



STATE OF DELAWARE

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March 16, 2017

MEMORANDUM

TO: Members of the Commission

FROM: Joseph DeLosa, Public Utilities Analyst <sup>JDS</sup>

SUBJECT: 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 SUPPLIERS (OPENED AUGUST 23, 2005; REOPENED SEPTEMBER 4, 2007; AUGUST 5, 2008; SEPTEMBER 22, 2009; AUGUST 17, 2010; SEPTEMBER 6, 2011; SEPTEMBER 18, 2012; FEBRUARY 2, 2017) - PSC REGULATION DOCKET NO. 56

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Background

On December 30, 2016, Judge LeGrow issued a Memorandum Opinion<sup>1</sup> overturning Commission Order No. 8807 (December 3, 2015), requiring the Commission to revise their regulations to implement “procedures for freezing the [yearly increase in the Renewable Portfolio Standards (“RPS”)] requirements.”<sup>2</sup> The Commission issued the first set of responsive draft regulations in Order No. 9024 (February 2, 2017), and a second set of draft regulations in Order No. 9090 (July 25, 2017). On December 7, 2017, the Commission held a hearing at which it heard arguments from the parties, deliberated, and decided on each of the three<sup>3</sup> contentious issues. On January 26, 2018, the Commission issued Order No. 9016, publishing further revised draft regulations reflecting the outcome of the December deliberations.

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<sup>1</sup> *DPA v. PSC*, C.A. N15A-12-002 AML. (“Opinion”)

<sup>2</sup> *Id.* Slip op. at 11.

<sup>3</sup> *See, e.g.*, Staff Memo, Regulation Docket 56 (Nov. 21, 2017, as amended December 1, 2017).

## **Proposed Final Regulations**

As shown in Exhibit A in proposed Order 9197, the most recent draft regulations published in the February Register of Regulations<sup>4</sup> represent the Commission's December deliberations. No substantive changes have been made. Staff recommends that the Commission enter Proposed Order No. 9197 approving those regulations as final.

### **1. Total Retail Cost of Electricity for Retail Electricity Suppliers**

In the December deliberations, the Commission decided 3-2 to “support Staff's position and DNREC's position on the first question regarding what should be included in the definition of total retail cost of electricity...”<sup>5</sup> The proposed regulations continue to reflect<sup>6</sup> the Commission's decision on Staff's position.<sup>7</sup>

### **2. Bloom Fuel Cell**

In the December deliberations, the Commission decided 5-0 “in favor of the DPA and Mr. Myers' argument,”<sup>8</sup> to include the cost of the Bloom Fuel Cell in the calculation for total cost of compliance. The draft regulations were amended before being approved for republishing by the Commission in Order No. 9016 (Jan. 26, 2018) to reflect the DPA's and Mr. Myers' argument.<sup>9</sup> The proposed regulations continue to reflect<sup>10</sup> the Commission's decision on the DPA's and Mr. Meyers' argument.<sup>11</sup>

### **3. Consultation**

In the December deliberations, the Commission decided 4-1 to support “the position put forth by Staff.”<sup>12</sup> The proposed regulations continue to reflect<sup>13</sup> the Commission's decision on Staff's position for consultation<sup>14</sup> between the E&C Director and the Commission.

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<sup>4</sup> 21 DE Reg. 620 (Feb. 1, 2018).

<sup>5</sup> Transcript, 1075 at 21:24, 1076 at 1.

<sup>6</sup> See Proposed Regulations at 1.0, Total Retail Cost of Electricity.

<sup>7</sup> See Staff Review and Recommendation (Jul. 20, 2017) at 15.

<sup>8</sup> Tr. 1078 at 5:6.

<sup>9</sup> See Order No. 9016 (Jan. 26, 2017), Exhibit B at 3.2.21.1.6, 3.2.21.1.7, 3.2.21.3.7, 3.2.21.3.8, 3.2.21.4.4.

<sup>10</sup> See Proposed Regulations at 3.2.21.1.6, 3.2.21.1.7, 3.2.21.3.7, 3.2.21.3.8, 3.2.21.4.4.

<sup>11</sup> See Comments of the DPA (Oct. 2, 2017) at 28.

<sup>12</sup> Tr. 1081 at 20:21.

<sup>13</sup> See Proposed Regulations at 3.2.21.5 – 3.2.21.9.2.

<sup>14</sup> See Staff Review and Recommendation (Jul. 20, 2017) at 32-33.