

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE ADOPTION OF)
RULES AND REGULATIONS TO IMPLEMENT)
THE PROVISIONS OF 26 DEL. C. CH. 10) PSC REGULATION DOCKET NO. 49
RELATING TO THE CREATION OF A COM-)
PETITIVE MARKET FOR RETAIL ELECTRIC)
SUPPLY SERVICE (OPENED APRIL 27,)
1999 AND RE-OPENED JANUARY 7, 2003))

IN THE MATTER OF THE COMMISSION'S)
CONSIDERATION OF THE "NET METERING")
STANDARD SET FORTH IN 16 U.S.C.) PSC DOCKET NO. 07-219
§ 2621(d)(11) RELATED TO THE "NET)
METERING" OF CUSTOMER-GENERATED)
ELECTRIC SUPPLY)
(OPENED AUGUST 21, 2007))

ORDER NO. 7252

This 21st day of August, 2007, the Commission determines and Orders the following:

1. The federal Energy Policy Act of 2005¹ added an additional five electric energy "standards" that State utility commissions are directed to "consider" implementing under the regime initially set up in the Public Utility Regulatory Policies Act of 1978 ("PURPA").² One of these new standards focuses on "net metering." The federal standard reads:

Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term "net metering service" means

¹Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 1251-1252, 1254, 119 Stat. 594, 962-67, 970-71 (2005) ("EPAct 2005").

²92 Stat. 3117 (1978). See 16 U.S.C. §§ 2611-13, 2621-27, 2631-34. See PSC Orders Nos. 7129 (Feb. 7, 2007) (consideration of new "smart-metering" standard) & 6983 (July 11, 2006) (consideration of new "interconnection" standard).

service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.³

2. The concept captured by this standard - the ability of a retail customer to offset his electric supply (and distribution) charges by producing his own electricity behind the utility's meter - is not new to Delaware. Since 1999, Commission-jurisdictional electric utilities and electric suppliers have been obligated to permit residential and smaller commercial customers to use limited capacity generators (powered by renewable resources) to "net meter" their electric production and consumption.⁴ And recently, the General Assembly expanded that statutory command: (a) to widen the customer classes eligible for net metering; (b) to increase permissible generator capacities for these additional classes of eligible customers; (c) to more particularly define the types of renewable generation eligible for net metering; and (d) to expand the "net metering" obligation beyond Commission-jurisdictional utilities.⁵

³See 16 Del. U.S.C. § 2621(d)(11) as added by EPAct 2005, § 1251(a).

⁴See 26 Del. C. § 1014(d) (2006 Supp.) (reflecting net metering provision prior to July 24, 2007 amendments). The Commission initially implemented the 1999 directive by adopting "Net Energy Metering" provisions in Section VIII of its "Rules for Certification and Regulation of Electric Suppliers" (adopted by PSC Order No. 5207 (Aug. 31, 1999)). In 2006, the Commission revised those net metering rules as part of its comprehensive reworking of the Electric Supplier regulations. See "Rules for Certification and Regulation of Electric Suppliers," § 8.0 (adopted by PSC Orders Nos. 7023 (Sept. 5, 2006) & 7078 (Nov. 21, 2006)).

⁵See 76 Del. Laws ch. 164 §§ 1-3 (July 24, 2007), amending 26 Del. C. § 1014(d), (d)(1) & (d)(2).

3. In light of these State statutory commands - one enacted prior to EAct 2005 and the other coming afterwards - the Commission does not believe that it need now commence further hearings (surrounded by the PURPA procedural guidelines)⁶ to consider whether to adopt the federal "net metering" standard. In 1999, our legislature made the decision to implement "net metering" and it has now further defined the appropriate State standard to govern how net metering is to work. Both the original 1999 directive, and the recent 2007 amendments, result in a State program "comparable" to the one envisioned by the EAct federal standard. Thus, no additional proceedings related to adoption of the federal standard are now required. See 16 U.S.C. §§ 2622(d)(1), (3), as added by EAct 2005, § 1251(b)(3)(A) (lifting PURPA procedural obligations to consider 2005 federal standard where State, by administrative or legislative action prior to enactment of EAct 2005, had implemented the standard or a comparable one); 2627(b) (State may adopt standard which is different than federal standard).⁷

4. However, more work appears to be needed on the State net metering obligation. As noted, just last year, the Commission adopted revised "net metering" rules. See n. 4 above. However, given the amendments to § 1014 made in July, the Commission thinks that it is appropriate to once again revisit its rules to see if further changes need to be made. The statutory changes made to § 1014(d) expand the classes of customers who can pursue "net metering" and recalculate the allowed capacities for behind-the-meter generation. More significantly, the new amendments add a new subsection 1014(e) that sets forth a complex description of the various payment and

⁶See 16 U.S.C. §§ 2621(b), (c), 2631, 2632.

⁷As noted above, the Commission adopted regulations implementing net metering originally in 1999.

metering obligations involved in "net metering."⁸ Consequently, the Commission directs Staff to review the recent statutory amendments and the current rules and report back with proposed revisions to the latter for the Commission's consideration. If acceptable, the Commission will then propose such revisions for adoption under the rule-making process under the State administrative procedures law.

5. The Commission raises a tangential issue with regard to the contemplated revisions to the net metering rules. Under the provisions of 26 Del. C. § 224(9), so long as the Delaware Electric Cooperative, Inc. ("DEC") continues to implement a restructuring plan that provides for retail competition, it apparently remains subject to the Commission's limited regulatory authority in order to implement the commands of § 1014(d).⁹ However, the Commission has some question whether § 224(9) remains operative. Does the DEC still operate under a retail competition model? And did the July, 2007 amendments to § 1014(d) implicitly repeal the Commission's surviving limited authority over DEC in the net metering context.¹⁰ These are not simply academic questions. The answer to whether the DEC is "in" or "out" of the Commission's "net metering" regulatory reach might make a difference in the content of the contemplated rule revisions. Consequently, the Commission asks the DEC and other interested persons to submit to the

⁸See 76 Del. Laws ch. 164 § 4 (July 24, 2007) (adding new § 1014(e)).

⁹See 26 Del. C. § 224(9)a.1. (2006 Supp.). This Commission generally has no regulatory supervision over the DEC.

¹⁰In several instances, the July, 2007 amendments, changing § 1014(d) and adding § 1014(e), make specific references to the DEC. However, those 2007 changes call on the Commission and municipal electric companies to "promulgate" rules to not only implement net metering but also the details of billing, credits, and metering. There is no explicit comparable reference to the DEC adopting its own net metering rules. It is unclear whether such silence reflects a legislative conclusion that § 224(9) continues to prevail or that the DEC may develop its own "net metering" provisions.

Commission their positions on the Commission's current regulatory authority over the DEC as it relates to implementing "net metering."

Now, therefore, **IT IS ORDERED:**

1. That, as more fully set out in the body of this Order, the Commission finds that the provisions of 26 Del. C. § 1014(d) and (e), as originally enacted in 1999 and as amended by 76 Del. Laws ch. 164 (July 24, 2007), provide a "net metering" standard comparable to the federal standard for net metering set forth in 16 U.S.C. § 2621(d)(11). The Commission further finds that the enactment of 26 Del. C. § 1014(d) in 1999, coupled with the Commission's prior promulgation of implementing net metering rules in 1999, constitutes "prior State action" under 16 U.S.C. § 2622(d)(1), (3). Consequently, the Commission determines that it is not required to now institute further proceedings to consider whether to implement the federal "net metering" standard set forth in 16 U.S.C. § 2621(d)(11).

2. That, within sixty days from the date of this Order, Staff shall submit proposed revisions to the "Net Energy Metering" provisions within the "Rules for Certification and Regulation of Electric Suppliers," § 8.0 (as adopted by PSC Orders Nos. 7023 (Sept. 5, 2006) & 7078 (Nov. 21, 2006)) to reflect the amendments made to 26 Del. C. § 1014(d) and (e) by 76 Del. Laws ch. 164 §§ 1-4 (July 24, 2007). After Staff's proposed revisions are submitted, the Commission will determine what revisions should be proposed for adoption under the rule-making procedures set forth in 29 Del. C. ch. 101.

3. That the Secretary shall mail a copy of this Order to the Chief Executive Officer of the Delaware Electric Cooperative, Inc.; the State Energy Office within the Department of Natural Resources and Environmental Control; the Division of the Public Advocate; and Delmarva Power & Light Company. The Secretary shall also post an electronic version of this Order on the Commission's website under an appropriate heading.

4. That the Commission hereby solicits the views of the Delaware Electric Cooperative, Inc. and other interested persons or entities related to whether the Commission continues to have regulatory authority, under 26 Del. C. § 224(9)a.1., over the Delaware Electric Cooperative, Inc. for the purposes of implementing "net metering." The Commission asks that such views be filed with the Commission on or before September 21, 2007.

5. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Dallas Winslow
Commissioner

PSC Regulation Docket No. 49 and PSC Docket
No. 07-219, Order No. 7252 Cont'd.

/s/ Jeffrey J. Clark
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary