

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF ENERGY AND CLIMATE

Statutory Authority: 26 Delaware Code, Section 354(i) and (j) (26 **Del.C.** §354(i) & (j))

PROPOSED

REGISTER NOTICE #2015-XX

102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions

1. TITLE OF THE REGULATION:

102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUE:

The purpose of this action is to propose rules to govern how the Director of the Division of Energy & Climate (Director) and the Division of Energy & Climate (Division) administer their obligations under 26 **Del.C.** §354(i) & (j). The statute directs when and whether the Director may institute a freeze on the implementation of Delaware's Renewable Energy Portfolio Standards as provided for in 26 **Del.C.** §354(a).

Start Action Notice 2012-03 initiating this rule making process was issued April 16, 2012.

This proposed regulation replaces the regulation posted in the *Register* on October 1, 2015, which contained significant typographical errors.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

26 **Del.C.** §354(i) & (j)

5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on 102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions (Proposed Rules to Implement 26 **Del.C.** §354(i) & (j)) will open November 1, 2015 and will close December 8, 2015 at 4:30 PM.

Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. However, any comments submitted in response to the regulation posted in the October 1, 2015 *Register* will be considered to be part of the record.

The public hearing scheduled for November 3, 2015, starting at 6:00 p.m. in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901 has been cancelled and rescheduled for November 23, 2015 as noted below.

A public hearing on the proposed amendment will be held on November 23, 2015 beginning at 6:00 p.m. in the Public Service Commission Hearing Room, 861 Silver Lake Blvd., Dover, DE, 19904.

7. PREPARED BY:

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Philip Cherry, Director

102 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions

1.0 Purpose

These rules govern how the Director of the Division of Energy & Climate (Director) and the Division of Energy & Climate (Division) administer their obligations under 26 **Del.C.** §354(i) & (j). The statute directs when and whether the Director may institute a freeze on the implementation of the Renewable Energy Portfolio Standards as provided for in 26 **Del.C.** §354(a).

2.0 Definitions

For purposes of this regulation, the following words and phrases shall have the following meaning unless the context clearly indicates otherwise:

"Alternative compliance payment" means a payment of a certain dollar amount per megawatt hour, which a Commission-Regulated Electric Company may submit in lieu of supplying the minimum percentage of RECs from Eligible Energy Resources required as defined and set by 26 Del.C. §§352(1) and 358(d).

"Avoided system costs" means reductions in electric generation, transmission or distribution costs.

"Commission-Regulated Electric Company" means the same as an Electric Distribution Company in 26 Del.C. §1001(12).

"Compliance year" means the calendar year beginning with June 1 and ending with May 31 of the following year, for which a Commission-Regulated Electric Company must demonstrate that it has met the requirements of the subchapter known as the "Renewable Energy Portfolio Standards Act".

"Director" means the Director of the Division of Energy & Climate, who is considered the State Energy Coordinator for the purpose of these rules.

"Division" means the Division of Energy & Climate, the successor agency to the Delaware Energy Office.

"End-use customer" means a person or entity in Delaware that purchases electrical energy at retail prices from regulated electric utilities.

"Exempt sales" means the retail customer sales of a Commission-Regulated Electric Company that is not included in the total retail sales for RPS compliance.

"Externality benefits" means reductions in environmental, health and mortality costs resulting from reduced emissions.

"Freeze" means suspension of enforcement or implementation of the annual increase in the RPS as provided for under 26 Del.C. §§352(3) & 354(a).

"Green Energy Fund" means the grant program authorized under 29 Del.C. §8057.

"Integrated Resource Plan" or "IRP" means the plan filed by the Commission-Regulated Electric Company to meet the requirements of 26 Del.C. §1007(c) & (d).

"Non-exempt sales" means the retail customer sales of a Commission-Regulated Electric Company that is included in the total retail sales for RPS compliance.

"PJM" or "PJM interconnection" means the regional transmission organization that coordinates the movement of wholesale electricity in the PJM region, or its successors at law.

"Price suppression effects" means reductions in energy or capacity costs due to competitive pressures from renewable resources.

"PSC" means the Delaware Public Service Commission.

"REC costs of compliance" means the total costs expended by the Commission-Regulated Electric Company to achieve the applicable RPS percentage standards for RECs during a respective compliance year.

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

"Renewable Energy Cost of Compliance" means the total costs expended by the Commission-Regulated Electric Company to achieve the applicable RPS percentage standards for all renewable energy during a respective compliance year.

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

"RPS" means the renewable portfolio standard, the minimum percentage of total electricity sales delivered to Delaware end-use customers that is derived from eligible energy resources established under 26 Del.C. §354.

"Solar alternative compliance payment" means the payment of certain dollar amounts expended in lieu of supplying the minimum percentage from solar photovoltaics as defined and set by 26 Del.C. §§352(24) and 358(e).

"Solar Renewable Energy Cost of Compliance" means the total costs expended by a Commission-Regulated Electric Company to achieve the applicable RPS percentage standards for solar photovoltaic renewable energy during a respective compliance year.

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

"Third party supplier" means an electricity supplier that sells power to end-use customers delivered over the distribution facilities of the Commission-Regulated Electric Company. It does not include the Commission-Regulated Electric Company, Rural Electric Cooperatives or Municipal Electric Companies.

"Total Retail Costs of Electricity" means the total costs paid by customers of the Commission-Regulated Electric Company for the supply, transmission, distribution and delivery of retail electricity to serve non-exempt customers, including those served by third party suppliers, during a respective compliance year.

3.0 Application

- 3.1 These rules shall apply only to a Commission-Regulated Electric Company. These rules shall not apply to electric supply provided by either:
 - 3.1.1 an exempted municipal electric company or a municipal utility (as set forth in 26 Del.C. §363); or
 - 3.1.2 an exempted rural electric cooperative or a rural electric cooperative (as set forth in 26 Del.C. §363).
- 3.2 These rules will be applied immediately upon enactment.

4.0 Calculation of the Cost of Compliance

- 4.1 The Division shall calculate the Renewable Energy Cost of Compliance, the Solar Renewable Energy Cost of Compliance and the Total Retail Cost of Electricity as follows.
- 4.2 The Division shall calculate the Renewable Energy Cost of Compliance for a particular compliance year to be:
 - 4.2.1 the total of contributions to that portion of the Green Energy Fund used to support the development of renewable resources, plus
 - 4.2.2 the cost of RECs and SRECs retired to satisfy the RPS requirement, plus
 - 4.2.3 all Alternative Compliance Payments.
- 4.3 The Division shall calculate the Solar Renewable Energy Cost of Compliance for a particular compliance year to be:
 - 4.3.1 the total of contributions to that portion of the Green Energy Fund used to support the development of photovoltaic renewable resources, plus
 - 4.3.2 the cost of SRECs retired to satisfy the RPS requirement, plus
 - 4.3.3 all Solar Alternative Compliance Payments for the solar photovoltaic requirement.
- 4.4 The Division will determine the Total Retail Costs of Electricity as all customer costs for non-exempt load customers for a particular compliance year.

5.0 Determination by the Director

- 5.1 The Director shall review the calculations of the Division.
- 5.2 If the Division calculations show that the Renewable Energy Cost of Compliance is greater than 3 percent of the Total Retail Costs of Electricity for the compliance year, the Director shall, after consulting with the staff of the PSC, determine whether a freeze should be implemented.
- 5.3 If the Division calculations show that the Solar Renewable Energy Cost of Compliance is greater than 1 percent of the Total Retail Costs of Electricity for the compliance year, the Director shall, after consulting with the staff of the PSC, determine whether a freeze should be implemented.
- 5.4 In making a determination, the Director may consider:
 - 5.4.1 the overall energy market conditions;
 - 5.4.2 the avoided cost benefits from the RPS;
 - 5.4.3 the externality benefits due to the RPS; and
 - 5.4.4 the economic impacts of the deployment of renewable energy in Delaware.
- 5.5 Overall market conditions may include shifts in energy prices, long term market trends, adjustments for short term fluctuations, changes in compliance costs, consumer benefits of other state energy policies such as the implementation of energy efficiency programs, and the overall cost of energy to consumers.
- 5.6 Avoided cost benefits from the RPS may include avoided system costs and price suppression effects attributable to the deployment of renewable energy that result in lower net electricity costs.
- 5.7 Externality benefits of changes in energy markets may include externality savings in health and mortality costs and environmental impacts due to policies promoting cleaner energy in Delaware and regional energy generation. To the extent possible, the externality savings should be consistent with the current IRP filed by the Commission-Regulated Electric Company, except where other published methods or studies are determined to be more appropriate.
- 5.8 Economic development benefits may include the overall economic activity attributed to jobs created by the development of renewable energy in Delaware.

6.0 Implementation

If the Director determines that a freeze should be implemented under Section 5.0 above, the Director, in consultation with the staff of the PSC, will declare the freeze and notify the Commission-Regulated Electric Company that filed reports on RPS compliance. The Director will also publish notice of the freeze in the next appropriate issue of the Delaware *Register of Regulations*.

7.0 Lifting of a Freeze

- 7.1 If a freeze has been imposed, the Division will calculate compliance costs, using the methods described in Section 4.0 of this regulation.
- 7.2 The Director will review the calculation and determine whether to lift a freeze using the methods and criteria described in Section 5.0 of this regulation.
- 7.3 If the total cost of compliance falls below the 3 percent threshold in Section 5.2 of this regulation or 1 percent threshold in Section 5.3 of this regulation, the Director shall lift a freeze following consultation with the staff of the PSC.
- 7.4 If a freeze is lifted, the Director will promptly notify, electronically and by mail, the Commission-Regulated Electric Company that filed reports on RPS compliance. The Director will also:
 - 7.4.1 provide prior notice of the lifting of the freeze to the PSC; and
 - 7.4.2 publish notice of the lifting of the freeze in the next appropriate issue of the Delaware *Register of Regulations*.

8.0 Administration

- 8.1 Within 90 days after the end of any compliance year, the Commission-Regulated Electric Company shall submit to the Division in writing and electronically the following information for the applicable compliance year:
 - 8.1.1 the Renewable Energy Cost of Compliance for that compliance year;
 - 8.1.2 the Solar Renewable Energy Cost of Compliance costs for that compliance year; and
 - 8.1.3 the Total Retail Costs of Electricity for that compliance year.
- 8.2 Within 30 days from receipt of the information described in Section 8.1 of this regulation from the Commission-Regulated Electric Company, the Division shall calculate the cost of compliance as described in Section 4.0 of this regulation and present the results to the Director.
- 8.3 Within 30 days of receipt of the calculations of the cost of compliance from the Division, the Director will, after receipt of the calculations, make a determination as described in Section 5.0 of this regulation and present to the Registrar for publication.
- 8.4 The public will have 15 business days from the publication of the Director's determination to offer comment. The Director may alter or amend the determination based on review of the public comments.
- 8.5 The Director shall make a final determination, including effective date, and provide public notice and notify electronically and by mail the PSC, the Commission-Regulated Electric Company, and other interested parties within 15 business days of the close of public comments.

9.0 Existing Contracts

In implementing a freeze under these rules, existing contracts for the production or delivery of RECs, SRECs, renewable energy supply or other environmental attributes shall not be abrogated.