



Delaware Chapter of the Sierra Club

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Lisa Vest
Hearing Officer
DNREC
89 Kings Highway
Dover, DE 19901
Lisa.Vest@state.de.us

CC: Thomas Noyes, DNREC Principal Planner for Utility Policy
Robert Underwood, DNREC Energy Policy Program Administrator

Dear Ms. Vest:

On behalf of the Delaware Chapter of the Sierra Club, I respectfully submit the following comments on the Proposed Rules to Implement RPS Cost Cap Provisions, 26 Del. C. § 354(i) and (j).

26 Del. C. §354(i) states, “The State Energy Coordinator in consultation with the Commission, may freeze the minimum cumulative solar photovoltaics requirement for regulated utilities...”.

26 Del. C. §354(j) states, “The State Energy Coordinator in consultation with the Commission, may freeze the minimum cumulative eligible energy resources requirement for regulated utilities...”.

1.0 Purpose

We would like to point out that the emphasis on “may” in the legislation, not “must” or “shall” institute a freeze. Therefore, we interpret this to mean that a freeze is not mandatory, even if the cost of compliance meets the 1% for solar renewable energy and 3% for renewable energy thresholds.

We are pleased to see that the proposed regulation maintains the intent of previous legislation in stating “the director **may** institute a freeze”. A freeze is not mandatory,

even if the cost of compliance meets the 1% for solar renewable energy and 3% for renewable energy thresholds.

4.0 Calculation of the Cost of Compliance

We support the Division not including the costs of the “Qualified Fuel Cell Provider Projects” (QFCPP) in the calculating the RPS cost cap. The sole utilization of QFCPP is for natural gas-fired Bloom Boxes. We object to any costs utilized for the purchase of fossil fuels or utility incentives for electricity generated from natural gas to be used toward the cost cap of the Renewable Portfolio Standard. The cost burden of financing schemes for Delaware Economic Development Office investment contracts should not provide an opportunity to cap the RPS. Doing so is acting contrary to the purpose and legislative intent of the RPS.

QFCPP is not listed as an “eligible energy resource” in the original RPS Cost Cap statute. Further, the QFCCPP was approved by the Delaware General Assembly a year **after** the RPS Cost Cap legislation, therefore the cost of Bloom fuel cells could not have been intended by the General Assembly to be included in the calculation of the RPS Cost Cap.

We fully support the exclusion of the cost of Bloom Boxes in the RPS Cost of compliance for the following additional reasons:

- Natural gas is a fossil fuel with extensive life-cycle externality costs. Natural gas fuel cells are not by definition renewable, since they rely on a finite and dirty energy resource.
- Bloom fuel cells do no generate Renewable Energy Credits (RECs); rather the energy generated by Bloom can be used to *offset* a portion of Delmarva Power’s REC and/or SREC requirements. (26 Del. C. §353(d))
- QFCPP has its own “cost cap” set by statute and the tariff approved by Delaware Public Service Commission. DNREC does not have the statutory authority to “freeze” the Bloom costs.
- Large industrial energy customers in Delaware have option of “exempting” themselves from the RPS, however there is no option to opt out of the QFCPP charge. This is yet another distinct difference in the way QFCPP are treated from other resources in the RPS, and the way QFCPP operate outside the bounds of RPS compliance costs.

5.0 Determination by the Director

We support the criteria to be utilized by the Director, including market conditions, avoided cost benefits, externality benefits and the economic impacts of the deployment of renewable energy. We strongly support the language in §5.7 pertaining to the externality costs of health and mortality costs and environmental impacts, and the need to rely upon well-documented research.

There are very significant costs of energy generation from fossil fuels that are not included in the end-use consumer cost of electricity. These health, social and

environmental costs are externalized and place a burden on public health and the economy. Therefore the inclusion of avoided externality costs from transitioning to renewable energy is critical to accurately calculating the cost of the RPS.

We support the Division's reliance on the EPA cost of carbon, and believe this number to be conservative. In the future the social cost of carbon is likely to be found to have been much higher than we thought; however we understand the need to rely upon well-documented and conservative estimates for the purpose of getting this regulation finalized.

We would like to see the avoided cost of externalities from all conventional fuels (including coal, natural gas and nuclear) taken into account in calculating the RPS cost of compliance. While we recognize that the externality costs of coal are the most well-understood and documented, it is also important to consider the negative health, economic, societal and environmental externalities of natural gas and nuclear over their entire life cycle (from extraction to waste generated).

We ask that §5.8, which defines economic development benefits of renewable energy, also weigh these benefits against the state and federal subsidies given to fossil fuel distribution companies and electricity generation companies, including subsidies from the Delaware Economic Development Office in the form of offset credits, NOx and pollution credits, and grants/funding for power plants and natural gas pipelines needed for power plants, in addition to other state and federal subsidies and tax credits for fossil fuels.

6.0 Implementation

We support the notifications listed in this section if a freeze is imposed. However, we suggest that the notifications should also include the DNREC Public Notice Email Distribution List.

A public notice of an impending determination, public hearing, and public comment prior to the determination by the Director should be included in the regulations. We ask that this public notice should specify the DNREC Public Notice Email Distribution List. While this is somewhat addressed in §8.0 Administration for annual review, the public process for enacting a freeze should be very clear and included in this section.

7.0 Lifting a Freeze

A process in this section should be included that enables members of the public to petition the Director to lift a freeze. We suggest language that clearly defines the process that members of the public may engage in to lift a freeze, including a number of signatures on a petition to initiate a review process.

The process for lifting a freeze should also include a public notice of a determination by the Director, public hearing and public comment prior to action by the Director.

8.0 Administration

According to the language in this section, the Director must make a determination annually on the cost of compliance and enact a freeze. We would like the public notice of this annual review to be clarified and to include greater opportunity for public involvement. Specifically:

8.3 Within 30 days of receipt of the calculations of the cost of compliance from the Division, the Director shall make a draft determination as described in Section 5.0 of these regulations, publicly notice the draft determination through the DNREC Public Notice Email Distribution List, and present to the Registrar for publication.

8.4 The public will have 15 30 days from the publication and public notice of the Director's draft determination to offer comment and request a public hearing. The Director may grant a public hearing or alter or amend the determination based on review of the public comments.

8.5 The Director shall make a final determination and present it to the Registrar for publication and publicly notice via the DNREC Public Notice Email Distribution List within 15 days of receipt of public comments. The determination shall be effective upon its publication.

8.6 Decisions of the Director may be appealed via the Environmental Appeals Board within 60 days of publication and public notice of the final determination.

Thank you for the opportunity to comment on these important regulations.

Stephanie Herron
Volunteer & Outreach Coordinator
Delaware Chapter of the Sierra Club