “eligible” for REC equivalency treatment. Under the 2011 REPSA amendments, REC equivalency for electric generation output from a such a Delaware-manufactured fuel cell powered by a non-renewable fossil fuel (such as natural gas) is available only to:

- a) output from such fuel cells in a QFCPP with an output capacity of up to, and including, 30 MW

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and

- b) output from such fuel cells up to, and including, an aggregated 20 MW capacity that are *customer-sited* (located behind the customer's meter).

26 Del. C. § 353(d)(2). The 2011 REPSA amendments do not provide for granting REC equivalencies to output from a QFCPP for its generation capacity above 30 MW.

At the same time, the 2011 REPSA amendments do allow for a QFCPP to have capacity greater than 30 MW. *See* 26 Del. C. § 364(d)(1)a. But as in the case of the “eligible” customer-sited fuel cells, this “above 30” QFCPP capacity is subject to separate Commission oversight and approval. In addition, none of the statutory provisions allowing for such an extended QFCPP capacity provide for REC equivalencies being available for output from such expanded generation capability.

The Commission should announce now – either by a separate REPSA rule provision or within the adopting order – the limits on REC equivalencies imposed by § 353(d)(2). In particular, the Commission should announce its view that, under current law, the output from any “above 30” MW capacity within a QFCPP is not eligible for REC equivalents. A present pronouncement recognizing this current statutory limit on grants of REC equivalents would provide guidance to the QFCPP operator, as well as the Commission Staff, and would avoid any need for a later hurried determination on such issue if the QFCPP would file a tariff for above 30 MW capacity output from a QFCPP.

5. Interplay Between QFCPP Tariff Charges and REC and SREC Cost Recoveries

In any adopting order, the Commission should now also speak to the interplay of the QFCPP tariff charges (and the attendant REC equivalencies) and the overall RESPA requirements.

Currently, DP&L, in its billings to its customers, bundles the monthly recovery of its traditional REC costs with the monthly QFCPP tariff charge amounts. This bundling process is sure to invite questions under several of the newly proposed revisions.

For example, the current REPSA regulations provide for an offsetting “equal in amount credit” to be applied against the normal REC recovery charge in the context of retail transitional contract customers. REPSA Reg. § 3.2.3.2.2. The idea for such credit is to null out the REC recovery charge so that transitional customers do not end up paying twice for REC costs associated with their contract load (once to the supplier and then again to DP&L). The

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question is: will the “credit back” amount be equal to the full REC recovery charge (which now includes the QFCPP tariff charge) or will it merely reflect the part of the REC charge linked to the “costs of procurement” of actual RECs and SRECs? In other words, will the transitional contract customer still pay the QFCPP tariff charge even after application of the REC recovery “claw back” credit? Is DP&L's billing system able to make such distinctions in the case of a transitional customer?

Similarly, new proposed rule § 3.2.3.2.1 exempts high peak demand Industrial Customers from the entire REC recovery charge. Does such exemption apply to the bundled recovery charge (including the QFCPP charges)? Or do such exempted customers still have to pay the QFCPP charges despite being relieved from paying other REC recovery charges? Once more, is DP&L's billing system able to make such a breakdown in the otherwise bundled REC charges?

On the one hand, I think the provisions of 26 Del. C. § 364(b)-(c) suggest that both transitional contract customers and exempted Industrial Customers do remain liable for the QFCPP charges even if they are not obligated to pay the other components of the REC recovery charge. If that is so, any adopting order should make that clear.

Yet, the above conclusion – that all DP&L customers must pay the QFCPP charges – raises an unsettling theoretical problem. Exempted Industrial Customers have no REC or SREC liability for their exempted load. So too, transitional contract customers have already paid their retail supplier for full REC and SREC costs for the transitional load. Yet both apparently end up paying the QFCPP charges even though neither have any need for any REC and SREC equivalencies related to their load. In other words, they pay the Bloom Energy tariff charges and get nothing in return; they do not need the REC and SREC equivalencies created by Bloom output since they have no (or have already paid) all of their load's REC and SREC liabilities. This really highlights that – at least for these two categories of customers – the QFCPP charge is a pure government-directed subsidy to Bloom for which the Industrial and transitional contract customers receive no direct benefits in return. And since no power from Bloom's QFCPP flows to any DP&L customers (including transitional contract and exempt Industrial customers) the tariff charge cannot be chalked up to a cost of retail electric energy. The charges are simply cash exactions from those customers to help pay the QFCPP's costs of operation.

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