

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION)
OF DELMARVA POWER & LIGHT)
COMPANY FOR APPROVAL OF AN)
AGREEMENT WITH WASHINGTON GAS)
ENERGY SERVICES, INC. FOR THE)
SOLAR RENEWABLE ENERGY CREDITS)
(Filed March 11, 2013)

PSC DOCKET NO. 13-299 DELAWARE P.S.C.

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**OPPOSITION OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE
TO THE APPLICATION OF DELMARVA POWER & LIGHT COMPANY FOR
APPROVAL OF AN AGREEMENT TO PURCHASE SOLAR RENEWABLE ENERGY
CREDITS FROM WASHINGTON GAS ENERGY SERVICES, INC.**

Pursuant to Order No. 8325 dated March 19, 2013, the Attorney General of the State of Delaware, by and through his designee James Adams, Deputy State Solicitor, submits this opposition to the Application of Delmarva Power & Light Company ("Delmarva") for Approval of an Agreement to Purchase Solar Renewable Energy Credits ("SRECs") from Washington Gas Energy Services, Inc. ("WGES").

The Attorney General will not reiterate the history of the Renewable Energy Portfolio Standards Act ("REPSA") or the various amendments thereto. For purposes of this opposition, however, two amendments are important: the 2010 amendment that created the Renewable Energy Task Force (the "RETF") and instructed the RETF to "mak[e] recommendations about the establishment of trading mechanisms and other structures to support the growth of renewable energy markets in Delaware;" and the 2011 amendment that removed from third party energy suppliers the responsibility for procuring the renewable energy credits ("RECs") and SRECs necessary to meet their REPSA obligations and transferred that responsibility to Delmarva. 26 *Del. C.* §§353(c), 360(d). Consequently, the Attorney General provides this brief background in order to place the proposed Agreement in context.

A. BACKGROUND

1. The 2010 Amendments and the RETF

In 2010, the General Assembly amended the REPSA to create the RETF and instructed it to make recommendations about and report on, *inter alia*, the following:

- Establishing a balanced market mechanism for Renewable Energy Credit (“REC”) and Solar Renewable Energy Credit (“SREC”) trading;
- Establishing REC and SREC aggregation mechanisms and other devices to encourage the deployment of solar energy technologies in Delaware with the least impact on retail electricity suppliers, municipal electric companies and rural electric cooperatives;
- Minimizing REPSA compliance costs;
- Establishing revenue certainty for appropriate investment in solar renewable energy technologies, including consideration of long-term contracts and auction mechanisms;
- Establishing mechanisms to maximize in-state solar renewable energy generation and local manufacturing; and
- Ensuring that residential, commercial and utility scale PV and solar thermal systems of various sizes were financially viable and cost-effective instruments in Delaware.

Id. §§360(d)(2), (3).

Pursuant to this instruction, the RETF drafted and proposed for the Public Service Commission’s (the “Commission”) consideration a pilot program to encourage the growth of the solar industry in Delaware. The Pilot Program consisted of four tiers: Tier 1 for projects of up to 50 kW; Tier 2A for projects between 50 kW and 250 kW; Tier 2B for projects between 250 kW and 500 kW; Tier 3 for projects between 500 kW and 2 MW; and Tier 4 for projects greater than 2 MW. The contracts were for 20 years: for Tiers 1 and 2A, the prices per SREC were administratively set at \$260 and \$240, respectively for the first ten years. Tiers 3 and 4 would be competitively bid and the lowest qualified bids would be selected. The price per SREC for the

last ten years for all contracts would be \$50. (Docket No. 11-399, Order No. 8093 dated December 20, 2011, pp. 3-10).

Tier	System Size	# of SRECs/Year	\$ Price for 1st 10 Years	% of Total SRECs
1	≤ 50 kW	2,972	\$260	25.9%
2A	> 50 kW to 250 kW	2,000	\$240	17.4%
2B	> 250 kW to 500 kW	2,000	Lowest qualified bids	17.4%
3	> 500 kW to 2 MW	4,500	Lowest qualified bids	39.2%
4	> 2 MW	0	Lowest qualified bids	0.0%
TOTAL		11,472		100.0%

The Commission approved the proposed pilot program in Order No. 8093.

2. The 2011 Amendments and the Change in SREC Procurement Requirements

Prior to 2011, the REPSA provided that all retail electric suppliers were responsible for procuring the SRECs necessary for compliance with respect to all energy delivered to Delmarva's distribution customers. In order to meet its REPSA requirements, WGES invested approximately \$7.2 million in developing and constructing over 1.8 MW of solar power at two Delaware locations: Wilmington Friends School in Wilmington and the Perdue facility in Bridgeville. (Warren Testimony, pages 2-3). According to WGES, the two projects were sized such that the output would approximately match WGES' near-term SREC obligations. *Id.* at 3. WGES claims to be the only third-party supplier in Delaware that chose to construct solar projects in Delaware to meet its SREC compliance requirements. *Id.*

In 2011, however, the General Assembly amended the REPSA to require Delmarva to assume the obligation of acquiring all SRECs necessary for compliance with respect to all energy delivered to Delmarva's distribution customers.¹ The General Assembly recognized that changing the party responsible for procuring RECs and CRECs might affect the third-party

¹The amendments were part of a comprehensive State economic development and renewable energy program in which Bloom Energy Corporation would construct new natural gas-powered fuel cell baseload generation in Newark, Delaware.

suppliers, their customers, the Commission-regulated electric company (that is, Delmarva) and its customers. Consequently, new REPSA section 353(c) instructed the Commission to develop rules to transition the REC and SREC procurement responsibility to Delmarva that would:

(1) ... adequately protect electric suppliers that entered into contracts to provide RECs and SRECs to retail electric customers prior to the transition of REC and SREC procurement responsibility under § 354(e) of this title;

(2) ... adequately protect against overpayment of the cost of RPS obligations for customers of electric suppliers who are parties to supply contracts that were entered into prior to the transition of REC and SREC procurement responsibility under § 354(e) of this title; and

(3) ... adequately protect commission-regulated electric suppliers and customers thereof from having to incur alternative compliance payments or other costs that would have been avoided but for the failure of an electric supplier to continue retiring RECs or SRECs associated with its retail supply contracts existing at the time of the transition of REC and SREC procurement responsibility under § 354(e) of this title. To the extent such protection involves a temporary reduction to the RPS obligation or to the price of an alternative compliance payment required of a commission-regulated electric supplier made necessary by the failure described above, the Commission is authorized to make the necessary temporary reductions notwithstanding the RPS obligations otherwise required by this chapter.

26 Del. C. §353(c).

The Commission Staff conducted workshops to discuss proposed amendments to its electric supplier rules to implement the REPSA amendments, and published amended rules for the Commission's consideration. WGES contended that the proposed amended rules did not satisfy new Section 353(c)(1)'s mandate to adequately protect retail electric suppliers that entered into contracts to provide RECs and SRECs to retail electric customers prior to the General Assembly's transition of that responsibility to Delmarva, and that the only way to ensure that WGES would be adequately protected was for the rules to require Delmarva to purchase

WGES's SRECs for the average price that Delmarva paid for all other SRECs it procured for the compliance year during which the SRECs were transferred. *See* Order No. 8150 dated May 12, 2012 in PSC Regulation Docket No. 56, ¶19. WGES further argued that the proposed amended rules would violate the Contract Clause of the United States Constitution because they would impair WGES' contracts with Perdue and Wilmington Friends. *Id.* at ¶21.

After reviewing WGES' and Commission Staff counsel's written submissions and after hearing oral argument from WGES, Commission Staff, Delmarva and the Public Advocate, the Commission rejected WGES' contentions. *See id.* The rules that the Commission ultimately adopted authorized retail electric suppliers like WGES to offer SRECs to Delmarva, but did not obligate Delmarva to purchase them. *See 26 Del. Admin. C. §3008-3.2.3.4.*

3. The First SREC Pilot Program Auction

The first SREC pilot program auction took place in April 2012. The lowest winning Tier 2A bid was \$120/SREC and the highest winning bid was \$139.48/SREC, for a weighted average winning bid of \$131.13/SREC. The lowest winning Tier 3 bid was \$148/SREC and the highest winning bid was \$175.57/SREC, for a weighted average winning bid of \$154.35/SREC. *Evaluation of the Delaware SREC Pilot Prepared for the Delaware Public Service Commission*, Meister Consulting Group, August 3, 2012, at 14, 17. Notably, every tier was oversubscribed. *Id.* at 14, 17. The Attorney General understands that WGES bid its SRECs into that auction but its bids were not selected – probably because they were too high compared to the other bids.

4. Modification of the SREC Pilot Program for Year 2

On January 17, 2013, by Order No. 8281, the Commission approved the continuation of the SREC pilot program,² but made three significant modifications. First, it eliminated

² The Commission entered a minute order approving the program as modified and stating that it would issue a formal opinion supporting the Order at a later date. Order No. 8281 dated January 17, 2013 at Ordering ¶5.

administratively-set prices; all tiers will now be competitively bid. Second, successful bidders will receive the bid price in only the first seven years of the 10-year contract rather than the first ten years; they will receive \$50 per SREC for the last 13 years of their contracts. Last, and perhaps most important for ratepayers, Delmarva will not be required to satisfy its SREC need only from the SREC auction; the program specifically contemplates procuring SRECs in the spot market. See Docket No. 11-526, *Staff Report on 2013 Program for the Procurement of Solar Renewable Energy Credits*, pp. 10-13 (Exhibit A). Bidding began March 25, 2013 and will continue through April 12, 2013.

5. The Spot Market for SRECs

The RETF's recommendation, adopted by the Commission, that Delmarva procure its SRECs through an annual auction³ has resulted in Delmarva distribution customers paying higher prices for their electric supply. This is because the spot market price for SRECs has tanked over the last four years. The following chart shows the steady decline in spot market SREC prices in Delaware:

Month & Year	Price
Nov. 2008	\$270.00
Dec. 2008	\$215.00
Jan. 2009	\$240.00
Feb. 2009	\$215.00
Mar. 2009	\$225.00
April 2009	\$215.00
May 2009	\$250.00
June 2009	\$235.00
July 2009	\$215.00
Aug. 2009	\$215.00
Sept. 2009	\$200.00
Oct. 2009	\$215.00
Nov. 2009	\$200.00

³ The Attorney General has no reason to believe at this juncture that the Commission will end the pilot program at any time in the near future.

Dec. 2009	\$200.00
Jan. 2010	\$215.00
Feb. 2010	\$215.00
March 2010	\$215.00
April 2010	\$215.00
May 2010	\$225.00
June 2010	\$200.00
July 2010	\$200.00
Aug. 2010	\$200.00
Sept. 2010	\$137.50
Oct. 2010	\$200.00
Nov. 2010	\$215.00
Dec. 2010	\$224.99
Jan. 2011	\$115.00
Feb. 2011	\$185.00
March 2011	\$165.00
April 2011	\$100.00
May 2011	\$90.00
June 2011	\$80.00
July 2011	\$84.00
Aug. 2011	\$40.06
Sept. 2011	\$10.01
Oct. 2011	\$50.00
Nov. 2011	\$35.00
Dec. 2011	\$30.00
Jan. 2012	\$25.00
Feb. 2012	\$9.99
March 2012	\$10.00
April 2012	\$20.00
May 2012	\$20.00
June 2012	\$25.00
July 2012	\$10.00
Aug. 2012	\$10.00
Sept. 2012	\$28.00
Oct. 2012	\$17.00
Nov. 2012	\$15.00
Dec. 2012	\$8.99
Jan. 2013	\$8.00
Feb. 2013	\$10.00
March 2013	\$10.00

<https://gats.pjm-eis.com/myModule/rpt/myrpt.asp?5=502> (as of March 26, 2013) (Exhibit B).

As shown, the spot market for SRECs declined below \$200/SREC for good in January 2011, and

declined below \$100/SREC in May 2011. SRECs can be obtained now for as little as \$10 each on the spot market.

6. The Delmarva/WGES Contract

Following the Commission's rejection of WGES' arguments and its approval of the amended REPSA rules, Delmarva and WGES "began to discuss the possibility" of Delmarva purchasing WGES's SRECs. They ultimately reached the agreement now before the Commission, which is claimed to be "fair to Delmarva and its customers, fair to WGES, and ... in the public interest." (Application at ¶8).

The price that Delmarva will pay WGES in the first ten years for the SRECs being purchased is the weighted average price awarded to winners of the 2012 SREC auction in the Tier 2B and Tier 3 categories - \$131.13/SREC for the Wilmington Friends School SRECs and \$154.35/SREC for the Perdue SRECs. *Id.* ¶14(a), (b); Swink Direct Testimony at 3.⁴ WGES will receive \$50/SREC for all SRECs in each of the final ten contract years. Agreement, ¶14(c).

According to the Application and the testimony of WGES President Harry A. Warren, Jr. and Pepco Holdings, Inc. Manager of Energy Transactions William R. Swink, the Agreement includes provisions that "ensure its fairness for ratepayers, and ensures [sic] that WGES bears an appropriate level of risk" *Id.* ¶11. Those provisions are:

- The prices are "in line with the competitive prices achieved in the 2012 SREC auction" and do not include administratively-set prices (*id.*);
- Delmarva will purchase only the SRECs that correspond to the SREC requirements associated with WGES' actual load as it may exist over time, but will never exceed 2,440 SRECs per year (*id.*); and
- If WGES' sales volume decreases below the volume for which the SRECs are needed, Delmarva's purchase obligation will decrease correspondingly (*id.*).

⁴ Mr. Swink's direct testimony cites the Tier 3 weighted average price as \$145.45; however, the Application and the Meister Consulting Group report presented to the Commission both state the Tier 3 price as \$145.35.

B. ARGUMENT

1. The Commission Should Reject the Application.

The Attorney General is sympathetic to the unfortunate position in which WGES has found itself. It evaluated its Delaware retail electric load and projected its future need for SRECs, and then constructed solar facilities in Delaware to generate SRECs to help it meet its statutory compliance requirements. It was doing what it considered to be advantageous for its business, and what was advantageous for its business also had the salutary effect of contributing to the Delaware economy. But after WGES made this investment, the General Assembly pulled the rug out from under it by transferring the procurement responsibility to Delmarva. Suddenly WGES had thousands of SRECs that cost it a substantial amount to obtain and that it cannot sell on the spot market at anywhere near a break-even point.

But the Attorney General cannot allow his sympathy for WGES' predicament to override his overarching duty to advocate for the lowest reasonable rates consistent with the provision of adequate utility service and an equitable distribution of rates among all rate classes. *See 29 Del. C. §8716(d)(2)*. Despite Delmarva's and WGES' contentions that the prices are "fair" and that approval of the Agreement is in the public interest, the Attorney General cannot reach the same conclusion.

a. The Contract Price Is Unfair to Delmarva Distribution Customers.

First, as discussed above, SRECs can be purchased on the spot market for as little as \$10.00 as of March 26, 2013. Delmarva will purchase 298 SRECs from the Wilmington Friends facility at \$131.13/SREC, and will purchase the remaining 2,142 SRECs from the Bridgeville facility at \$154.35/SREC. (Swink Direct Testimony at 3). Here is some simple math that

demonstrates that - at least based on recent spot market prices – this Agreement is *not fair to ratepayers*.

1. *Wilmington Friends*
First 10 Years

Current spot market price = \$10.00/SREC
298 SRECs x \$10.00 = \$2,980.00
Contract price for 298 SRECs = \$131.13
298 SRECs x \$131.13 = \$39,076.74
Difference between spot market and contract price: \$36,096.74

Second 10 Years (assuming same spot market price)

Contract price for 298 SRECs = \$50.00
298 SRECs x \$50.00 = \$14,900
Difference between spot market and contract price: \$11,920.00

2. *Perdue*
First 10 Years

Current spot market price = \$10.00/SREC
2,142 SRECs x \$10.00 = \$21,420.00
Contract price for 2,142 SRECs = \$154.35
2,142 SRECs x \$154.35 = \$330,617.70
Difference between spot market and contract price: \$309,919.77

Second 10 Years

Contract price for 2,142 SRECs = \$50.00
2,142 SRECs x \$50.00 = \$107,100.00
Difference between spot market and contract price: \$85,680.00

Total additional money to be paid by Delmarva customers annually in the first ten years of the Agreement if it is approved: \$345,294.44

Total additional money to be paid by Delmarva customers annually in the second ten years of the Agreement if it is approved: \$97,600.00

Amount to be paid by Delmarva customers over and above the spot market price:

Years 1-10: \$3,452,944.40
Years 11-20: \$ 976,000.00

GRAND TOTAL: \$4,428,944.40

The Attorney General understands that the spot market price will fluctuate, and that it will not always be \$10.00. But it is undeniable that for almost two years, the spot market SREC price has been less than the price Delmarva will pay for WGES' SRECs under the proposed Agreement. Even if the spot market price should dramatically increase to, say, the \$100.00 level that it reached in April 2011, Delmarva distribution customers will *still* be paying more for SRECs as a result of this Agreement than they would if Delmarva purchased the SRECs it needed on the spot market. And spot market prices should remain quite low as long as the supply of SRECs exceeds demand.⁵ Keeping in mind that successful pilot program Tier 1 and 2A SREC providers are receiving administratively-set SREC prices of \$260 and \$240 for the first ten years of their contracts, one can see that Delaware ratepayers are paying a significant amount for Delmarva to comply with its SREC procurement responsibilities. The Attorney General is not questioning the General Assembly's decisions with respect to renewable energy; he is simply noting that those decisions have a noticeable effect on the prices that Delmarva consumers pay for their electric supply, and every incremental increase in the cost of energy necessarily increases the burden on Delmarva's distribution customers.

In light of this, the Attorney General does not understand how requiring Delmarva distribution customers to pay more than they would if Delmarva purchased the necessary SRECs on the spot market is either fair to Delmarva distribution customers or in the public interest.

b. The Contract Is Unfair to All 2012 SREC Auction Bidders.

Second, the proposed Agreement treats WGES as if it were a successful bidder in the 2012 auction when it was not. How is this fair to other unsuccessful bidders? If the Agreement is approved, what signal does that send to other unsuccessful bidders? They may also have made

⁵ According to "The Sale of Solar Renewable Energy Credits (SRECs) from Delaware Solar Systems: A Market Update – July 20, 2012," posted on the Delaware Solar Energy Coalition's website, "[t]he market for SRECs in Delaware is oversupplied. Without legislative changes, it is likely to remain so for several years." (Exhibit C).

substantial investments in solar facilities – does that mean that Delmarva should enter into a contract with each of them outside the auction process, at a price substantially equivalent to the prices obtained in the auction? And how is the WGES contract price fair to the successful bidder in the 2012 auction that is getting \$120 per SREC for its SRECs? Changing the rules for one unsuccessful bidder (and paying that unsuccessful bidder more than a successful bidder is receiving) is neither fair nor in the public interest.⁶

c. WGES Can Participate In the Ongoing 2013 SREC Auction

Third, the 2013 SREC auction is currently proceeding. Given the oversubscription in all tiers in the 2012 auction, there is reason to believe that the winning bids in the current auction will be lower than the winning bids in the 2012 auction. WGES can bid into that auction, and if it is successful, it will be able to sell at least some of its SRECs. Therefore, this contract is unnecessary at this time.

Moreover, the Attorney General questions why would Delmarva not wait until the results of the 2013 auction are known? Delmarva has no legal obligation to offer WGES any particular price for its SRECs. Why the insistence that this Agreement be brought before the Commission for a decision before the 2013 auction closes, especially since there is no indication in the Application or Delmarva's supporting testimony that Delmarva needs the WGES SRECs to meet its REPSA obligations now or in the future?

d. The Proposed Agreement Is An End Run Around the Commission's Decision on the Amended Rules in Regulation Docket No. 56.

WGES President Warren testifies that the proposed Agreement "corresponds to the original intention of WGES' investment, meeting its solar RPS obligations, and leaves with

⁶ The Attorney General notes that Delmarva took a very similar position to this in its argument to the Commission in Regulation Docket No. 56 with respect to the proposed amended rules. See Regulation Docket No. 56, April 17, 2012 Transcript at 873-74 (Exhibit D). Delmarva's current position begs the question of what has happened since then to cause Delmarva to change its position.

WGES a key risk that it bore in making that investment, the need to maintain retail electricity load in Delaware sufficient to absorb output of its solar projects.” (Warren Direct Testimony at 4-5). But the Attorney General has a different interpretation of what this Agreement does: it take WGES and its shareholders off the hook for a business decision that did not turn out in their favor. That is neither fair nor in the public interest.

Laws change all the time: that is a risk of doing business. WGES, aided by Delmarva, seeks to offload that risk onto Delmarva distribution customers. If the Commission approves this contract, it allows WGES to obtain indirectly through this Agreement what it was unable to obtain directly from the Commission when it challenged the proposed amended rules: a certain buyer for its SRECs.

- e. **If the 2,440 WGES SRECs Are Fewer Than the Full Requirement Associated With Its Retail Electric Load Contracted Prior to March 1, 2012, The Amended Rules Allow WGES To Use Them Itself to Satisfy the Obligation.**

WGES contends that the 2,440 SRECs that are the subject of this Agreement are less than the full requirement for the SREC obligation associated with its retail electric load. (Warren Direct Testimony at 6). If so, then why is this Agreement necessary? *26 Del. Admin. C. §3008-3.2.3.1* as amended (and approved) specifically provides that all third-party retail electric suppliers that entered into contracts with Delaware end users prior to March 1, 2012 that contain an amount for REPSA compliance remain responsible for supplying to Delmarva the RECs and SRECs required to meet those obligations for as long as those contracts exist. So, if WGES has a contract with a Delaware end user that predated March 1, 2012 and extends into 2013, WGES is still responsible for the RECs or SRECs for that contract until it expires. If it has a contract with a Delaware end user that predated March 1, 2012 and extends into 2014, it is responsible for the RECs or SRECs for that contract until it expires. If WGES has a contract with a Delaware end

user that predates March 1, 2012 and extends into 2017, it is still responsible for the RECs or SRECs for that contract until it expires. If the facilities are only generating enough SRECs to meet WGES' then-contracted load, this Agreement should be unnecessary. The fact that it is being proposed suggests that the facilities were not constructed simply to meet WGES' then-existing load, but also to satisfy any additional load it contracted in Delaware.

C. CONCLUSION

The proposed Agreement serves only to reduce the potential loss that an unregulated electric supplier may experience. It results in Delmarva distribution customers paying more than they need to, with Delmarva gaining little if anything from it. The proposed Agreement is neither fair to Delmarva distribution customers nor in the public interest. The Attorney General respectfully urges the Commission to reject it.

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Dated: April 1, 2013

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EXHIBIT A

III. MERITS OF 2013 PROGRAM

A. INTRODUCTION

The purpose of the 2013 Program is to continue the Pilot Program's goals of creating a market for SRECs in Delaware and providing a mechanism for the procurement of SRECs to ensure that retail electricity suppliers meet the requirements set forth in the Renewable Energy Portfolio Standards Act (REPSA). Identical to the Pilot Program, the 2013 Program will cover only one year, the 2013 compliance year. However, in order to incorporate participant feedback and results from the Pilot Program, recommendations of the Taskforce, and suggestions listed in the Meister Report (Exhibit A of the "Application"), several key changes have been made in the proposed 2013 Program. The proposed modifications are detailed in this section.

B. TOTAL AMOUNT OF SRECS TO BE PROCURED

Delmarva proposes to purchase 8,000 SRECs (for 20 years) through the 2013 Program. The revised structure in which these SRECs will be purchased encompasses a portfolio approach, which is a notable amendment of the 2013 Program. This approach allows for greater opportunity of diversity among the program participants by allowing both new and existing systems to participate, while also allowing Delmarva to purchase SRECs directly from the spot market at prices that may be lower than long-term contract prices. Therefore, all parties are in agreement that this approach provides equal benefit to the solar industry and ratepayers alike. The 2013 Program will have three components:

New Systems ¹⁰ :	4,000 SRECs to be procured
Existing Systems ¹¹ :	3,000 SRECs to be procured
Spot Market Purchases:	<u>1,000</u> SRECs to be procured

8,000 Total SRECs to be procured

The SRECs to be procured from New Systems and Existing Systems are further broken into tiers, which are described in the next section of this report.

¹⁰ Eligible New Systems are systems with final interconnection approval after the first date of the preceding auction process (i.e. April 2, 2012, for compliance year 2012).

¹¹ Eligible Existing Systems are systems with final interconnection approval before the first date of the preceding auction process.

C. TIERS

In order to increase the likelihood that a wide variety of residential and commercial projects have an opportunity to participate in the 2013 Program, the Taskforce established distinct tiers of solar generation units (based on their date of interconnection approval and nameplate capacity) for which different pricing, bid rules, and other contract terms and conditions will apply. The tier designations and the number of SRECs to be procured from each tier are as follows:

New Systems (4,000 SRECs to be procured)		
Tier	Nameplate Rating (DC at STC)	Number of SRECs to be procured
N-1	Less than or equal to 30 kW	1,200
N-2	Greater than 30 kW but less than or equal to 200 kW	1,400
N-3	Greater than 200 kW but less than or equal to 2 MW	1,400
Existing Systems (3,000 SRECs to be procured overall)		
Tier	Nameplate Rating (DC at STC)	Number of SRECs to be procured
E-1	Less than or equal to 30 kW	1,500
E-2	Greater than 30 kW but less than or equal to 2 MW	1,500

As mentioned earlier, the 2013 Program allows for an additional 1,000 SRECs to be purchased from the spot market. The spot market procurement will be open to all systems, and Delmarva will procure short-term contracts in a similar manner to its current practices.

D. COMPETITIVE BIDDING

One of the primary differences of the proposed 2013 Program is that unlike the Pilot Program, none of the tiers in the 2013 Program will offer SRECs at administratively set prices. Instead, all five tiers will be competitively bid. The Taskforce believes this change will more accurately reflect expected return based on system prices which have been decreasing and, therefore, reducing costs that will be recovered from ratepayers.

Applicants in the procurement will be required to submit an application (bid) in only one tier. However, the Sustainable Energy Utility (SEU) may, subject to certain limitations, accept bids from a lower tier to fill the requirements of a higher tier. The limitations are broken down into the following:

- 30% of the total procurement for New Systems must be awarded to bids submitted into Tier N-1 (Ex: 30% x 4,000 SRECs = 1,200 SRECs that must be purchased from bids submitted to Tier N-1)
- 35% of the total procurement for New Systems must be awarded to bids submitted into Tier N-2 (Ex: 35% x 4,000 SRECs = 1,400 SRECs that must be purchased from bids submitted to Tier N-2)
- 50% of the total procurement for Existing Systems must be awarded to bids submitted into Tier E-1 (Ex: 50% x 3,000 SRECs = 1,500 SRECs that must be purchased from bids submitted to Tier E-1)

These minimum requirements in the smaller tiers are intended to ensure that a sufficient number of smaller systems will be able to participate and also ensure the lowest competitive SREC price in the higher tiers. The presumption is that larger scaled projects should be advantaged by economies of scale and other economic factors and therefore be able to bid less per SREC than the smaller projects which may have a higher cost per watt to be recovered.

E. CONTRACT TERM AND PRICING STRUCTURE

The proposed standard contract for the SREC Transfer Agreement, as set forth in Exhibit B at Appendix B of the Application, has a term of 20 years. The Transfer Agreement is similar to the one used for the Pilot Program, but has been modified to take into account changes in the 2013 Program.

For the first seven years of the Transfer Agreement, the SREC price will be the accepted bid price. For the remaining 13 years, the SREC price will be fixed at \$50 per SREC. This is also a change from the Pilot Program, in which the Transfer Agreements were split into two 10 year periods. This is another revision that the Taskforce believes will reduce costs to ratepayers and more accurately reflect the typical solar system financing terms.

F. PROGRAM ADMINISTRATION; ELIGIBILITY

In response to feedback from participants of the Pilot Program, some additional changes were made to the eligibility of applicants in the 2013 Program. Primarily, solar generation owners can submit applications without using an aggregator or Owner Representative. However, owners are not precluded from designating an Owner Representative if they so choose.

G. SEU AS SOLICITATION MANAGER AND CONTRACTING PARTY

On page five of its Application, Delmarva says it "found the SEU and SRECTrade to be effective in the Pilot Program and anticipates the same for the 2013 Program." It is also anticipated that the SEU will use the same agent, SRECTrade, used for the Pilot Program, for any auctions held for the 2013 Program. Delmarva claims that the use of the SEU to fulfill

this role allows one central entity to manage the program and also allows the SEU to take advantage of its banking rights under REPSA because the SEU will procure the SRECs from solar generators and resell them to Delmarva.

However, just as Staff pointed out during the Pilot Program, there is no need in the 2013 Program to use the SEU's banking rights based on estimated SREC purchase requirements and expected purchases. Furthermore, in approving the Pilot Program, the Commission signed Order Number 8093 which cautioned Delmarva that when it seeks recovery of the Pilot Program costs, it will be required to establish that using the SEU was no more expensive than if Delmarva had administered the Pilot Program itself. Hence, the Meister Report examined the administrative costs of the SEU and SRECTrade during the Pilot Program. It stated that the majority of the Pilot Program's administrative costs is associated with ongoing contract management fees for both the SEU and SRECTrade and suggests that "It may be in the interest of ratepayers to either explore alternative strategies for ongoing contract management or to seek discounted contract management costs during future pilot program rounds." (Meister Report, Pages 56-57)

While the Taskforce voted unanimously to again have the SEU administer all aspects of the bidding process for the 2013 Program, Staff still believes that for cost recovery, Delmarva must present strong cost-benefit justification to support the continued use of the SEU and SRECTrade.

EXHIBIT B

SOLAR WEIGHTED AVERAGE PRICE REPORT INCLUDES ALL DATA UP TO 03/26/2013 00:25

Print Date: 3/26/2013 11:02:55 AM

Month	Year	State	Active KW DC	Issued in Month	Traded in Month	Retired in Month	Low (Price per Certificate)	High (Price per Certificate)	Weighted Average Price per Certificate
Mar	2013	DE	45,826	0	2,761	382	10.00	420.00	158.86
Feb	2013	DE	45,459	2,964	1,402	0	10.00	430.00	160.16
Jan	2013	DE	30,281	2,513	2,061	5	8.00	420.00	202.09
Dec	2012	DE	30,143	1,888	1,390	11	8.99	430.00	165.02
Nov	2012	DE	29,367	2,126	3,264	0	15.00	430.00	176.12
Oct	2012	DE	29,309	4,102	4,696	26	17.00	430.00	190.05
Sep	2012	DE	29,021	5,967	4,885	12,466	28.00	430.00	166.54
Aug	2012	DE	28,942	1,868	4,377	2,020	10.00	430.00	166.14
Jul	2012	DE	28,688	5,511	4,733	2,215	10.00	420.00	202.51
Jun	2012	DE	28,526	4,372	7,049	10	25.00	420.00	135.35
May	2012	DE	28,300	3,957	2,646	12	20.00	420.00	183.49
Apr	2012	DE	28,084	3,888	2,066	487	20.00	500.00	187.86
Mar	2012	DE	27,862	2,386	2,683	61	10.00	420.00	167.28
Feb	2012	DE	27,245	1,866	1,047	18	9.99	340.00	229.14
Jan	2012	DE	26,325	1,962	3,735	27	25.00	400.00	194.79
Dec	2011	DE	25,847	1,988	2,835	32	30.00	310.00	192.29
Nov	2011	DE	24,000	2,510	1,069	12	35.00	400.00	119.00
Oct	2011	DE	23,871	2,603	3,287	339	50.00	340.00	197.56
Sep	2011	DE	21,173	4,760	1,448	1,171	10.01	410.00	210.40
Aug	2011	DE	21,041	1,206	2,620	2,477	40.06	600.00	259.51
Jul	2011	DE	20,892	1,320	1,184	390	84.00	430.00	205.34
Jun	2011	DE	20,612	937	313	0	80.00	600.00	158.08
May	2011	DE	9,002	933	172	0	90.00	600.00	259.04
Apr	2011	DE	8,901	834	605	217	100.00	600.00	197.19
Mar	2011	DE	8,781	589	477	77	165.00	600.00	210.34
Feb	2011	DE	8,545	467	1,527	22	185.00	600.00	275.92
Jan	2011	DE	8,168	483	725	0	115.00	600.00	229.49
Dec	2010	DE	7,990	912	835	0	224.99	600.00	290.59
Nov	2010	DE	6,646	615	658	8	215.00	600.00	281.07

Oct	2010	DE	6,352	1,048	948	41	200.00	600.00	305.58
Sep	2010	DE	6,229	556	1,323	1,020	137.50	680.00	294.30
Aug	2010	DE	6,142	684	2,111	1,552	200.00	600.00	312.18
Jul	2010	DE	5,879	681	983	35	200.00	600.00	314.51
Jun	2010	DE	5,826	816	332	15	200.00	425.00	325.53
May	2010	DE	5,577	430	503	0	225.00	600.00	325.96
Apr	2010	DE	5,209	503	667	445	215.00	475.00	356.04
Mar	2010	DE	4,508	185	536	43	215.00	475.00	307.80
Feb	2010	DE	4,401	324	503	3	220.00	425.00	350.50
Jan	2010	DE	4,251	544	815	20	215.00	350.00	326.08
Dec	2009	DE	4,155	188	403	0	200.00	425.00	312.41
Nov	2009	DE	3,920	765	339	4	200.00	363.00	286.96
Oct	2009	DE	3,636	236	706	271	215.00	319.00	280.94
Sep	2009	DE	3,319	337	822	680	200.00	690.00	359.37
Aug	2009	DE	3,044	246	754	494	215.00	690.00	302.14
Jul	2009	DE	2,795	250	586	12	215.00	430.00	293.11
Jun	2009	DE	2,653	266	218	90	235.00	290.00	257.39
May	2009	DE	2,375	423	242	20	250.00	280.00	277.52
Apr	2009	DE	2,230	213	3	0	215.00	415.00	348.33
Mar	2009	DE	1,911	87	31	0	225.00	235.00	232.42
Feb	2009	DE	1,734	76	524	0	215.00	300.00	292.97
Jan	2009	DE	1,518	136	142	0	240.00	250.00	247.04
Dec	2008	DE	1,305	248	16	0	215.00	270.00	266.56
Nov	2008	DE	1,184	181	184	0	270.00	280.00	276.79
Total				74,950	80,241	27,230			

EXHIBIT C



The Sale of Solar Renewable Energy Credits (SRECs) from Delaware Solar Systems

A Market Update – July 20, 2012

Synopsis only:

- If you install a solar system without a contract to sell the SRECs produced already in hand, there is no guarantee you will be able to get such a contract, or be able to sell any SRECs produced on the open market.
- There is no “guaranteed price” for SRECs other than the price shown on that fully executed SREC sales contract for your specific system.
- If installing solar power does not make sense for you without a certain SREC price, you should not proceed with installing a system until you have an SREC sales contract.
- If you build a system without an SREC contract, you may lose the ability to bid in future procurements.
- If you build a solar system without a contract already in hand, there is no guarantee you will be able to get such a contract, or be able to sell any SRECs produced on the open market.
- If you cannot afford to install solar unless you can sell the SRECs for a certain price, do not install the system until you have an SREC contract in hand. Make sure there is language in your agreement with your installer that lets you back out of the deal if the system is not awarded a contract.
- The market for SRECs in Delaware is over supplied. Without legislative changes it is likely to remain so for several years.
- Unless legislative measures are undertaken to increase the number of SRECs required, while placing limits on the utilities’ ability to meet requirements with a few very large systems or by means other than actual solar produced electricity, the ability of residential and small commercial solar installations to sell their SRECs will remain limited into the foreseeable future.

EXHIBIT D

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE
VOLUME 20

IN RE: IN THE MATTER OF :
THE ADOPTION OF RULES AND :
PROCEDURES TO IMPLEMENT THE :
RENEWABLE ENERGY PORTFOLIO : PSC REGULATION
STANDARDS ACT, 26 DEL. C. : DOCKET NO. 56
§§ 351-363, AS APPLIED TO :
RETAIL ELECTRICITY SUPPLIERS:
(OPENED AUGUST 23, 2005; :
REOPENED SEPTEMBER 4, 2007; :
AUGUST 5, 2008; SEPTEMBER :
22, 2009; AUGUST 17, 2010; :
SEPTEMBER 6, 2011) :

Public Service Commission Hearing taken
pursuant to notice before Gloria M. D'Amore, Registered
Professional Reporter, in the offices of the Public
Service Commission, 861 Silver Lake Boulevard, Cannon
Building, Suite 100, Dover, Delaware, on Tuesday, April
17, 2012 beginning at approximately 1:21 p.m., there
being present:

APPEARANCES:

On behalf of the Public Service Commission:
J. DALLAS WINSLOW, COMMISSIONER
JAY LESTER, COMMISSIONER
JOANN CONAWAY, COMMISSIONER
JEFFREY CLARK, COMMISSIONER

Corbett Reporting - A Veritext Company
300 Delaware Avenue Suite 815
Wilmington, DE 19801
(302) 571-0510

1 APPEARANCES CONTINUED:

2
3 On behalf of the Public Service Commission Staff:
REGINA A. IORII, ESQUIRE

4
5 On behalf of the Public Service Commission Staff:
WILLIAM F. O'BRIEN, EXECUTIVE DIRECTOR
6 JANIS L. DILLARD, DEPUTY DIRECTOR
ALISA BENTLEY, SECRETARY
7 PAMELA KNOTTS, PUBLIC UTILITIES ANALYST

8
9 On behalf of the Office of the Public Advocate:
MICHAEL SHEEHY, PUBLIC ADVOCATE

10
11 On behalf of Washington Gas Energy Services:
TELEMAC CHRYSNIKOS, ESQUIRE
12 HARRY WARREN, PRESIDENT

13
14 On behalf of Delmarva Power & Light Company:
TODD GOODMAN, ESQUIRE

15
16 INTERVENOR:
GARY MYERS, ESQUIRE

1 in the discussions in the working group, I believe, that
2 came out of some of the question and answer was, where
3 were we, to your point, looking to unload, if you will,
4 on Delmarva a whole lot more SRECs than were associated
5 with our retail customer base.

6 And certainly, at this point in time,
7 the answer is clearly, no, knowing that the percentages
8 will increase every year under the RPS, our nominal 2,400
9 SRECs a year will be a smaller and smaller percentage of
10 the requirements associated with our retail customer
11 base.

12 So, knowing that Delmarva now going
13 forward has to take on the responsibility of sourcing
14 SRECs for all customers, not just its SOS customers, as
15 it previously had, now it is taking on our
16 responsibility. It did not seem unreasonable for them to
17 take over, from us, the contracts, which were not more
18 than, some portion of our retail customer needs going
19 forward, which they are now obligated to supply.

20 Were those the numbers you were looking
21 for in terms of quantity there?

22 COMMISSIONER CLARK: They helped. Maybe
23 as I listen some more, I will get a handle more on what
24 it means on the consumer side in the future.

1 Thank you.

2 COMMISSIONER CONAWAY: Now, you want to
3 hear from Delmarva?

4 COMMISSIONER CLARK: Yes.

5 MR. GOODMAN: Because you are linear
6 thinker, I will stick with where we left off, and I will
7 go back to things I want to cover.

8 What Mr. Warren explained with respect
9 to the size of the facility put things in general
10 numbers, because I'm not good with them, but it looks
11 like the two facilities that they want help with here
12 were built, at least, twice as big, or a little more than
13 their current needs for customers.

14 You already said you had 1,700 a year,
15 and these things when the full year is able to produce
16 quite a few --

17 MR. WARREN: If I may clarify. We have
18 a certain amount of retail customer load. As each
19 compliance year goes by, the RPS requirements for SRECs,
20 in particular, associated with that load goes up as the
21 RPS requirements do increase in each year.

22 So, it turns out the facilities that we
23 built that started operation part way through this
24 compliance year gave us a partial year of operation this

1 year, which will produce something less than this year's
2 requirement. And if we get a full year production in the
3 up-coming compliance year, once again, they would give us
4 something less than the needs of our retail customer base
5 for this coming year.

6 So, I think that's a little different
7 than the characterization that we were in some way over
8 building to our requirements, when one has to recognize
9 that the RPS requirements double when this compliance
10 year to this next compliance year.

11 MR. GOODMAN: I understand. Thank you.
12 That was helpful.

13 But let's look at it this way. Maybe so
14 you don't have to pull out other things, if you have WGES
15 comments here, or the statute you are referring to,
16 either one, if you look at 353(c)(1).

17 What this Commission and what its Staff
18 accomplished what they were supposed to do is adequately
19 protect, one, electric suppliers of which WGES had
20 entered into contracts to provide SRECs to electric
21 supply customers.

22 And then, two, they are also supposed to
23 protect those parties to those supply contracts.

24 We're talking supply contracts, not

1 we'll rent your roof or your field. You'll let us put in
2 these fuel cells, or these solar cells, and we'll buy
3 them from you during the, for lack of a better term,
4 lease contract that we're having these cells here.
5 That's not the type of contract they're talking about.
6 They're talking about to protect those who -- suppliers
7 who entered into contracts to provide the RECs to its
8 electric supply customers.

9 And number two, to protect those
10 customers who are parties to buy those RECs from the
11 supplier. They are protected. Absolutely one
12 hundred percent -- those customers are protected. They
13 won't have to pay twice because of the mechanism put in
14 place by DPA, Staff, Delmarva and all of the suppliers
15 who participated, which there were very many.

16 And also, the electric suppliers are
17 protected with respect to those exact same, quote,
18 contracts to provide SRECs to retail supply customers.
19 There's no language in there whatsoever that says, if
20 they intended to, the General Assembly would have
21 included language that said -- and also let's make sure
22 that we make any unregulated supplier whole if they went
23 ahead and built a generation source to match some load
24 that they think they are going to get in the future.

1 That was not intended. And that's what they're asking
2 for.

3 Now, I say that not to criticize you at
4 all. I understand it is disappointing when something
5 like this happens. And I also want to say, the argument
6 provided by WGES counsel, by the way, was about as civil
7 as I've seen. I like the way they have acted here. I
8 really appreciate that. I appreciate the way they
9 treated me when they called to ask for clarification.
10 They're very upright in this position.

11 But the statute is clear. And the rules
12 are clear. Those who are supposed to be protected are
13 protected. There's no existing contract that's impaired.
14 That's the key. The market has changed. The market
15 changes, as Ms. Iorii correctly said, just about every
16 year. Something passes, whether it's by legislation that
17 changes the market, or whether it's just by the market
18 itself.

19 Two-years-ago, less than two-years-ago,
20 when we had to go out and buy SRECs to meet our
21 obligation of our customers load, it was \$300 bucks an
22 SREC. \$400 to \$300. We would buy them. If they drop a
23 hair under \$300, that was a deal. We go out and buy as
24 many as we could that day for \$299 an SREC. Today, under

1 \$100. The market changes all of the time.

2 Now, going back, or staying on the
3 linear path, you asked how would the customers -- our
4 customers be protected in the future if we were required
5 by the Commission, by the rules, to go out and negotiate
6 with WGES, which I understand, if I was in the business
7 they were in, I would love to have that.

8 But averaging it doesn't work, for the
9 same reason I just said. What are you averaging it to?
10 Two-years-ago when we entered into a contract with the
11 Dover Sun Park, which was at that point \$100 dollars, or
12 a little less than the going rate at 216 and average it
13 with today down at 80. Well, didn't we really hurt those
14 customers in the future. We gave them an average when we
15 can be buying it for less. And also, how fair is it to
16 the customers that we are required to go out and get this
17 load for that we're only going to negotiate with one
18 party. How far is it to our customers when we're
19 limiting it to one party?

20 And even more importantly, there are,
21 what, a thousand or more people who don't have marketing
22 departments, who don't have business people out there who
23 have solar cells on their roofs that are out on the same
24 position. They're going to have to find a way to market

1 their SRECs as well. That's why the state set up the
2 process it has. They're trying to save that market that
3 has been over built and the price of the technology has
4 also come down. And they're trying to set that market to
5 keep it alive. And they've done it through a process
6 that you approved two-months-ago, solar REC purchase.
7 That's just one year. We can't put our customers at risk
8 by paying above market by averaging out all of the
9 prices. And we also can't be unfair to the thousand or
10 more people who hang to the roof tops. We can't cut them
11 out and say, we're just going to negotiate them with
12 them, and we'll come deal with you all later. It's not
13 the right way to do it. It's not appropriate.

14 Number one, your Staff has complied with
15 the statute. It has protected the type of contract that
16 has been sold to protect that is the supply contract. It
17 has been done. As Mr. Warren explained how it was done,
18 he did a good job, but it is not supposed to protect
19 someone who rented space to put solar cells in there to
20 buy RECs in the future for future load. These contracts
21 are short term, two years, maybe one year, and those are
22 the ones that are protected. That has been done. The
23 fairness, I think we covered. That's our --

24 COMMISSIONER WINSLOW: Excuse me, Mr.

1 Goodman. I apologize for interrupting.

2 That last comment one or two years, I
3 don't see that language in the statute.

4 MR. GOODMAN: The language that is in
5 the statute is the contracts to provide supply to
6 customers. I'm saying in general terms. We've learned
7 this, basically, because our customers enter those
8 contract and we see them. And WGES has been very honest
9 in this process. They said there will to be two-year or
10 less contracts.

11 I come to you, Commissioner Lester, and
12 you entered into a two-year contract to purchase your
13 supply from WGES. Then the law changes, and then Mr.
14 Lester would have to pay his WGES contract that included
15 the price of SRECs and pay a charge that comes from
16 Delmarva. So, he's protected. And also WGES is still
17 going to get paid throughout the term of that two-year
18 supply contract. Those are the contracts I'm talking
19 about.

20 COMMISSIONER WINSLOW: I guess I'm less
21 linear than Commissioner Clark. I just looked at the
22 statute that refers to contracts to retail electric
23 supply customers prior to the transition without any
24 limitations that the number of years that might be in

C E R T I F I C A T E

STATE OF DELAWARE:

:

NEW CASTLE COUNTY:

I, Gloria M. D'Amore, a Registered Professional Reporter, within and for the County and State aforesaid, do hereby certify that the foregoing Public Service Commission Hearing, was taken before me, pursuant to notice, at the time and place indicated; that the statements of said parties was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the Public Service Commission Hearing is a true record of the statements given by the parties; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand and official seal this
21st day of April A.D. 2012.

GLORIA M. D'AMORE
REGISTERED PROFESSIONAL REPORTER
CERTIFICATION NO. 119-PS

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

**IN THE MATTER OF THE APPLICATION)
OF DELMARVA POWER & LIGHT)
COMPANY FOR APPROVAL OF AN) PSC DOCKET NO. 13-99
AGREEMENT TO PURCHASE SOLAR)
RENEWABLE ENERGY CREDITS)
(Filed March 11, 2013)**

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2013, I caused a copy of the attached **OPPOSITION OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE TO THE APPLICATION OF DELMARVA POWER & LIGHT COMPANY FOR APPROVAL OF AN AGREEMENT TO PURCHASE SOLAR RENEWABLE ENERGY CREDITS FROM WASHINGTON GAS ENERGY SERVICES, INC.** to be served by electronic mail upon the following persons in the manner indicated.

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Dated: April 1, 2013

Counsel for the Attorney General of the
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Deputy State Solicitor James Adams