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Lisa Vest
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State of Delaware – DNREC
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1/27/15

Dear Ms. Vest;

I am submitting additional comments regarding DNREC's **102 Implementation of Renewable Portfolio Standards (RPS) Cost Cap Provisions** printed in the Delaware Register 12/1/14, regarding how the Director of DNREC will determine how a freeze of the accelerating requirement for renewable power will be triggered.

Electricity is a vital commodity for citizens and businesses in Delaware. By law, Delaware electricity retailers must purchase power from renewable resources, such as wind and solar. The required percentage of renewable power has increased each year starting in 2010. Price protections are critical and the Delaware Legislature recognized this need when legislating cost cap protection in 2010. A freeze on the increasing requirements was to be implemented if the purchase of Renewable Energy Credits (REC) caused electric bills to rise over 3%, or Solar Renewable Energy Credits (SREC) raised bills by over 1%.

We must report the cost is greatly exceeding the cost cap for all Delmarva Power customers. The actual costs for the 2013 Compliance Year (CY), June 1, 2013 through May 31, 2014, have not been released. However, in July, 2014, Delmarva Power began showing the cost of the RPS on electric bills. A review of bills for a Standard Offer of Service customer for the period July to December, 2014 showed the RPS was adding over 5% to cost in substantial violation of Delaware Code 26, Section 354 (i & j). The percentage will probably be higher for large industrial companies as the divisor, the cost of electricity, will be lower.

The recently released "Delaware Housing Needs Assessment 2015-2020" describes how about 30,000 Delaware families below the poverty level are paying 50% or more of their income for utility bills. The U.S. Energy Information Agency "Electric Power Monthly" for December, 2014, shows Delaware's industrial electric rates are 25% higher than states we compete with for jobs, such as, Virginia. If we want to create jobs and move people out of poverty we need lower electric rates.

Freezing the RPS would not necessarily end the growth of renewable energy in Delaware. The only viable renewable power source in Delaware is solar power. Onshore wind speeds are insufficient to build economically competitive wind farms in Delaware, and the capital cost of offshore wind is prohibitive. Small scale, distributed solar projects are the only renewable option to create jobs in Delaware. We can continue to fund these projects with the Enhanced Green Energy Fund (EGEF) available from the Sustainable Energy Utility (SEU), along with a more generous standard Green Energy Fund subsidy. Solar installations with existing contracts for SRECs that exceed the amount needed to meet the Minimum Compliance Percentage could also be offered EGEF grants that trade up-front payments for SRECs produced in the future. An



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SREC auction planned for the second quarter of 2015 should be postponed until the need for a freeze for the 2013 Compliance Year is determined.

We have several specific objections to the proposed regulation:

- The freeze should be applied if the total cumulative compliance cost of meeting the RPS goes over 1% or 3% of the retail cost of electricity, rather than 1% or 3% year over year as proposed
- The freeze should be automatic if the caps are exceeded without consideration of un-priced positive or negative metrics not defined in Delaware Code
- The determination to freeze the annual compliance requirement should be decided quickly at the end of a compliance year, not delayed by 255 days, or almost 9 months as proposed.
- Based on the proposed rules, a determination of whether a freeze has been triggered for the 2013 Compliance Year was due from the Director of the Division of Energy & Climate by January 6, 2015. The results for the 2013 Compliance Year should be announced immediately along with a decision to freeze the RPS so the cost premiums to electric customers do not continue to accumulate
- RECs/SRECs, renewable energy supply, or environmental attributes contracted after the cost cap legislation, Senate Substitute 1 for Senate Bill 119, was signed into law July 28, 2010, shall be void if such products cause the 1% or 3% cost cap to be exceeded. After a freeze is determined, the Minimum Compliance Percentage shall be the same as the Compliance Year the cost cap was exceeded. We recommend canceling contracts for Eligible Energy Resources based on the date generation began with the newest generation canceled first.

We are providing additional comment for the five points summarized above. In general, we note the rules appear to be written to provide maximum protection for the suppliers of renewable power. There is little protection for electric ratepayers as shown in the proposed cost cap regulation. In fact, it is difficult to imagine the Director would ever determine a freeze was called for using the proposed rules. We implore DNREC to reconsider the rules to put more emphasis on protecting electric customers.

The freeze should be based on a 3% cumulative cost

Delaware Code Chapter 26, §354 (i) & (j) state a freeze will be triggered if as follows, “the total cost of complying with this requirement during a compliance year exceeds 3% of the total retail cost of electricity for retail electricity suppliers during the same compliance year”. The formula is straightforward and is consistent with the language of Section 4.0 of the proposed regulation. However, DNREC’s proposed “Determination by the Director” in section 5.0 changes the formula to subtract the compliance cost of the previous compliance year. Nothing in the code supports a formula comparing cost to a previous compliance year. Compounding a 3%/year increase from 2010 to 2025 (the peak year in the RPS schedule) results in an allowed electric rate increase of 56%, or \$75/month for a residential customer. This is an absurd interpretation of legislative intent especially given the extensive debate in the following year by both the legislature and the Public Service Commission (PSC) over a, supposed, increase of \$1/month for the Bloom Energy Fuel Cell Project. The freeze should be triggered by the simple formula; RPS compliance cost 2013 CY/total retail cost of electricity 2013 CY.



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DNREC released a summary of an opinion from the Attorney General's Office stating "Interpreting the statute so that a minimum cumulative requirement refers to the cumulative increase from the beginning of the program would lead to an unreasonable or absurd result because at that rate the statutory compliance schedule could not be achieved". The entire basis of the RPS was renewable power sources needed temporary subsidies until they could become competitive with conventional power sources. The support of subsidies was to gradually decline as the cost of renewable power sources such as wind and solar declined. Indeed, the cost of wind and solar power has declined dramatically. The National Renewable Energy Laboratory reports the cost of onshore wind power was cut in half from the early 1990's to about \$75/MWh now, and expects costs to drop another 15% by 2020, and 20% by 2025. Solar power systems that sold for \$8.00/watt as recently as 2007 now sell for \$2.80, and prices are expected to continue to fall. While the cost for renewable power is declining, the cost for conventional power is rising. The Delmarva Power 2014 IRP forecasts power costs will increase 3% a year through 2024, or 33% in total. However, the forecast did not include new plans to increase capacity cost, or take into account the rising cost of carbon dioxide permits. New EPA regulations for ozone, emissions and the Clean Power Plan for existing power plants were also not considered and could potentially double the rate of increase used in the IRP.

In July, 2014, Delmarva began showing the cost of the RPS on electric bills. A review of bills for a Standard Offer of Service customer for the period July to December, 2014 showed the RPS was adding 5.1% to cost (\$39.20/\$762.38 for 4.86 MWh), or \$8.07/MWh. For the same period, the Qualified Fuel Cell Provider (QFCP) tariff added \$4.26/MWh at the equivalent price of \$76.20/REC (\$17,447,853 net cost/228,988 RECs per Delmarva's monthly reports). According to the 2014 IRP, RECs on the spot market sell for \$15. Had Delmarva simply purchased RECs on the spot market instead of the QFCP the RPS cost would have dropped to \$4.65/MWh for this SOS customer, or 2.96%, just below the cost cap. Given the declining cost of wind and solar power, and the increasing cost of conventional power, it appears the 3% cost cap was not unreasonable at all. It may well be the QFCP project, which uses non-renewable natural gas and gets twice the RECs as a wind farm for each MWh of power, will be what puts cost over the 3% cap.

There is no basis for using un-priced factors in establishing a freeze

We find no support in the Delaware Code for using the four points discussed in proposed sections 5.4.1 to 5.4.4 in the determination of whether the Director shall implement a freeze. Also, the four points don't stand up to scrutiny.

The primary purpose of deregulating the electricity supply market in Delaware was to allow market competition to lower prices. Using lower market price for power as a reason not to freeze the RPS requirements (5.5) defies common sense when lower prices are an intended consequence of Delaware energy policy.

Section 5.6 states the Director should consider avoided system cost and price suppression effects attributable to renewable energy. Both of these items are already priced into the market and do not require a separate accounting. Price suppression is widely discussed and is factored into Locational Marginal Prices in the PJM Reliability Pricing Model. Avoided system costs show up in the Capacity Market and Transmission prices shown on electric bills.



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Section 5.7 suggests externality benefits such as avoided health costs presented in Delmarva Power's Integrated Resource Plan (IRP) should be considered to offset the high costs of the RPS. Intervener comments in PSC Docket 12-544, Delmarva Power's 2012 Integrated Resource Plan show a wide gap in the interpretation of Externality cost. DNREC will point to an IRP calculation that considers regulatory changes in air pollution laws that will lead to avoided health costs by 2022 for all emission sources of \$1 to \$2 billion in Delaware. Others questioned those findings. The definitive answer came in the May 14, 2013 IRP workshop where Delmarva Power's consultant, ICF International, submitted a report titled "Air Quality & Health Impacts Assessment for Delmarva Power's 2012 IRP". Large increases in renewable power, and large decreases in coal power were expected between 2013 and 2022 but emissions of air pollutants related to health impacts from those sources showed essentially no change. No change in pollution means no improvement in health impacts. Will DNREC selectively pick data from the IRP or consider all the facts?

Section 5.8 states the job creation attributed to renewable energy development will be considered. In 2014 the only renewable energy jobs related to the RPS program were in solar panel installation as the only solar manufacturer closed in 2013. Eighty percent of the RPS will be met with out-of-state wind farms that add cost without adding Delaware jobs. Nationally, 3,300 MW of solar capacity was installed in 2012 by 89,250 people in the installation business, or 37 KW per employee (according to the Solar Energy Industry Association). The PSC reported 3,500 KW, and Delmarva Power reported 5,500 KW of new solar capacity was installed in Delaware in 2014 creating 95 to 150 jobs. Jobs are also lost because higher electric rates dampen economic development. Delmarva estimates total RPS compliance cost will be \$56.3 million in 2015 CY. A 2012 report calculated each \$147,000 in electric premiums costs one job, so the RPS will cost 383 jobs, at least 2.5 times the number of jobs created. The RPS program cannot be called a job creator for Delaware.

The freeze should be automatic if the caps are exceeded without consideration of un-priced positive or negative metrics not defined in Delaware Code

Determination of a freeze should be immediate, not delayed 9 months

The Energy & Climate Division is to calculate the cost of compliance for each Compliance Year. It is unbelievable DNREC proposes a 9 month time line (Section 8.0) to implement a freeze while electric bill premiums continue to accumulate. This delay could add up to \$1 million a year to electric bills for large industrial customers. The RPS cost is now shown on monthly electric bills. Surely, Delmarva Power can quickly provide the data for a calculation of compliance year cost without the extensive calculations suggested in Section 5.0. The Director should be able to quickly announce a freeze. Challenges to the freeze could occur after the announcement. The proposed time line needs major revision.

Contracts signed after the Cost Cap legislation was approved should be void if they cause the cost cap to be exceeded

Delaware Code Chapter 26, §354 (i) & (j) state "In the event of a freeze, the minimum cumulative percentage from eligible energy resources shall remain at the percentage for the year in which the freeze is instituted". Section (a) provides the annual compliance level. The RPS requirement for CY 2013 was 9.4%



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for RECs and 0.6% for SRECs. The load requirement for the upcoming CY 2015-16 is 6,812,559 MWh according to the 2014 IRP (Table 2, page 65). If the RPS is frozen at CY 2013 levels the RPS requirement would be 40,875 SRECs and 640,381 RECs.

The IRP (Table 3) shows 50,376 SRECs contracted after July, 2010, and an oversupply position of 9,501. RECs contracted from three onshore wind farms total 338,627 with only one of the projects contracted before July, 2010. The 301,754 REC shortfall would be made up with equivalent RECs from the Qualified Fuel Cell Project (QFCP). Every MWh produced by the QFCP counts for two RECs (Del 26, Chapter 1, §353 (1)(a) & (b)). IRP Table 5 projects 228,636 MWh/year, or 457,272 RECs/Year from the QFCP. Delmarva Power will have banked approximately 220,000 excess QFCP RECs by May, 31, 2015 and these should be applied first to CY 2015. Therefore, Delmarva should only buy 118,636 MWh (220,000 RECs/2) from the QFCP, or about 52% of production. If the freeze continues in future Compliance Years, Delmarva would only buy 150,877 MWh/year from the QFCP or 66% of production.

Delaware Code Section §364 (l) protects a QFCP from “future” changes in legislation. It does not protect the QFCP, or solar and wind providers who signed contracts after the cost cap legislation was approved. The Fuel Cell Tariff was written in such a way as to pass essentially all risk from the project onto electric ratepayers. Fortunately for electric ratepayers, the cost cap issue was missed. Delmarva Power is not obligated to pay \$166.87/MWh to Diamond State Generation Partners, the QFCP, for RECs not needed to meet RPS Minimum Compliance Percentage. The same goes for wind farms, or to SREC auction winners in the 2012, 2013, or 2014 auctions for SRECs that would raise electric rates above the 1% or 3% caps. Renewable power generators should be rolled back based on the principal the last to generate, first to be cut.

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