



Lisa Vest
Hearing Officer
Delaware Natural Resources and Environmental Control
89 Kings Highway
Dover, DE 19901

December 7, 2015

RE: Proposed Rulemaking for 26 Del. C. § 354(i) & (j)

Dear Ms. Vest,

I am writing on behalf of the Maryland, DC, and Virginia Solar Energy Industries Association (MDV-SEIA) and the Delaware Solar Energy Coalition (DSEC). Our organizations represent the interests of the solar community – from installers to manufacturers and everyone in between. We appreciate the opportunity to comment upon the proposed rules to implement 26 Del. C. § 354(i) & (j).

The solar industry currently provides more than 300 jobs in Delaware, mostly from locally-owned small businesses. Nationally, solar employment is creating jobs 10 times faster than the economy as a whole. Solar jobs have been driven, in part, by the Renewable Energy Portfolio Standard (RPS). Freezing the RPS would significantly hinder industry growth, result in job losses, and decrease taxable revenue. An RPS freeze would also result in the collapse of the Solar Renewable Energy Credit market and financially harm Delawareans who have already invested in solar power systems.

The General Assembly Recently Rejected Freezing the RPS. A bill, HB 247¹, which would have frozen the RPS at 8.7 percent was overwhelmingly voted down in a committee hearing in March 2012. Representative Kowalko pointed out that the RPS was intended to create economies of scale that would instead lower prices over time. “You are proposing a repeal of a goal that will cause a shutdown” of those industries, he told Rep. Lavelle. “We’re not going to have huge savings by stopping this, but quite

¹ HB 247, 146 General Assembly. [http://legis.delaware.gov/LIS/lis146.nsf/vwLegislation/HB+247/\\$file/legis.html?open](http://legis.delaware.gov/LIS/lis146.nsf/vwLegislation/HB+247/$file/legis.html?open)

to the contrary, new costs imposed on ratepayers and industry.”² Those sentiments were echoed by Dr. Tom Earnest, global venture manager at DuPont, which employs 9,500 individuals in the state and has made support of renewables a top company priority. Earnest said that more than \$100 million has been invested in clean-energy industries in Delaware. “Having an inconsistent policy undermines that drive and deepens our reliance on fossil fuels,”³ he said.

Additionally, the State of Delaware RPS allows electricity suppliers to recover dollar for dollar costs incurred in complying with the law through a surcharge on the supply portion of the ratepayer’s electricity bill. This mechanism follows the discussions held and language agreed to during the drafting, proposal, and passing of the bill in 2010. Altering this language or any subset of it, as the draft proposed rule does in subsection 4.4 would significantly diverge from the intent of the original bill⁴.

The regulation, as currently written, vests authority with the Director of Energy and Climate to enact an RPS freeze at their discretion. The code states (emphasis added)⁵:

(i) The State Energy Coordinator in consultation with the Commission, *may* freeze the minimum cumulative solar photovoltaics requirement for regulated utilities if the Delaware Energy Office determines that the total cost of complying with this requirement during a compliance year exceeds 1% of the total retail cost of electricity for retail electricity suppliers during the same compliance year. In the event of a freeze, the minimum cumulative percentage from solar photovoltaics shall remain at the percentage for the year in which the freeze is instituted.

The key word is “may,” which means the State Energy Coordinator - now the Director of Energy & Climate - has reached a threshold where there is a possibility of enacting a freeze. However, implementing a freeze is not mandatory.

² <http://greenmatters.csgeast.org/2012/04/05/amid-rising-challenges-to-state-clean-energy-mandates-delaware-lawmakers-reject-effort-to-freeze-rps/>

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⁴ 4.4 The Division will determine the Total Retail Costs of Electricity as all customer costs for non-exempt load customers for a particular compliance year.

⁵ 26 Del. C. § 354(i) <http://delcode.delaware.gov/title26/c001/sc03a/index.shtml>

Furthermore, when the General Assembly granted the State Energy Coordinator - now Director of Energy and Climate - discretion to enact a freeze, they also granted discretion on the reasons to enact a freeze. When the director considers whether to implement the freeze, it is permissible for the Director to take into account variables beyond just the 1% and 3% ratepayer impact thresholds. Such externalities⁶ may include:

1. Long-term cost benefits to ratepayers not immediately identified;
 2. Healthcare associated costs driven by utilizing cleaner forms of energy;
 3. Ancillary sectors and markets which would see positive economic growth; and
 4. The price suppression effect renewable energy often produces when added to the electricity grid.⁷
- Renewable energy sources provide a tangible benefit to ratepayers since they are a low cost of energy during times of peak demand. The associated price suppression effect is essential to incorporate into any compliance cost calculation.⁸

The RPS impact goes beyond the cost of compliance and an effect on electric bills. It grows the economy by creating markets for business to be created and grown in Delaware. That is borne out in the over 300 solar jobs in Delaware, other renewable energy industries in the state, and the long-term investment opportunities that can grow those jobs numbers. The environmental and health benefits only add to the benefits. When deciding whether to freeze the RPS, all costs and benefits need to be decided. A metric that has the sole criterion of cost of RPS compliance is too narrow to base a decision.

Also, DNREC and the Department of Energy and Climate have the authority to promulgate the rule. The Delaware Department of Natural Resources and Environmental Control and the Delaware Public Service Commission staff filed joint comments before the Delaware Public Service Commission. Both DNREC and the PSC Staff agree that DNREC's Division of Energy and Climate has the authority to promulgate regulations which specify the cost calculations for initiating and deactivating an RPS cost cap freeze. Both agencies agree that the PSC supports the current form of the regulations; the State Energy Coordinator - now Director of Energy and Climate within DNREC - will calculate the total ratepayer cost of compliance and, in consultation with the PSC, may initiate a RPS freeze if certain thresholds are met.

⁶ It has been well established for some time that generating electricity, especially from fossil fuels, creates impacts on third parties other than the producer of the electricity and the consumer of the electricity. These impacts are referred to as externalities and in the case of electricity generation they are mostly negative, having a damaging impact on the parties concerned.

⁷ Adding renewable energy sources to the electricity market reduces, or "suppresses" the price of energy to the consumer. Renewables - whether wind, solar, or other form - operate without fuel costs. Particularly at times of high electricity demand, these low operating cost renewables displace resources with substantially higher operating costs, which in turn lowers the price consumers pay for electricity. This consumer benefit is called the "price suppression effect" and has been studied by PJM, among others.

⁸ GE Energy Consulting, PJM Renewable Integration Study (PRIS) 2014. <http://www.pjm.com/committees-and-groups/subcommittees/irs/pris.aspx>

As the voice of the solar industry and solar community across the region, MDV-SEIA recommends adoption of the proposed rules. They provide for a well-balanced calculation of the cost and benefits of renewable energy, assure ongoing cost protection to the ratepayers, increased skilled employment, and additional reductions in the cost of both renewable and traditional electric power generation by furthering competition.

We appreciate the opportunity to provide comments regarding the cost cap freeze. We would be pleased to provide further comments and answer questions the Commissioners or staff may have. Thank you for the work you do on behalf of the consumers of Delaware and your commitment to public service.

Sincerely,

Omar Terrie

Omar Terrie
Policy Director
MDV-SEIA

CC: Dana Sleeper, Executive Director