

January 17, 2021

The Honorable Stephanie L. Hansen, Chair

The Honorable Trey Paradee, Vice-Chair
The Honorable Maria Pinkney
The Honorable Laura Sturgeon
The Honorable Gerald W. Hocker
The Honorable David L. Wilson

(all by electronic copy sent
by e-mail)

Senate Environmental & Energy Committee
Delaware Senate
411 Legislative Avenue
Dover, DE 19901

Re: ***Senate Bill No. 33 (Hansen) - amendments to Renewable Energy
Portfolio Standards Act - Comments Urging Modifications
submitted by Gary Myers***

Dear Energy Committee Members:

I write to the Committee about Senate Bill No. 33 (Hansen) which would amend Delaware's Renewable Energy Portfolio Standards Act (REPSA). I am not a climate change-change denier, nor am I associated with any organization. I am simply a customer of Delmarva Power who each month pays the "Renewable Compliance Charge" brought about the REPSA requirements.

My comments will *not* speak to the portions of SB 33 that extend and expand through 2035 the mandatory renewable energy yearly quotas for Renewable Energy Certificates (RECs) and Solar Renewable Energy Certificates (SRECs).

Rather, my comments will focus on the revisions being made to 26 Del. C. § 358(d) & (e) (SB 33 at pgs. 4-5, lines 108-115; pg. 5 lines 127, 131-139). The Synopsis to the bill says that SB 33 deletes the current "cost cap" provisions (26 Del. C. § 354(i) & (j)). These subsections were added to REPSA in 2010 - *at DNREC's urging* - in order to have in place "consumer protections" - backstops which would shield DP&L ratepayers from having to pay way too high renewable compliance costs. SB 33 ends those protections substituting a new "market driven" mechanism in revised § 358(d) & (e).

But unfortunately, in real world operation, this new mechanism will provide almost no protection for Delmarva Power customers against paying excessive renewable compliance charges. As SB 33 is now written, the new provisions will allow Delmarva to incur high prices for RECs and SRECs and pass those costs

on to its customers without any safeguards to restrain the amount of these customers' bill liabilities.

High Delaware REC and SREC Costs and Charges

The background to all of this is that Delmarva Power's customers have always had to pay comparably very high costs to comply with the renewable energy mandates under REPSA. For example in the 2019-20 compliance year (which closed May, 2020), Delmarva Power customers shelled out \$ 67,259,311 to pay for the 1,289,822 RECs and SRECs needed to comply with that year's REPSA quota number.¹ In contrast, in neighboring Maryland in 2019, all of that State's electric customers paid \$ 134,545,520 in renewable energy costs to acquire the 11,433,483 RECs and SRECs required under that State's similar renewable energy mandate. *Marylanders might have paid twice as much as Delmarva Power customers but they got 10 times more RECs and SRECs.* A per REC and SREC price comparison tells the same tale:

AVERAGE PRICE of RENEWABLE COMPLIANCE INSTRUMENTS (per REC, SREC, or REC equivalent)

	Maryland (2019)	Delaware (DP&L) (2019-2020)
Non-solar REC	\$ 7.77	\$ 33.40
SREC	\$ 47.26	\$ 60.02
QFCCP (Bloom) Equivalent REC	n/a	\$ 78.68 ²

Failed Earlier Attempts at REC and SREC Price Discipline

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- ¹ This number includes the \$34,210,271 paid by customers in Qualified Fuel Cell Provider surcharges ("Bloom Energy surcharges"). Under REPSA, output from a Qualified Fuel Cell Provider Project (QFCPP) can create "equivalent" RECs and SRECs that can be used to fulfill the yearly REPSA quota numbers
 - ² The Delaware figures in this paragraph are derived from two sources: (1) Delmarva Power's *2019-20 Annual Renewable Compliance Report* (Sept. 2020) filed with the Public Service Commission and (2) Diamond State Generation Partners, LLC's *Annual Report: 2019-20* (2020) also submitted to the Commission. The Maryland numbers are drawn from the Maryland Public Service Commission's *Renewable Energy Portfolio Standard Report With Data for Calendar Year 2019* (Oct. 2020).

When the yearly quota requirements under REPSA were last upgraded back in 2010, several members in the General Assembly then questioned whether the quota increases would mean electricity customers would face burdensome higher renewable compliance costs. Senator McDowell and then DNREC Secretary O'Mara responded that such would never happen because the 2010 law included much-needed "cost cap" provisions to protect customers. These new provisions, they said, would protect customers by stalling the quota increases if renewable compliance costs tripped "circuit-breaking caps" imposed on renewable energy expenditures.³

DNREC - which was charged with doing the legwork for these cost cap protections - first ignored the provisions for several years and then fought tooth and nail against having to throw the "circuit breaker" switches when calculations showed that renewable costs were running above the cost cap limits. In the meantime, DP&L customers - for at least 7 years - have been paying renewable compliance costs greater than the "cap" levels set forth in the 2010 provisions.

The Proposed § 358(d) & (e) Mechanisms

Now SB 33 will do away with those customer protections. The replacement is a supposed "market driven" mechanism where pauses in the yearly REPSA quota requirements are keyed to the number of "Alternative Compliance Payments" (ACP) that Delmarva Power might make in two consecutive years. See revised subsections 368(d) & (e).⁴

First, it is not exactly, or immediately, clear how these new provisions put any kind of dollar limit on what DP&L can be spend on renewable compliance changes in one, or even two, years. Delmarva Power can pay (and pass through to its customers) top dollar prices for RECs and SRECs. So long as Delmarva does not make ACP payments for 15% of its annual quotas in each of two years, it can pass on to customers all these too-high outlays without any restraint. The new sections impose neither price discipline nor any "hard cap" on Delmarva Power's renewable compliance costs.

The ACP Process

3 Under the 2010 provisions, the caps for expenditure levels were calculated based on whether renewable compliance charges exceeded a certain percentage of the amounts customers paid for the electric supply portion of their bills.

4 See SB 33 at pgs. 4-5. Subsection (d) speaks to non-solar REPSA requirements and the percentage of "Alternative Compliance Payments" made. Subsection (e) offers the same mechanism for REPSA solar requirements via then number of "Solar Alternative Compliance Payments." For purposes of this letter, I will use "ACP" to cover both subsections.

You have to dig a little deeper into the ACP process to understand why, in fact, the new provisions offer little, or no, customer protection. The working theory for the ACP regime is that Delmarva Power has a choice in meeting the annual quota requirements for renewable energy production. On the preferred hand, it can acquire the specified number of RECs and SRECs to equal the yearly quota percentages. On the other hand, for every missing or foregone REC or SREC, Delmarva can choose to substitute an Alternative Compliance Payment charge for any REC or SREC required to meet the quota figures. The ACP charges come in certain per mwh dollar amounts (under SB 33 the levels are \$ 25 for non-solar requirements and \$ 150 for solar requirements). Because it is assumed that Delmarva will seek compliance through the cheapest means, one would expect Delmarva to buy a REC if its price is less than the ACP charge and, conversely, pay the ACP in lieu of a higher priced REC and SREC.⁵ In theory then, the ACP payment amounts (\$ 25 and \$ 150) create price caps on what should be paid for a REC or a SREC. The new subsections 358(d) & (e) say that if over two years, Delmarva Power pays these ACP charges for 15% or more of either of its yearly requirements, then the yearly quota requirement freezes in place until the quantity of ACP charges drops below the 15% threshold.

The Bill Needs Explicit "Hard Cap" Language

This highlights the first problem with SB 33's § 358 revisions. Nothing in the bill's new language explicitly says that the new ACP payment levels are to be "hard caps" on what Delmarva can pay for, and pass through to customers, for RECs and SRECs. There is nothing explicit that prevents Delmarva Power from paying more than those ACP levels and thus never incurring any ACP charges. In such case, customers pay the higher prices without any protection. **The bill should be amended to include "hard cap" language that makes clear that in any given year Delmarva Power cannot pay (and recover from customers) any REC or SREC price that exceeds the ACP payment levels.**

The ACP Levels Appear to Be Too High

Second, the ACP (and hence the price cap) levels appear to be too high. In comparison to the \$ 25 ACP charge for non-solar requirements, the recent spot market price for a non-solar wind REC hovers around \$7-10. And spot market prices for SRECs can recently come in at from \$ 10 to \$ 76 (as compared to the \$ 150 solar ACP charge).⁶ In fact, during the 2019-20 year,

5 REPSA tries to enforce this choice by saying that Delmarva cannot recover ACP charges from its customers if cheaper RECs or SRECs were available for purchase. 26 Del. C. § 353(f)(2).

Delmarva Power made spot purchases of 400,000 RECs and 38,712 SRECs for average prices of \$ 8.77 per REC and \$ 9.83 per SREC.

When there is too much headroom between ACP payment levels and Certificate market prices, customers are left with little protection, except for the utility's good faith. For example, under SB 33 Delmarva Power could buy all its non-solar RECs at a cost of \$24 - way above market prices but just below the ACP level - and hence never pay any ACP charge. This would never trigger the new "market driven" mechanisms even though customers would end up paying compliance charges way beyond market price levels.

The ACP and SCAP charge levels need to re-examined and lowered. Again, just two years ago in neighboring Maryland, the legislature reset that State's ACP charge levels concurrent with it increasing that State's renewable energy quota goals through 2030. Maryland set a \$ 30 non-solar ACP charge for 2019 but then stepped it down each year to \$ 22.35 by 2030 and beyond. So too, Maryland set its solar ACP charge at \$100 for 2019 but moved it down each year to \$22.35 in 2030 (in comparison to SB 33's flat solar \$150 charge level).⁷ **The General Assembly should consider adopting the Maryland scheme of ACP and SACP cost levels for SB 33.**

Pre-existing Commitments for High REC and SREC Prices

The Problem

A third problem arises with regard to the SB 33 mechanism. Delmarva Power currently has several long term contracts with Pennsylvania wind farms and the Dover Sun Park - along with understandings with the Delaware SREC Financing Program - to buy RECs and SRECs at specified prices that exceed the ACP payment levels that would become operative under SB 33. Over the last few years, Delmarva Power has recovered these higher prices from its customers.⁸ And the volume of RECs and SRECs from these contracts/understanding have accounted for more than 15% of that year's REPSA requirements. In the absence of any "hard cap" language, one would expect Delmarva Power to continue to procure RECs and SRECs under these commitments and pass those high prices on to customers. But billing these contract prices would never trigger the new § 358 "protections" since Delmarva

6 One company's report of the trading prices for RECs and SRECs for various States in December, 2020 is set forth in an attachment to this letter.

7 MD Code Annotated *Public Utilities* § 7-705(b)(2)(i)1. & 2..

8 In 2019-20, Delmarva Power customers paid \$ 68 per REC for output from the three wind farms. They paid \$ 197 per SREC from the Dover Sun Park and \$ 184 per SREC from the Financing Project.

Power would not be paying any ACP charges. Yet, if these contracts did not exist, either Delmarva would have to buy far cheaper RECs or SRECs or pay the much lower ACP payment. The result is that Delmarva customers will end up paying REC and SREC prices which are beyond the supposed "price cap" levies that SB 33 says it sets on those instruments.

The Solution

There's a possible solution to this glitch: **add provisions to SB 33 that say that, for purposes of the 15% ACP payment "triggers" under revised subsections 358(d) & (e), prices for RECs and SRECs paid by customers that exceed SB 33's ACP payment levels should be deemed an ACP payment in making the percentage calculations.** This would allow Delmarva Power to honor its commitments to the renewable electric generators (if the contracts can't be broken or expire) while delaying imposing *more* renewable cost burdens on Delmarva Power customers until the contracts expire, end, or drop below the 15% of any year's requirements. True, such additional language might cause the yearly quota increases to stall in the short term (as the deemed provision triggers the § 358 freeze provisions) but it would mean that customers would be partially protected from paying even more dollars while these old expensive contracts keep renewable compliance charges high.

Conclusion

Three things should be done before final consideration of SB 33:

1. Language should be added that explicitly states the ACP and SACP payment levels are "hard caps" on the prices Delmarva Power can charge its customers for RECs and SRECs.
2. The ACP and SACP payment levels (\$ 25 and \$ 150) should be scrutinized and changed to reflect more accurately market prices, current and expected, while allowing appropriate headroom for errors.
3. Language should be added to the new provisions of subsections 358 (d) & (e) that say that when Delmarva Power charges its customers renewable charges based on REC and SREC prices that exceed the ACP and SCAP payment levels, each such charge (on a per mwh basis) shall be deemed to be an ACP or SCAP payment for purposes of the new freeze provision calculations in those subsections.

Respectfully submitted,

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(all by electronic copy by e-mail)

SNL RECs Index

As of: 12/30/20

Product	Term	Price	Product	Term	Price
CT Class I REC	2020	43.38	ME Class II	2020	0.85
CT Class I REC	2021	36.73	ME Class II	2021	1.00
CT Class II REC	2020	19.88	NH Class I	2020	44.50
CT Class II REC	2021	20.13	NH Class I	2021	41.88
CT Class III REC	2020	10.18	NH Class II	2020	35.00
CT Class III REC	2021	12.98	NH Class III	2020	33.25
DC Solar REC	2020	447.50	NH Class IV	2020	21.63
DC Solar REC	2021	447.50	NH Class IV	2021	22.63
DC Tier I REC	2020	2.50	NJ Class I REC	2020	10.65
DC Tier I REC	2021	3.25	NJ Class I REC	2021	10.85
MA APS	2020	3.25	NJ Class I REC	2022	11.28
MA APS	2021	6.25	NJ Class II REC	2021	7.63
MA Class I	2020	43.56	NJ Class II REC	2022	8.31
MA Class I	2021	41.75	NJ Solar REC	2020	231.88
MA Class II	2020	19.81	NJ Solar REC	2021	232.63
MA Class II	2021	21.06	NJ Solar REC	2022	227.63
MA Class II WTE	2020	10.19	OH Located REC	2020	10.39
MA Class II WTE	2021	17.63	OH Located REC	2021	10.13
MA Solar I	2020	343.25	PA Solar REC	2020	21.13
MA Solar I	2021	344.25	PA Solar REC	2021	23.50
MA Solar II	2020	286.00	PA Solar REC	2022	25.13
MA Solar II	2021	276.75	PA Tier 1 REC	2020	10.58
MD Solar	2020	80.63	PA Tier 1 REC	2021	10.78
MD Solar	2021	80.25	PA Tier 2 REC	2020	5.81
MD Solar	2022	68.06	PA Tier 2 REC	2021	7.09
MD Tier I	2020	10.64	RI NEW REC	2020	43.00
MD Tier I	2021	10.79	RI NEW REC	2021	41.25
ME Class I	2020	2.56	TX REC	2020	1.64
ME Class I	2021	4.00	TX REC	2021	1.68

Data is compiled from a range of market indicatives and do not necessarily represent completed trades.

Data for RECs index provided by:

Evolution Markets: <http://new.evomarkets.com/>

Tradition Financial Services: <http://www.tradition.com/>

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Please contact data providers for more detailed or specific transaction data or REC markets not covered by SNL index.

Source: S&P Global Market Intelligence