**ORDER NO. 91464**

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| Petition of Commission Technical Staff for Green Product Pricing | * * * * * * * | BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND<br>CASE NO. 9757 |

Issue Date: December 30, 2024

**ORDER ESTABLISHING GREEN PRODUCT PRICING IN ACCORDANCE WITH PUA § 7-707(d)(2) AND GREEN PRODUCT MARKETING REQUIREMENTS IN ACCORDANCE WITH PUA § 7-707(f) and (g)**

On November 21, 2024, the Commission requested that interested parties submit proposals on maximum green product pricing for each choice service territory in accordance with *Annotated Code of Maryland,* Public Utilities Article ("PUA") § 7-707(d)(2). Proposals were submitted through filings and at a legislative hearing held on December 11, 2024. The Commission hereby establishes the product pricing to be based on the trailing 12-month average SOS rate, along with the 2023 Tier 2 REC price.

## I. Background

During the 2024 Session of the Maryland General Assembly, the legislature passed, and the Governor subsequently signed, Senate Bill 1 ("SB 1"), the general purpose of which was to reform the consumer impacts of Maryland's retail choice supply activity. SB 1 contains, among other things, a number of provisions limiting the price an electricity supplier can charge a residential customer for green power, which is defined as energy derived from Tier 1 and Tier 2 renewable sources or associated with renewable energy credits ("RECs") that are marketed as clean, green, eco–friendly, environmentally friendly or responsible, carbon–free, renewable, 100% renewable, 100% wind, 100% hydro, 100% solar, 100% emission–free, or similar claims.[1] One such provision, PUA § 7-707(d)(2), requires that the Commission hold an annual proceeding to set a price per megawatt–hour for electricity marketed as green power that may not be exceeded by an electricity supplier.

On October 9, 2024, the Commission's Technical Staff ("Staff") filed its Green Energy Product Pricing Petition ("Petition") to initiate a new proceeding by which to establish price guidelines in response to PUA § 7-707(d)(2).[2] As part of the Petition, Staff recommended that the Commission set a maximum price for each choice service territory that includes the most recent 12-month average standard offer service ("SOS") rate, along with the average Tier 2 REC price in the previous year's renewable energy portfolio standard ("RPS") annual report.

On October 10, 2024, the Commission filed a Notice Initiating a New Docket and Request for Comments, thereby creating Case No. 9757 to establish price guidelines related to green product offerings.[3] The Notice invited interested parties to file comments on the Petition by October 30, 2024.

Comments were filed by the Office of People's Counsel ("OPC"),[4] Retail Energy Supply Association, NRG Energy, Inc., and CleanChoice Energy, Inc. (collectively, "the Supplier Coalition"),[5] and WGL Energy Services, Inc. ("WGL Energy").[6]

[1] PUA § 7–707(a).
[2] Maillog No. 312798.
[3] Maillog No. 312809.
[4] Maillog No. 313256: OPC's Comments Regarding Green Product Pricing ("OPC Comments") (October 30, 2024).
[5] Maillog No. 313251: Comments of Retail Energy Supply Association, NRG Energy, Inc., and CleanChoice Energy, Inc. ("Supplier Coalition Comments") (October 30, 2024).
[6] Maillog No. 313254: WGL Energy Comments (October 30, 2024).

On November 21, 2024, the Commission issued a Request for Proposed Green Product Pricing, requesting that interested parties file by December 6, 2024 a proposed maximum green product price for each choice service territory, along with the most recent 12-month average SOS rate.[7]

On December 4, 2024, the Commission issued a Notice of Hearing advising that a legislative-style hearing would be held on December 11, 2024 on the proposals for green product pricing.[8]

Proposals for green product pricing were filed by Staff,[9] OPC,[10] the Supplier Coalition,[11] WGL Energy,[12] AEP Energy, Inc. ("AEP Energy"),[13] and Baltimore Gas and Electric Company, Delmarva Power & Light Company, and Potomac Electric Power Company (collectively, "the Exelon Utilities").[14]

The Commission conducted the legislative-style hearing on December 11, 2024, at the conclusion of which the Commission took the matter of establishing the green product pricing under advisement.

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[7] Maillog No. 313756.

[8] Maillog No. 314021.

[9] Maillog No. 314101: Staff Proposal for the Maximum Allowable Green Product Pricing ("Staff Proposal") (December 6, 2024).

[10] Maillog No. 314091: OPC's Response to Request for Green Product Pricing ("OPC Proposal") (December 6, 2024).

[11] Maillog No. 314102: Green Power Pricing Proposal of the Supplier Coalition ("Supplier Coalition Proposal") (December 6, 2024).

[12] Maillog No. 314098: WGL Energy Services, Inc. Comments in Response to Request for Proposed Green Product Pricing ("WGL Energy Proposal") (December 6, 2024).

[13] Maillog No. 314112: AEP Energy Inc.'s Responses to the Petition of Commission Technical Staff for Green Product Pricing ("AEP Energy Proposal") (December 9, 2024).

[14] Maillog No. 314096: Comments of the Exelon Joint Utilities ("Exelon Utilities Comments") (December 6, 2024). The Exelon Utilities filed a request to be added to the Case No. 9757 Service List on November 11, 2024.

## II. **Party Positions**

*Staff*

Staff recommended that the Commission set a maximum green product price that includes the most recent 12-month average SOS rate of the customer's respective utility service territory, along with the average Tier 2 REC price in the previous year's RPS reports as a baseline.[15] Staff argued that its methodology would limit a supplier's ability to make an unreasonable profit that would result if the pricing model used Tier 1 prices as a baseline, which would allow a supplier to purchase the least expensive RECs (Tier 2) but sell a green product based on the higher Tier 1 prices.[16]

Staff explained that, under its proposal, the green product price would be calculated for a service territory by taking the difference between the current year's RPS requirements and the green power percentage that is being offered in the product.[17] Staff gave the following example:

> If the green product is comprised of 51% green power, then this will be subtracted from that year's RPS requirements. For 2025 the total RPS requirement is 38%. The resulting percentage would be 51% - 38% = 13%. This 13% will be known as the Green Power Premium Factor ("GPPF"). Under this model, suppliers will be rewarded for offering a greener product by being able to achieve a higher GPPF. The GPPF is then multiplied by the average of the previous year's Tier 2 REC price which produces the Green Product Premium ("GPP") that the supplier will be permitted to add on to the most recent 12-month average SOS rate in the customer's respective service territory. In this example the 2023 Calendar Year Tier 2 REC price of $0.01050 is used. Accordingly, the calculation would be as follows: $0.01050 x 0.13 (13% GPPF) = $0.00137 GPP.[18]

[15] Staff Proposal at 2.
[16] *Id.*
[17] *Id.*
[18] *Id.*

The Supplier Coalition opposed Staff's proposal, arguing that it would establish a below-cost price ceiling, thereby requiring suppliers to offer any green power products at a significant loss, which would effectively ensure that no green products are available to Maryland customers.[19]

*OPC*

OPC suggested that the Commission establish a forward-looking process to determine price guidelines. Specifically, OPC recommended that the Commission set a maximum price for each service territory that includes known SOS procurement prices for the year following the annual PUA § 7-707(d)(2) proceeding. This would require the Commission to instruct utilities to provide information regarding the following year's SOS costs in advance of the § 7-707(d)(2) proceeding.[20] OPC acknowledged that its proposal precludes it from being able to propose a maximum green product price, as such SOS price information from utilities is necessary but unavailable.[21]

Although OPC noted that a forward-looking REC price would likely result in a baseline price for green power that more accurately reflects the market price, OPC deferred to Staff's recommendation to use the average Tier 2 REC price from the previous year's RPS report as a benchmark at the beginning of the program, until the Commission is able to establish a methodology for determining a forward-looking REC price.[22]

The Exelon Utilities oppose OPC's recommendation to use SOS prices for the year following the annual proceeding, claiming that it would be based on too many unknown

[19] Supplier Coalition Proposal at 3.
[20] OPC Proposal at 2.
[21] *Id*.
[22] *Id*. at 2-3.

variables, given that several components of the SOS price would not be known at the time the price is set, including transmission charges, periodic procurement cost adjustments, and the SOS administrative charge.[23] If the Commission were to adopt OPC's proposal to use a forward-looking SOS price, the Exelon Utilities argued that the price to compare should be used to calculate the green product price cap as it represents the best estimate of the future SOS price that the utilities have at the point in time it is calculated.[24]

The Supplier Coalition supported OPC's use of a prospective view in setting a green power price but opposed its recommendation to use a historical Tier 2 REC price in the interim, claiming that doing so would prevent customers from choosing wind or solar products.[25]

*Supplier Coalition*

The Supplier Coalition argued that the Commission should conduct a fulsome evidentiary proceeding that takes the required criteria in PUA § 7-707(d)(2)(iii)(1) into account before establishing a final green power pricing structure.[26] The Supplier Coalition further argued that certain threshold issues must be resolved before pricing can be established, including the finalization of green power regulations and clarification of consolidated billing options.[27] However, given that the pricing requirements from SB 1 are to begin on January 1, 2025, the Supplier Coalition recommended that the Commission establish an interim green power price for 2025 at 150% of the trailing average SOS rate, pending the outcome of the evidentiary proceeding.[28]

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[23] Exelon Utilities Comments at 3.
[24] *Id*. at 4.
[25] Supplier Coalition Proposal at 4.
[26] *Id*. at 2.
[27] *Id*. at 4.
[28] *Id*.

OPC opposed the Supplier Coalition's recommended interim green power price, claiming that it would be likely to result in a baseline price for green power that is too high and leads to unfair profits, thus conflicting with SB 1's focus on transparency and consumer protection in the retail electricity market.[29]

*The Exelon Utilities*

The Exelon Utilities recommended that the green product cap baseline be calculated using the trailing 12-month SOS rate or the SOS price to compare for any baseline used to calculate the maximum green product price cap.[30]

*WGL Energy Services, Inc.*

WGL Energy recommended that the maximum green product price for each choice service territory using 51 percent Maryland RPS-qualified RECs and the remaining from other jurisdictions should be 12-month SOS trailing for each service territory and $20 per megawatt hour ("MWh").[31] Alternatively, if the Commission were to require that the RECs must be generated in Maryland, then WGL Energy recommended a maximum green product price based on the average 12-month SOS trailing price for each service territory and $60 per MWh, with the increased price reflective of what WGL Energy alleges to be the challenges of sourcing RECs within a single state's geographic boundaries.[32]

*AEP Energy, Inc.*

AEP Energy filed a chart proposing the maximum green product price as 150 percent above the rolling 12-month SOS average.[33]

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[29] OPC Proposal at 1.
[30] Exelon Utilities Comments at 2.
[31] WGL Energy Proposal at 3.
[32] *Id*. at 4.
[33] AEG Energy Proposal at 1.

## COMMISSION DECISION

PUA § 7–707(c) states that retail electricity suppliers marketing to residential customers may not market electricity as green power unless the percentage of the green power being offered exceeds the greater of 51%, or 1% higher than the current RPS for the year the electricity is provided to the customer. PUA § 7-707(c)(2) requires retail electricity suppliers who market and sell green power to charge rates that do not exceed a Commission-approved baseline.

PUA § 7-707(d)(2) requires that the Commission hold a proceeding each year to set a price per MWh for electricity marketed as green power. This price may not be exceeded by an electricity supplier unless a supplier requests that the Commission hold a proceeding for that supplier's green product pursuant to PUA § 7-707(d)(3), at which their green product price may be established. PUA § 7-707(d)(2)(iii) requires the Commission to consider the following factors in setting the baseline green power price:

(1) the price of the energy purchased, including the total cost of the renewable energy credits;
(2) the amount of electricity that is eligible for inclusion in meeting the renewable energy portfolio standard;
(3) the state in which the electricity was generated; and
(4) applicable market data.

PUA §7-707(d)(2)(iii) also allows the Commission to consider whether the purchase of RECs was bundled with a power purchase agreement from the energy sources associated with the credit.

The General Assembly passed SB 1 to strengthen consumer protections against deceptive practices in the retail electricity market. The legislation calls for increased Commission oversight in order to prevent unfair retail supplier price gouging. The Commission is tasked with establishing a maximum price that suppliers may charge residential customers for green power. The Commission recognizes its responsibility to set a price guideline that limits a supplier's ability to make an unfair profit, as well as the challenges that go with setting the price cap, given the ways in which green products may vary, including the type and source of the green power as well as how "green" the product actually is.

After careful consideration of the filings and testimony received in this matter, as well as the requirements and guidance provided by SB 1, the Commission approves Staff's proposal for green product pricing under PUA § 7-707(d)(2). The Commission directs retail electricity suppliers in each service territory that offer green power to residential customers to do so at a price not exceeding the service territory's most recent 12-month average SOS rate, along with the 2023 Tier 2 REC price, including the green power premium factor and green product premium as identified by Staff.

The trailing 12-month average SOS rate is a benchmark referenced in nearly all of the interested party proposals, either as an immediate or alternative proposal. It provides actual, known figures that do not risk overestimation, require the need for speculation, or cause delay, as the use of prospective SOS rates might, given that SOS procurement auction prices for 2025 will not be fully verified until April 2025. Trailing average SOS rates are required to be posted on utility websites to enforce transparency and enable supplier compliance, thereby allowing the Commission, suppliers, and the general public to access "price to compare" data on trailing SOS rates regularly. The Commission finds the Supplier Coalition's proposed use of 150 percent of the trailing average SOS rate would not be in keeping with the intent of SB 1, as such an increase over the trailing average would result in unfair supplier profits, whereas the use of the trailing 12-month average SOS conforms to the statutory intent of SB 1.

Similarly, the proposal by Staff to utilize the Tier 2 REC price for compliance year 2023 allows for the use of accessible, substantiated data, as the Commission's annual RPS report verifies the cost of Tier 2 RECs. The use of Tier 2 RECs also limits the ability for suppliers to achieve an unfair profit by basing pricing off of the least expensive RECs. This decision does not prevent retail electricity suppliers from making a fair profit, as PUA §7-707(d)(3) provides a means for suppliers that wish to use the more expensive Tier 1 RECs to seek the Commission's authority to charge a price higher than the established baseline. Furthermore, Staff's proposal enables variation in the amount of RECs composed in a green power product through the green power premium factor. As a result, it incentivizes green power by reducing greenhouse gas emissions and eliminating carbon-fueled generation, establishing a market for electricity from renewable elements within the State, and enabling flexibility based on the amount of RECs eligible for inclusion in meeting the renewable portfolio standard.

Staff noted that, outside of a PJM Interconnection, LLC ("PJM")-specific tracking system, it is unable to verify the retirement of RECs that exceed the 51% requirement. The Commission interprets SB 1 to encourage procurement of verifiable RECs within PJM markets, and therefore directs retail electric suppliers to retire all RECs composing an approved green product, 51% and above, into a PJM tracking system accessible by the Commission.

The Commission notes that SB 1 has a built-in review mechanism in that PUA § 7-707(d)(2) requires the Commission to establish a maximum green product price annually.

Each proceeding that follows will allow the Commission and interested parties to review and adjust in accordance with lessons learned, price fluctuations, and market indicators. The Commission's directive today, however, is intended to reflect reasonable, low-risk considerations as a starting point for the newly enacted green power pricing requirements. The Commission reiterates that its decision does not preclude a retail electric supplier from specifically petitioning the Commission for a price that exceeds the amount dictated herein, as PUA § 7-707(d)(3) allows suppliers to petition for a higher price based on independently verified data submitted to the Commission.

Additionally, PUA § 7-707(f) requires a supplier to include the following or similar Commission-approved disclosure language in marketing materials involving the purchase of green power:

> We deliver energy through the purchase of Renewable Energy Credits (RECs). A REC represents the social good that accompanies 1 megawatt-hour of renewable electricity generation. RECs may be sold separately from renewable electricity itself. Renewable electricity and RECs may be sold to different entities. The purchase of a REC does not indicate that renewable electricity itself has been purchased by the entity that purchased the REC.

Similarly, PUA § 7-707(g) requires the Commission to adopt regulations that require retail electric suppliers offering green power for sale to include in marketing materials a disclosure that explains the following:

> (1) what the customer will actually be paying for when the customer purchases green power from the electricity supplier;
> (2) how the electricity that the customer has purchased is generated;
> (3) how the green power will benefit the environment;
> (4) the percentage of electricity that would be provided by the electricity supplier that is eligible for inclusion in meeting the renewable energy portfolio standard; and

(5) the state in which electricity was generated.

In accordance with PUA § 7-707(f) and (g), the Commission directs all retail electric suppliers offering green products for sale to include the following statement in its marketing materials:

> The electricity delivered to your home is generated from a variety of sources, both renewable and nonrenewable. Energy from renewable resources, such as wind and solar, cannot be tracked directly into your home. Instead, the energy your home uses will support renewable energy sources through the purchase of renewable energy credits ("RECs"). A REC represents the environmental and social good associated with 1 megawatt hour of renewable electricity generation. RECs may be sold separately from the electricity itself, so the buyer of a REC may be different than the buyer of the electricity. In your contract, [X]% of the RECs qualify for Maryland's renewable portfolio standard. The remaining [Y]% of RECs are [the specific product being marketed].
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> By purchasing RECs that qualify for Maryland's renewable portfolio standard, you are supporting renewable energy development in the region. Increased demand for, and generation of, renewable electricity can help reduce conventional electricity generation from fossil fuels in the region where the renewable electricity generator is located. It may also have other environmental benefits such as reducing regional air pollution.

**IT IS THEREFORE**, this 30th day of December, in the year Two Thousand Twenty-Four, by the Public Service Commission of Maryland, **ORDERED**:

(1) that Staff's proposal for green product pricing under PUA § 7-707(d)(2) is approved;

(2) that retail electric suppliers are directed to retire all RECs composing an approved green product, 51% and above, into a PJM tracking system accessible by the Commission; and

(3) that in accordance with PUA § 7-707(f) and (g), all retail electric suppliers offering green products for sale are directed to include in its marketing materials the statement contained herein.

*/s/ Frederick H. Hoover, Jr.*

*/s/ Michael T. Richard*

*/s/ Kumar P. Barve*

*/s/ Bonnie A. Suchman*
Commissioners