

Eric J. Wallace EWallace@GreeneHurlocker.com Direct Dial: 804.672.4544

October 30, 2024

Via E-File

Mr. Andrew S. Johnston Executive Secretary Maryland Public Service Commission William Donald Schaefer Tower 6 Saint Paul Street, 16th Floor Baltimore, Maryland 21202-6806

Re: Petition of Commission Technical Staff for Green Product Pricing Case No. 9757

Dear Secretary Johnston:

On behalf of the Retail Energy Supply Association, NRG Energy, Inc., and CleanChoice Energy, Inc. (the "Supplier Coalition"), attached for filing in this matter are Comments pursuant to the Notice Initiating a New Docket and Request for Comments.

Please feel free to contact me with any questions about this filing.

Sincerely,

/s/ Eric J. Wallace

Eric J. Wallace

Enclosure

CC: Service List (by email)

STATE OF MARYLAND

PUBLIC SERVICE COMMISSION

*

Petition of Commission Technical Staff for Green Product Pricing

Case No. 9757

COMMENTS OF RETAIL ENEGY SUPPLY ASSOCIATION, NRG ENERGY, INC., AND CLEANCHOICE ENERGY, INC.

On October 9, 2024, the Commission's Technical Staff ("Staff") filed a Petition to initiate a new proceeding to establish green power product pricing ("Petition"). On October 10, 2024, the Commission established this case and issued a Notice Initiating a New Docket and Request for Comments ("Notice"). The Retail Energy Supply Association ("RESA"),¹ NRG Energy, Inc. ("NRG"), and CleanChoice Energy, Inc. ("CleanChoice") (collectively, the "Supplier Coalition"), by counsel, submit these comments pursuant to the Notice.

Staff's Petition seeks to establish pricing for green power products, a requirement under 2024 Senate Bill 1 ("SB1").² Staff proposed that the Commission set a maximum price for each electric company service territory based on the trailing 12-month average Standard Offer Service ("SOS") rate plus the average Tier 2 REC price from the prior year's Renewable Portfolio Standard ("RPS") report. Staff asserts that its proposed green power pricing structure is "reasonable" and

¹ The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customeroriented competitive retail energy markets. RESA members operate throughout the United States delivering value added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at <u>www.resausa.org</u>.

² SB1 included a requirement, now codified at Public Utilities Article § 7-707(d)(2), that "[e]ach year the Commission shall hold a proceeding to set a price per megawatt-hour for electricity marketed as green power under this section that may not be exceeded except [with product specific approval].").

that it will "limit a supplier's ability to make an unfair profit by purchasing the least expensive RECs available."³ However, Staff's proposal is not reasonable. The green power pricing approved in this proceeding will establish a ceiling for the competitive market above which supplier pricing cannot go without separate product-specific approval.⁴ However, Staff's proposal does not address the required minimum statutory factors in PUA § 7-707(d)(2)(iii)(1):

- A. the price of the energy purchased, including the total cost of the renewable energy credits;
- B. the amount of electricity that is eligible for inclusion in meeting the renewable energy portfolio standard;
- C. the state in which the electricity was generated; and
- D. applicable market data...

The General Assembly could not have intended for the Commission to establish a belowmarket price ceiling when the statute specifically requires the Commission to consider, among other things, "the price of the energy purchased, including the total cost of the renewable energy credits... and applicable market data..."⁵ Staff's proposal should be rejected because it is not consistent with the statutory requirements for green power pricing and would set a below-market price ceiling that would prevent, rather than enable, green power offers for residential customers in Maryland (absent separate product-specific applications and approvals).

In the interest of time, given that the pricing requirements from SB1 begin on January 1, 2025, the Supplier Coalition recommends that the Commission establish an interim green power price for 2025 at 150% of the trailing average SOS rate, pending the outcome of the Commission's

³ Petition at 1.

⁴ PUA § 7-707(d) (directing the Commission to establish market-wide green power product price up to 150% of the trailing average SOS rate and allow suppliers to apply for individualized Commission approval of green power product pricing above the market-wide price).

⁵ PUA § 7-707(d)(2)(iii)(1)(A) and (D).

proceeding to consider the required statutory factors to set a green power price. As discussed below, the Supplier Coalition requests that the Commission reject Staff's proposal and:

- (1) set an interim green power product price cap indexed at 150% of the trailing average SOS rate, as contemplated by the General Assembly in PUA § 7-707(d)(4)(i); and
- (2) establish a procedural schedule to develop an evidentiary record that includes the required information upon which the Commission may establish a green power product price pursuant to PUA § 7-707(d)(2)(iii).

I. The Commission should consider the required statutory factors to approve green power pricing.

Staff's proposed green power pricing must be rejected because it fails to consider the required statutory factors and would set the ceiling for green power pricing well below a market rate for brown power, much less a renewable energy product backed by renewable energy credits ("RECs") from renewable generating resources in the PJM Interconnection, L.L.C. ("PJM") region. In this section, the Supplier Coalition discusses each of the statutory green power pricing requirements.

A. "The price of the energy purchased, including the total cost of the renewable energy credits"

The Commission's green power price should take into account *prospective* energy supply costs, as well as different types of green power products supported by varying types of RECs and percentages of RECs, consistent with § 7-707.

Staff's Petition does not address the price of energy purchased or the total cost of the RECs that suppliers will purchase to support their green power product offerings. Staff's proposed price is indexed to the trailing-average SOS rate, which is a retrospective view of SOS procurements conducted over the prior two-year period. The trailing average SOS rate is not informed by or reflective of the prospective costs that suppliers will incur for the energy supply to serve residential

customers in Maryland in a future period. Similarly, the historic Tier 2 REC pricing Staff proposes to use does not reflect the prospective cost of renewable energy credits to serve green power customers, nor to comply with the RPS requirements for all energy supply products (whether green or not).

First, regarding the energy component, the trailing average SOS rate is based on historical laddered two-year wholesale SOS contracts. The resulting price is divorced from the current and prospective market conditions. Relying on the trailing average SOS rate, as Staff proposes, would not satisfy the statutory requirement to consider energy pricing for green power products. Importantly, current and historic SOS rates do not account for PJM capacity market results and the associated costs that will kick in mid-2025. Indeed, as the Maryland Office of People's Counsel discussed in an August 2024 report, PJM's recent capacity market auction results showed an 800% spike in capacity costs, resulting in a \$4 (DPL) to \$18 (PE) monthly bill increase for residential customers.⁶ Together with increased costs associated with Reliability Must Run contracts for Brandon Shores and Wagner units, OPC pegs the monthly bill impact for BGE customers at \$21.⁷

Importantly, PJM's most recent Base Residual Auction ("BRA") was held in July 2024, whereas the SOS procurement auction for residential customers was April 8, 2024 (prior to the PJM BRA), for the October 1, 2024 – September 30, 2026 delivery period. The SOS pricing from the most recent auction on October 21, 2024, will take effect on June 1, 2025 (for 25% of SOS load, with the remaining 75% from prior auctions).⁸ In addition to the increased capacity costs,

⁶ Office of People's Counsel, *Bill and Rate Impacts of PJM's 2025/2026 Capacity Market Results & Reliability Must-Run Units in Maryland* at 7 (August 2024), *available at* https://opc.maryland.gov/Portals/0/Files/Publications/RMR%20Bill%20and%20Rates%20Impact%20Rep ort 2024-08-14%20Final.pdf?ver=V9hZfyTmjLeNVt2Dg3cTgw%3d%3d.

⁷ \overrightarrow{OPC} Report at 9.

⁸ Case Nos. 9056 and 9064, The Commission Staff's Report on the Standard Offer Service Billing Process and Results for 2024-2025 (Oct. 24, 2024).

suppliers will also incur other energy and transmission costs to serve Maryland residential customers. The most recent SOS auction results reflect prospective increases in energy supply costs for SOS, with residential BGE customers seeing SOS rate increases of 6.25%.⁹ Staff's proposal to cap the forward-looking energy component of the green power price at the trailing average SOS rate falls far short of the statutory requirement for the Commission to consider energy pricing and market conditions when setting a green power price.

Second, Staff's REC component is an unreasonable below-market price. Staff proposed to use a single price based on 100% Tier 2 RECs. As a threshold issue, it is not possible for a supplier to offer 100% Tier 2 RECs and comply with the RPS requirements. For 2025, the RPS requirement is:

(i) 35.5% from Tier 1 renewable sources, including:					
1. at least 7% derived from solar energy;					
2. an amount set by the Commission under § 7-704.2(a) of					
this subtitle, not to exceed 10%, derived from offshore					
wind energy; and					
3. at least 0.25% derived from post-2022 geothermal					
systems;					
(ii) 2.5% from Tier 2 renewable sources					

For a green power product to comply with the above RPS requirements, at least 35.5% of the RECs must come from Tier 1 renewable sources, with 7% from SRECs. As shown in the Commission's most recent RPS Report, the pricing for Tier 1 non-solar RECs and Tier 1 SRECs is significantly higher than the Tier 2 REC price that Staff proposes:¹⁰

 ⁹ BGE – 6.25% increase; Pepco – 6.4% increase; Delmarva – 0.1% decrease; PE – 3.6% increase.
¹⁰ Public Service Commission of Maryland, Renewable Energy Portfolio Standard Report With Data for Calendar Year 2022 at 8, Table 4 (Nov. 2023), *available at* https://www.psc.state.md.us/commission-reports/.

Year	Tier 1 Non-Solar	Tier 1 Solar	Tier 2
2008	\$0.94	\$345.45	\$0.56
2009	\$0.96	\$345.28	\$0.43
2010	\$0.99	\$328.57	\$0.38
2011	\$2.02	\$278.26	\$0.45
2012	\$3.19	\$201.92	\$0.44
2013	\$6.70	\$159.71	\$1.81
2014	\$11.64	\$144.06	\$1.81
2015	\$13.87	\$130.39	\$1.71
2016	\$12.22	\$110.63	\$0.96
2017	\$7.14	\$38.18	\$0.48
2018	\$6.54	\$31.91	\$0.66
2019	\$7.77	\$47.26	\$1.05
2020	\$8.24	\$66.10	\$1.06
2021	\$14.36	\$72.59	\$6.45
2022	\$17.80	\$57.80	\$7.42

Table 4 Average Cost of RECs per Tier (2008 - 2022)

For a residential customer using 1,000 kWh per average (12,000 kWh or 12 MWh per year), the difference in REC price between 100% Tier 2 RECs is substantial:

[Table on Following Page]

Supplier Coalition Comparison of REC Costs for Green Power Products Based on 2022 REC Pricing							
	100%	RPS	51% Green	100% Green	100% Green		
	Tier 2	Obligation	(RPS Plus	(RPS Plus	– Solar (RPS		
	(Staff	(without	15% Tier	64.5% Tier 2)	Plus 64.5%		
	Proposal)	green	2)		SRECs)		
		power)					
Tier 1 Total (35.5% in 2025)							
1. Tier 1 (Non-	0%	28.25%	28.25%	28.25%	28.25%		
Solar)		(\$60.34)	(\$60.34)	(\$60.34)	(\$60.34)		
2. Tier 1	0%	7%	7%	7% (\$48.55)	69%		
(Solar)		(\$48.55)	(\$48.55)				
3. Tier 1	0%	N/A	N/A	N/A	N/A		
(Offshore							
Wind)							
4. Tier 1 (Post-	0%	0.25%	0.25%	0.25% (Cost	0.25% (Cost		
2022		(Cost	(Cost N/A)	N/A)	N/A)		
Geothermal)		N/A)					
Tier 2 (2.5% in	100%	2.5%	15%	64.5%	2.5%		
2025)	(\$89.04)	(\$2.23)	(\$13.36)	(\$57.43)	(\$2.23)		
Annual REC Cost (1,000 kWh per month)	\$89.04	\$111.12	\$122.25	\$166.32	\$478.58		

As the table above shows, even relying on the historic REC pricing from the RPS reports for compliance year 2022, which would need to be updated with prospective market data, the lowest possible price for a RPS compliant green power product relying exclusively on Tier 2 RECs to get from the RPS requirement up to 51%, the cost would have been \$122.25 (nearly 40% higher than the REC component price Staff proposed based on 100% Tier 2 RECs). For a product to provide 100% Tier 2 RECs, that price jumps to \$166.32 (nearly double what Staff's pricing would allow). Another example, not included in the above table, is a wind product backed by PJM wind RECs, which would be more expensive than the Tier 2 product, but could be less expensive than a Tier 1

solar product. Finally, if the Commission wants to see solar green power products in the Maryland market, the price (as of 2022) would be significantly higher at \$478.58, over five times what Staff's below-market green power price ceiling would allow.

While Staff asserts that its proposed green power pricing ceiling is "reasonable" and would just prevent suppliers from reaping "unfair" profits, Staff's proposal is not reasonable because it would require suppliers to offer green power well below the minimum cost to comply with the RPS. Suppliers would be required to take a significant loss to provide green power products under Staff's proposal, earning no profit (much less an "unfair" profit).

To enable a competitive market for green power products under SB1, the Commission should initiate a proceeding (or expand this proceeding) to receive comments on actual prospective energy supply and REC costs. Only by considering this data will the Commission be able to establish green power pricing consistent with the statutory requirements in PUA § 7-707.

B. "The amount of electricity that is eligible for inclusion in meeting the renewable energy portfolio standard"

As discussed above, green power products with different percentages of RECs and different types of RECs will necessarily have different costs and pricing. Staff's one-size-fits-all approach based on Tier 2 RECs does not allow RPS compliant products, much less green power products based on other resource types. PUA § 7-707 requires the Commission to consider the amount of RPS-eligible electricity included in a green power offer when establishing the price. The percentage of RPS-eligible electricity must be at least 51% for 2025 but could be as much as 100% (or greater).¹¹

¹¹ For example, if a supplier were selling a product backed by 100% SRECs, the product could be structured to be match with 100% SRECs, but would also need to meet the geothermal and Tier 2 REC requirements, resulting in a combined REC percentage above 100%.

Staff's proposal would limit green power pricing based on only one scenario: 100% Tier 2 RECs. As explained above, that product would not comply with the RPS, so it should not be the basis for green power pricing in Maryland. Instead, the Commission should consider establishing a tiered green power pricing structure based on the amounts and types of RECs provided (with higher pricing for Tier 1 RECs, and even higher for Tier 1 SRECs).

C. "The state in which the electricity was generated"

The REC type and location of the renewable generator are important factors that the Commission is required to consider under § 7-707(d)(2)(iii)(1)(C). The Commission should establish a green power pricing framework that takes the state where RECs are sourced from into account, consistent with this statutory element for green power pricing.

Current market data shows that Maryland SREC pricing is around \$58 per REC, which is consistent with the Tier 1 SREC pricing in the Commission's most recent RPS Report.¹² However, current and historic SREC pricing data does not necessarily reflect the pricing that suppliers will pay for Maryland SRECs to offer green power products in the future. Indeed, the historic 2022 prices are based on RPS requirements that included a 5.5% SREC component.¹³ For suppliers to offer 100% Maryland SREC products as green offers, suppliers would need to exceed the RPS requirement (7% in 2025) by 93%, increasing overall demand for SRECs. Given what the Commission described as a "significant shortfall" in SRECs in the most recent RPS report (resulting in more than \$85 million in Tier 1 Solar alternative compliance payments), added demand for SRECs could reasonably be expected to increase SREC prices.¹⁴ While that price

¹² See Table 4 (from the 2022 RPS Report) above; SRECTrade, Maryland, Market Prices (showing Maryland SREC prices around \$58), *available at* <u>https://www.srectrade.com/markets/rps/srec/maryland</u> (last visited Oct. 10, 2024).

¹³ PUA § 7-703(b)(17).

¹⁴ RPS Report at 9 ("Due to a significant shortfall in available SRECs, ACPs accounted for a significant portion (\$86.6 million) of the total \$438.8 million RPS compliance costs in 2022. Prior to 2021,

increase may help support more investment in solar generation in the long term, the short-term impact of a price increase must be considered as part of the Commission's market data analysis in this proceeding.

Other than Maryland REC-based products, the Commission should also consider how pricing will reflect products that are based on PJM RECs, or may include RECs from outside of PJM. One key threshold question for the Commission to consider is whether green products may include RECs from outside of PJM. In general, nationally sourced RECs can be less expensive than PJM RECs. Given that climate change is a global issue (not just a PJM or Maryland issue), the Commission should encourage and enable Maryland customers to support products that include a green component satisfying the SB1 requirements if that product also includes national RECs on top of the SB1 requirements. SB1 does not prohibit a 51% RPS-eligible product that is paired with 49% national RECs (for a combined total of 100%). SB1 just requires that green product RECs be sourced from PJM for the RPS-eligible portion of the offering. Any non-PJM RECs would not count towards the RPS-eligible portion of the product, but should be allowed for the non-RPSeligible portion of the product. Of course, the supplier's disclosures describing the product would need to accurately explain the source of the RECs.¹⁵ There is no reason that a 51% Maryland SREC product with 49% brown power should be permitted, but a 51% Maryland SREC product paired with 49% national RECs should not be permitted.

Rather than proceed with a one-size-fits-all REC component based only on PJM Tier 2 RECs, the Commission should provide flexibility for green power pricing based on the source and type of the RECs.

reliance on ACPs had been limited.").

¹⁵ PUA § 7-707(g) requires the Commission to adopt regulations to address marketing disclosures for green power products. *See* RM84, Green Power Offerings – Revisions to Comar 20.53 and 20.61.04.01.

D. "Applicable market data..."

As discussed above regarding energy and REC pricing, applicable prospective market data must be considered to determine a reasonable green power pricing structure for Maryland residential customers. Suppliers must be able to cover their energy supply and REC costs, as well as their marketing, sales, customer service, billing, operations, and profit margin through the prices that they charge. To that end, the Commission should consider not only wholesale supply costs for energy and RECs, but also how those costs must be grossed up to cover the other costs that suppliers incur to provide a retail energy service.

The Commission should also consider which types of green power products customers want to purchase. Applicable market data should not just include cost data, but also data about customer demand. For example, if customers have a strong preference for wind or solar products, the green price should not be capped based on a less expensive Tier 2 REC product. Importantly, the only Tier 2 resource under the Maryland RPS is "hydroelectric power other than pump storage generation."¹⁶ In the Tier 1 category, there are thirteen kinds of resources, including solar, wind, biomass, ocean wave/tidal, etc.¹⁷ While the Tier 1 resource requirement in the RPS scales up to 50% by 2030, the Tier 2 requirement stays at 2.5% indefinitely. This focus on Tier 1 resources shows the General Assembly's intent that those resources become a larger and larger part of Maryland's energy resource mix over the next decade. Accordingly, Green power pricing should not be based exclusively on Tier 2 RECs.

¹⁶ PUA § 7-701(t) ("Tier 2 renewable source" means hydroelectric power other than pump storage generation."). ¹⁷ PUA § 7-701(s).

Staff's proposal to use historic SOS pricing and historic Tier 2 REC prices would establish a below-cost price ceiling, requiring suppliers to offer any green power products at a significant loss – effectively ensuring that no green products are available to Maryland customers. Such a result would be contrary to the intent of the General Assembly as reflected in the plain language of PUA § 7-707.

II. The Commission should use 150% of the trailing average SOS rate and a tiered REC cost component for any green power price indexed to SOS rates and REC pricing.

If the Commission is inclined to establish an green power price indexed to historic SOS rates and REC pricing, the Commission should do so on an interim basis and set the price at 150% of the 12-month trailing average SOS rate. In SB1, the General Assembly specifically established 150% of the 12-month trailing average SOS rate as the ceiling for green power pricing, unless the Commission determines that the actual cost of green power exceeds that amount.¹⁸

As discussed above, Staff's proposed green power pricing ceiling is a well below-market price and would prevent any green power offers because it would put suppliers in a position of having to sell green products at a significant loss. Absent a specific analysis of the statutory factors, the Commission should enable residential customers in Maryland to access green power products and advance Maryland's clean energy and climate goals by setting a price ceiling that provides an opportunity for retail suppliers to sell green power in Maryland under SB1.

To be clear, the Supplier Coalition recommends that the Commission use a tiered approach for the REC component of the green power pricing so that products with a higher percentage of RECs or a higher tier of REC (e.g., SRECs) would have a higher price ceiling. However, in the interest of time, to at least provide some possibility of green power available for Marylanders on

¹⁸ PUA § 7-707(d)(4).

January 1, 2025, the Commission should consider setting an interim green power price at 150% of the trailing average SOS rate consistent with PUA § 7-707(d)(4).

III. Timing considerations support an interim green power price cap at 150% of the trailing average SOS rate pending the Commission's consideration of the statutory green pricing factors.

Suppliers should be authorized to offer green power products that comply with SB1 subject to that interim price cap until the Commission completes its consideration of the specific statutory factors in § 7-707(d)(2)(iii). Suppliers will need to price their green power products and ensure that their supply teams are able to procure the power and RECs for a green power offering, develop marketing and contract materials for the green power offering, engage in a marketing and sales campaign to educate customers about the offering and enable customers to sign up, then enroll customers that contract for green power. For suppliers to be able to make these offerings to customers in advance of January 1, 2025, the Commission should issue an order setting the interim price as soon as possible.

As a second part step, at the conclusion of this proceeding, when the Commission issues an order establishing green power product pricing after consideration of the required statutory factors, the Commission should specify a date certain when green power products will need to comply with the updated green power price ceiling.

For example, the interim price may be in place through June 30, 2025. Contracts entered into prior to that date would be subject to the interim pricing requirements (and grandfathered for the duration of the contract term, up to 12 months). If the Commission enters an order on December 31, 2024, the Commission could set a revised green power product price ceiling effective July 1, 2025. Contracts entered into on or after July 1, 2025, would then be subject to the revised green power pricing.

IV. Conclusion

For the reasons discussed above, the Supplier Coalition requests that the Commission reject Staff's green power pricing proposal and:

(1) set an interim green power product price cap indexed at 150% of the trailing average

SOS rate, as contemplated by the General Assembly in PUA § 7-707(d)(4)(i); and

(2) establish a procedural schedule to develop an evidentiary record that includes the required information upon which the Commission may establish a green power product price pursuant to PUA § 7-707(d)(2)(iii).

Respectfully submitted,

RETAIL ENERGY SUPPLY ASSOCIATION NRG ENERGY, INC. CLEANCHOICE ENERGY, INC.

By Counsel

<u>/s/ Eric J. Wallace</u> Brian R. Greene Eric J. Wallace GREENEHURLOCKER, PLC 4908 Monument Avenue, 2nd Floor Richmond, VA 23230 (804 672-4542 (BRG) (804) 672-4544 (EJW) <u>BGreene@GreeneHurlocker.com</u> EWallace@GreeneHurlocker.com

Counsel for Retail Energy Supply Association, NRG Energy, Inc., and CleanChoice Energy, Inc.

Dated: October 30, 2024