

## **PROPOSED RULES TO IMPLEMENT 26 Del. C. § 354(i) & (j)**

### **1.0 PURPOSE**

These rules govern how the State Energy Coordinator and the State Energy Office will administer their obligations under 26 Del. C. § 354(i) & (j). Those statutory subsections direct the State Energy Coordinator to impose a “freeze” on the applicable percentages for solar and renewable energy credits (26 Del. C. § 354(a)) for any compliance year when, for the same compliance year, the costs of complying with the solar energy or renewable energy percentages exceed 3% (renewable) or 1% (solar) of retail suppliers' total costs of electric supply.

### **2.0 APPLICATION**

2.1 These rules shall govern only in the case of retail electric supply delivered over the distribution facilities of an electric distribution utility regulated by the Public Service Commission. These regulations shall not apply to electric supply provided by either (a) an exempted municipal electric company or a municipal utility (as set forth in 26 Del. C. § 363) or (b) an exempted rural electric cooperative (as set forth in 26 Del. C. § 363).

2.2 These rules will be applied beginning in compliance year 2011, as defined in 26 Del. C. §§ 352(3) and 354(a).

### **3.0 DEFINITIONS**

As used in these rules:

3.1 “Alternative compliance payment amounts” mean the dollar amounts expended for alternative compliance payments (as defined and set by 26 Del. C. §§ 352(1) and 358(d)).

3.2 “Average QFCP offset cost” means the dollar amount to be attributed to the cost of a Mwh of output from a QFCP during a compliance year. The average QFCP offset cost will be calculated under section 7.0 of these rules.

3.3 “Compliance year” has the same meaning as described and set by 26 Del. C. §§ 352(3) and 354(a) & (h).

3.4 “DP&L” means Delmarva Power & Light Company.

3.5 “End-use customer” means a person or entity to whom electrical energy at retail prices is delivered over the distribution facilities of an electric distribution utility regulated by the PSC.

3.6 “PJM” or “PJM interconnection” means the regional transmission organization (RTO) that coordinates the movement of wholesale electricity in

the PJM region, or its successors at law.

3.7 "PSC" means the Public Service Commission.

3.8 "Qualified fuel cell project" or "QFCP" shall mean an entity defined by 26 Del. C. § 352(17) and authorized to receive surcharge payments paid by customers of DP&L under 26 Del. C. § 364(d)(1)f., g., j., & k. and a tariff approved by the PSC.

3.9 "REC costs of compliance" or "RECcosts" means the total costs expended by retail electric suppliers or electric distribution utilities to achieve the applicable RPS percentage standards for RECs during a particular compliance year. The RECcosts and total RECcosts shall be calculated in accord with section 6.0 of these rules.

3.10 "REC offset hours" and "SREC offset hours" mean the Mwh of output from a QFCP that is utilized under 26 Del. C. § 353(d) to offset or fulfill the number of RECs and SRECs that might otherwise be required to be surrendered to meet REC and SREC percentage requirements in a compliance year.

3.11 "REC percentage requirements" and "SREC percentage requirements" mean the renewable energy portfolio requirements for each compliance year as set forth in 26 Del. C. § 354(a).

3.12 "Renewable Energy Credit" or "REC" means the instrument defined by 26 Del. C. § 352(18) utilized to demonstrate compliance with the percentage requirements set forth in 26 Del. C. § 354(a).

3.13 "Renewable Energy Credit payment amounts" or "REC payment amounts" means the dollar amounts expended to produce or procure RECs that are utilized to meet REC percentage requirements in a particular compliance year.

3.14 "Retail electricity supplier" means a person or entity that sells electrical energy to end-use customers delivered over the distribution facilities of an electric distribution utility regulated by the PSC. The term includes non-regulated power producers and electric utility distribution utilities companies supplying standard offer or similar default electric supply service.

3.15 "RPS load" means the total volume of electricity sold or delivered during a compliance year, excluding sales or deliveries made to any industrial customer (as designated by the PSC) with a peak demand in excess of 1,500 kilowatts.

3.16 "Solar alternative compliance payment amounts" mean the dollar amounts expended for alternative solar compliance payments (as defined and set by 26 Del. C. §§ 352(24) and 358(e)).

3.17 "Solar Renewable Energy Credit" or "SREC" means the instrument defined by 26 Del. C. § 352(25) utilized to demonstrate compliance with the percentage requirements set forth in 26 Del. C. § 354(a).

3.18 "Solar Renewable Energy Credit amounts" or "SREC payment amounts" mean the dollar amounts expended to produce or procure SRECs that are utilized to meet SREC percentage requirements in a particular compliance year.

3.19 "SREC costs of compliance" or "SRECcosts" means the total costs expended by retail electric suppliers or electric distribution utilities to achieve the applicable RPS percentage standards for SRECs during a particular compliance year. The SRECcost and total SRECcosts shall be calculated in accord with section 5.0 of these rules.

3.20 "Surcharge payments" means the dollar amounts (whether positive or negative) paid to, or received by, customers of DP&L from a QFCP and DP&L under 26 Del. C. § 364(d)(1) and an implementing tariff approved by the PSC.

3.21 "Total Retail Costs of Electricity" or "TCElec" means the total costs expended by retail electric suppliers to produce or purchase wholesale energy to serve the RPS load during a particular compliance year. The TRElec shall be calculated in accord with section 4.0 of these rules.

#### **4.0 TOTAL RETAIL COSTS OF ELECTRICITY ("TCElec")**

4.1 "Total Retail Costs of Electricity" will be computed by aggregating the total costs expended by all retail suppliers to produce or purchase, at wholesale, electric energy or power to serve the aggregated RPS load during a particular compliance year. Such costs shall include:

- a) the costs incurred for the production or procurement (by contract or by purchase in any wholesale market) of wholesale energy that is then used to serve RPS load;
- b) the costs of any capacity, or similar, charges imposed on wholesale transactions by PJM interconnection related to serving the RPS load; and
- c) any transmission costs for delivery of the wholesale energy used to serve the RPS load.

4.2 The following costs shall *not* be included in TCElec:

- a) retail distribution or administrative costs or charges;
- b) any costs expended to procure or acquire RECs or SRECs for the RPS load incurred in conjunction with the acquisition of wholesale energy;
- c) any costs expended to procure RECs or SRECs as stand-alone products; and
- d) any surcharge payments related to a QFCP.

#### **5.0 SREC COSTS OF COMPLIANCE ("SRECcosts")**

5.1 "SREC costs of Compliance" are the dollar amounts expended by a retail electric

supplier or an electric distribution utility to achieve the applicable SREC percentage requirements for a particular compliance year. The costs of compliance shall include:

a) all amounts paid by end-use customers during the compliance year to the Green Energy Fund under the provisions of 26 Del. C. § 1014(a);

b) all amounts expended for producing or acquiring SRECS that were retired to meet the compliance year's SREC percentage requirements;

c) all solar alternative compliance payment amounts paid in order to meet the compliance year's SREC percentage requirements; and

d) the dollar amount derived from multiplying the average QFCP offset cost amount for the compliance year (as calculated under section 7.1) by the total number of SREC offset hours used to offset or fulfill the SREC percentage requirements in the compliance year.

5.2 The “total SREC costs of compliance” will be computed by aggregating the SREC costs of compliance of all retail suppliers and electric distribution utilities for a particular compliance year.

## **6.0 REC COSTS OF COMPLIANCE (“RECcosts”)**

6.1 “REC costs of Compliance” are the dollar amounts expended by a retail electric supplier or an electric distribution utility to achieve the applicable REC percentage requirements for a particular compliance year. The costs of compliance shall include:

a) all amounts paid by end-user customers during the compliance year to the Green Energy Fund under the provisions of 26 Del. C. § 1014(a);

b) all amounts expended for producing or acquiring SRECS and RECs that were retired to meet the compliance year's SREC and REC percentage requirements;

c) all solar alternative compliance payment amounts and alternative compliance payment amounts paid in order to meet the compliance year's SREC and REC percentage requirements; and

d) the dollar amount derived from multiplying the average QFCP offset cost amount for the compliance year (as calculated under section 7.1) by the total number of SREC and REC offset hours used to offset or fulfill the SREC and REC percentage requirements in the compliance year.

6.2 The “total REC costs of compliance” will be computed by aggregating the REC costs of compliance of all retail suppliers and electric distribution utilities for a particular compliance year.

## **7.0 QFCP OUTPUT CALCULATIONS**

7.1 The “average QFCP offset cost” will be calculated under the following formula:

*total surcharge payments made by DP&L customers in the compliance year*

*divided by*

*total number of Mwh of output by QFCP (either actual or deemed under 26 Del. C. § 364(d)(1)m. and any implementing tariff) during the compliance year.*

7.2 To calculate costs for SREC costs, the average QFCP offset cost shall be multiplied by the number of Mwh of QFCP output utilized as SREC offset hours during the compliance year.

7.3 To calculate costs for REC costs, the average QFCP offset cost shall be multiplied by the number of Mwh of QFCP output utilized as REC and SREC offset hours during the compliance year.

## 8.0 THRESHOLDS

8.1 The SREC threshold under 26 Del. C. § 354(i) will be computed as follows:

*SREC threshold (in dollars) = .01 x Total Retail Costs of Electricity (in dollars).*

8.2 The REC threshold under 26 Del. C. § 354(j) will be computed as follows:

*REC threshold (in dollars) = .03 x Total Retail Costs of Electricity (in dollars).*

## 9.0 FREEZES

9.1 **SREC.** If for the compliance year, the total SREC compliance costs are greater than the SREC threshold, then a freeze of the SREC percentage requirements shall be imposed for the succeeding compliance year.

9.2 **REC.** If for the compliance year, the total REC compliance costs are greater than the REC threshold, then a freeze of the REC percentage requirements shall be imposed for the succeeding compliance year.

9.3 If a freeze is imposed under sections 9.1 or 9.2 above, then the SREC or REC percentage requirement for the compliance year shall apply in the following compliance year. In any succeeding compliance year, the freeze shall be lifted if:

a) the total SREC compliance costs in that succeeding compliance year are equal to or below the SREC threshold for that succeeding compliance year; or

b) the total REC compliance costs in that succeeding compliance year are equal to or below exceed the REC threshold for that succeeding compliance year.

9.4 If the freeze is lifted in any succeeding year, then in the next succeeding year the SREC or REC percentage requirements shall revert to the requirements for that compliance year as set forth in 26 Del. C. § 354(a).

## 10.0 ADMINISTRATION

10.1 Within 120 days after the end of each compliance year, each retail supplier and electric distribution company shall submit to the State Energy Office in writing and electronically the following information for the applicable compliance year:

a) the RECCosts for that retail supplier or electric distribution utility for that compliance year;

b) the SREC costs for that retail supplier or electric distribution company for that compliance year; and

c) the retail costs of electricity for that retail supplier or electric distribution company for that compliance year.

10.2 Within 90 days after the end of each compliance year, DP&L shall provide to the State Energy Office in writing and electronically the following information for the compliance year:

a) the total Mwh of output (either actual or deemed) produced by the QFCP during the compliance year;

b) the total amount of surcharge payments paid by DP&L customers during the compliance year;

c) DP&L's calculation of the average QFCP offset cost for the the compliance year under section 7.0; and

d) the number of output hours that DP&L would allocate to SREC and REC offset hours for the compliance year.

10.3 If a freeze is required under section 9.0, the State Energy Coordinator will promptly declare the freeze and notify, electronically and by mail, all retail electric suppliers and electric distribution utilities that filed reports under section 10.1 and 10.2 above. The Coordinator will also (a) provide notice of the freeze to the PSC and (b) publish notice of such freeze in the next appropriate issue of the Delaware Register of Regulations. In the case of a freeze being lifted, the State Energy Coordinator will provide similar notice.