

In the Matter Of:

DNREC Public Hearing Docket 2019-R-CCE-0019

THE GREEN ENERGY PROGRAM

July 28, 2021



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STATE OF DELAWARE
DELAWARE DEPARTMENT OF NATURAL
RESOURCES & ENVIRONMENTAL CONTROL

IN RE: FOR 7 DE ADMIN. : DOCKET #
C. 2103 REGULATIONS FOR : 2019-R-CCE-0019
THE GREEN ENERGY PROGRAM:

Public Hearing taken via
remote videoconferencing of all
participants beginning at 6:00 p.m., on
Wednesday, July 28, 2021, before Gloria
M. D'Amore, Registered Professional
Reporter and Notary Public.

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APPEARANCES :

On behalf of the State of Delaware
Delaware Department of Natural
Resources & Environmental Control:
LISA A. VEST, HEARING OFFICER
SASCHA MOHAMMED

On behalf of the State of Delaware
Delaware Department of Natural
Resources & Environmental Control:
Division of Climate, Coastal & Energy
BRETT SWAN, PLANNER III

- - - - -

1 HEARING OFFICER VEST: Good
2 evening. I believe that everyone has
3 joined and is now connected and ready.
4 So, we are going to go ahead and begin
5 tonight's proceedings.

6 I want to thank everyone for
7 taking the time, to take the time out of
8 your busy schedules and join us tonight.

9 The date is Wednesday,
10 July 28, 2021. And we are here this
11 evening to provide the Virtual Platform
12 for DNREC to conduct its Public Hearing
13 on the Proposed Amendments to Delaware's
14 Green Energy Fund Regulations.

15 For those of you who may not
16 know me, my name is Lisa Vest. And
17 Secretary Garvin has designated me to
18 serve as Hearing Officer for these
19 proceedings.

20 Just to set the stage
21 tonight before we begin with the
22 information, specifically to set the
23 parameters of DNREC's Public Hearing
24 protocols, this hearing is conducted

1 virtually. No staff is being gathered in
2 the same room. Everyone is participating
3 independently at their own respective
4 locations.

5 While there are no physical
6 sign-in sheets to document physical
7 attendance, like we would normally do for
8 a face-to-face meeting, the Webex
9 Platform does generate an electronic
10 sign-in list for those that are virtually
11 attending tonight. So, the Department
12 will still have a verifiable way of
13 recording those who have electronically
14 attended tonight. And, again, I do thank
15 everyone for taking the time to join us.

16 At the conclusion of these
17 introductory remarks, I will be turning
18 the hearing over to Department Staff.
19 They have a brief PowerPoint presentation
20 regarding this proposed Regulatory
21 Actions. And, again, that's being done
22 not only for the public's benefit, but
23 for the benefit of building the hearing
24 record concerning this matter.

1 There is still a court
2 reporter that is in virtual attendance
3 tonight. They will prepare a verbatim
4 transcript of the hearing pursuant to the
5 statutory requirement for DNREC to do so.
6 And as always, that transcript will be
7 posted on the hearing website page
8 associated with this matter as soon as it
9 is received.

10 Following the conclusion of
11 the Department's presentation, we will
12 then open the floor to receive live
13 comment from those Members of the Public
14 that have preregistered with us to do so.

15 Tonight, we have two Members
16 of the Public that have registered to
17 offer comment. They will be recognized
18 at that time in the order in which they
19 were preregistered. And each will be
20 given the allotted three minutes of time
21 to speak.

22 As is the case with all
23 DNREC Public Hearings, the Department
24 wishes to ensure that everyone is able to

1 offer their comments for inclusion into
2 the record that is being generated in
3 this matter.

4 Therefore, the record will
5 remain open to receive comment beyond
6 tonight's hearing and will remain open
7 through August 12, 2021. In that way,
8 the public does have an opportunity to
9 offer written comment for the Secretary's
10 consideration should they wish to do so.

11 I would also encourage
12 everyone attending this proceeding
13 tonight to visit DNREC's Public Hearing
14 website. It's found under the
15 Administrative Law section of our web,
16 and that gives more details concerning
17 this proposed Regulatory Action.

18 The Department's
19 presentation that we're getting ready to
20 hear, along with all of the exhibits that
21 will be entered into the record, and all
22 of the other documentation, including the
23 comments that come in and are submitted
24 regarding this matter will all be posted

1 on the hearing web page dedicated to
2 these proposed Green Energy Fund
3 Regulatory Amendments. And the public
4 can gain a wealth of information by
5 reviewing the same.

6 Of course, all mechanisms
7 that have always been available by which
8 to offer comment remain in effect. There
9 is an electronic link. There are E-mails
10 and, of course, the United States Postal
11 Service. Also, the following protocols
12 do remain in place for all DNREC
13 hearings.

14 Number one, all comment
15 received must be limited solely to the
16 subject matter of tonight's hearing.

17 All comments germane to that
18 subject matter will be incorporated into
19 the hearing record that is being compiled
20 in this matter.

21 Number two, as previously
22 noted, in order to ensure that everyone
23 who wishes to offer comment for the
24 Secretary's consideration is

1 accommodated. The public comment period
2 shall remain open beyond tonight and
3 through August 12, 2021.

4 Number three, there is only
5 one authentic record of this formal
6 proceeding tonight. And it is the court
7 reporter's official verbatim transcript
8 which, again, will be posted on the
9 hearing web page immediately upon its
10 receipt.

11 Number four, the statutory
12 purpose of tonight's hearing is, once
13 again, to build the record with regard to
14 the Department's proposed Regulatory
15 Actions. The record consisting of the
16 transcript of the hearing tonight, all
17 comments that come in, all exhibits, and
18 eventually, The Hearing Officer's report
19 will be reviewed by Secretary Garvin.

20 The Secretary will
21 ultimately issue an order following that
22 review, and that order will contain his
23 decision on the matter and the reasons
24 therefore.

1 Number five, it's important
2 to note that absolutely no decision has
3 been made about these Proposed
4 Regulations by the Department; nor will
5 any decision be made tonight with regard
6 to this matter.

7 The public comment period is
8 going to remain open, again, through
9 August 12, 2021, so that Members of the
10 Public have an opportunity to submit
11 comment for the Secretary's
12 consideration, should they wish to do so.

13 Comments may be submitted
14 through the comment form link on the
15 hearing page via E-mail to
16 DNRECHearingComments@delaware.gov or,
17 again, via the U.S. Postal Service at the
18 physical address for DNREC as indicated
19 on the PowerPoint slide, the hearing page
20 and public notices previously issued in
21 this matter.

22 Please note that written
23 comments to DNREC may not be submitted
24 using any type of social media platform,

1 such as Twitter, Facebook, YouTube or
2 standardized text messaging.

3 Lastly, please note that,
4 whether comments were received prior to
5 the hearing tonight, whether they come in
6 during the course of the proceedings
7 tonight, or whether they're received
8 between now and the point where the
9 record closes, again, on August 12th, and
10 regardless of whether they come in
11 through standardized United States Postal
12 Service Mail or any of the electronic
13 mechanisms that I just referenced now.

14 As long as they are received on or before
15 August 12, 2021, all comments bear
16 exactly the same weight and all will be
17 considered equally by Secretary Garvin
18 prior to his making a decision in this
19 matter.

20 The ultimate decision
21 regarding these proposed Regulatory
22 Amendments is made by Secretary Garvin.
23 The formal hearing tonight acts as a
24 mechanism to enable the Department to

1 thoroughly vet what we wish to do to the
2 public, and also to let the public know
3 the various ways by which comment may be
4 submitted for the Secretary's
5 consideration, if so desired.

6 With that being said, I am
7 now going to hand it over to Brett, and
8 he is going to be offering the
9 Department's presentation on this matter.

10 So, Brett, you may begin
11 when ready.

12 MR. SWAN: Thank you, Lisa.

13 My name is Brett Swan. I'm
14 the Green Energy Fund Manager for the
15 Department of Natural Resources and
16 Environmental Control.

17 Starting on our agenda,
18 we've already gone through introductions.
19 We're going to go over the Regulation
20 Promulgation Schedule, the Summary of our
21 Proposed Regulations, Edits to the
22 Published Proposed Regulations, the Entry
23 of our Department Exhibits into the
24 record and, then, Public Comment.

1 So, the Regulation
2 Promulgation Schedule.

3 The publication of Proposed
4 Amendments occurred on July 1st of this
5 year.

6 Our legal notice was
7 published on July 4th.

8 Today is the Public Hearing.

9 As Lisa mentioned, the
10 hearing record is going to close on
11 August 12th.

12 We anticipate that the Final
13 Regulations will be published on
14 November 1st of this year.

15 And we anticipate the new
16 Regulations will take effect on
17 November 11th of this year.

18 Current Green Energy Program
19 Regulations were first promulgated back
20 in 2004 and were last updated back in
21 2006.

22 These Regulations regulate
23 the following Green Energy Fund Programs:
24 The Green Energy Endowment Program, the

1 Technology Demonstration Program and the
2 Research and Development Program.

3 Our Proposed Regulations
4 will revise outdated and misstated
5 language.

6 For example, renaming the
7 regulations to Regulations for the Green
8 Energy Fund instead of Regulations for
9 the Green Energy Program.

10 As well as striking language
11 with outdated grant incentive amounts, we
12 will also be striking overly detailed and
13 prescriptive language.

14 And in the drafting of this
15 proposal, the Department Staff considered
16 input from The Delaware Public Advocate
17 and the Public Service Commission Staff
18 who provided valuable technical advice.

19 So now, we will go over the
20 substantive changes per section of the
21 Proposed Regulations.

22 In Section 5.0 for the Green
23 Energy Program, we'll be adding statutory
24 language that clarifies our allowable

1 expenditures. We'll be striking
2 references to outdated grant incentive
3 maximums.

4 We'll be adding language to
5 allow for the removal of contractors from
6 our program's participating contractor's
7 list.

8 And we will be striking
9 Energy Efficiency Information Programs
10 that have not been utilized since the
11 program was created.

12 In Section 6.0, the
13 Technology Demonstration Program, we're
14 adding statutory language that will
15 clarify our allowable expenditures.

16 And we'll also be adding
17 language that allows for proposals to be
18 received on a rolling basis instead of a
19 current Request for Proposals, or RFP
20 process, as they have done now.

21 Similar to the last section
22 in Section 7.0, the Research and
23 Development Program, we're adding
24 statutory language to clarify allowable

1 expenditures. And, again, adding
2 language that will allow proposals to be
3 received on a rolling basis instead of
4 through the RFP process.

5 We will be including a new
6 section, Section 10.0, the Solar Energy
7 Curriculum Program. This program exists
8 currently in the statute; however, it has
9 not existed in the Regulations to date.

10 We are also adding another
11 new section, Section 11.0, entitled Other
12 Eligible Programs. In this section, we
13 add language that will allow the Green
14 Energy Fund to develop new programs that
15 are consistent with the goals of the
16 Fund, subject to the availability of
17 funds.

18 Our authority to create
19 these new programs can be found in
20 Chapter 80, Title 29, Section 8057(d).

21 Now, we're going to go over
22 some of the edits to the Proposed
23 Regulations that were published on
24 July 1st.

1 In the definition section,
2 the definition Conectiv Power Delivery,
3 DP&L, currently it is only partially
4 struck. Our edit is that we are striking
5 -- we would like to strike this
6 definition completely.

7 In the Definition
8 Department, under the new language, the
9 underlined language that says, "Division
10 of Climate, Coastal and Energy, after the
11 comma, we would like to insert the word
12 "or."

13 Next edit under Section 5.0
14 for the Green Energy Program, in Section
15 5.4.1, at the very end of the sentence
16 where the underlined language says, "set
17 forth in Subsection 5.3.1," we are
18 proposing to change that to, "set forth
19 in Subsection 5.3."

20 In Section 5.5, it reads,
21 "The Green Energy Program." To be
22 consistent with the language throughout
23 the rest of the Regulation, it should
24 say, "Green Energy Endowment Program."

1 In Section 5.8.1.4, the very
2 last sentence reads, currently reads,
3 "The installing participating contractor
4 is responsible for insuring that the
5 system is free from shading." It should
6 read, "The installing participating
7 contractor is responsible for ensuring
8 that the system is free from shading."

9 Under Section 8.0,
10 Evaluation of Technology Demonstration
11 and Research and Development
12 Applications, this is 8.4.1. The very
13 beginning of the sentence currently
14 reads: "If upon, if, on. It should read,
15 the edit is striking the words "if upon"
16 and adding in the words "if, on."

17 Now, we would like to enter
18 eight exhibits into the record for these
19 proceedings.

20 The eight exhibits occur on
21 this slide and also the next slide.

22 HEARING OFFICER VEST: Thank
23 you, Brett.

24 Just a couple of questions

1 for verification, for the record.

2 Are the Department's 8
3 Exhibits that are displayed on this and
4 the next section the same documents as
5 those that are labeled "DNREC Proposed
6 Exhibits" on the hearing page?

7 MR. SWAN: Yes.

8 HEARING OFFICER VEST: Have
9 they been changed or altered in any way
10 since their posting?

11 MR. SWAN: No, they have
12 not.

13 HEARING OFFICER VEST: Okay.
14 Very good.

15 Let the record reflect that
16 DNREC Department Exhibits 1 through 8, as
17 identified just now, are hereby entered
18 into the hearing record that's being
19 generated in this matter.

20 Brett, does the Department
21 have anything further that they wish to
22 add for the record at this time?

23 MR. SWAN: No, we do not.

24 HEARING OFFICER VEST: Thank

1 you very much.

2 We are now going to go to
3 the comment portion of this hearing.

4 I am just double-checking
5 some things. I want to make sure just
6 for a second that the court reporter is
7 okay.

8 Gloria, I saw that you
9 raised your hand. I don't know whether
10 everything worked out or not, but are we
11 good? Sascha, you may have to unmute
12 her.

13 COURT REPORTER: Yes. We
14 just like to be unmuted for the hearing
15 in case we have to interrupt.

16 HEARING OFFICER VEST: Sorry
17 about that. You're unmuted now, and I
18 will keep you that way.

19 So, as you can see on the
20 screen right now, and thank you, Sascha,
21 for that, we did have two Members of the
22 Public go through the preregistration
23 process pursuant to the protocols on our
24 web page. They are both from the

1 University of Delaware, as a matter of
2 fact. We have Professor Jeremy Firestone
3 and Professor Steven Hegedus. Welcome,
4 Gentlemen.

5 You will each have three
6 minutes to speak. As you can see on the
7 screen, there are buckles that will begin
8 to phase out like the hands of a clock as
9 you begin to speak. The intent with that
10 is to try to help you pretty much gauge
11 your speaking speed and your time.

12 And as I said in the
13 beginning, let me please reassure you
14 that, if, for whatever reason, you do not
15 get through everything that you want to
16 say tonight, you may certainly submit the
17 full context of your comments between now
18 and August 12th. That is certainly no
19 problem. Or if you want to submit
20 additional comment, you can do whatever
21 you wish.

22 But you certainly may submit
23 everything and all comments that you wish
24 for the Secretary to consider prior to

1 the record closing.

2 So, in no particular order,
3 other than the fact that this is the
4 order that the Gentlemen signed up in,
5 Professor Firestone, you are first up.

6 Can you hear me?

7 PROFESSOR FIRESTONE: Can
8 you hear me?

9 HEARING OFFICER VEST: I can
10 hear you. Welcome.

11 The timer in the system will
12 start when you are ready. As I said, if,
13 for some reason, you do not get through
14 everything you want to say and the system
15 cuts you off, no worries. We can
16 certainly accept any supplemental or
17 additional comments in writing.

18 COURT REPORTER: Could I get
19 his full name?

20 HEARING OFFICER VEST: I'm
21 sorry. It's Jeremy Firestone.

22 PROFESSOR JEREMY FIRESTONE:
23 My name is Jeremy Firestone. Jeremy,
24 J-E-R-E-M-Y, Firestone,

1 F-I-R-E-S-T-O-N-E. I'm a Professor at
2 the University of Delaware in the School
3 of Marine Science and Policy, and the
4 Director of the University Center for
5 Research in Wind. I'm a Social Science
6 Scientist and Lawyer by training.

7 DNREC's mission includes to
8 lead energy policy and climate
9 preparedness. The Social Sciences are
10 critical and, indeed, have been
11 addressing the climate crisis moving
12 swiftly. And a just energy transition
13 has to be routed in the Social Sciences.

14 Indeed, while much of the
15 focus has placed both its current energy
16 and, here on this regulation, on building
17 a better bread box that is technology.
18 The impediments to the energy transition
19 are more social and cultural than they
20 are technological or economic.

21 I went through the rules a
22 little bit ago because I had the markup.
23 But the only mention of the words
24 economics or policy in the Regulations

1 are with regard to the new solar energy
2 curriculum program. The word
3 technologies or technology appears 34
4 times, products nine times, and engineer,
5 engineers or engineering eight.

6 None of the words social
7 culture, cultural justice or equity
8 appear at all in the Rule.

9 Now, there is arguably a way
10 through Rule 7.41 and 7.11 that Social
11 Science projects could be seen as
12 improving the adaptation of "products."

13 But please let us bring
14 Social Science research through the front
15 door.

16 But even then, given the
17 existing language, there are difficulties
18 that remain in 7.4.2 because we're
19 required to show that this "project" is
20 an improvement over existing products
21 that provide a similar function.

22 Now, the last time there was
23 a competition, we did have the same
24 issue, and we got DNREC to agree that the

1 Rules were broad enough to allow Social
2 Science. But let's do it up front and
3 make it clear that we can bring Social
4 Science to bear on these issues.

5 The last thing, and I know
6 Professor Hegedus is going to talk a good
7 deal on this, is the cost share
8 requirements, which are a particular
9 difficult problem in the Social Sciences
10 because we don't have industry partners.
11 And, indeed, we don't generally want
12 industry partners because we want our
13 work to appear non-biased.

14 Thank you very much.

15 HEARING OFFICER VEST: Thank
16 you, Professor. As always, your comments
17 are greatly appreciated.

18 We will now switch from
19 Professor Firestone and go to Professor
20 Hegedus.

21 Sir, can you hear me?

22 PROFESSOR STEVEN HEGEDUS:
23 Yes, I can hear you. Can you hear me?

24 HEARING OFFICER VEST: I can

1 hear you loud and clear, sir. You may
2 proceed when ready.

3 PROFESSOR STEVEN HEGEDUS:
4 Thank you. My name is Steven Hegedus.
5 My last name is spelled H-E-G-E-D-U-S. I
6 have been doing solar energy research at
7 the University of Delaware for almost
8 40 years at the Institute of Energy
9 Conversion and within the College of
10 Engineering.

11 I think that this Green
12 Energy Fund is a wonderful opportunity to
13 sponsor some exploratory and innovative
14 research here within the State that meets
15 the State's particular needs.

16 I would particularly like to
17 address Section 7.2. I understand that
18 you need the recipient to demonstrate
19 that they have some skin in the game by
20 providing some cost share.

21 Typically, with Department
22 of Energy Programs, this cost share is
23 20 percent. And you are requiring us to
24 come up with 65 percent for research.

1 I understand having a high
2 level of cost share for the technology
3 development, Section 6, because that's
4 being done by companies. They're
5 probably expecting to develop a
6 profitable product. And companies have a
7 lot more resources available to meet the
8 cost share requirements.

9 However, university
10 researchers at nonprofit organizations,
11 it's pretty tough to come up with
12 65 percent cost share for a research
13 project. We have very limited ways that
14 we can adjust or provide free service for
15 labor or equipment.

16 So, what I would be asking
17 is that you would reconsider that adding
18 a sentence that would make the recipient
19 cost share requirement, for example,
20 let's say 25 percent for a nonprofit
21 research organization located within the
22 State. So, that would include colleges,
23 universities, and I don't know what else.
24 But 25 percent cost share is still more

1 than the Department of Energy or the
2 National Science Foundation requires. It
3 would demonstrate considerable
4 commitments from the recipient, but it
5 wouldn't be as difficult or challenging
6 to meet. And, therefore, I think you
7 would get more and higher quality
8 proposals.

9 Thank you very much.

10 HEARING OFFICER VEST:

11 Excellent. Thank you, Professor Hegedus.

12 As I said before, we only
13 had those two Gentlemen as the only
14 Members of the Public that signed up to
15 offer live comment tonight.

16 With that being said, the
17 record does absolutely remain open to
18 receive any and all comments that might
19 come in between now and August 12th.

20 Again, it all bears the same
21 weight regardless of how it comes in, or
22 when it comes in, or how it comes in, as
23 long as the Department is in receipt of
24 it on or before August 12th.

1 So, with the comment period
2 being done, you will see on the screen
3 that, once again, there are some
4 indications of who to contact, who to
5 send the comments to. And, again, all of
6 this information is located on the DNREC
7 hearing web page dedicated to this
8 matter.

9 If you just remember to go
10 to DNREC's website and go to the
11 Administrative Law section, you will see
12 a whole menu there. And you want to go
13 to Public Hearings. And, then, every
14 single hearing that we have had for the
15 past couple of years, we do not retire
16 these pages. We keep the information out
17 there. So every single hearing we've had
18 is set there chronologically. So, of
19 course, this one is closer to the top.

20 But you can go there. You
21 will be able to review all of the
22 exhibits in detail.

23 Also, any and all comments
24 that come in, we post them as well so the

1 public not only knows what the Department
2 is saying, but they also see what other
3 commenters are saying. And, of course,
4 the two Gentlemen that spoke live this
5 evening, their comments will be caught by
6 the court reporter's transcript, and they
7 will be up there as well.

8 So, again, check it out.

9 The public can gain a wealth of
10 information from the hearing page.

11 I want to thank everyone for
12 attending tonight. Again, the comment
13 period remains open through August 12th.

14 Have a great evening. And
15 this hearing is adjourned.

16 (Public Hearing was
17 concluded at 6:25 p.m.)

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4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

INDEX

STATEMENTS :	PAGE
Hearing Officer Lisa Vest	3/27
Brett Swan	11
Professor Jeremy Firestone	21
Professor Steven Hegedus	25

INDEX	PAGE 30
CERTIFICATE OF REPORTER	PAGE 31

1 State of Delaware:

2 New Castle County:

3

4 CERTIFICATE OF REPORTER

5

6 I, Gloria M. D'Amore, Registered
7 Professional Reporter and Notary Public,
8 do hereby certify that the foregoing
9 record, Pages 1 to 31 inclusive, is a
10 true and accurate transcript of my
11 stenographic notes taken on Wednesday,
12 July 28, 2021, in the above-captioned
13 matter.

14 IN WITNESS WHEREOF, I have hereunto
15 set my hand and seal this 2nd day of
16 August, 2021, at Wilmington, Delaware.

17

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GLORIA M. D'AMORE, RPR

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The Green Energy Program - July 28, 2021

<hr/> 1 <hr/>	6.0 14:12	ahead 3:4
1 18:16	65 25:24 26:12	allotted 5:20
10.0 15:6	<hr/> 7 <hr/>	allowable 13:24 14:15,24
11.0 15:11	7.0 14:22	altered 18:9
11th 12:17	7.11 23:10	Amendments 3:13 7:3 10:22 12:4
12 6:7 8:3 9:9 10:15	7.2 25:17	amounts 13:11
12th 10:9 12:11 20:18 27:19,24	7.4.2 23:18	anticipate 12:12,15
1st 12:4,14 15:24	7.41 23:10	appears 23:3
<hr/> 2 <hr/>	<hr/> 8 <hr/>	Applications 17:12
20 25:23	8 18:2,16	appreciated 24:17
2004 12:20	8.0 17:9	arguably 23:9
2006 12:21	8.4.1 17:12	attendance 4:7 5:2
2021 3:10 6:7 8:3 9:9 10:15	80 15:20	attended 4:14
25 26:20,24	8057(d) 15:20	attending 4:11 6:12
28 3:10	<hr/> A <hr/>	August 6:7 8:3 9:9 10:9,15 12:11 20:18 27:19,24
29 15:20	absolutely 9:2 27:17	authentic 8:5
<hr/> 3 <hr/>	accept 21:16	authority 15:18
34 23:3	accommodated 8:1	availability 15:16
<hr/> 4 <hr/>	Action 6:17	<hr/> B <hr/>
40 25:8	Actions 4:21 8:15	back 12:19,20
4th 12:7	acts 10:23	basis 14:18 15:3
<hr/> 5 <hr/>	adaptation 23:12	bear 10:15 24:4
5.0 13:22 16:13	add 15:13 18:22	bears 27:20
5.3 16:19	adding 13:23 14:4,14,16,23 15:1,10 17:16 26:17	begin 3:4,21 11:10 20:7,9
5.3.1 16:17	additional 20:20 21:17	beginning 17:13 20:13
5.4.1 16:15	address 9:18 25:17	benefit 4:22,23
5.5 16:20	addressing 22:11	bit 22:22
5.8.1.4 17:1	adjust 26:14	box 22:17
<hr/> 6 <hr/>	Administrative 6:15	bread 22:17
6 26:3	advice 13:18	Brett 11:7,10,13 17:23 18:20
	Advocate 13:16	bring 23:13 24:3
	agenda 11:17	broad 24:1
	agree 23:24	buckles 20:7
		build 8:13
		building 4:23 22:16

The Green Energy Program - July 28, 2021

busy 3:8	consideration 6:10 7:24 9:12 11:5	18:2
<hr/>	considered 10:17 13:15	designated 3:17
C	consistent 15:15 16:22	desired 11:5
<hr/>	consisting 8:15	detailed 13:12
case 5:22 19:15	context 20:17	details 6:16
Center 22:4	contractor 17:3,7	develop 15:14 26:5
challenging 27:5	contractor's 14:6	development 13:2 14:23 17:11 26:3
change 16:18	contractors 14:5	difficult 24:9 27:5
changed 18:9	Control 11:16	difficulties 23:17
Chapter 15:20	Conversion 25:9	Director 22:4
clarifies 13:24	cost 24:7 25:20,22 26:2,8,12,19,24	displayed 18:3
clarify 14:15,24	couple 17:24	Division 16:9
clear 24:3 25:1	court 5:1 8:6 19:6,13 21:18	DNREC 3:12 5:5,23 7:12 9:18,23 18:5,16 23:24
climate 16:10 22:8,11	create 15:18	DNREC's 3:23 6:13 22:7
clock 20:8	created 14:11	DNRECHEARINGCOMMENTS@ DELAWARE.GOV 9:16
close 12:10	crisis 22:11	document 4:6
closes 10:9	critical 22:10	documentation 6:22
closing 21:1	cultural 22:19 23:7	documents 18:4
Coastal 16:10	culture 23:7	door 23:15
College 25:9	current 12:18 14:19 22:15	double-checking 19:4
colleges 26:22	curriculum 15:7 23:2	DP&L 16:3
comma 16:11	cuts 21:15	drafting 13:14
comment 5:13,17 6:5,9 7:8,14,23 8:1 9:7,11,14 11:3,24 19:3 20:20 27:15	<hr/>	<hr/>
comments 6:1,23 7:17 8:17 9:13,23 10:4,15 20:17,23 21:17 24:16 27:18	D	E
Commission 13:17	date 3:9 15:9	E-MAIL 9:15
commitments 27:4	deal 24:7	E-MAILS 7:9
companies 26:4,6	decision 8:23 9:2,5 10:18,20	economic 22:20
competition 23:23	dedicated 7:1	economics 22:24
compiled 7:19	definition 16:1,2,6,7	edit 16:4,13 17:15
completely 16:6	Delaware 13:16 20:1 22:2 25:7	edits 11:21 15:22
conclusion 4:16 5:10	Delaware's 3:13	effect 7:8 12:16
conduct 3:12	Delivery 16:2	Efficiency 14:9
conducted 3:24	demonstrate 25:18 27:3	electronic 4:9 7:9 10:12
Conectiv 16:2	Demonstration 13:1 14:13 17:10	electronically 4:13
connected 3:3	Department 4:11,18 5:23 9:4 10:24 11:15,23 13:15 16:8 18:16,20 25:21 27:1,23	Eligible 15:12
considerable 27:3	Department's 5:11 6:18 8:14 11:9	enable 10:24

The Green Energy Program - July 28, 2021

<p>encourage 6:11</p> <p>end 16:15</p> <p>Endowment 12:24 16:24</p> <p>energy 3:14 7:2 11:14 12:18,23,24 13:8,9,23 14:9 15:6,14 16:10,14,21, 24 22:8,12,15,18 23:1 25:6,8,12,22 27:1</p> <p>engineer 23:4</p> <p>engineering 23:5 25:10</p> <p>engineers 23:5</p> <p>ensure 5:24 7:22</p> <p>ensuring 17:7</p> <p>enter 17:17</p> <p>entered 6:21 18:17</p> <p>entitled 15:11</p> <p>Entry 11:22</p> <p>Environmental 11:16</p> <p>equally 10:17</p> <p>equipment 26:15</p> <p>equity 23:7</p> <p>Evaluation 17:10</p> <p>evening 3:2,11</p> <p>eventually 8:18</p> <p>Excellent 27:11</p> <p>exhibits 6:20 8:17 11:23 17:18,20 18:3,6,16</p> <p>existed 15:9</p> <p>existing 23:17,20</p> <p>exists 15:7</p> <p>expecting 26:5</p> <p>expenditures 14:1,15 15:1</p> <p>exploratory 25:13</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>F-I-R-E-S-T-O-N-E 22:1</p> <p>face-to-face 4:8</p> <p>Facebook 10:1</p> <p>fact 20:2 21:3</p>	<p>Final 12:12</p> <p>Firestone 20:2 21:5,7,21,22,23,24 24:19</p> <p>floor 5:12</p> <p>focus 22:15</p> <p>form 9:14</p> <p>formal 8:5 10:23</p> <p>found 6:14 15:19</p> <p>Foundation 27:2</p> <p>free 17:5,8 26:14</p> <p>front 23:14 24:2</p> <p>full 20:17 21:19</p> <p>function 23:21</p> <p>Fund 3:14 7:2 11:14 12:23 13:8 15:14,16 25:12</p> <p>funds 15:17</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gain 7:4</p> <p>game 25:19</p> <p>Garvin 3:17 8:19 10:17,22</p> <p>gathered 4:1</p> <p>gauge 20:10</p> <p>generally 24:11</p> <p>generate 4:9</p> <p>generated 6:2 18:19</p> <p>Gentlemen 20:4 21:4 27:13</p> <p>germane 7:17</p> <p>Gloria 19:8</p> <p>goals 15:15</p> <p>good 3:1 18:14 19:11 24:6</p> <p>grant 13:11 14:2</p> <p>greatly 24:17</p> <p>Green 3:14 7:2 11:14 12:18,23,24 13:7,9,22 15:13 16:14,21,24 25:11</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>H-E-G-E-D-U-S 25:5</p>	<p>hand 11:7 19:9</p> <p>hands 20:8</p> <p>hear 6:20 21:6,8,10 24:21,23 25:1</p> <p>hearing 3:1,12,18,23,24 4:18,23 5:4, 7 6:6,13 7:1,16,19 8:9,12,16,18 9:15, 19 10:5,23 12:8,10 17:22 18:6,8,13, 18,24 19:3,14,16 21:9,20 24:15,24 27:10</p> <p>hearings 5:23 7:13</p> <p>Hegedus 20:3 24:6,20,22 25:3,4 27:11</p> <p>high 26:1</p> <p>higher 27:7</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>identified 18:17</p> <p>immediately 8:9</p> <p>impediments 22:18</p> <p>important 9:1</p> <p>improvement 23:20</p> <p>improving 23:12</p> <p>incentive 13:11 14:2</p> <p>include 26:22</p> <p>includes 22:7</p> <p>including 6:22 15:5</p> <p>inclusion 6:1</p> <p>incorporated 7:18</p> <p>independently 4:3</p> <p>industry 24:10,12</p> <p>information 3:22 7:4 14:9</p> <p>innovative 25:13</p> <p>input 13:16</p> <p>insert 16:11</p> <p>installing 17:3,6</p> <p>Institute 25:8</p> <p>insuring 17:4</p> <p>intent 20:9</p> <p>interrupt 19:15</p> <p>introductions 11:18</p>
--	---	---

<p>introductory 4:17</p> <p>issue 8:21 23:24</p> <p>issued 9:20</p> <p>issues 24:4</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>J-E-R-E-M-Y 21:24</p> <p>Jeremy 20:2 21:21,22,23</p> <p>join 3:8 4:15</p> <p>joined 3:3</p> <p>July 3:10 12:4,7 15:24</p> <p>justice 23:7</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>labeled 18:5</p> <p>labor 26:15</p> <p>language 13:5,10,13,24 14:4,14,17, 24 15:2,13 16:8,9,16,22 23:17</p> <p>Lastly 10:3</p> <p>Law 6:15</p> <p>Lawyer 22:6</p> <p>lead 22:8</p> <p>legal 12:6</p> <p>level 26:2</p> <p>limited 7:15 26:13</p> <p>link 7:9 9:14</p> <p>Lisa 3:16 11:12 12:9</p> <p>list 4:10 14:7</p> <p>live 5:12 27:15</p> <p>located 26:21</p> <p>locations 4:4</p> <p>long 10:14 27:23</p> <p>lot 26:7</p> <p>loud 25:1</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>made 9:3,5 10:22</p>	<p>Mail 10:12</p> <p>make 19:5 24:3 26:18</p> <p>making 10:18</p> <p>Manager 11:14</p> <p>Marine 22:3</p> <p>markup 22:22</p> <p>matter 4:24 5:8 6:3,24 7:16,18,20 8:23 9:6,21 10:19 11:9 18:19 20:1</p> <p>maximums 14:3</p> <p>mechanism 10:24</p> <p>mechanisms 7:6 10:13</p> <p>media 9:24</p> <p>meet 26:7 27:6</p> <p>meeting 4:8</p> <p>meets 25:14</p> <p>Members 5:13,15 9:9 19:21 27:14</p> <p>mention 22:23</p> <p>mentioned 12:9</p> <p>messaging 10:2</p> <p>minutes 5:20 20:6</p> <p>mission 22:7</p> <p>misstated 13:4</p> <p>moving 22:11</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>National 27:2</p> <p>Natural 11:15</p> <p>non-biased 24:13</p> <p>nonprofit 26:10,20</p> <p>note 9:2,22 10:3</p> <p>noted 7:22</p> <p>notice 12:6</p> <p>notices 9:20</p> <p>November 12:14,17</p> <p>Number 7:14,21 8:4,11 9:1</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>occur 17:20</p>	<p>occurred 12:4</p> <p>offer 5:17 6:1,9 7:8,23 27:15</p> <p>offering 11:8</p> <p>Officer 3:1,18 17:22 18:8,13,24 19:16 21:9,20 24:15,24 27:10</p> <p>Officer's 8:18</p> <p>official 8:7</p> <p>open 5:12 6:5,6 8:2 9:8 27:17</p> <p>opportunity 6:8 9:10 25:12</p> <p>order 5:18 7:22 8:21,22 21:2,4</p> <p>organization 26:21</p> <p>organizations 26:10</p> <p>outdated 13:4,11 14:2</p> <p>overly 13:12</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>parameters 3:23</p> <p>partially 16:3</p> <p>participating 4:2 14:6 17:3,6</p> <p>partners 24:10,12</p> <p>percent 25:23,24 26:12,20,24</p> <p>period 8:1 9:7</p> <p>phase 20:8</p> <p>physical 4:5,6 9:18</p> <p>place 7:12</p> <p>platform 3:11 4:9 9:24</p> <p>point 10:8</p> <p>policy 22:3,8,24</p> <p>portion 19:3</p> <p>Postal 7:10 9:17 10:11</p> <p>posted 5:7 6:24 8:8</p> <p>posting 18:10</p> <p>Power 16:2</p> <p>Powerpoint 4:19 9:19</p> <p>prepare 5:3</p> <p>preparedness 22:9</p> <p>preregistered 5:14,19</p>
--	--	--

The Green Energy Program - July 28, 2021

<p>preregistration 19:22</p> <p>prescriptive 13:13</p> <p>presentation 4:19 5:11 6:19 11:9</p> <p>pretty 20:10 26:11</p> <p>previously 7:21 9:20</p> <p>prior 10:4,18 20:24</p> <p>problem 20:19 24:9</p> <p>proceed 25:2</p> <p>proceeding 6:12 8:6</p> <p>proceedings 3:5,19 10:6 17:19</p> <p>process 14:20 15:4 19:23</p> <p>product 26:6</p> <p>products 23:4,12,20</p> <p>Professor 20:2,3 21:5,7,22 22:1 24:6,16,19,22 25:3 27:11</p> <p>profitable 26:6</p> <p>program 12:18,24 13:1,2,9,23 14:11, 13,23 15:7 16:14,21,24 23:2</p> <p>program's 14:6</p> <p>programs 12:23 14:9 15:12,14,19 25:22</p> <p>project 23:19 26:13</p> <p>projects 23:11</p> <p>promulgated 12:19</p> <p>Promulgation 11:20 12:2</p> <p>proposal 13:15</p> <p>proposals 14:17,19 15:2 27:8</p> <p>proposed 3:13 4:20 6:17 7:2 8:14 9:3 10:21 11:21,22 12:3 13:3,21 15:22 18:5</p> <p>proposing 16:18</p> <p>protocols 3:24 7:11 19:23</p> <p>provide 3:11 23:21 26:14</p> <p>provided 13:18</p> <p>providing 25:20</p> <p>public 3:12,23 5:13,16,23 6:8,13 7:3 8:1 9:7,10,20 11:2,24 12:8 13:16,17 19:22 27:14</p> <p>public's 4:22</p> <p>publication 12:3</p>	<p>published 11:22 12:7,13 15:23</p> <p>purpose 8:12</p> <p>pursuant 5:4 19:23</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>quality 27:7</p> <p>questions 17:24</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>raised 19:9</p> <p>read 17:6,14</p> <p>reads 16:20 17:2,14</p> <p>ready 3:3 6:19 11:11 21:12 25:2</p> <p>reason 20:14 21:13</p> <p>reasons 8:23</p> <p>reassure 20:13</p> <p>receipt 8:10 27:23</p> <p>receive 5:12 6:5 27:18</p> <p>received 5:9 7:15 10:4,7,14 14:18 15:3</p> <p>recipient 25:18 26:18 27:4</p> <p>recognized 5:17</p> <p>reconsider 26:17</p> <p>record 4:24 6:2,4,21 7:19 8:5,13,15 10:9 11:24 12:10 17:18 18:1,15,18,22 21:1 27:17</p> <p>recording 4:13</p> <p>referenced 10:13</p> <p>references 14:2</p> <p>reflect 18:15</p> <p>regard 8:13 9:5 23:1</p> <p>registered 5:16</p> <p>regulate 12:22</p> <p>regulation 11:19 12:1 16:23 22:16</p> <p>regulations 3:14 9:4 11:21,22 12:13,16,19,22 13:3,7,8,21 15:9,23 22:24</p> <p>Regulatory 4:20 6:17 7:3 8:14 10:21</p> <p>remain 6:5,6 7:8,12 8:2 9:8 23:18</p>	<p>27:17</p> <p>remarks 4:17</p> <p>removal 14:5</p> <p>renaming 13:6</p> <p>report 8:18</p> <p>reporter 5:2 19:6,13 21:18</p> <p>reporter's 8:7</p> <p>Request 14:19</p> <p>required 23:19</p> <p>requirement 5:5 26:19</p> <p>requirements 24:8 26:8</p> <p>requires 27:2</p> <p>requiring 25:23</p> <p>research 13:2 14:22 17:11 22:5 23:14 25:6,14,24 26:12,21</p> <p>researchers 26:10</p> <p>resources 11:15 26:7</p> <p>respective 4:3</p> <p>responsible 17:4,7</p> <p>rest 16:23</p> <p>review 8:22</p> <p>reviewed 8:19</p> <p>reviewing 7:5</p> <p>revise 13:4</p> <p>RFP 14:19 15:4</p> <p>rolling 14:18 15:3</p> <p>room 4:2</p> <p>routed 22:13</p> <p>Rule 23:8,10</p> <p>rules 22:21 24:1</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>Sascha 19:11,20</p> <p>Schedule 11:20 12:2</p> <p>schedules 3:8</p> <p>School 22:2</p> <p>Science 22:3,5 23:11,14 24:2,4 27:2</p>
--	--	---

The Green Energy Program - July 28, 2021

<p>Sciences 22:9,13 24:9</p> <p>Scientist 22:6</p> <p>screen 19:20 20:7</p> <p>Secretary 3:17 8:19,20 10:17,22 20:24</p> <p>Secretary's 6:9 7:24 9:11 11:4</p> <p>section 6:15 13:20,22 14:12,21,22 15:6,11,12,20 16:1,13,14,20 17:1,9 18:4 25:17 26:3</p> <p>sentence 16:15 17:2,13 26:18</p> <p>serve 3:18</p> <p>service 7:11 9:17 10:12 13:17 26:14</p> <p>set 3:20,22 16:16,18</p> <p>shading 17:5,8</p> <p>share 24:7 25:20,22 26:2,8,12,19,24</p> <p>sheets 4:6</p> <p>show 23:19</p> <p>sign-in 4:6,10</p> <p>signed 21:4 27:14</p> <p>similar 14:21 23:21</p> <p>sir 24:21 25:1</p> <p>skin 25:19</p> <p>slide 9:19 17:21</p> <p>social 9:24 22:5,9,13,19 23:6,10,14 24:1,3,9</p> <p>solar 15:6 23:1 25:6</p> <p>solely 7:15</p> <p>speak 5:21 20:6,9</p> <p>speaking 20:11</p> <p>specifically 3:22</p> <p>speed 20:11</p> <p>spelled 25:5</p> <p>sponsor 25:13</p> <p>staff 4:1,18 13:15,17</p> <p>stage 3:20</p> <p>standardized 10:2,11</p> <p>start 21:12</p> <p>Starting 11:17</p> <p>State 25:14 26:22</p>	<p>State's 25:15</p> <p>States 7:10 10:11</p> <p>statute 15:8</p> <p>statutory 5:5 8:11 13:23 14:14,24</p> <p>Steven 20:3 24:22 25:3,4</p> <p>strike 16:5</p> <p>striking 13:10,12 14:1,8 16:4 17:15</p> <p>struck 16:4</p> <p>subject 7:16,18 15:16</p> <p>submit 9:10 20:16,19,22</p> <p>submitted 6:23 9:13,23 11:4</p> <p>Subsection 16:17,19</p> <p>substantive 13:20</p> <p>Summary 11:20</p> <p>supplemental 21:16</p> <p>Swan 11:12,13 18:7,11,23</p> <p>swiftly 22:12</p> <p>switch 24:18</p> <p>system 17:5,8 21:11,14</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>taking 3:7 4:15</p> <p>talk 24:6</p> <p>technical 13:18</p> <p>technological 22:20</p> <p>technologies 23:3</p> <p>technology 13:1 14:13 17:10 22:17 23:3 26:2</p> <p>text 10:2</p> <p>thing 24:5</p> <p>things 19:5</p> <p>time 3:7 4:15 5:18,20 18:22 20:11 23:22</p> <p>timer 21:11</p> <p>times 23:4</p> <p>Title 15:20</p> <p>Today 12:8</p> <p>tonight 3:8,21 4:11,14 5:3,15 6:13</p>	<p>8:2,6,16 9:5 10:5,7,23 20:16 27:15</p> <p>tonight's 3:5 6:6 7:16 8:12</p> <p>tough 26:11</p> <p>training 22:6</p> <p>transcript 5:4,6 8:7,16</p> <p>transition 22:12,18</p> <p>turning 4:17</p> <p>Twitter 10:1</p> <p>type 9:24</p> <p>Typically 25:21</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>U.S. 9:17</p> <p>ultimate 10:20</p> <p>ultimately 8:21</p> <p>underlined 16:9,16</p> <p>understand 25:17 26:1</p> <p>United 7:10 10:11</p> <p>universities 26:23</p> <p>university 20:1 22:2,4 25:7 26:9</p> <p>unmute 19:11</p> <p>unmuted 19:14,17</p> <p>updated 12:20</p> <p>utilized 14:10</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>valuable 13:18</p> <p>verbatim 5:3 8:7</p> <p>verifiable 4:12</p> <p>verification 18:1</p> <p>Vest 3:1,16 17:22 18:8,13,24 19:16 21:9,20 24:15,24 27:10</p> <p>vet 11:1</p> <p>virtual 3:11 5:2</p> <p>virtually 4:1,10</p> <p>visit 6:13</p>
---	---	--

W

ways 11:3 26:13

wealth 7:4

web 6:15 7:1 8:9 19:24

Webex 4:8

website 5:7 6:14

Wednesday 3:9

weight 10:16 27:21

Wind 22:5

wishes 5:24 7:23

wonderful 25:12

word 16:11 23:2

words 17:15,16 22:23 23:6

work 24:13

worked 19:10

worries 21:15

writing 21:17

written 6:9 9:22

Y

year 12:5,14,17

years 25:8

Youtube 10:1