

DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 **Del.C.** §209(a))

FINAL

ORDER 7377

IN THE MATTER OF THE ADOPTION OF RULES		
TO IMPLEMENT THE RENEWABLE ENERGY		
PORTFOLIO STANDARDS ACT,		
26 DEL.C. §§ 351-363, AS APPLIED TO		PSC REGULATION DOCKET NO. 56
RETAIL ELECTRICITY SUPPLIERS		
(OPENED AUGUST 23, 2005;		
REOPENED SEPTEMBER 4, 2007)		

AND NOW, this 17th day of April, 2008;

WHEREAS, in 2005 the General Assembly and the Governor enacted the "Renewable Energy Portfolio Standards Act," 26 **Del.C.** §§ 351-363 (2006 Supp.) ("the Act"). As its name suggests, the Act requires each electric supplier to annually accumulate a portfolio of "renewable energy credits" equivalent to a specified percentage of its retail electric supply sales within this State. The obligation began in 2007 and the particular percentages increase each year. In 2006, exercising the authority granted under 26 **Del.C.** § 362 (2006 Supp.), the Commission promulgated "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" ("RPS Rules"). See PSC Order No. 6931 (June 6, 2006);¹ and

WHEREAS, on July 27, 2007, the General Assembly and Governor enacted significant changes to various provisions in the Act and, in so doing, directed the Delaware Public Service Commission (the "Commission") to adopt revised rules. See 76 **Del. Laws** ch. 165 §§ 1-9 (July 24, 2007) ("chapter 165"). Such revised rules are set forth as Exhibit "B" to this Order; and

WHEREAS, for the reasons set forth above, on September 4, 2007, by PSC Order No. 7276, the Commission reopened Regulation Docket No. 56 to revise its RPS Rules and directed Staff to draft proposed rules to effect the changes made by the legislature and the Governor; and

WHEREAS, by PSC Order No. 7276 (Sept. 4, 2007), the Commission directed publication in the Delaware Register (among other places) of Staff's revised proposed RPS Rules and directed a Hearing Examiner to conduct proceedings regarding the proposed RPS rules; and

WHEREAS, after holding a duly noticed public evidentiary hearing, the Hearing Examiner has now submitted her Findings and Recommendations (Apr. 4, 2008) in which she recommends Commission approval of Staff's final proposed RPS Rules, which include certain non-substantive changes made after the initial publication in the Delaware Register; and

WHEREAS, the Commission finds that the proposed revised "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" changes are just and reasonable and that adoption of the Hearing Examiner's Report is in the public interest.

Now, therefore, **IT IS ORDERED**:

1. That, by and in accordance with the affirmative vote of a majority of the Commissioners, the Commission hereby adopts the April 9, 2008 Findings and Recommendations of the Hearing Examiner, appended to the original hereof as "Attachment A".

1. The RPS Rules (attached as Exhibit "A") were formally published at 10 DE Reg. 151-157 (July 1, 2006). Municipal electric utilities and the now self-regulated Delaware Electric Cooperative, Inc., can choose to be exempt from the Act's requirements by pursuing an alternative regime for supporting "renewable energy" resources. See 26 **Del.C.** §§ 353(a), 363 (2006 Supp.).

2. That the Commission hereby adopts and approves the proposed revised "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" attached to the Hearing Examiner's Findings and Recommendations as "Appendix 1". The Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the *Delaware Register* the exact text of the Regulations attached hereto as Exhibit "B" for publication on June 1, 2008.

3. The effective date of this Order shall be the later of June 10, 2008, or ten days after the date of publication in the *Delaware Register of the Regulations* attached hereto as Exhibit "A."

4. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair
Joann T. Conaway, Commissioner
Jaymes B. Lester, Commissioner
Dallas Winslow, Commissioner
Jeffrey J. Clark, Commissioner

ATTEST:
Karen J. Nickerson
Secretary

2008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard

1.0 Definitions

1.1 The following words and terms, when used in this Regulation, should have the following meanings unless the context clearly indicates otherwise:

"Alternative Compliance Payment" ("ACP") means a payment of a certain dollar amount per megawatt hour, which a Retail Electricity Supplier may submit in lieu of supplying the minimum percentage of RECs required under Section 3.3.4 of this Regulation.

"DNREC" means Delaware Department of Natural Resources and Environmental Control.

"Commission" means the Delaware Public Service Commission.

"Compliance Year" means the calendar year beginning with June 1 and ending with May 31 of the following year, for which a Retail Electricity Supplier must demonstrate that it has met the requirements of this Regulation.

"Customer-Sited Generation" means a Generation Unit that is interconnected on the End-Use Customer's side of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the End-Use Customer.

"Eligible Energy Resources" means the following energy sources located within the PJM region or imported into the PJM region and tracked through the PJM Market Settlement System:

Solar energy technologies that employ solar radiation to produce electricity;

Electricity derived from wind energy;

Electricity derived from ocean energy including wave or tidal action, currents, or thermal differences;

Geothermal energy technologies that generate electricity with a steam turbine, driven by hot water or steam extracted from geothermal reservoirs in the earth's crust;

Electricity generated by a fuel cell powered by Renewable Fuels;

Electricity generated by the combustion of gas from the anaerobic digestion of organic material;

Electricity generated by a hydroelectric facility that has a maximum design capacity of 30 megawatts or less from all generating units combined that meet appropriate environmental standards as determined by DNREC (see DNREC Regulation _____);

Electricity generated from the combustion of biomass that has been cultivated and harvested in a sustainable manner as determined by DNREC, and is not combusted to produce energy in a waste-to-energy facility or in an incinerator (see DNREC Regulation _____);

Electricity generated by the combustion of methane gas captured from a landfill gas recovery

system; provided, however, that:

Increased production of landfill gas from production facilities in operation prior to January 1, 2004 demonstrates a net reduction in total air emissions compared to flaring and leakage;

Increased utilization of landfill gas at electric generating facilities in operation prior to January 1, 2004 (i) is used to offset the consumption of coal, oil, or natural gas at those facilities, (ii) does not result in a reduction in the percentage of landfill gas in the facility's average annual fuel mix when calculated using fuel mix measurements for 12 out of any continuous 15-month period during which the electricity is generated, and (iii) causes no net increase in air emissions from the facility; and

Facilities installed on or after January 1, 2004 meet or exceed 2004 Federal and State air emission standards, or the Federal and State air emission standards in place on the day the facilities are first put into operation, whichever is higher.

"End Use Customer" means a person or entity in Delaware that purchases electrical energy at retail prices from a Retail Electricity Supplier.

"Fund" means the Delaware Green Energy Fund.

"GATS" means the Generation Attribute Tracking System developed by PJM Environmental Information Services, Inc. (PJM EIS).

"Generation Attribute" means a non-price characteristic of the electrical energy output of a Generation Unit including, but not limited to, the Unit's fuel type, geographic location, emissions, vintage, and RPS eligibility.

"Generation Unit" means a facility that converts a fuel or an energy resource into electrical energy.

"Industrial Customer" means an End Use Customer with a North American Industry Classification System (NAICS) Manufacturing Sector Code.

"Municipal Electric Company" means a public corporation created by contract between 2 or more municipalities pursuant to provisions of Title 22, Chapter 13 of the ~~Delaware Code~~ and the electric utilities that are municipally owned within the State of Delaware.

"New Renewable Generation Resources" means Eligible Energy Resources first going into commercial operation after December 31, 1997.

"Peak Demand" shall have the same meaning as and be determined consistently with how such term or a similar term is defined and determined in the applicable utility's tariff then in effect and approved by the Commission. For customers with more than one account, the peak demands shall be aggregated for all accounts. The calculation will be applied in the current year based on the Peak Demand, as defined above, in the prior year.

"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.

"PJM region" means the area within which the movement of wholesale electricity is coordinated by PJM Interconnection. The PJM region is as described in the Amended and Restated Operating Agreement of PJM.

"Renewable Energy Credit" ("REG") means a tradable instrument comprised of all the Generation Attributes equal to 1 megawatt-hour of electricity derived from Eligible Energy Resources and that is used to track and verify compliance with the provisions of this Regulation. A REG does not include emission reduction credits and/or allowances encumbered or used by a Generation Unit for compliance with local, state, or federal operating and/or air quality permits associated with the 1 megawatt-hour of electricity.

"Renewable fuel" means a fuel that is derived from Eligible Energy Resources. This term does not include a fossil fuel or a waste product from a fossil fuel source.

"RPS" and **"Renewable Energy Portfolio Standard"** means the percentage of electricity sales at retail in the State that is to be derived from Eligible Energy Resources.

"Retail Electricity Product" means an electrical energy offering that is distinguished by its Generation Attributes only and that is offered for sale by a Retail Electricity Supplier to End Use Customers. Multiple electrical energy offerings with the same Generation Attributes may be considered a single Retail Electricity Product.

"Retail Electricity Supplier" means a person or entity that sells electrical energy to End Use Customers in Delaware, including, but not limited to, non-regulated power producers, electric utility distribution companies supplying standard offer, default service, or any successor service to End Use Customers. A Retail Electricity Supplier does not include a Municipal Electric Company for the purposes of this Regulation.

"Rural Electric Cooperative" means a non-stock, non-profit, membership corporation organized pursuant to the Federal "Rural Electrification Act of 1936" and operated under the cooperative form of ownership.

"Total Retail Sales" means retail sales of electricity within the State of Delaware exclusive of sales to any Industrial Customer with a Peak Demand in excess of 1,500 kilowatts.

2.0 Purpose and Scope

2.1 The benefits of electricity from renewable energy resources accrue to the public at large, and electric suppliers and consumers share an obligation to develop a minimum level of these resources in the electric supply portfolio of the State. The purpose of this Regulation, in support of ~~26 Del.C., §351—363~~, is to set forth the rules for governing the RPS.

2.2 This regulation shall apply to all retail electricity sales in the State of Delaware except for retail electricity sales of Municipal Electric Companies and retail electricity sales to any Industrial Customer with a Peak Demand in excess of 1,500 kilowatts.

2.2.1 An Industrial Customer with Peak Demand in excess of 1,500 kilowatts may elect to have their load exempt from this Regulation provided that they meet the definitions found in Section 1.1 and:

2.2.1.1 submit a notice to the Commission's Staff including, but not limited to, Name and Address of Industrial Customer, and NAICS Code and load for each account;

2.2.1.1.1 the Commission's Staff shall, within thirty (30) days of receipt of the notice, provide to the Industrial Customer an acknowledgement of the status, exempt or non-exempt, of the Industrial Customer and;

2.2.1.2 submit the Commission's Staff acknowledgement referenced in Section 2.2.1.1.1 of this Regulation to their Retail Electricity Supplier.

2.2.2 For an End Use Customer with multiple accounts totaling in excess of 1,500 kilowatts within an applicable utility's service territory and served by a single Retail Electricity Supplier, to have their load exempt, the aggregate of their accounts with an NAICS Manufacturing Sector Code must have a Peak Demand of at least 751 kilowatts and they must follow the procedure found in Section 2.2.1.

2.3 Any Rural Electric Cooperative that is opted out of Commission regulation by its membership pursuant to ~~26 Del.C. §223 of the Delaware Code~~ shall, for all purposes of administering and applying this Regulation, be treated as a Municipal Electric Company during any period of time the Rural Electric Cooperative is exempt from Commission regulation.

2.4 A Rural Electric Cooperative may elect to be exempt from the requirements of this Regulation provided that, on or before June 1, 2006, they:

2.4.1 submit a written notice to the Delaware General Assembly;

2.4.2 submit a written notice to the Commission;

2.4.3 alert their End Use Customers with notices inserted in two (2) consecutive electricity bills;

2.4.4 offer their End Use Customers a voluntary program for purchasing renewable energy under competitive rates; and

2.4.5 either contribute to the Delaware Green Energy Fund at levels commensurate with other Retail Electricity Suppliers or create an independent fund separate from the Delaware Green Energy Fund to be used in support of energy efficiency technologies, renewable energy technologies, or demand side management programs, into which they make payments of \$0.178 for each megawatt-hour they sell, transmit, or distribute in the State.

3.0 Administration of RPS

3.1 Certifying Eligible Energy Resources:

3.1.1 The Commission through its Staff will certify Generation Units as Eligible Energy Resources based on the definition of Eligible Energy Resources found in Section 1.1 of this Regulation.

3.1.2 Any Generation Unit seeking certification as an Eligible Energy Resource must submit an Application for Certification as an Eligible Energy Resource Under the Delaware Renewable Energy Portfolio Standard (Application) to the Commission. This may include Customer-Sited Generation or a Generation Unit owned or operated by a Municipal Electric Company.

3.1.3 Commission Staff will review the Application and will notify the applicant of its approval as an Eligible Energy Resource or of any deficiencies in their Application within 30 days of receipt. The applicant will have the opportunity to revise their submission, if appropriate.

3.1.4 If Commission Staff finds the Generation Unit to be in compliance with Sections 1.0 and 3.0 of this Regulation, as well as any other applicable Delaware statute; Commission Staff will issue a State of Delaware Certification Number.

3.1.5 Upon receipt of the State of Delaware Certification Number, a Generation Unit will be

deemed an Eligible Energy Resource.

3.1.6 Upon designation as an Eligible Energy Resource, the Generation Unit's owner shall be entitled to one (1) Renewable Energy Credit (REC) for each mega watt hour of energy derived from Eligible Energy Resources. RECs will be created and supplied by the PJM EIS GATS, or its successor at law. Eligible Energy Resources are subject to applicable PJM EIS GATS rules and shall pay applicable PJM EIS GATS fees.

3.1.6.1 However, if in the future, the Commission finds that PJM EIS's GATS is not applicable or not suited to meet the needs or requirements of the RPS, the Commission may establish or participate in another renewable energy tracking system.

3.1.7 RECs created by Eligible Energy Resources on or after June 1, 2006 shall be valid to meet retail electricity supplier requirements, subject to Section 3.2.3 of this Regulation.

3.1.7.1 If a Generation Unit is deemed an Eligible Energy Resource under Section 3.1 and the Eligible Energy Resource's GATS account continues to be maintained in good standing, the Eligible Energy Resource may achieve a Delaware designation for RECs recorded with PJM EIS's GATS for the calendar year being traded in GATS at the time of the Commission Staff's approval of the Eligible Energy Resource, but no earlier than June 1, 2006.

3.1.8 An Eligible Energy Resource will remain certified unless substantive changes are made to its operational characteristics. Substantive changes include, but are not limited to changes in fuel type, fuel mix and generator type. An Eligible Energy Resource making substantive changes to its operational characteristics shall notify the Commission of such changes at least 30 days prior to the effective date of such changes. At such time the Generation Unit shall submit a revised Application, which shall be subject to the process laid out in Section 3.1 of this Regulation.

3.1.9 RECs created by an Eligible Energy Resource shall remain valid for compliance, subject to Section 3.2.3 and Section 3.3.3 of this Regulation, even if that Eligible Energy Resource is subsequently decertified for eligibility.

3.2 Compliance with RPS

3.2.1 The Total Retail Sales of each Retail Electricity Product sold to End Use Customers by a Retail Electricity Supplier during any given Compliance Year shall include a minimum percentage of electrical energy sales from Eligible Energy Resources as shown in Schedule 1.

<u>SCHEDULE 1</u>	
<u>Compliance Year</u>	<u>Cumulative Minimum Percentage</u>
<u>2007</u>	<u>1%</u>
<u>2008</u>	<u>1.5%</u>
<u>2009</u>	<u>2%</u>
<u>2010</u>	<u>2.75%</u>
<u>2011</u>	<u>3.5%</u>
<u>2012</u>	<u>4.25%</u>
<u>2013</u>	<u>5%</u>
<u>2014</u>	<u>5.75%</u>
<u>2015</u>	<u>6.5%</u>
<u>2016</u>	<u>7.25%</u>
<u>2017</u>	<u>8%</u>
<u>2018</u>	<u>9%</u>
<u>2019</u>	<u>10%</u>

3.2.2 A Retail Electricity Supplier's compliance with Schedule 1 shall be based on accumulating RECs equivalent to the current Compliance Year's Cumulative Minimum Percentage of Total Retail Sales of each Retail Electricity Product sold to End Use Customers and subject to Section 3.2.3 and, where appropriate, Commission regulations⁴. Such RECs shall be filed annually with the Commission within 120 days following the completion of the Compliance Year.

3.2.3 Each Retail Electricity Supplier can provide no more than 1% of each Compliance Year's Total Retail Sales from Eligible Energy Resources operational before December 31, 1997. The remainder of each year's retail sales, up to the required amount as specified in Section 3.2.1 of this Regulation must come from New

Renewable Generation resources. In Compliance Year 2020 and for each Compliance Year thereafter, all Eligible Energy Resources used to meet the cumulative minimum percentage requirements set by the Commission rules shall be New Renewable Generation Resources.

3.2.4 A Retail Electricity Supplier shall not use RECs used to satisfy another state's renewable energy portfolio requirements for compliance with Schedule 1. A Retail Electricity Supplier may sell or transfer any RECs not required to meet this regulation.

3.2.5 On or after June 1, 2006, Eligible Energy Resources may create and accumulate RECs for the purposes of calculating compliance with the RPS.

3.2.6 Aggregate generation from small Eligible Energy Resources, 100 kilowatts of capacity or less, may be used to meet the requirements of Schedule 1, provided that the generators or their agents, on an annual basis, document the level of generation, as recorded by appropriate metering.

3.2.7 A Retail Electricity Supplier shall receive 300% credit toward meeting the RPS for energy derived from the following sources installed on or before December 31, 2014:

3.2.7.1 Solar electric; or

3.2.7.2 Renewable fuel that is used in a fuel cell.

3.2.8 A Retail Electricity Supplier shall receive 150% credit toward meeting the RPS for wind energy installations sited in Delaware on or before December 31, 2012.

3.2.9 A Retail Electricity Supplier shall receive credit toward meeting the RPS for electricity derived from the fraction of eligible landfill gas, biomass or biogas combined with other fuels.

3.2.10 Cumulative minimum percentage requirements of Eligible Energy Resources shall be established by Commission rules for Compliance Year 2020 and each subsequent year. In no case shall the minimum percentages established by Commission rules be lower than those required for Compliance Year 2019 in Schedule 1. Each of the rules setting such minimum percentage shall be adopted at least two years prior to the minimum percentage being required.

3.2.11 Beginning in Compliance Year 2010, and in each Compliance Year thereafter, the Commission may review the status of Schedule 1 and report to the legislature on the status of the pace of the scheduled percentage increases toward the goal of 10%. If the Commission concludes at this time that the schedule either needs to be accelerated or decelerated, it may also make recommendations to the General Assembly for legislative changes to the RPS.

3.2.12 Beginning in Compliance Year 2014, and in each Compliance Year thereafter, the Commission may, in the event of circumstances specified in this subsection and after conducting hearings, accelerate or slow the scheduled percentage increases towards meeting the goal of 10%. The Commission may only slow the increases if the Commission finds that at least 30% of RPS compliance has been met through the ACP for three (3) consecutive years, despite adequate planning by the Retail Electricity Suppliers. The Commission may only accelerate the scheduled percentage increases after finding that the average price for RECs eligible for RPS compliance has, for two (2) consecutive years, been below a predetermined market-based price threshold to be established by the Commission. The Commission shall establish the predetermined market-based price threshold in consultation with the Delaware Energy Office. Rules that would alter the percentage targets shall be promulgated at least two years before the percentage change takes effect. In no event shall the Commission reduce the percentage target below any level reached to that point.

3.3 Verification of Compliance with the RPS

3.3.1 Within 120 days of the end of a compliance year, each Retail Electricity Supplier who has made sales to an End-use Customer in the State of Delaware must submit a completed Retail Electricity Supplier's Verification of Compliance with the Delaware Renewable Energy Portfolio Standard Report (Report) which includes, but is not limited to, evidence of the specified number of RECs required for that Compliance Year according to Schedule 1 and the Total Retail Sales of each Retail Electricity Product.

3.3.2 RECs must have been created by PJM EIS's GATS, or its successor at law or pursuant to

1. The Commission understands the legislation to mean that the Total Retail Sales of each Retail Electricity Product sold to End-Use Customers during a given Compliance Year shall include a minimum percentage of RECs determined by the current Cumulative Minimum Percentage as defined in Schedule 1. The Commission shall, in another proceeding, further define how RECs from Green Power products, as that term is defined in Commission Docket Number 49, are to be tracked and utilized for compliance in the RPS.

Section 3.1.6.1 of this Regulation.

3.3.3 RECs, submitted for compliance with this Regulation, may be dated no earlier than three (3) years prior to the beginning of the current Compliance Year.

3.3.4 In lieu of standard means of compliance with the RPS, any Retail Electricity Supplier may pay into the Fund an ACP of \$25 for each megawatt hour deficiency between the RECs used by a Retail Electricity Supplier in a given compliance year and the RECs necessary for such Retail Electricity Supplier to meet the year's Cumulative Minimum Percentage. In subsequent years, the ACP for any Retail Electricity Supplier shall increase as follows:

3.3.4.1 If a Retail Electricity Supplier has paid an ACP of \$25 for any megawatt hour deficiency in any previous year, then the ACP shall be \$35 for each megawatt hour.

3.3.4.2 If a Retail Electricity Supplier has paid an ACP of \$35 for any megawatt hour deficiency in any previous year, then the ACP shall be \$45 for each megawatt hour.

3.3.4.3 If a Retail Electricity Supplier has paid an ACP of \$45 for any megawatt hour deficiency in any previous year, then the ACP shall be \$50 for each megawatt hour.

3.3.4.4 If a Retail Electricity Supplier has paid an ACP of \$50 for any megawatt hour deficiency in any previous year, then the ACP shall be \$50 for each megawatt hour.

3.3.4.5 ACPs shall not be more than \$50 for each megawatt hour.

3.3.5 The Commission Staff shall notify any Retail Electricity Supplier of any compliance deficiencies within 165 days of the close of the current Compliance Year. If the Retail Electricity Supplier is found to be deficient by the Commission Staff, the Retail Electricity Supplier shall be required to pay the appropriate ACP, according to Section 3.3.4 of this Regulation. All such payments shall be due within 30 days of notification by the Commission Staff. Upon receipt of payment, the Retail Electricity Supplier shall be found to be in compliance for that given year.

3.3.6. All compliance payments, made by the Retail Electricity Supplier, shall be payable to the Delaware Green Energy Fund and sent to the Commission.

4.0 Recovery of Costs

4.1 A Retail Electricity Supplier may recover, through a non-bypassable surcharge on its supply portion of the bill, actual dollar for dollar costs incurred in complying with the State of Delaware's RPS, except that any compliance fee assessed pursuant to Section 3.3.4 and its subsections of these Rules and Regulation shall be recoverable only to the extent authorized by Section 4.2 of this Regulation.

4.2 A Retail Electricity Supplier may recover any ACP if the payment of an ACP is the least cost measure to ratepayers as compared to the purchase of Renewable Energy Credits to comply with the RPS; or if there are insufficient Renewable Energy Credits available for the Retail Electricity Supplier to comply with the RPS.

4.3 Any cost recovered under this section shall be disclosed to customers at least annually on inserts accompanying customer bills.

5.0 Other General Rules

5.1 Under Delaware's Freedom of Information Act, 29 ~~Del.C.~~ Ch. 100, all information filed with the Commission is considered of public record unless it contains "trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature." 29 ~~Del.C.~~ §10002(d)(2). To qualify as a non-public record under this exemption, materials received by the Commission must be clearly and conspicuously marked on the title page and on every page containing the sensitive information as "proprietary" or "confidential" or words of similar effect. The Commission shall presumptively deem all information so designated to be exempt from public record status. However, upon receipt of a request for access to information designated proprietary or confidential, the Commission may review the appropriateness of such designation and may determine to release the information requested. Prior to such release, the Commission shall provide the entity that submitted the information with reasonable notice and an opportunity to show why the information should not be released.

5.2 Any End Use Customer, Retail Electricity Supplier, Eligible Energy Resource, potential Eligible Energy Resource or other interested party to which this Regulation may apply may file a complaint with the Commission pursuant to the Rules of Practice and Procedure of the Delaware Public Service Commission.

5.3 The failure to comply with this Regulation may result in penalties, including monetary assessments, suspension or revocation of eligibility as an Eligible Energy Resource, or other sanction as determined by the Commission consistent with 26 ~~Del.C.~~, §205(a), §217, and §1019.

1.0 Definitions

1.1 The following words and terms, when used in this Regulation, should have the following meanings unless the context clearly indicates otherwise:

"Alternative Compliance Payment" or **"ACP"** means a payment of a certain dollar amount per megawatt hour, which a Retail Electricity Supplier may submit in lieu of supplying the minimum percentage of RECs required under Section 3.3.4 of this Regulation.

"DNREC" means Delaware Department of Natural Resources and Environmental Control.

"Commission" means the Delaware Public Service Commission.

"Compliance Year" means the calendar year beginning with June 1 and ending with May 31 of the following year, for which a Retail Electricity Supplier must demonstrate that it has met the requirements of this Regulation.

"Customer-Sited Generation" means a Generation Unit that is interconnected on the End-Use Customer's side of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the End-Use Customer.

"Eligible Energy Resources" means the following energy sources located within the PJM region or imported into the PJM region and tracked through the PJM Market Settlement System:

Solar Photovoltaic [Energy Resources means solar photovoltaic] or solar thermal energy technologies that employ solar radiation to produce electricity or to displace electricity use;

Electricity derived from wind energy;

Electricity derived from ocean energy including wave or tidal action, currents, or thermal differences;

Geothermal energy technologies that generate electricity with a steam turbine, driven by hot water or steam extracted from geothermal reservoirs in the earth's crust;

Electricity generated by a fuel cell powered by Renewable Fuels;

Electricity generated by the combustion of gas from the anaerobic digestion of organic material;

Electricity generated by a hydroelectric facility that has a maximum design capacity of 30 megawatts or less from all generating units combined that meet appropriate environmental standards as determined by DNREC (see DNREC Regulation's Secretary's Order No. 2006-W-0027);

Electricity generated from the combustion of biomass that has been cultivated and harvested in a sustainable manner as determined by DNREC, and is not combusted to produce energy in a waste to energy facility or in an incinerator (see DNREC Regulation's Secretary's Order No. 2006-W-0027);

Electricity generated by the combustion of methane gas captured from a landfill gas recovery system; provided, however, that:

Increased production of landfill gas from production facilities in operation prior to January 1, 2004 demonstrates a net reduction in total air emissions compared to flaring and leakage;

Increased utilization of landfill gas at electric generating facilities in operation prior to January 1, 2004 (i) is used to offset the consumption of coal, oil, or natural gas at those facilities, (ii) does not result in a reduction in the percentage of landfill gas in the facility's average annual fuel mix when calculated using fuel mix measurements for 12 out of any continuous 15 month period during which the electricity is generated, and (iii) causes no net increase in air emissions from the facility; and

Facilities installed on or after January 1, 2004 meet or exceed 2004 Federal and State air emission standards, or the Federal and State air emission standards in place on the day the facilities are first put into operation, whichever is higher.

"End-Use Customer" means a person or entity in Delaware that purchases electrical energy at retail prices from a Retail Electricity Supplier.

"Fund" means the Delaware Green Energy Fund.

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"Generation Attribute" means a non-price characteristic of the electrical energy output of a Generation Unit including, but not limited to, the Unit's fuel type, geographic location, emissions, vintage, and RPS eligibility.

"Generation Unit" means a facility that converts a fuel or an energy resource into electrical energy.

"Industrial Customer" means an End-Use Customer with a North American Industry Classification System (NAICS) Manufacturing Sector Code.

"Municipal Electric Company" means a public corporation created by contract between 2 or more municipalities pursuant to provisions of Title 22, Chapter 13 of the **Delaware Code** and the electric utilities that are municipally owned within the State of Delaware.

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"Renewable Energy Credit" ("REC") means a tradable instrument comprised of all the Generation Attributes equal to 1 megawatt-hour of electricity derived from Eligible Energy Resources and that is used to track and verify compliance with the provisions of this Regulation. A REC does not include emission reduction credits and/or allowances encumbered or used by a Generation Unit for compliance with local, state, or federal operating and/or air quality permits associated with the 1 megawatt-hour of electricity.

"Renewable fuel" means a fuel that is derived from Eligible Energy Resources. This term does not include a fossil fuel or a waste product from a fossil fuel source.

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"Rural Electric Cooperative" means a non-stock, non-profit, membership corporation organized pursuant to the Federal "Rural Electrification Act of 1936" and operated under the cooperative form of ownership.

"Solar Alternative Compliance Payment" or "SACP" means a payment of a certain dollar amount per megawatt-hour, which a Retail Electricity Supplier or Municipal Electric Supplier may submit in lieu of supplying the Minimum Percentage from Solar Photovoltaic required under Section 3.3.4 of this Regulation.

"Solar Renewable Energy Credit" or "SREC" means a tradable instrument that is equal to 1 megawatt-hour of retail electricity sales in the State that is derived from Solar Photovoltaic Energy Resources and that is used to track and verify compliance with the provisions of this Regulation.

"Total Retail Sales" means retail sales of electricity within the State of Delaware exclusive of sales to any Industrial Customer with a Peak Demand in excess of 1,500 kilowatts.

2.0 Purpose and Scope

- 2.1 The benefits of electricity from renewable energy resources accrue to the public at large, and electric suppliers and consumers share an obligation to develop a minimum level of these resources in the electric supply portfolio of the State. The purpose of this Regulation, in support of 26 Del.C., §351 - 363, is to set forth the rules for governing the RPS.
- 2.2 This Regulation shall apply to all retail electricity sales in the State of Delaware except for retail electricity sales of Municipal Electric Companies and retail electricity sales to any Industrial Customer with a Peak Demand in excess of 1,500 kilowatts.
 - 2.2.1 An Industrial Customer with Peak Demand in excess of 1,500 kilowatts may elect to have their load exempt from this Regulation provided that they meet the definitions found in Section 1.1 and:
 - 2.2.1.1 submit a notice to the Commission's Staff including, but not limited to, Name and Address of Industrial Customer, and NAICS Code and load for each account;
 - 2.2.1.1.1 the Commission's Staff shall, within thirty (30) days of receipt of the notice, provide to the Industrial Customer an acknowledgement of the status, exempt or non-exempt, of the Industrial Customer and;
 - 2.2.1.2 submit the Commission's Staff acknowledgement referenced in Section 2.2.1.1.1 of this Regulation to their Retail Electricity Supplier.
 - 2.2.2 For an End-Use Customer with multiple accounts totaling in excess of 1,500 kilowatts within an applicable utility's service territory and served by a single Retail Electricity Supplier, to have their load exempt, the aggregate of their accounts with an NAICS Manufacturing Sector Code must have a Peak Demand of at least 751 kilowatts and they must follow the procedure found in Section 2.2.1.
- 2.3 Any Rural Electric Cooperative that is opted-out of Commission regulation by its membership pursuant to 26 Del.C. §223 of the Delaware Code shall, for all purposes of administering and applying this Regulation, be treated as a Municipal Electric Company during any period of time the Rural Electric Cooperative is exempt from Commission regulation.
- 2.4 A Rural Electric Cooperative may elect to be exempt from the requirements of this Regulation provided that, on or before June 1, 2006, they:
 - 2.4.1 submit a written notice to the Delaware General Assembly;
 - 2.4.2 submit a written notice to the Commission;
 - 2.4.3 alert their End-Use Customers with notices inserted in two (2) consecutive electricity bills;
 - 2.4.4 offer their End-Use Customers a voluntary program for purchasing renewable energy under competitive rates; and
 - 2.4.5 either contribute to the Delaware Green Energy Fund at levels commensurate with other Retail Electricity Suppliers or create an independent fund separate from the Delaware Green Energy Fund to be used in support of energy efficiency technologies, renewable energy technologies, or demand side management programs, into which they make payments of \$0.178 for each megawatt-hour they sell, transmit, or distribute in the State.

3.0 Administration of RPS

- 3.1 Certifying Eligible Energy Resources:
 - 3.1.1 The Commission through its Staff will certify Generation Units as Eligible Energy Resources based on the definition of Eligible Energy Resources found in Section 1.1 of this Regulation.
 - 3.1.2 Any Generation Unit seeking certification as an Eligible Energy Resource must submit an Application for Certification as an Eligible Energy Resource Under the Delaware Renewable Energy Portfolio Standard (Application) to the Commission. This may include Customer-Sited Generation or a Generation Unit owned or operated by a Municipal Electric Company.

- 3.1.3 Commission Staff will review the Application and will notify the applicant of its approval as an Eligible Energy Resource or of any deficiencies in their Application within 30 days of receipt. The applicant will have the opportunity to revise their submission, if appropriate.
- 3.1.4 If Commission Staff finds the Generation Unit to be in compliance with Sections 1.0 and 3.0 of this Regulation, as well as any other applicable Delaware statute; Commission Staff will issue a State of Delaware Certification Number.
- 3.1.5 Upon receipt of the State of Delaware Certification Number, a Generation Unit will be deemed an Eligible Energy Resource.
- 3.1.6 Upon designation as an Eligible Energy Resource, the Generation Unit's owner shall be entitled to one (1) Renewable Energy Credit (REC) for each mega-watt hour of energy derived from Eligible Energy Resources other than Solar Photovoltaic Energy Resources. Upon designation as an Eligible Energy Resource, the owner of a Generation Unit employing Solar Photovoltaic Energy Resources shall be entitled to one (1) Solar Renewable Energy Credit (SREC) for each mega-watt hour of energy derived from Solar Photovoltaic Energy Resource. SRECs and RECs will be created and supplied by the PJM-EIS GATS, or its successor at law. Eligible Energy Resources are subject to applicable PJM-EIS GATS rules and shall pay applicable PJM-EIS GATS fees.
- 3.1.6.1 However, if in the future, the Commission finds that PJM-EIS's GATS is not applicable or not suited to meet the needs or requirements of the RPS, the Commission may establish or participate in another renewable energy tracking system.
- 3.1.7 RECs or SRECs created by Eligible Energy Resources on or after June 1, 2006 shall be valid to meet retail electricity supplier requirements, subject to Section 3.2.3 of this Regulation.
- 3.1.7.1 If a Generation Unit is deemed an Eligible Energy Resource under Section 3.1 and the Eligible Energy Resource's GATS account continues to be maintained in good standing, the Eligible Energy Resource may achieve a Delaware designation for RECs or SRECs recorded with PJM-EIS's GATS for the calendar year being traded in GATS at the time of the Commission Staff's approval of the Eligible Energy Resource, but no earlier than June 1, 2006.
- 3.1.8 An Eligible Energy Resource will remain certified unless substantive changes are made to its operational characteristics. Substantive changes include, but are not limited to changes in fuel type, fuel mix and generator type. An Eligible Energy Resource making substantive changes to its operational characteristics shall notify the Commission of such changes at least 30 days prior to the effective date of such changes. At such time, the Generation Unit shall submit a revised Application, which shall be subject to the process laid out in Section 3.1 of this Regulation.
- 3.1.9 RECs or SRECs created by an Eligible Energy Resource shall remain valid for compliance, subject to Section 3.2.3 and Section 3.3.3 of this Regulation, even if that Eligible Energy Resource is subsequently decertified for eligibility.
- 3.2 Compliance with RPS
- 3.2.1 The Total Retail Sales of each Retail Electricity Product sold to End-Use Customers by a Retail Electricity Supplier during any given Compliance Year shall include a minimum percentage of electrical energy sales from Eligible Energy Resources and Solar Photovoltaics as shown in Schedule 1. Any portion of a Retail Electric Supplier's renewable energy supply portfolio for 2007, 2008 and 2009 Compliance Years that is acquired under wholesale renewable energy supply entered into pursuant to the 2005 or 2006 Delaware Standard Offer Services ("SOS") auctions shall be subject to the provisions of this Regulation as shown in Schedule 2 below that were in effect on the date of the 2005 or 2006 SOS auction.

SCHEDULE 1

<u>Compliance Year (beginning June 1st)</u>	<u>Cumulative Minimum Percentage from Solar Photovoltaics [Energy Resources]</u>	<u>Minimum Cumulative Percentage from Eligible Energy Resources^a</u>
<u>2007</u>	--	<u>2.0%</u>
<u>2008</u>	<u>0.011%</u>	<u>3.0%</u>
<u>2009</u>	<u>0.014%</u>	<u>4.0%</u>
<u>2010</u>	<u>0.018%</u>	<u>5.5%</u>
<u>2011</u>	<u>0.048%</u>	<u>7.0%</u>
<u>2012</u>	<u>0.099%</u>	<u>8.5%</u>
<u>2013</u>	<u>0.201%</u>	<u>10.0%</u>
<u>2014</u>	<u>0.354%</u>	<u>11.5%</u>
<u>2015</u>	<u>0.559%</u>	<u>13.0%</u>
<u>2016</u>	<u>0.803%</u>	<u>14.5%</u>
<u>2017</u>	<u>1.112%</u>	<u>16.0%</u>
<u>2018</u>	<u>1.547%</u>	<u>18.0%</u>
<u>2019</u>	<u>2.005%</u>	<u>20.0%</u>

a. Minimum Cumulative Percentage from Eligible Energy Resources includes the Minimum Cumulative Percentage from Solar Photovoltaics.

SCHEDULE 2		
<u>Compliance Year (beginning June 1st)</u>	<u>Minimum Cumulative Percentage from Solar Photovoltaics [Energy Resources]</u>	<u>Minimum Cumulative Percentage from Eligible Energy Resources^a</u>
<u>2007</u>	--	<u>1.00%</u>
<u>2008</u>	<u>0.011%</u>	<u>1.50%</u>
<u>2009</u>	<u>0.014%</u>	<u>2.00%</u>
<u>2010</u>	<u>0.018%</u>	<u>5.00%</u>
<u>2011</u>	<u>0.048%</u>	<u>7.00%</u>
<u>2012</u>	<u>0.099%</u>	<u>8.50%</u>
<u>2013</u>	<u>0.201%</u>	<u>10.00%</u>
<u>2014</u>	<u>0.354%</u>	<u>11.50%</u>
<u>2015</u>	<u>0.559%</u>	<u>13.0%</u>
<u>2016</u>	<u>0.803%</u>	<u>14.5%</u>
<u>2017</u>	<u>1.112%</u>	<u>16.00%</u>
<u>2018</u>	<u>1.547%</u>	<u>18.00%</u>
<u>2019</u>	<u>2.005%</u>	<u>20.00%</u>

a. Minimum Cumulative Percentage from Eligible Energy Resources includes the Minimum Cumulative Percentage from Solar Photovoltaics

3.2.2 A Retail Electricity Supplier's compliance with Schedule 1 shall be based on accumulating RECs [and SRECs] equivalent to the current Compliance Year's Cumulative Minimum Percentage of Total Retail Sales of each Retail Electricity Product sold to End-Use Customers and subject to Section 3.2.3 and, where appropriate, Commission regulations.¹ Such RECs shall be filed annually with the Commission within 120 days following the completion of the Compliance Year.

- 3.2.3 Each Retail Electricity Supplier can provide no more than 1% of each Compliance Year's Total Retail Sales from Eligible Energy Resources operational before December 31, 1997. The remainder of each year's retail sales, up to the required amount as specified in Section 3.2.1 of this Regulation must come from New Renewable Generation resources. In Compliance Year 2020 and for each Compliance Year thereafter, all Eligible Energy Resources used to meet the cumulative minimum percentage requirements set by the Commission rules shall be New Renewable Generation Resources.
- 3.2.4 A Retail Electricity Supplier shall not use RECs used to satisfy another state's renewable energy portfolio requirements for compliance with Schedule 1. A Retail Electricity Supplier may sell or transfer any RECs [or SRECs] not required to meet this Regulation.
- 3.2.5 On or after June 1, 2006, Eligible Energy Resources may create and accumulate RECs [or SRECs] for the purposes of calculating compliance with the RPS.
- 3.2.6 Aggregate generation from small Eligible Energy Resources, 100 kilowatts of capacity or less, may be used to meet the requirements of Schedule 1 [or Schedule 2] , provided that the generators or their agents, on an annual basis, document the level of generation, as recorded by appropriate metering.
- 3.2.7 A Retail Electricity Supplier shall receive 300% credit toward meeting the Minimum Cumulative Percentage from Eligible Energy Resources of Schedule 1 or Schedule 2 of the RPS for energy derived from the following sources installed on or before December 31, 2014:
- 3.2.7.1 Customer-Sited solar photovoltaic physically located in Delaware; or
- 3.2.7.2 A fuel cell powered by Renewable Fuels.
- 3.2.8 A Retail Electricity Supplier shall receive 150% credit toward meeting the RPS for wind energy installations sited in Delaware on or before December 31, 2012.
- 3.2.9 A Retail Electricity Supplier shall receive credit toward meeting the RPS for electricity derived from the fraction of eligible landfill gas, biomass or biogas combined with other fuels.
- 3.2.10 Cumulative minimum percentage requirements of Eligible Energy Resources shall be established by Commission rules for Compliance Year 2020 and each subsequent year. In no case shall the minimum percentages established by Commission rules be lower than those required for Compliance Year 2019 in Schedule 1 [or Schedule 2]. Each of the rules setting such minimum percentage shall be adopted at least two years prior to the minimum percentage being required.
- 3.2.11 Beginning in Compliance Year 2010, and in each Compliance Year thereafter, the Commission may review the status of Schedule 1 [and Schedule 2] and report to the legislature on the status of the pace of the scheduled percentage increases toward the goal of 20%. If the Commission concludes at this time that the schedule either needs to be accelerated or decelerated, it may also make recommendations to the General Assembly for legislative changes to the RPS.
- 3.2.12 Beginning in Compliance Year 2014, and in each Compliance Year thereafter, the Commission may, in the event of circumstances specified in this subsection and after conducting hearings, accelerate or slow the scheduled percentage increases towards meeting the goal of 20%. The Commission may only slow the increases if the Commission finds that at least 30% of RPS compliance has been met through the ACP [or SACP] for three (3) consecutive years, despite adequate planning by the Retail Electricity Suppliers. The Commission may only accelerate the scheduled percentage increases after finding that the average price for RECs [and SRECs] eligible for RPS compliance has, for two (2) consecutive years, been below a predetermined market-based price threshold to be established by the Commission. The Commission shall establish the predetermined market-based price threshold in consultation with the Delaware

1. The Commission understands the legislation to mean that the Total Retail Sales of each Retail Electricity Product sold to End-Use Customers during a given Compliance Year shall include a minimum percentage [of SRECs] and RECs determined by the current Cumulative Minimum Percentage as defined in Schedule 1 [or Schedule 2.] The Commission shall, in another proceeding, further define [how SRECs] and RECs from Green Power products, as that term is defined in Commission Docket Number 49, are to be tracked and utilized for compliance in the RPS.

Energy Office. Rules that would alter the percentage targets shall be promulgated at least two years before the percentage change takes effect. In no event shall the Commission reduce the percentage target below any level reached to that point.

3.3 Verification of Compliance with the RPS

- 3.3.1** Within 120 days of the end of a compliance year, each Retail Electricity Supplier who has made sales to an End-use Customer in the State of Delaware must submit a completed Retail Electricity Supplier's Verification of Compliance with the Delaware Renewable Energy Portfolio Standard Report (Report) which includes, but is not limited to, evidence of the specified number of SRECs and RECs required for that Compliance Year according to Schedule 1 or Schedule 2 and the Total Retail Sales of each Retail Electricity Product.
- 3.3.2** SRECs or RECs must have been created by PJM-EIS's GATS, or its successor at law or pursuant to Section 3.1.6.1 of this Regulation.
- 3.3.3** SRECs or RECs, submitted for compliance with this Regulation, may be dated no earlier than three (3) years prior to the beginning of the current Compliance Year.
- 3.3.4** In lieu of standard means of compliance with the RPS, any Retail Electricity Supplier may pay into the Fund a SACP or ACP pursuant to the provisions of 26 Del.C. §358 or as determined by the State Energy Coordinator of the Delaware Energy Office consistent with 26 Del.C. §354 (a).
- 3.3.5** The Commission Staff shall notify any Retail Electricity Supplier of any compliance deficiencies within 165 days of the close of the current Compliance Year. If the Retail Electricity Supplier is found to be deficient by the Commission Staff, the Retail Electricity Supplier shall be required to pay the appropriate ACP [or SACP], according to Section 3.3.4 of this Regulation. All such payments shall be due within 30 days of notification by the Commission Staff. Upon receipt of payment, the Retail Electricity Supplier shall be found to be in compliance for that given year.
- 3.3.6** All compliance payments, made by the Retail Electricity Supplier, shall be payable to the Delaware Green Energy Fund and sent to the Commission.

4.0 Recovery of Costs

- 4.1** A Retail Electricity Supplier may recover, through a non-bypassable surcharge on its supply portion of the bill, actual dollar for dollar costs incurred in complying with the State of Delaware's RPS, except that any compliance fee assessed pursuant to Section 3.3.4 and its subsections of these Rules and Regulation shall be recoverable only to the extent authorized by Section 4.2 of this Regulation.
- 4.2** A Retail Electricity Supplier may recover any ACP [or SACP] if the payment of an ACP [or SACP] is the least cost measure to ratepayers as compared to the purchase of RECs [and SRECs] to comply with the RPS; or if there are insufficient RECs [and SRECs] available for the Retail Electricity Supplier to comply with the RPS.
- 4.3** Any cost recovered under this section shall be disclosed to customers at least annually on inserts accompanying customer bills.

5.0 Other General Rules

- 5.1** Under Delaware's Freedom of Information Act, 29 Del.C. ch. 100, all information filed with the Commission is considered of public record unless it contains "trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature." 29 Del.C. §10002(d)(2). To qualify as a non-public record under this exemption, materials received by the Commission must be clearly and conspicuously marked on the title page and on every page containing the sensitive information as "proprietary" or "confidential" or words of similar effect. The Commission shall presumptively deem all information so designated to be exempt from public record status. However, upon receipt of a request for access to information designated proprietary or confidential, the Commission may review the appropriateness of such designation and may determine to release the information requested. Prior to such release, the Commission shall provide the entity that submitted the information with reasonable notice and an opportunity to show why the information should not be released.

- 5.2 Any End-Use Customer, Retail Electricity Supplier, Eligible Energy Resource, potential Eligible Energy Resource or other interested party to which this Regulation may apply may file a complaint with the Commission pursuant to the Rules of Practice and Procedure of the Delaware Public Service Commission.
- 5.3 The failure to comply with this Regulation may result in penalties, including monetary assessments, suspension or revocation of eligibility as an Eligible Energy Resource, or other sanction as determined by the Commission consistent with 26 Del.C., §205(a), §217, and §1019.

10 DE Reg. 151 (07/01/06)

11 DE Reg. 1670 (06/01/08) (Final)