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August 16, 2007

Via Email and Overnight Mail

Karen Nickerson
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IN THE MATTER OF THE INVESTIGATION OF THE PUBLIC SERVICE COMMISSION INTO REVENUE DECOUPLING MECHANISMS FOR POTENTIAL ADOPTION AND IMPLEMEN- ATION BY ELECTRIC AND NATURAL GAS UTILITIES SUBJECT TO THE JURISDICTIONOF THE PUBLIC SERVICE COMMISSION (OPENED MARCH 20, 2007) PSC Regulation Docket 59

Dear Ms. Nickerson,

Please find an original and 10 copies of the Division of the Public Advocate's initial comments in the above captioned manner.

Very truly yours,

Kishon Williams

Service List (3 pages)
PSC Regulation Docket No. 59

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

RECEIVED
AUG 17 AM 10:23
DELAWARE P.S.C.

IN THE MATTER OF THE INVESTIGATION)
OF THE PUBLIC SERVICE COMMISSION)
INTO REVENUE DECOUPLING MECHANISMS)
FOR POTENTIAL ADOPTION AND IMPLEMEN-) PSC Regulation No. 59
ATION BY ELECTRIC AND NATURAL GAS)
UTILITIES SUBJECT TO THE JURISDICTION)
OF THE PUBLIC SERVICE COMMISSION)
(OPENED MARCH 20, 2007)

August 15, 2007

Pursuant to the Rules of Practice and Procedure of the Public Service Commission of Delaware ("the Commission"), the Division of the Public Advocate ("the DPA") hereby submits these comments for the Commission's consideration in connection with the captioned matter.

I. Background

The Commission opened this proceeding to consider whether to implement a revenue decoupling mechanism for the electric and natural gas utilities subject to its jurisdiction, consistent with the provisions of the settlement of Delmarva Power & Light Company's ("Delmarva") gas base rate case approved by this Commission in Order No. 7152 (Mar. 20, 2007)[1]. The Commission seeks to develop policy recommendations and concepts regarding the potential approval of revenue decoupling ("RD") mechanisms for the utilities subject to the Commission's jurisdiction.

The Commission decided that it will not dictate a specific process for the Hearing Examiner to follow; instead, the Commission deemed the Hearing Examiner "free to develop a process that is efficient and fair."[2] Thus, the Commission indirectly ordered the Hearing Examiner to "convene one or more workshops or other similar meetings in

[1] The Settlement Agreement in Docket No. 06-284 calls for the parties to participate in any generic statewide proceeding initiated by the Commission for purposes of investigating a revenue decoupling mechanism for electric and gas distribution utilities.

[2] PSC Order No. 7153, issued March 20, 2007, paragraph 3.

which the Commission Staff, Delmarva Power & Light Company, Chesapeake Utilities Corporation, and all other participants will work to identify possible recommendations, develop a list of 'consensus' proposals, and narrow the issues related to any 'contested' proposals."[3]

The Hearing Examiner conducted three "workshop" meetings on April 25, May 16, and June 20, 2007. The parties in this proceeding were given opportunities to present positions on decoupling, forms of decoupling for implementation, and question the presenters. Subsequent to these workshops, the Hearing Examiner circulated "Staff's issue list[4]," requesting parties to focus comments on these issues.

The Hearing Examiner granted an extension of time to the parties of the initial comment filing date on July 17, 2007. The Hearing Examiner extended the filing date from July 18, 2007 to August 15, 2007 after a request by the Division of the Public Advocate.

The DPA met with Delmarva Power in order to obtain consensus on a RD proposal for Delaware. At the time of this filing, the DPA and Delmarva Power have been unable to reach consensus on RD. The DPA extended a verbal invitation to Chesapeake Utilities to discuss consensus. However, Chesapeake did not respond, and no meeting took place. Thus, at this time, it would appear that all proposals are contested to some degree, and there is no consensus on any of them.

II. Introduction

The DPA is not opposed to the concept of RD if: there is persuasive evidence that RD is necessary to allow consumers to benefit from their conservation efforts; the utility has filed secure, just and reasonable rates; the utility maintains capital risk with investors and not impose the burden of risk on customers; and if RD does not impede the utility from providing its commodity at the lowest reasonable cost.

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[3] Id., paragraph 3.
[4] Letter from Hearing Examiner Price, July 3, 2007.

1. The DPA's comments will focus primarily on the fact that Delaware's utilities do not need RD measures since there is not a scintilla of evidence to support even the suggestion that Delaware's public utilities are being "hurt" financially or in any other manner by energy conservation or weather patterns. In fact, during the past decade, Delaware has experienced typical weather patterns for the heating months as confirmed by empirical historical weather data.

2. The DPA will present data on customer growth for Delaware's utilities, as well as weather data to demonstrate that Delaware's utilities are not impeded in any manner from earning their allowable rate of return and recovering their revenue requirement..

3.The DPA will also present to the Commission evidence that implementing RD in any form would be a structural change to the utility. Therefore, the Commission must **first** find it to be sound public policy to justify transforming a traditional commodity-providing public utility into an energy services company which could develop rates based upon revenue decoupling principles rather than traditional rate making concepts.

Absent that finding, the traditional rate case proceeding as defined in Delaware Law is the only tool available to the Commission to account for weatherization and energy conservation while providing "just and reasonable" rates to consumers.[5] In the absence of such a finding, the traditional rate case, by historical practice in Delaware, is considered sacrosanct as the means for providing just and reasonable rates to consumers.

Fundamentally, the responsibility of Delaware's utilities remains to deliver its commodity at the lowest reasonable cost. In fact, the General Assembly chartered the Division of the Public Advocate to ensure this is the result in Delaware.[6] Thus, if the Commission is to integrate energy efficiency (or distributed generation as contemplated by the SEU) alternatives into the electric or natural gas delivery, it must do so in conjunction with planning and rate design in the traditional rate case proceeding and not in an *ad hoc* retroactive rate-making process. The traditional rate case proceeding ensures that electricity and natural gas delivery are done so at the lowest reasonable cost.

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[5] Like many economists, the Washington Utilities and Transportation Commission held that "the variety of alternative approaches to decoupling make it more efficient to address these issues in the context of specific utility proposals included in general rate case filings rather than through a generic rulemaking." (Docket No UG-050369)

[66] 29 Del. § 8716, furthermore, the DPA just completed a review by the 144th General Assembly's Joint Sunset Committee without changes to the DPA's charter.

Currently, utility rate designs in Delaware are not interfering with energy efficiency programs of any type, from any entity, and will continue in this way even if the utility does implement its own Demand-Side Management ("DSM") programs.

3. The DPA will present empirical data to show an increase in electric usage per customer in Delaware. In fact, per customer usage, measured in watts, rose over 30% from 1990 to 2005.

4. The DPA will respond and address the issues on the Staff issue list, distributed to the parties by the Hearing Examiner on July 3, 2007.

5. Let it be clear that opposing revenue decoupling does not imply or result in the DPA being opposed DSM. Once again, the current utility rate design along with a sound rate case proceeding allow for the DPA to oppose revenue decoupling and advocate and support DSM programs by all parties, including the utility.

III. Discussion

A. Revenue Decoupling is not needed in Delaware to "protect" utilities from energy conservation measures.

1. Delmarva Power and Chesapeake Utilities claim that revenue decoupling ("RD") is needed so that utilities will be "more aggressively involved in the [DSM]"[7] and to stabilize the "utility's ...revenues"[8] which may fluctuate due to customers' demand fluctuations as a result of energy conservation programs or weather abnormalities.

The DPA contends by the nature of both empirical data and the lack thereof, that Delaware has not experienced energy conservation to a level of success that requires RD to "protect" the utility's earnings or "stabilize" revenues. In fact, a most recent report conducted by the Sustainable Energy Utility Task Force ("SEU") found traditional demand-side management programs in Delaware to be inadequate and have been conducted haphazardly.[9] This is due to the fact the utilities have no incentive to help or

[7] Comments and presentation of Mr. Gary Stockbridge, President, Delmarva Power, PSC Regulation Docket No. 59, Workshop, May 16, 2007, trans. P. 6, lines 17-20.
[8] Comments and presentation of Ms. Jennifer Clausius, Manager, Pricing and Regulation, Chesapeake Utilities, PSC Regulation Docket No. 59, Workshop, May 16, 2007, trans. P. 62, lines 22-24.
[9] The Sustainable Energy Utility Task Force, Final Report, Issued to the 144th Delaware General Assembly, page 3, Section 1.1"The SEU Defined."

promote the reduction of sales of their commodity. Thus, any consideration of RD due to DSM and conservation programs is premature.

Going forward, if the Commission desires the utility to be more involved in the promotion of energy conservations, RD is still unnecessary. The utility can promote energy conservation without experiencing sales fluctuations that threaten earnings. The Commission can account for entities such as the utility itself or the SEU promoting energy conservation, in the context of a rate case. This was presented in the introduction of the DPA's comments.

2. The Commission should not require consumers to bear the burden financially of guaranteeing a level of earnings and rate of return for the utility *and* fund energy conservation programs.[10] Consumers have been, and are, doing their part to fund and promote energy conservation.

RD as proposed in this proceeding will allow utilities to recover lost profits resulting not only from DSM and customer conservation, but also due to weather, economic downturns, imprudent or inefficient management decisions, and population adjustments. This is accomplished by the imposition of unjust and unreasonable charges on consumers and a shift in risk from the utility to the consumer.

If the Commission is presented with sufficient and valid data that per customer usage will decline as a result of the implementation of particular energy conservation programs, or any other reason demonstrating that per customer usage is declining and thereby causing the proxy rates set in the most recent case to prevent the utility from recovering its economic costs,[11] then the Commission needs to adjust the proxy rates within the context of a rate case. Of course this is not an automatic process. There are many moving parts, rate base, rate structure, cost of capital, etc., that must be examined in a rate case.

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[10] The Delaware Green Energy Fund

[11] This is certainly not the case with Delmarva's electric sales. According to the data collected by the Energy Institute of America, Delmarva had 282,827 residential customers consume 2.65Mwh of electricity in 1990 and 373,639 customers consume 4.59Mwh of electricity in 2005. That represents an increase of approximately 30% in usage per residential customer. Even if we were to use the unrealistic assumption of overlaying a DSM program with 100% participation saving 20% on usage; per customer usage would still have increased. (EIA - Electricity Data, Electric Power Capacity and Fuel Use, Electric Surveys and Analysis)

Specifically, new customer growth can easily offset a per customer decline in usage. This has been the case with Chesapeake Utilities[12] and there is no reason to adjust the proxy rates. Footnote 11, *supra*, demonstrates that Delmarva experienced 30% in new customer growth over a period that the company experienced a 140% increase in usage.

3. Furthermore, even if the Commission determines that it believes that energy efficiency programs should be conducted by the utility,[13] RD itself will not provide an incentive for utilities to promote energy conservation measures. At best, it will only lessen any disincentive they may have to *not* promote sales reductions. Moreover, RD undermines the traditional rate case proceeding and threatens the statutory "just and reasonable" rate standard for Delawareans.[14]

Any true-up of a customer's bill to restore a pre-determined level of earnings for a utility is retroactive ratemaking and should not be referred to as RD.

B. A customer using less of the commodity is not sufficient evidence to determine that they are practicing conservation.

1. Economic theory suggests that customers will react to a price increase by demanding less. The Commission as well as the utility can recognize and account for a dampening in "quantity demanded" as price increases[15] in the context of rate case proceedings. Forecasting the demand for the commodity is an exercise necessary for any rate case, including adjusted demand at a new price level.

For example, natural gas prices for Delaware consumers rose approximately 100% from 1999-2006. It is disingenuous to conclude that because per household usage of natural gas declined that it was due to conservation. For example, if the price of beef rose 100% over the same time period and per household consumption of beef declined, it is unlikely that we would conclude that households were conserving the slaughter of steers. We would more logically conclude they were buying chicken or pork. In this same case, had the demand for beef fallen without the price increase, it would be reasonable to

[12] Comments of Mr. John Citrolo, Deputy Public Advocate, PSC Regulation Docket No. 59, May 16, 2007 workshop, trans. P.108, lines 5-24. (quoting CPK's 10-K report)
[13] This is a structural shift for the utility. In order to be successful, the Commission will be transforming the utility from a commodity seller to an Energy Services Company.
[14] See 26 Del. C. §303
[15] Economic theory establishes a distinction between "quantity demanded" and "demand." A change in demand occurs when less of a commodity is demanded at the same price. A change in quantity demanded results from a change in price. .

conclude that consumers were concerned with the slaughter of steer or some other non-price factor. Likewise, as the price for natural gas rose and electric rates were staying the same, customers may have utilized electric space heaters to maintain the same level of comfort within their home, thus they were not conserving energy, but expectedly reacting to the increased price.

RD may be needed if a change in "demand" is demonstrated by the utilities. The success of energy conservation can only be measured if consumers demand less of the commodity at the same price.

In this case consumers are "conserving" without regard to their price elasticity of demand for the commodity.[16] Otherwise, their behavior is a reaction to price increases. Typically, as price increases, consumers will demand less.[17] (Albeit slightly in household energy due to the relatively inelastic demand of electricity and natural gas) They may not be practicing any conservation, just using less. Hence, RD is not the tool to address a change in quantity demanded due to rising prices or a threat to the utility to recover its fixed costs not being recovered sufficiently in variable rates, the matter is to be properly and more accurately addressed in a rate case.[18]

C.Revenue decoupling is not needed in Delaware to protect utilities from weather fluctuations.

2. Delaware is located geographically in a temperate zone. Temperatures change season to season, fluctuate year to year within a season, but have historically followed a well established and definable trend that can be identified and captured in a rate case. At the time of a rate case, the Commission is well aware of seasonality changes in the weather as well as the fact that a particular December may not have as many heating days as the one of the prior year or that it may have more. For example, the average daily

[16] Price elasticity of demand is an empirical economic measure that quantifies the change in quantity demanded relative to a price change. In the case of electricity or natural gas, customer's price elasticity of demand is considered to be relatively inelastic, meaning that customers only vary quantity demanded slightly relative to a price change.

[17] Despite suggestions by economic theory, the DPA asserts that this docket exists because consumers reacted to higher prices by using less of the commodity.

[18] In fact, in an attempt to better recover non-variable costs, the Commission approved a 54% increase in the monthly customer fixed charge for Delmarva's residential customers. ($4.76 to $7.36)

temperature in Delaware in during January of 2007 was 39(F) degrees.[19] The average of the January months from 2003 to 2007 is 34.7(F) degrees. [20] January of 2007 was warm by comparison.

However, February of 2007 had an average daily temperature of 28(F) degrees, far below the average over the same period (2003-2007) of 35.62(F) degrees. In short, Delaware experienced a warmer January by 11% in 2007, but a colder February by 20%.

In all likelihood, the most recent rate case determined a revenue requirement based on the fact that the above referenced weather trend is expected. Once again, RD or retroactively making rates are not the tools to address weather fluctuations. The proper and more accurate tool is a rate case.

D. In Delaware, electricity rates are market-based and so too is DSM

The introduction of competitive electric markets for Delaware in 1999 resulted in the discontinuation of utility-sponsored energy efficiency and load reduction programs.[21] Supply and/or demand-side resources would be a result of competitive markets. Utilities, such as Delmarva Power persuaded the Commission to allow the utility to drop DSM from their tariffs because it was expected that there would be a functioning market for demand-side resources.

This expectation was not fulfilled by the market. However, since rate caps did not expire until 2006 it is reasonable to conclude that the market has not had enough time to develop DSM programs via the competitive market.

This is the determination made by the General Assembly when it established the SEU. The SEU has been created to fill the void in DSM created by deregulation and the slow development of a competitive market for residential customers. The SEU in no way interferes or undermines current rate designs in Delaware, just like utility implemented DSM programs will not under current rate designs in Delaware.

E. Staff's Issue List

1. **Is implementation of revenue decoupling permitted under the Delaware Public Utilities Act of 1974, 26 Del. C. § 101, *et seq.* which contemplates a rate-based, rate of return earnings structure for regulated utilities?**

[19] State Climatologist, University of Delaware
[20] Ibid
[21] 26 Del. Ch. 10 et sequential, the "Electric Utility Restructuring" Act

The DPA believes that it is a presumptive fact that RD is permitted under Delaware Law[22] by the existence of PSC Order 7153, drafted by Delaware Deputy Attorney General Myers. Based on our experience with this Commission, it would not ask the parties to seek consensus on RD for the Commission's consideration had the determination as to the legal status of RD been not determined.

Nevertheless, 26 Del. § 201(d)(1) allows the Commission to depart from rate base rate of return regulation with one constraint. The General Assembly conditioned this discretion by allowing a departure only "**when such departure is found to promote just and reasonable rates."**[23] **(Emphasis added).**

Section 303(a) of 26 Del. provides a legal basis to challenge Revenue Decoupling. The text of 303(a) is as follows:

§ 303. Unjust or unreasonable rates and preferences; change in fuel adjustment rate; economic development credit for qualifying corporations.

> **(a) No public utility shall make, impose or exact any unjust or unreasonable or unduly preferential or unjustly discriminatory individual or joint rate for any product or service supplied or rendered by it within the State, or adopt, maintain or enforce any regulation, practice or measurement which is unjust, unreasonable, unduly preferential or unjustly discriminatory or otherwise in violation of law, or make, or give, directly or indirectly, any undue or unreasonable preference or advantage to any person or corporation or to any particular description of traffic, in any respect whatsoever.**

Section 303 permits the opportunity to present substantive facts and evidence to the PSC, and other interested parties, showing that the results of RD would violate section 303(a) by deviating from the "just and reasonable" standard. Therefore, while RD may not be prohibited by law pursuant to 26 Del. §201(d)(1), the Legislature continues to prescribe limiting language and structure for mechanisms such as RD pursuant to 26 Del. § 303(a).

The General Assembly did not specifically mention RD, however, it is clear that the implementation of RD must promote just and reasonable rates. The DPA maintains as

[22] 26 Del. § 201(d)(1)
[23] 26 Del. §303(a)

discussed above in these comments, just and reasonable rates are best, if not only, established by conducting a traditional rate case proceeding.

2. How will the imposition of a revenue decoupling rider impact examinations of the utility's earnings, revenues, assets in the context of rate based, rate of return ratemaking?

It is likely that the imposition of revenue decoupling will impact all of the above mentioned parts of a rate case, least likely rate base. Rate base is impacted if advanced meters are considered part of an energy efficiency program. The implementation of revenue decoupling implies a reduction in the utility's cost of equity, thus lowering the utility's risk. This could lead to a lower overall rate of return, lower prices, and reduced earnings.

3..From a public policy viewpoint, is it appropriate to compensate utilities for decreased revenues?

This question can only be answered by first answering the question:

"What are the reasons for a utilities decrease in revenue?'

Next, it is necessary to categorize the reasons for compensating utilities for decrease revenues, (i.e., RD) into those reasons that benefit consumers, thus are categorized as "acceptable" to consumers and those with no direct or indirect benefit to consumers and are categorized as "unacceptable." Consumer will likely find reasons such as; poor management decisions, economic downturns, inefficient investment, population shifts, unwarranted increase to O&M, as acceptable reasons to compensate the utility for declining revenues, directly, in **the** form of **RD.**

Consumers may find RD acceptable if public policy prescribes transforming the utility's role as a least cost commodity provider to an Energy Services Company, in which the new structure of the utility practices sound demand-side management, partners with government DSM programs, and may even structurally integrate vertically[24] in order to provide a diverse portfolio of renewable energy supply. Consumers will most likely require this public policy to include direction to the utility to be actively involved in energy conservation efforts, facilitate the use of technology **as** a solution to energy

[24] For example in PSC Docket 06-241, if Delmarva Power is structured as an Energy Services Provider, similar to what they have proposed in PSC Docket 07-28, the buyer-seller relationship with Blue Water Wind would be designed more as a partnership.

consumption issues, and most importantly, the Commission and the General Assembly continue with intelligent regulation.

4. Is decoupling inconsistent with the premise of rate?

Yes, decoupling is inconsistent with rate base rate of return regulation and rate base rate of return regulation is the law in Delaware for utilities such as Delmarva Power and Chesapeake Utilities. RD is inconsistent with rate of return regulation because it violates the fundamental standards of rate making. ,

The utility is permitted to set rates that cover operating costs and allowed an opportunity to earn a reasonable rate of return on it plant in service, or property..

The rate regulation standard has two primary aspects: setting of the rate level (earnings) and setting of the rate structure (prices.) The former entitles the utility to recover all of its allowable operating costs while having the opportunity to earn a "fair" rate of return.

This is more commonly referred to as the revenue requirement. Prices are set to recover this revenue requirement and these prices must be "just and reasonable" and not unduly discriminatory.[25]

These two aspects have been inviolable for economics in utility regulation and have been summarized best by the United States Supreme Court as early as 1942.

> **The establishment of a rate for a regulated industry often involves two steps of different character, one of which may appropriately precede the other. The first is the adjustment of a general revenue level to the demands of a fair return. The second is the adjustment of a rate schedule conforming to that level, so as to eliminate discriminations and unfairness from its details.** (*Federal Power Commission V. Natural Gas Pipeline Company, 31 5 US 575, 584 (1942))*

The economics of rate regulation do not accommodate RD.

5. What effect, if any, will the implementation of a revenue decoupling mechanisms have on the frequency of future base rate proceedings

[25] 26 Del. § 303(a)

RD will have no affect on the frequency of future base rate proceedings. There are many moving parts to a rate proceeding such as cost of capital, operating expense, plant in service, etc. Therefore, a utility's management would be foolish to agree to not file future rate cases, even in the near term, as a consequent of the implementation of RD.

The Commission needs to be highly suspect if any utility were to agree to not file a future rate case as a trade-off to the Commission allowing the implementation of a RD mechanism. This would be an extremely compelling reason to presume the utility is over earning either by over recovering its revenue requirement on earning above its allowed rate of return. .

Likewise, the Commission should not prejudice itself from ordering a "310 proceeding"[26] Since there are many moving parts to a rate case, well as the utility's daily operations and corporate development. Therefore, the Commission must not relinquish their power to order a "310 proceeding."

The DPA does not believe RD will reduce or increase future rate case proceedings and the parties should not agree to limit rate cases as a result of the implementation of RD due to the very nature of the rate regulation beast.

Implementing a rate case "black out period" would be tantamount to a competitive company agreeing to not: increase or decrease price, adjust staffing levels or operating cost, engage in any corporate development activity such as mergers and acquisitions, during the "black out period."

Furthermore, this "black out period" would likely put consumers rates into a sling-shot just like what the rate caps did that were associated with electric restructuring.

The DPA along with this Commission learned that consumers have a difficult time managing large lumpy rate spikes to rates as opposed to price stability.[27]

6. Is it appropriate to compensate utilities for decreased revenues that result from consumers' conservation efforts?

The DPA addressed this issue in our answer to Issue No. 3

7. Do all utility customers benefit from a revenue decoupling mechanism?

[26] 26 Del. § 310 et al.
[27] PSC Dockets 04-391, the implementation of the Standard Offer Supply of residential electric service.

The question as posed is highly misleading and the DPA takes exception to any characterization that RD is a benefit to consumers. Utility customers may benefit from the utility implementing DSM in a manner described in the DPA's answer to Issue No. 3.

The notion presented by the utilities that RD benefits customers by -'[lessening] the price volatility for consumers"[28] is delusory.

First, the price for consumers is not changing, with or without a RD mechanism. The total monthly outlay for the consumer may change as a result of a change in consumption, but not a change in price.

Second, Delmarva Power currently offers a "budget-billing"[29] arrangement that allows customers to pay a predetermined fixed amount each month, subject to only a bi-annual true-up. Thus, there is currently a bill service arrangement available for customers who prefer to have stable monthly payments, season of season, year over year, and without regard to abnormal weather conditions or DSM.

> **8. How do utility conservation and efficiency efforts overcome market barriers faced by subsets of customers, such as renters, customers who cannot take on more debt, low-income customers, small businesses , etc, and to what extent will such customers participate in and benefit fr m such utility efforts; and**
>
> **9. In light of the potential benefits to participating customers and to non-participants (i.e. system benefits, as they may be allocated), benefit equally from conservation and efficiency efforts decoupling?**
>
> **If not, can all customers receive some degree of benefit?**
>
> **If not, will any customers lose the anticipated benefits entirely?**
>
> **If not, is revenue decoupling and the anticipated resulting energy efficiency and conservation efforts nevertheless justified?**

The DPA finds at least one fundamental flaw in the above as stated. RD is

[28] Comments of Mr. Gary Stockbridge, President, Delmarva Power, PSC Regulation Docket No. 59, Workshop, May 16, 2007, trans. P. 8, lines 9-10.
[29] Delmarva Electric and [Natural Gas Service}[s} Tariff, P.S.C. Delaware 8, 2nd Revised Leaf 15, Section IV. "I" and "H" in the natural gas tariff.

not a tool of induction for conservation and efficiency. This notion mistakenly puts the "cart before the horse." RD may be needed only after the implementation of DSM programs and measurable results are achieved not before.

Typically, renters and low-income residents whom either own their home or rent, have very little, if any economic incentive to weatherize their home. Moreover, even if such economic incentive existed, these households historically have not had the funds, or access to funds to weatherize the home, purchase more efficient appliances, or install distributed generation. Thus, DSM and other conservation programs are "pie in the sky" for low income households and albeit, to a lesser degree, renters.

The only redeeming economic factor of DSM and energy conservation for these customers is that the implementation of these programs and the ongoing development of such programs may curtail load growth enough to put downward pressure on energy prices.

Of course, there are many non-economic environmental benefits for all consumers, including low income and rental households, such as; the reduction of greenhouse gases, a lessening of dependence on fossil fuels such as oil and natural gas, and the promotion of an overall environmental policy for cleaner and more efficient energy use.

Nevertheless, the economic benefits and environmental benefits of DSM and energy conservation programs can both be achieved with a sound rate design and without the implementation of RD mechanisms.

9. Are revenue decoupling mechanisms feasible for both natural gas and electric utilities? and

What can we learn from the New Jersey Board of Public Utilities' CIP about revenue decoupling that has relevance to our proceeding in this docket? Are there any rules or regulations that have been promulgated by the Board that should be considered in our proceeding?

Yes, revenue decoupling mechanisms are feasible for both the electric and natural gas utilities. In fact, RD mechanisms for both commodities have been implemented, at the very least in the form of a pilot program in other states.

Natural gas distinguishes itself from electric simply due to the fact that natural gas can be stored. The provision of electricity experiences a almost unique challenge in which demand and supply must equal, or at least be in balance pursuant to applicable properties of physics.

The storage capability of natural gas allows for the implementation of a more incentive based RD program for the utility than is available with electric.

For example, the State of New Jersey has incorporated into their CIP (Conservation Incentive Program) a major distinction between electricity and natural gas commodities. The New Jersey CIP exploits the storage capability of natural gas by linking and limiting any revenue recovery due to declining sales but only to the extent that the amount of the decline is offset by gas supply-cost reductions. In short, in order to recover revenue decreases, the gas companies are required to reduce their capacity costs *and pass the savings through to consumers.*[30]

The New Jersey CIP does not guarantee full recovery of the utility's revenue requirement just because there is a lower sales volume. The New Jersey plan is much more palatable to both consumers and environmental policy makers since the supply cost reductions are passed through to the consumer, the utility is limited to what it recovers, and DSM and energy conservation can be implemented and developed without impeding

[30] The New Jersey CIP also includes a cap on the utility's return on equity, thus financing of the CIP is done with investor capital and not consumer rates or surcharges.

the utility's recovery of their revenue requirement and earning their allowable rate of return.

10. How can the utility quantify the impact of utility energy efficiency, conservation efforts and the supposed im act on utility revenues: and
How can the utility quantify the impact of utility energy efficiency? Conservation efforts and the supposed impact on utility revenues; and

How can the utility quantify and isolate the impact of efficiency, conservation efforts, and the supposed imp revenues from other factors, such as the normal warmer weather, etc.?

The DPA's foregoing comments have suggested that any (RD) plan for Delaware should include a mechanism that would differentiate a utility's revenue loss caused by the implementation of DSM projects into the previously defined categories of "acceptable" and "unacceptable" reasons to be compensating the utility for lost revenues.

A measure such as this is necessary to recognize the fact that rate making has consumers paying for a share of business risk, in their rates, they should not also pay additional surcharges or true-ups to further minimize the risk of the investor. The investor is compensated for their risk in the rate of return. The implementation of any RD mechanism must not transfer capital risk from the investor to the customers

First, thresholds must be created for weather and DSM with regard to average daily temperatures and usage per customer.

A benchmark, such as a rolling average of heating days, cooling days, and monthly average daily temperatures must be calculated to provide a benchmark threshold of temperature. Otherwise there is no way to categorize a month as particularly hot or cold.

A usage pattern must be developed that can be profiled on a per customer basis, or at least by customer class. This profile must be developed to benchmark historical usage patterns.

Next, the utility must produce at least 36 months of customer usage data, (by customer or by customer class depending on the design of the RD mechanism) for evaluation by the Commission Staff and other interested parties. This data can be formulated to provide a baseline for usage patterns and consumption levels to provide a benchmark for future consumption levels that will be observed after the implementation of DSM and other conservation mechanisms. These consumption levels along with engineering and economic analysis of the industry can be used to track DSM effectiveness as well as the degree of magnitude with respect to consumption per customer of energy conservation..

Lastly, the monitoring of energy consumption reduction and its effects on factors such as, impeding a utility from earning its prescribed rate of return that may result from a utility's involvement in programs designed to reduce per customer consumption, must be designed and administered under the direction and jurisdiction of the Commission.

The steps outlined briefly here are by no means complete. They are suggested as a starting point.

14. Remaining Issues from the Staff Issue List

The DPA respectfully declines to comment on the remaining issues on the Staff issues list until after the utilities have provided more insight as to how their respective RD proposals relate to these issues.

V. Summary

1. Revenue Decoupling is not needed in Delaware to "protect" utilities from energy conservation measures. Utilities, such as Delmarva Power, dropped DSM from their tariffs in 1999 at the advent of electric deregulation. Consequently, there has not been

DSM of any significance in Delaware during the past eight years.[31] Thus, there is no near term threat to any utility's earnings as a result of consumers practicing DSM. In fact, electric sales per customer rose 30% over the fifteen year period from 1990-1995 in Delmarva Power's service territory.

Furthermore, any evidence of a decline in per customer usage, in electric or natural gas consumption, is a result of a consumer's well expected behavior with regard to the price elasticity of demand for the commodity and not necessarily conservations efforts by the consumer. Falling demand as a result of increasing prices is commonplace in many markets. Consumers consuming less of either natural gas or electric as prices increase is not an economic phenomena, but a well establish consumer behavioral pattern that regulators are well aware of when rate making.

On a going forward basis, the Sustainable Energy Utility, (SEU), is not yet fully funded and consequently has not been established. Formalized energy efficiency programs are nascent in Delaware and will be for some time. There is no evidence or empirical data with regard to DSM and energy conservation for the Commission to evaluate and analyze. Therefore, the Commission cannot logically or rationally conclude that RD is necessary to protect Delaware's utilities.

Hence, there is no need to extort surcharges from customers now before they have had access to the SEU.

Moreover, Delmarva Power customers are currently funding energy efficiency by way of their monthly account payments for electric service. Consumers are assessed a system benefit charge to fund the Delaware Green Energy Fund, with no matching requirement of shareholders. Once again, consumes are doing their part, to the extent possible, with regard to DSM and energy conservation without undermining current rate designs.

2. Revenue decoupling is not needed in Delaware to protect utilities

from monthly, seasonal, or yearly weather fluctuations. Delaware has experienced normal and typical weather patterns, monthly, seasonally, and yearly, as demonstrated by the

[31] The Delaware Green Energy Fund ,established with electric deregulation by the General Assembly, is the only significant DSM effort in the state and it is administered by the Delaware Energy Office.

DPA empirically our foregoing comments. Hence, there are no abnormal weather patterns undermining current rate designs.

3. There has not been one scintilla of evidence submitted in this proceeding or at any other time here in Delaware that the traditional rate regulation standard is being undermined by weather or energy efficiency and conservation. Furthermore, there is no credible evidence that the current rate designs impede or prevent the utility from its statutory opportunity to earn its allowed rate of return and recover its revenue requirement while providing service at the lowest reasonable cost.

4. Although Delaware Law[32] does not expressly prohibit the implementation of RD, the law does require the Commission to conduct evidentiary hearings on the matter and adjudicate any contested issues with regard to the matter.[33]

Respectfully submitted,

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Deputy Public Advocate

[32] 26 Del. 201(d)(1)
[33] 26 Del. 303(a)