

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE COMMISSION'S)
CONSIDERATION OF THE "FUEL SOURCES")
STANDARD SET FORTH IN 16 U.S.C.)
§ 2621(d)(12) RELATED TO PLANS BY)
ELECTRIC UTILITIES TO MINIMIZE) PSC DOCKET NO. 07-227
DEPENDENCE ON ONE FUEL SOURCE AND TO)
DIVERSIFY FUEL SOURCES USED TO)
GENERATE SUPPLY FOR ITS RETAIL LOAD)
(OPENED AUGUST 21, 2007))

ORDER NO. 7267

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

1. The Commission is working its way through the five PURPA¹ electric standards added by the Energy Policy Act of 2005.² Under the long-standing regime, State utility commissions are charged to consider these new standards and determine whether they are appropriate to adopt as requirements for State rate-regulated electric utilities. See PSC Order No. 7252 at ¶ 1 & n. 1 (Aug. 21, 2007) (outlining new 2005 PURPA standards and noting Commission's earlier actions on those standards). This Order focuses on the federal "Fuel Sources" standard. Under it:

¹Public Utility Regulatory Policies Act of 1978, 92 Stat. 3117 (1978), relevant provisions codified at 16 U.S.C. §§ 2611-12, 2621-27, 2631-34.

²Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 1251-1252, 1254, 119 Stat. 594, 962-67, 970-71 (2005) ("EPAAct 2005").

[e]ach electric utility shall develop a plan to minimize dependence on one fuel source and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies.³

2. Congress added this "Fuel Sources" standard for consideration by State commissions in August, 2005. In April, 2006, the General Assembly and Governor made it the policy of this State that electric distribution companies, in their mandatory role as Standard Offer Service suppliers, must "engage in integrated resource planning for the purpose of evaluating and diversifying their electric supply options, efficiently and at the lowest cost to their customers." See 26 Del. C. § 1002(4)(2006 Supp.).⁴ By the same enactment, Delmarva Power & Light Company ("DP&L") became obligated to conduct "integrated resource planning," and to submit to the Commission, and other State Agencies, on a two-year cycle, the results of such planning in the form of an "Integrated Resource Plan" ("IRP"). In its IRP, DP&L must forecast both its load and supply over a ten-year planning period, and identify how it arrived at the "resource mix" that it proposes to use to meet the forecasted demand over that planning period. See 26 Del. C. § 1007(c)(1)(2006 Supp.) ("1007(c)").⁵

³See 16 U.S.C. § 2621(d)(12), as added by EPAct 2005, § 1251(a).

⁴as added by 75 Del. Laws ch. 242 § 1 (April 6, 2006). See 26 Del. C. § 1001(19) (electric distribution utility is the "Standard Offer Service Supplier" for its distribution service territory).

⁵DP&L remains "rate-regulated" in its retail sales of Standard Offer Supply ("SOS"). See 26 Del. C. § 1006(a)(2) (2006 Supp.). In fact, DP&L remains the only "rate-regulated" electric utility for which the Commission must undertake PURPA considerations. See 16 U.S.C. § 2602(18). Other retail

3. The integrated resource planning process imposed on DP&L by state law seems to call for the same type of examination and analysis that would be at the heart of this Commission's initial "consideration" of the federal "fuel diversity" standard and a utility's later implementation of that standard: to what degree will diverse generation resources - both in terms of fuel and technology as well as procurement methods - bring benefits to retail consumers in the form of continued system reliability and lower, and more stable, electric prices?⁶

4. In another Order entered today, the Commission has opened a docket to consider what should be the rules and parameters surrounding the integrated resource planning now required of DP&L. See PSC Order No. 7263 (Aug. 21, 2007) (opening Reg. Dckt. No. 60).⁷ Given the overlap between the standards articulated in this State law IRP process and the federal "fuel diversity" standard, the Commission believes that such new docket is an appropriate vehicle to make the

electric suppliers may make retail sales to consumers under our State's Electric Restructuring Act. However, the Commission does not have "rate-making authority" over those other retail suppliers. In addition, the Delaware Electric Cooperative, Inc. is no longer subject to the Commission's regulatory supervision.

⁶In making its examination of what should be its overall mix of generation resources, DP&L is called upon to also look to the costs and benefits of including in that eventual mix generation resources that are diverse in terms of fuels and technologies. See 26 Del. C. § 1007(c)(1)b.1., 2., & 5. (in developing IRP, DP&L may consider values of "resources that utilize new or innovative baseload technologies," "resources that provide short-or long-term environmental benefits . . . (such as renewable resources like wind and solar power)," and "resources that promote fuel diversity"). These factors echo the "fuel source" diversity suggested in the federal standard.

⁷See 26 Del. C. § 1007(c)(1)c. (2006 Supp.). (Commission may promulgate rules it deems necessary to accomplish development of IRPs by DP&L).

"consideration" whether it is appropriate to implement (fully or partially) the federal "fuel sources" standard. PURPA requires that such consideration allow for notice, public participation, and a final written determination.⁸ The Commission believes that the proceedings contemplated in the new Regulation Docket No. 60 - including the requirements of notice and comment in the eventual rule-making process⁹ - will provide an opportunity (consistent with the PURPA requirements) for persons or entities to build a record on whether, and to what extent, the federal fuel sources standard should be utilized by this Commission in its supervision of DP&L, the only rate-regulated electricity utility.¹⁰

5. The Commission does not pre-judge any issue about how the federal fuel sources standard might fit within the State-law IRP construct. The Commission now only commits any such question to the new IRP rule-making docket.

Now, Therefore, **IT IS ORDERED:**

1. That, for the reasons set forth in the body of this Order, the Commission declines to initiate a separate proceeding to consider the federal "Fuel Sources" standard as set forth in 16 U.S.C. § 2621(d)(12) for the single remaining rate-regulated electric

⁸See 16 U.S.C. § 2621(b), (c).

⁹See 29 Del. C. §§ 10115-10118.

¹⁰See 16 U.S.C. § 2627(b) (State may adopt, under State law, any standard or rule which is different from any standard set forth in PURPA).

utility, Delmarva Power & Light Company. Instead, the Commission will undertake its consideration of the standard described in 16 U.S.C. § 2621(d)(12) and make its determination whether, or to what extent, it is appropriate to implement that standard for Delmarva Power & Light Company as part of the proceedings to develop rules for Integrated Resource Planning to be conducted in Regulation Docket No. 60, initiated by PSC Order No. 7263 (Aug. 21, 2007).

2. That the Secretary shall post for public review an electronic copy of this Order on the Commission's website under an appropriate heading. In addition, the Secretary shall serve a copy of this Order on (a) the Division of the Public Advocate; (b) the persons and entities already deemed parties in PSC Reg. Dckt. No. 60 under PSC Order No. 7263 (Aug. 21, 2007); and (c) Delmarva Power & Light Company.

3. That a copy of this Order shall be filed in Regulation Docket No. 60.

4. 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

PSC Docket No. 07-227, Order No. 7267 Cont'd.

/s/ Dallas Winslow
Commissioner

/s/ Jeffrey J. Clark
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary