



**THE GREENE FIRM**  
Attorneys at Law

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DELAWARE P.S.C.

Brian R. Greene  
THE GREENE FIRM, PLC  
707 East Main St., Suite 1025  
Richmond, Virginia 23219  
(804) 672-4542 (Direct)  
bgreene@thegreenefirm.com

*Docket Room/RB  
Courtney  
Janis  
Pam  
Regina  
Alisa*

November 2, 2011

**BY FED EX**

Alisa Carrow Bentley, Secretary  
Delaware Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, Delaware 19904

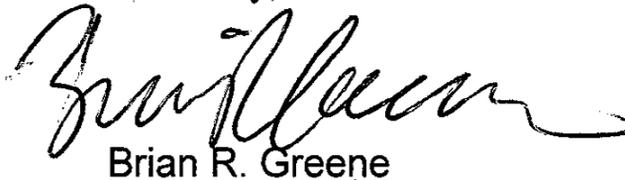
**Re: PSC Regulation Docket No. 56**

Dear Ms. Bentley:

Enclosed for filing in the above-referenced proceeding please find an original and 15 copies of the Comments of Retail Energy Supply Association.

Please contact me should you have any questions regarding this matter.

Sincerely,



Brian R. Greene

BRG/wcd

Enclosures

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

IN THE MATTER OF THE ADOPTION OF \*  
RULES AND PROCEDURES TO \*  
IMPLEMENT THE RENEWABLE \* PSC REGULATION DOCKET NO. 56  
PORTFOLIO STANDARDS ACT, 26 DEL. C. \*  
§§ 351-363, AS APPLIED TO RETAIL \*  
ELECTRICITY SUPPLIERS (OPENED \*  
AUGUST 23, 2005; REOPENED SEPTEMBER \*  
4, 2007; AUGUST 5, 2008; AND SEPTEMBER \*  
22, 2009; SEPTEMBER 7, 2010; AUGUST 17, \*  
2010; SEPTEMBER 20, 2011) \*

\* \* \* \* \*

**COMMENTS OF  
THE RETAIL ENERGY SUPPLY ASSOCIATION**

**I. Introduction and Background**

On September 6, 2011, the Commission issued Order No. 8026 in this docket proposing to update its Rules and Procedures to Implement the Renewable Energy Portfolio Standard (“RPS Rules”) to reflect the General Assembly’s amendments to the Renewable Energy Portfolio Standards Act (“amended RPS Act”).<sup>1</sup> Among other things, the General Assembly modified 26 Del. C. § 354 to make Delmarva Power & Light Company (“Delmarva”) – the “Commission-regulated electric company” – responsible for the RPS obligations of all its customers, including those who purchase their electricity from competitive retail suppliers, beginning with the 2012 compliance year.<sup>2</sup> The specific language as codified in Section 5 of the legislation is as follows:

Beginning with compliance year 2012, Commission-regulated electric companies shall be responsible for procuring RECs, SRECs and any other

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<sup>1</sup> 26 Del. C. §351-364. The recent legislative amendments can be found at 78 Del. Laws ch. 99 (July 7, 2011).

<sup>2</sup> The 2012 compliance year begins June 1, 2012 and ends May 31, 2013. See RPS Rule 1.0 (Definitions)(Feb. 22, 2010).

attributes needed to comply with subsection (a) of this section with respect to all energy delivered to such companies' end use customers.<sup>3</sup>

The statutory amendments also direct the Commission to develop rules "to transition the REC and SREC procurement responsibility" to Delmarva, and that contracts between retail suppliers and their customers in place through the transition are grandfathered. In other words, Delmarva will be obligated to pick up the RPS obligation for all load, including the load served by retail suppliers, effective June 1, 2012.

The Retail Energy Supply Association ("RESA") is a nonprofit organization and trade association that represents the interests of its members in regulatory proceedings in the Mid-Atlantic, Great Lakes, New York and New England regions.<sup>4</sup> RESA's members include providers of competitive electricity supply and related services in the Mid-Atlantic States, including Delaware. RESA submits these comments in an effort to work with the Commission and stakeholders to ensure that the amended RPS Act is implemented as seamlessly and efficiently as possible pursuant to the purposes of the legislation.

RESA has reviewed the proposed changes to the RPS Rules, which were attached as Exhibit A to Order No. 8026. Proposed Section 3.2.3 lays out the statutory end-game that "[b]eginning June 1, 2012, [Delmarva] shall be responsible for procuring RECs, SRECs, and any other attributes needed to comply with Section 3.2.1 with respect to all

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<sup>3</sup> 78 Del. Laws ch. 99 (July 7, 2011).

<sup>4</sup> RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

energy deliviviered [sic] to End-Use Customers.” Section 3.2.3.1 purports to explain how to achieve that end-game and provides as follows:

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 RECs/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.

As explained in more detail below, RESA has significant concerns about the practical impact and scope of the proposed language in Section 3.2.3.1 and proposes alternative language for the Commission’s consideration.

**II. Section 3.2.3.1 as proposed is overly broad, inconsistent with the language of the RPS Act, and unreasonably forces retail suppliers to transfer to Delmarva RECs and SRECs that may not have been procured to meet Delaware’s RPS.**

The proposed Section 3.2.3.1, quoted above, would require retail electric suppliers to transfer to Delmarva for retirement until Delmarva satisfies its RPS obligations for Compliance Year 2012, for no consideration, all RECs and SRECs contracted for by suppliers “prior to the transition,” meaning before June 1, 2012. RESA

has concerns about the proposed Section 3.2.3.1 and offers its own language, below, as substitute language.

- A. The proposed regulation would inappropriately interfere with suppliers' business practices, harm suppliers and is not consistent with REC and SREC procurement methods that could be used by retail suppliers.**

RESA opposes the mandatory transfer of RECs and SRECs contracted for prior to the transition date to Delmarva under any circumstance, including without financial consideration. This requirement appears to erroneously presume that: (1) retail suppliers holding RECs or SRECs in their PJM GATS sub-accounts that may be eligible to satisfy Delaware RPS obligations hold such RECs or SRECs solely to meet Delaware's RPS; (2) retail suppliers purchase RECs or SRECs to satisfy a particular customer load obligation in a particular state at the time those customer contracts are signed; (3) retail suppliers purchase some or all RECs or SRECs prior to the end of a compliance year as opposed to during the 120 day period after the end of the compliance year but prior to the submission of verification of compliance with Delaware's RPS; and that (4) retail suppliers do not plan to comply with Delaware's RPS through an Alternative Compliance Payment or Solar Alternative Compliance Payment.

In reality, retail suppliers, including members of RESA, utilize a variety of procurement practices and strategies to satisfy RPS obligations in the states in which they operate. It may be difficult, if not impossible, for suppliers to identify a particular subset of RECs or SRECs that they hold to meet Delaware's RPS. Retail suppliers may use procurement strategies to obtain RECs and SRECs on an aggregate basis for their total customer portfolio across multiple service territories. RECs and SRECs that may satisfy Delaware's RPS may also satisfy other state RPS obligations or may be utilized to

provide renewable oriented products that customers demand. In other words, a retail supplier's REC or SREC can be used to satisfy several states' RPS and might not be identified as a REC or SREC to satisfy a particular state's RPS obligation. During the annual compliance process, the supplier may then (1) decide the best way to allocate the RECs and SRECs it holds for each state obligation and any voluntary green products it offers, (2) purchase additional RECs or SRECs needed to comply with a state's RPS obligation, (3) pay a state's alternative compliance payment, or (4) utilize a combination of the above.

In essence, the mandatory requirement to transfer RECs and SRECs contracted for prior to the transition date to Delmarva is unworkable and would harm retail suppliers contrary to the express intent of the legislation to protect retail suppliers with existing contracts. Moreover, by June 1, 2012, retail suppliers are likely unable to advise Delmarva or the Commission as to the "the number of RECs/SRECs to be supplied through existing contracts." To the extent this language is intended to require a supplier to inform Delmarva or the Commission of its REC/SREC obligation, this is a problematic requirement because the number of RECs and SRECs necessary to comply with various state RPS obligations is dependent on load data provided by PJM, which is not available until later in the year – hence the 120 day lag period after the end of the compliance year for the submission of a completed Retail Electricity Supplier's Verification of Compliance with the Delaware Renewable Energy Portfolio Standard Report. The proposed Section 3.2.3.1, to the extent it obligates retail suppliers to begin reporting effective June 1, 2012, is in conflict with existing Delaware rules and puts retail suppliers

in the difficult position of having to estimate REC and SREC obligations without the benefit of the final PJM data.

**III. RESA requests that the Commission reject the proposed Section 3.2.3.1 and adopt RESA's proposed language.**

The Commission's proposed Section 3.2.3.1 introduces more complexity and unjust obligations to retail suppliers than is required to achieve the purposes of the amended RPS Act. The simplest manner to transfer the RPS obligation is to start with the premise that retail suppliers are responsible for their respective RPS obligations for the 2011 compliance year, and Delmarva is responsible for the 2012 compliance year. If Delmarva needs additional RECs and SRECs to satisfy its 2012 obligation, it can procure them as needed. Or, if the Commission determines that such an obligation is too burdensome, the Commission can temporarily reduce Delmarva's RPS obligation or its alternative compliance payment.<sup>5</sup> There is no need for a reporting requirement and mandatory transfers of RECs and SRECs located in a retail supplier's GATS sub-account.

In light of these concerns, RESA proposes to modify the language in Section 3.2.3.1 to read as follows:

3.2.3.1 To transition the REC and SREC procurement responsibility to the Commission-regulated electric companies, Retail Electricity Suppliers that entered into contracts for RECs and SRECs prior to June 1, 2012, may, but shall not be obligated to, sell or otherwise transfer some or all of such RECs/SRECs to the Commission-regulated electric company. Such sale or transfer shall be made pursuant to terms and conditions as agreed to by the Retail Electricity Supplier and the Commission-regulated electric company, and the Commission-regulated electric company shall use the acquired RECs/SRECs to fulfill its total RPS requirements for the Compliance Year beginning June 2012. The Commission-regulated electric company is responsible for procuring any additional RECs/SRECs to fulfill its respective RPS obligation.

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<sup>5</sup> See 78 Del. Laws ch. 99 (July 7, 2011)(Section 2).

This language conforms to the amended RPS Act and makes it permissible, but not mandatory, for retail supplier to sell or transfer RECs and SRECs to Delmarva for contracts entered into before June 1, 2012. Retail suppliers and Delmarva could negotiate the terms and price for such transfer. Given the various REC and SREC procurement strategies utilized by retail suppliers, without the changes proposed above, Section 3.2.3.1 is simply not workable, and RESA's proposed language is the better method to transfer the REC and SREC obligation to the utility.

#### **IV. Conclusion**

RESA is pleased to respond to the Commission's request for comments regarding the proposed RPS Rules in Delaware. For the reasons set forth above, RESA respectfully requests that proposed Section 3.2.3.1 be stricken from the proposed RPS Rules and replaced with the language proposed above.

Respectfully submitted,

RETAIL ENERGY SUPPLY ASSOCIATION

By Counsel

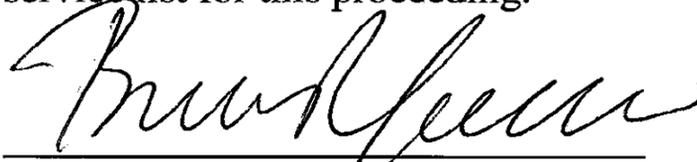


Brian R. Greene  
THE GREENE FIRM, PLC  
Eighth and Main Building  
707 East Main St., Suite 1025  
Richmond, Virginia 23219  
Tel: 804.672.4542 (direct)  
Fax: 804.672.4540  
[bgreene@thegreenefirm.com](mailto:bgreene@thegreenefirm.com)

Date: November 2, 2011

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Comments was mailed on November 3, 2011, to each member on the official service list for this proceeding.

A handwritten signature in cursive script, appearing to read "Brian R. Greene", written over a horizontal line.

Brian R. Greene

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