**Delaware Public Service Commission Staff's Comments on DNREC's Division of Energy and Climate's *Implementation of Renewable Energy Portfolio Standards Act Cost Cap Provisions* as Proposed in the November 1, 2015 Register of Regulations**

The Delaware Code permits the State Energy Coordinator, in coordination with the Delaware Public Service Commission ("Commission"), to freeze the minimum cumulative solar photovoltaics or minimum cumulative eligible energy resources 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% (minimum cumulative solar photovoltaic requirement) or 3% (minimum cumulative eligible energy resource requirement) of the total retail cost of electricity for retail electricity suppliers during the same compliance year. See 26 *Del. C.* §354(i) and (j).

The Commission, via its Staff, thanks the Division of Energy and Climate for this opportunity to submit comments/suggested edits to these proposed regulations regarding the implementation of the Renewable Energy Portfolio Standards cost caps. The *Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions* ("Cost Cap Rules" or the "Rules") will provide a valuable directive for the calculations to balance the impact of the renewable energy portfolio standards on the ratepayer with the benefits derived from renewable attributes and generation. This rule should define the method of calculating the cost caps that are intended to limit the cost impact of renewables to the ratepayer. The Commission staff is committed to working with the Division of Energy and Climate and all stakeholders to ensure the applicable rules are balanced between the benefits that the Delaware General Assembly finds in renewables and the costs that are paid by the ratepayers.

Background

In July of 2010, the Governor signed into law Senate Substitute No. 1 for Senate Bill No. 119.[1] According to the bill synopsis, the act strengthens the Renewable Energy Portfolio Standards by increasing and extending the required minimum percentage of renewable energy supply. The act also provides consumer protections by limiting rate impacts among other things. The public record of the House of Representatives and the Senate debate shows former Secretary of DNREC, Collin O'Mara, and Senator McDowell were concerned about any unintended consequences of increasing the RPS on ratepayers. In the Senate debate, Senator McDowell[2] spoke of "any time the cost impact of the photovoltaic goes up by 1 percent, the

[1] *See* 77 *Del. Laws*, c. 451.

[2] State of Delaware 145th General Assembly Senate Debate, Senate Substitute No. 1 for Senate Bill No. 119, June 22, 2010, Transcript of an electronic recording.

utility involved can push what we like to call a circuit breaker. In other words, they can suspend the program for that year and simply extend the portfolio forward by a year for their utility." Senator McDowell also stated "we've also built safety valves into this bill. I told you about the circuit breaker that we have put in where any utility who can show that its rates are going up or would go up by 1 percent in the case of …of solar, the retail electric would go up by 1 percent in a year in the cases of solar, or 3 percent in the overall, they could push the circuit breaker and suspend their participation in the program for one year. And so that is a very, very serious … rate production[sic]…ratepayer protection." In the House of Representatives debate,[3] Representative Kovach asked Secretary O'Mara, "This bill, while it has…certainly has laudable goals, has folks concerned, and their concern is mainly over how the increase in requirements for energy companies, the ramping up from the current requirements to increase requirements to buy our energy from renewable sources, which are typically and currently much more expensive, what's that going to do to their bottom line, what's that going to do to their wallet, what's that going to do to their energy bill?" Secretary O'Mara responded that they were trying to put "price protections in place where there currently are none. And we believe that the …on the high-end estimate that the ratepayer impact will be no more than 50 cents a month per, per [sic] residence. By having a circuit breaker , if you will, an actual price control, whereby if the, if the ratepayer impacts exceed a certain amount, that the entire program freezes in place, we can ensure ratepayers that there won't be any adverse impacts from this legislation." Secretary O'Mara explained further, "as soon as there's a 1 percent impact from the solar portion of the bill, the, target level freezes in place for that entire calendar year and then starts up again after it. You'll never have more than a 1 percent impact in any given year for solar" … and "that is actually more stringent and more…has much greater ratepayer protection than New Jersey and Maryland, both of which have a 2 percent carve-out, because we believe that we need to protect ratepayers during this tough economic time."

For the past several years, stakeholders have been trying to apply the legislative language and, where ambiguous, the legislative intent of 26 *Del. C.* §354 (i) and (j), which were adopted in Senate Substitute No. 1 for Senate Bill No. 119, as discussed above, to the drafting of the Cost Cap Rules. The legislature was very concerned with the rate impacts of increasing and extending the required minimum percentage of renewable energy supply.

1. § 354 (i) & (j) Consultation with the Commission.

[3] House of Representatives Debate, Senate Substitute No. 1 for Senate Bill No. 119, June 29, 2010, Transcript of an electronic recording.

The Cost Cap Rules state that the Director shall consult with the "staff of the PSC" concerning freezing or lifting of the freeze. This does not reflect the statutory language, which states "in consultation with the Commission" for freezing or lifting of the freeze. The proposed Rules should be revised to require "consultation with the Commission," not the "staff of the PSC".

2. §354 (i) & (j) Renewable Energy Cost of Compliance

The statutory language concerning the total cost of compliance with the RPS requirement indicates that it must include costs associated with any ratepayer-funded state solar or renewable energy rebate program, REC and SREC purchases and solar alternative compliance and alternative compliance payments. It does not say that these are the only or exclusive costs that can be considered but that these costs should be included. There are administrative costs as well as other costs that Delmarva incurs to administer the renewable programs and these costs have been recovered as part of the RPS annual filings and are part of the RPS rate on ratepayer bills.

The proposed Cost Cap Rules define the Renewable Energy Cost of Compliance as the "total costs expended by the Commission-Regulated Electric Company to achieve the applicable RPS percentage standards for all renewable energy during a respective compliance year." However, this revision to the proposed Rules[4] has deleted all references to the Qualified Fuel Cell Provider Project ("QFCP") that the ratepayers pay for monthly and that fulfills a significant proportion of the RPS. In Docket No. 13-250, DNREC stated that "the QFCP is an integral part of the Renewable Compliance Charge."[5] In this same letter, Mr. Noyes also stated "we should be mindful of the relationship between the QFCP costs and REPSA compliance costs. QFCP costs are incurred to meet a portion of DPL's RPS requirement…."

The QFCP costs are borne by ratepayers and one of the benefits is the fulfillment of a significant portion of the RPS obligation as stated by Mr. Noyes. This cost accounting must be a portion of the Renewable Energy Cost of Compliance. Secretary O'Mara in his testimony[6] referred to the "Qualified Fuel Cell" ability to fulfill the REC and SREC requirements up to a percentage and ratio … "with priority given to minimizing customer impacts, avoiding Alternative Compliance Payments, and ensuring sufficient opportunity for

[4] The QFCP costs were included in the April 2012 and the December 2014 proposed *Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions.*

[5] Letter to Mr. Jason Smith, Case Manager for Docket No. 13-250, from Tom Noyes, Principal Planner for Utility Policy, DNREC Division of Energy & Climate, dated September 8, 2015.

[6] State of Delaware Direct Testimony of Collin O'Mara before the Public Service Commission concerning new tariffs for Qualified Fuel Cell Providers-Renewable Capable, dated August 19, 2011, pages 6-7

in-state renewable energy economic development"[7]. For the 2014 RPS Compliance Year, the QFCP fulfilled approximately 55% of the RECs required for RPS compliance[8], which amounts to a significant proportion. These REC equivalents were not free, and they came with a cost that should be included as the cost of compliance. The argument can be stated another way: based on the Total Retail Sales of the non-exempt customers, Delmarva would have had to procure 776,872 RECs for the respective compliance year. Their ratepayers purchased 427,308 REC equivalents through the QFCP payments. These QFCP costs were included in the Total Retail Cost of Electricity in the spreadsheet the Division of Energy & Climate circulated and should be included as a cost of compliance.

If the legislature did not want the costs of the QFCP included in the cost caps, they could have made that clear in the statute, but they did not. The Delaware General Assembly rather included the language for the ratepayer-funded state renewable energy or solar rebates programs, which would imply that they were including in the renewable cost of compliance, programs for which the ratepayer pays to incentivize renewables that can help fulfil the RPS compliance requirement. Therefore the QFCP costs should be included in the final Rule because the ratepayer pays for this and it is used for RPS compliance.

3. §354 (i) & (j) Total Retail Costs of Electricity

The legislature used the term "total retail cost of electricity" in 26 *Del. C.* § 354 (i) and (j) for the Commission-regulated electric company, but for municipal electric companies and rural electric cooperatives, instead of using "total retail cost of electricity," the legislature used the term "total cost of the purchased power."[9] This distinction implies that "total retail cost of electricity" includes more than "purchased power" or supply. DNREC defines the "Total Retail Costs of Electricity" as the total costs paid by customers of the Commission-Regulated Electric Company for the supply, transmission, distribution and delivery of retail electricity to serve non-exempt customers, including those served by third party suppliers, during the respective compliance year. Staff does not propose a change to this definition.

4. §354 (i) & (j) Externalities as an offset.

The statutory language does not mention external benefits that are to be included in the calculation. The transcripts to the debates indicate that the legislature was concerned about rate impact and what the increase in renewables would mean to a ratepayer's bill, and therefore the cost caps were implemented as a consumer protection against too high of a

[8] Delmarva's 2014-2015 Annual Supplier Renewable Energy Portfolio Standard (RPS) Report Pursuant to Delaware Code Title 26 Subchapter III-A, dated September 30, 2015.
[9] 26 *Del. C.* §363 (f) and (g).

cost. In the respective debates as cited above there was no discussion or consideration of the inclusion of the cost of external benefits in the bill languages. The statute seems to be straight forward; the total cost of compliance to the RPS divided by the total retail cost of electricity or in the case of solar the total cost of solar compliance divided by the total retail cost of electricity to measure rate impact. Therefore sections 5.4-5.8 of the Rules should be stricken.