



# Washington Gas Energy Services

A Washington Gas Affiliated Company

**ORIGINAL**

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November 3, 2011

**Federal Express**

Ms. Alisa Carro Bentley  
Secretary  
Public Service Commission  
Of Delaware  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, Delaware 19904

**Re: PSC Regulation Docket No. 56**

Dear Ms. Bentley:

Enclosed for filing please find an original and ten (10) copies of "Comments" of Washington Gas Energy Services, Inc. on proposed revisions to the Commission's Rules and Procedures to Implement the Renewable Energy Portfolio Standard as set forth in Order no. 8926 issued September 6, 2011.

Respectfully submitted,

  
Telemac N. Chryssikos  
Attorney

Enclosure

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE ADOPTION OF )  
RULES AND PROCEDURES TO IMPLEMENT )  
THE RENEWABLE ENERGY PORTFOLIO )  
STANDARDS ACT, 26 DEL. C. §§ 351-363, )  
AS APPLIED TO RETAIL ELECTRICITY ) PSC REGULATION DOCKET NO. 56  
SUPPLIERS (OPENED AUGUST 23, 2005; )  
RE-OPENED SEPTEMBER 4, 2007, AUGUST )  
5, 2008, SEPTEMBER 22, 2009, AUGUST 17, )  
2010, SEPTEMBER 6, 2011) )

**COMMENTS OF  
WASHINGTON GAS ENERGY SERVICES, INC.**

Pursuant to Order No. 8026 issued September 6, 2011 (Order) in the captioned docket, Washington Gas Energy Services, Inc. (WGES) hereby files these comments regarding the proposed revisions to the Commission's Rules and Procedures to Implement the Renewable Energy Portfolio Standard (RPS) as set forth in Exhibits A (black-lined) and B (clean) of the Order.

WGES is a leading competitive retail electricity and natural gas supplier in Delaware. It has also made some of the largest solar power investments in the State with over 1,800 kW operating or under construction. The total capital investment in these solar projects is approximately \$7,500,000. Given its dual role as competitive retail electricity supplier and solar project developer and owner, WGES submits these comments on the implications of the proposed revised regulations for both the competitive retail electricity supply market and for current and future owners of solar power projects.

The Commission should clarify its proposed RPS regulations to provide that RPS compliance costs shall be recovered from customers by embedding them in SOS prices and in competitive supply prices. The Commission should further clarify that beginning June 1, 2012 competitive retail electricity suppliers with pre-existing REC and SREC purchase contracts will assign such contracts to Delmarva for the remaining terms of the contracts and be billed for their appropriate share of Delmarva's (REC) and (SREC) procurement costs in excess of those assignments.

Background

As noted in the Order the Commission is proposing to revise its RPS regulations to implement the requirements of Senate Bill No. 124, as amended by Senate

Amendment No. 1, which the Governor signed into law on July 7, 2011 (78 Del. Law ch. 99). The new law amended various sections of the RPS Act, 26 Del C. §§ 351 – 364, including Section 353 (c) and Section 354 (e) which are set forth below and are of particular interest to WGES.

Section 353 (c) provides:

“The Commission shall develop rules to transition the REC and SREC procurement responsibility set forth in Section 354 (e) of this subchapter. The purpose of such rules shall be:

(1) to adequately protect electric suppliers that entered into contracts to provide RECs and SRECs to retail electric supply customers prior to the transition of REC and SREC procurement responsibility under Section 354(e) of this subchapter,

(2) to adequately protect against overpayment of the cost of RPS obligations for customers of electric suppliers who are parties to supply contracts that were entered into prior to the transition of REC and SREC procurement responsibility under Section 354(e) of this subchapter, and

(3) to adequately protect Commission-regulated electric suppliers and customers thereof from having to incur alternative compliance payments or other costs that would have been avoided but for the failure of an electric supplier to continue retiring RECs or SRECs associated with its retail supply contracts existing at the time of the transition of REC and SERC procurement responsibility under Section 354(e) of this subchapter. To the extent such protection involves a temporary reduction to the RPS obligation or to the price of an alternative compliance payment required of a Commission-regulated electric supply company made necessary by the failure described above, the Commission is authorized to make the necessary temporary reductions notwithstanding the RPS obligations otherwise required by this Chapter.”

Section 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.”

As the Commission explains in Exhibit D of the Order to implement the new statutory provisions, the Commission proposes to modify its RPS regulations by adding a new Section 3.2.3 that reads as follows:

“3.2.3 Beginning June 1, 2012, Commission-regulated electric companies shall be responsible for procuring RECs, SRECs, and any other attributes needed to

comply with Section 3.2.1 with respect to all energy delivered to End-Use Customers.

3.2.3.1 To transition the REC and SREC procurement responsibility to the Commission-regulated electric companies, contracts for RECs and SRECs that were entered into by a Retail Electricity Supplier prior to the transition will be used by the Commission-regulated electric company to fulfill its total RPS requirements for the Compliance Year beginning June 2012. Beginning June 1, 2012, each Retail Electricity Supplier shall report to the Commission-regulated electric supplier and the PSC the number of RECs/SRECs to be supplied through existing contracts, if any, and provide supporting documentation if requested. All RECs/SRECs contracted by Retail Electricity Suppliers will be transferred from their GATS sub-accounts for the respective compliance year to the respective Commission-regulated electric company's GATS accounts for retirement until all RECs or SRECs under all existing contracts have been used to satisfy the Commission-regulated electric companies' RPS obligations. The Commission-regulated electric company is responsible for procuring any additional SRECs to fulfill its respective RPS obligation. The Commission-regulated electric company shall maintain the cost of any additional procurement of RECs/SREs (sic) for each Retail Electricity Supplier to be passed on to its respective retail customers as per the appropriate customer contract until all existing contracts are fulfilled.

3.2.3.2 To protect a Commission-regulated electric company from having to incur alternative compliance payments due to the failure of a Retail Electricity Supplier to continue retiring RECs or SRECs associated with retail supply contracts existing at the time of the transition of procurement responsibility, the Commission is authorized to grant the Commission-regulated electric company an temporary reduction of the RPS obligation or a reduction to the price of an alternative compliance payment."

#### Comments

As drafted, the language of proposed Section 3.2.3 contains certain ambiguities as to the new mechanics of the RPS market and the transition process, and the language should be clarified. In addition, clarification in the rules may be necessary to address the needs of competitive retail electricity suppliers like WGES that own solar assets in Delaware constructed to provide "self-sourcing" of solar renewable energy credits (SRECs) under the requirements of the Delaware RPS Act as they existed prior to the enactment of Senate Bill No. 124.

- 1) The method by which customers of regulated electric utility companies will be charged for RPS compliance costs should be clarified.

The proposed rules are not clear or explicit as to how the regulated electric utility company affected by the Senate Bill No. 124, as amended, Delmarva Power & Light

Company (Delmarva), will bill its customers for RPS compliance costs. WGES submits that the rules should be clear on this point.

WGES suggests that the RPS regulations should stipulate that Delmarva's RPS compliance costs will continue to be billed to customers as part of the price of generation supply services. Under the new law, effective June 1, 2012 Delmarva will become responsible for procuring RECs and SRECs for RPS compliance. WGES suggests that the Delmarva's method of recovering these costs should be (1) to embed an appropriate amount of the costs in the SOS price for customers taking that service, and (2) to bill an appropriate amount of the costs to competitive retail electricity suppliers who, in turn, will recover those costs from their customers by embedding them in their retail contract prices.

- 2) The transition method for assuring that customers will not be overbilled for RPS compliance needs to be clarified.

If all of Delmarva's customers are billed RPS compliance costs as part of generation supply services as suggested above, there should not be a risk of customers being overbilled during a transition. SOS customers would continue to be billed for RPS compliance through their SOS prices (to the best of WGES's knowledge RPS compliance costs are currently embedded in SOS rates for Delmarva's SOS customers). All contracts that are in force and effect today between competitive retail electricity suppliers and their customers would remain in effect under their terms and conditions. It is simply that competitive retail electricity suppliers' REC or SREC supplies, would be purchased from Delmarva going forward, subject to the transition rules described below

- 3) Methods for handling "blended" REC and SREC procurement responsibilities between competitive retail electricity suppliers and Delmarva need to be clarified.

In the proposed language for Section 3.2.3.1, the Commission appears to envision that any REC or SREC supply that is delivered to a competitive retail electricity supplier from a third party provider under purchase contracts that were entered into before the effectiveness of the new law would begin to be transferred or assigned to Delmarva's GATS account after June 1, 2012. Therefore these assigned or transferred RECs and SRECs would be counted towards Delmarva's RPS obligations after that date. This transfer or assignment process would be fully consistent with the method for billing RPS compliance costs outlined above. The amount of RECs or SRECs that Delmarva would bill to a competitive retail electricity supplier would be the net amount needed to meet the RPS compliance levels for the supplier's customers above any amount the supplier had already sourced and transferred by the competitive retail electricity supplier to Delmarva's GATS account.

Proposed 3.2.3.1 language may envision this type of transfer process:

“The Commission-regulated electric company shall maintain the cost of any additional procurement of RECs/SREs (sic) for each Retail Electricity Supplier to be passed on to its respective retail customers as per the appropriate customer contract until all existing contracts are fulfilled.”

Under the transfer process that WGES suggests, Delmarva would in effect “maintain the costs of any additional procurement of RECs/SREs (sic)” for each competitive retail electricity supplier and those amounts would be aggregated and billed to the competitive retail electricity suppliers.

- 4) The method for adequately protecting competitive retail electricity suppliers who have previously entered into REC or SREC supply contracts needs clarification.

Section 353(c) (1) of Title 26 tasks the Commission with developing rules that

“... adequately protect electric suppliers that entered into contracts to provide RECs and SRECs to retail electric customers prior to the transition of REC and SREC procurement responsibility under Section 354(e) of this title”

WGES has two long-term SREC supply contracts in place. In both cases, WGES has invested its own capital in solar generation projects located in Delaware, signing Power Purchase Agreements with end-users under which the end-users purchase the electric output of the projects from WGES, but the SRECs associated with the electric power output are retained by WGES. The two projects, one at a Perdue facility in Bridgeville and another at the Wilmington Friends School, have a combined peak output of over 1,800 kW, and represent an investment of approximately \$7.5 million. The Perdue contract extends for 15 years and the Wilmington Friends School for 20 years.

The method of billing RPS compliance charges described above would provide a reasonable approach to protecting WGES's contracts and investments. WGES would continue to transfer the SRECs produced by these projects to Delmarva for the life of the contracts, and would procure from Delmarva the incremental SREC requirements needed for its retail supply customers each year.

- 5) REC and SREC procurement processes need to be clarified.

Section 351 (c) of Title 26 states:

“(c) It is therefore the purpose and intent of the General Assembly in enacting the Renewable Energy Portfolio Standards Act **to establish a market for electricity from these resources in Delaware** and to lower the cost to consumers of electricity from these resources.” [Emphasis added.]

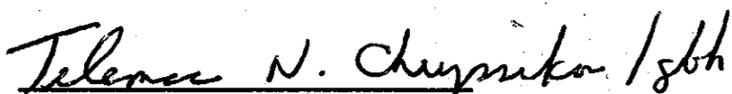
The revisions to the RPS Rules and Procedures proposed by the Commission in the Order are silent as to the procurement method that Delmarva will use to give effect to the new requirements of Section 354 (e) of Title 26. WGES suggests that the rules should specify that method and that the method must be consistent with the establishment of a workably competitive market for RECs and SRECs in Delaware. As an owner of solar power projects in Delaware and a prospective owner of additional projects, WGES has a strong interest in the procurement method that Delmarva will use.

In this regard WGES is, of course, aware of the pilot program recommendation made by the Renewable Energy Taskforce in its August 22, 2011 report. WGES suggests that while that recommendation may be an interesting option to consider as to how Delmarva might conduct its SREC procurements, there needs to be considerable consideration given to developing a method of procurement that meets the statutory requirements.

### CONCLUSION

In conclusion, WGES asks the Commission to revise its proposed RPS regulations to make it clear that RPS compliance costs should be recovered by embedding them in SOS prices and competitive supply prices, and that beginning June 1, 2012 competitive retail electricity suppliers with pre-existing REC and SREC procurement contracts will deliver these RECs and SRECs to Delmarva and be billed for their fair share of Delmarva's REC and SREC procurement costs consistent with the comments submitted herewith.

Respectfully Submitted,



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