December 28, 2017

VIA ELECTRONIC MAIL

Chairman Dallas Winslow, Members of the Commission
Delaware Public Service Commission
861 Silver Lake Blvd.
Cannon Building, Suite 100
Dover, Delaware 19904

RE: Sierra Club Comments on PSC Regulation Docket No. 56, In the Matter of the Adoption of Rules and Procedures to Implement the Renewable Energy Portfolio Standards Act As Applies to Retail Electricity Suppliers

Chairman Winslow, Members of the Commission,

On behalf of the Sierra Club and our more than 2,400 members in Delaware, thank you for the opportunity to provide comments regarding the Commission's tentative order in PSC Regulation Docket No. 56. The Sierra Club appreciates the Commission's careful consideration of the many issues presented in this docket. However we urge the Commission to change its determination that the costs of the payments for "Bloom" fuel cells be included in calculations pertaining to the cost thresholds under Sections 354 (i)&(j). That determination both contradicts the plain language of the statute and would thwart the legislature's clear intent in mandating the Renewable Portfolio Standard ("RPS") in the first place. As such, it is not legally defensible, regardless of the number of public comments received.

As the PSC staff memo notes, the section in question plainly states "the total cost of compliance shall include the costs associated with any ratepayer funded state solar rebate program, SREC purchases, and solar alternative compliance payments." Since the payments to Bloom are not for solar rebates, SREC purchases, or alternative compliance payments, and instead simply lower the obligation to make such purchases or payments (*see, e.g.*,, 26 Del. C. § 364(d) (describing conditions under which qualified fuel cell provider projects may "reduce"—*not* fulfill—electric company REC and SREC requirements), they should not be included in the calculations as costs. As the staff memo further explains, the Legislature had the clear opportunity to include Bloom payments in the statutory language and did not make that choice. For the Commission to second-guess the Legislature in this regard would be imprudent and unlawful. It is not too late to change that determination.

While the plain language of the statute is dispositive, to the extent the Commission considers the Legislature's intent, it should start with the stated purpose of creating the RPS:

> "The General Assembly finds and declares that the benefits of electricity from renewable energy resources accrue to the public at large, and that electric suppliers and consumers

> share an obligation to develop a minimum level of these resources in the electricity supply portfolio of the state. These benefits include improved regional and local air quality, improved public health, increased electric supply diversity, increased protection against price volatility and supply disruption, improved transmission and distribution performance, and new economic development opportunities." (26 Del. C. § 351 (b))

Bloom fuel cells are not renewable under the Delaware RPS. . They do not provide the public health and air quality benefits described by the General Assembly, but instead are powered by fracked gas which is doing tremendous harm to public health and air quality in communities throughout the Mid-Atlantic. Moreover, they do not increase electric supply diversity or protect against price volatility and supply disruption.

Solar power, on the other hand, does have all of those benefits, and more. Solar and wind are unquestionably the resources that delivers the maximum amount of those cited benefits to Delaware communities. That is further underscored by the Legislature's explicit requirement in Section 353 (D)(d)(1)(a) to limit the "energy output from a qualified fuel cell provider project in any given year to fulfill no more than 30% of the SREC requirements". Since including the costs of the Bloom payments in calculations of the thresholds under Sections 354 (i)&(j) would effectively end the SREC program, as the costs of those payments alone exceed the thresholds, the Legislature's stated intent would be thwarted. Since there is no reason to think that the Legislature meant that to occur in the 2011 amendments, even if the Commission were to impermissibly disregard the plain language of the statute, its proposed decision cannot be squared with express or implied legislative intent.

While the Commission should look no further than the plain language of the statute, as the staff memo correctly observes, there is no logically coherent way to add the Bloom payments to the cost thresholds under Sections 354 (i)&(j) without considering other non-statutory cost considerations. The cost of supplying power on a retail basis to customers in Delaware certainly includes the cost of pollution caused by that electricity, as the Legislature explicitly recognized in creating the RPS in the first place. Ignoring those costs while including the Bloom costs would compound a legal error to the great detriment of Delaware's ratepayers, families, and businesses alike.

The RPS was created with the express purpose of ensuring growth of the supply of renewable energy resources such as wind and solar to Delaware in order to capture tremendous economic, security, and public health benefits. Including the cost of the Bloom payments in calculations for the thresholds under Sections 354 (i)&(j) would both undermine that intent and contradict the plain language of the statute. The Sierra Club and its members respectfully urge the Commission to reverse your tentative determination under PSC Regulation Docket No. 56 as a result.

Respectfully submitted,

Don Brill
Chair, Climate Committee
Delaware Chapter, Sierra Club