

**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 )  
RELATING TO THE CREATION OF A COM- ) PSC REGULATION DOCKET NO. 49  
PETITIVE MARKET FOR RETAIL ELECTRIC )  
SUPPLY SERVICE (OPENED APRIL 27, )  
1999; RE-OPENED JANUARY 7, 2003; RE- )  
OPENED AUGUST 21, 2007) )

**ORDER NO. 7435**

**AND NOW**, this 2<sup>nd</sup> day of September, 2008;

**WHEREAS**, in 2005, the General Assembly and the Governor enacted the "Renewable Energy Portfolio Standards Act," 26 Del. C. §§ 351-363 (2006 Supp.) ("the Act"). As its name suggests, the Act requires each electric supplier to annually accumulate a portfolio of "renewable energy credits" equivalent to a specified percentage of its retail electric supply sales within this State. The obligation began in 2007 and the particular percentages increase each year. In 2006, exercising the authority granted under 26 Del. C. § 362 (2006 Supp.), the Commission promulgated "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" ("RPS Rules"). See PSC Order No. 6931 (June 6, 2006);<sup>1</sup> and

**WHEREAS**, on July 24, 2007, the General Assembly and the Governor enacted significant changes to various provisions in the Act and, in

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<sup>1</sup>The RPS Rules (attached as Exhibit "A") were formally published at 10 DE Reg. 151-157 (July 1, 2006). Municipal electric utilities and the now self-regulated Delaware Electric Cooperative, Inc., can choose to be exempt from the Act's requirements by pursuing an alternative regime for supporting "renewable energy" resources. See 26 Del. C. §§ 353(a), 363 (2006 Supp.).

so doing, directed the Delaware Public Service Commission (the "Commission") to adopt revised rules. See 76 Del. Laws ch. 165 §§ 1-9 (July 24, 2007) ("chapter 165"); and

**WHEREAS**, for the reasons set forth above, on August 21, 2007, by PSC Order No. 7252, the Commission re-opened Regulation Docket No. 49 to revise its RPS Rules and directed Staff to draft proposed rules to effect the changes made by the legislature and the Governor; and

**WHEREAS**, by PSC Order No. 7326 (Dec. 4, 2007), the Commission issued Proposed Revisions to the "Net Energy Metering" within the "Rules for Certification and Regulation of Electric Suppliers;" and

**WHEREAS**, by PSC Order No. 7326 (Dec. 4, 2007), the Commission directed publication in the Delaware Register (among other places) of Staff's revised proposed RPS Rules and directed a Hearing Examiner to conduct proceedings regarding the proposed RPS rules; and

**WHEREAS**, after holding a duly-noticed public evidentiary hearing, the Hearing Examiner has now submitted her Findings and Recommendations (Aug. 22, 2008), in which she recommends Commission approval of Staff's final proposed RPS Rules, which include certain non-substantive changes made after the initial publication in the Delaware Register; and

**WHEREAS**, the Commission finds that the proposed revisions to the "Net Metering Provisions" within the "Rules for Certification and Regulation of Electric Suppliers" are just and reasonable and that adoption of the Hearing Examiner's Report is in the public interest. Such revised rules are set forth as Exhibit "A" to this Order.

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

1. That, by and in accordance with the affirmative vote of a majority of the Commissioners, the Commission hereby adopts the Findings and Recommendations of the Hearing Examiner (Aug. 22, 2008) appended to the original hereof as "Attachment A".

2. That the Commission hereby adopts and approves the proposed "Net Metering provisions" within the "Rules for Certification and Regulation of Electric Suppliers" attached to the Hearing Examiner's Findings and Recommendations as "Appendix 1". The Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the Delaware Register the exact text of the Regulations attached hereto as Exhibit "A" for publication on November 1, 2008.

3. The effective date of this Order shall be the later of November 10, 2008, or ten days after the date of publication in the Delaware Register of the Regulations attached hereto as Exhibit "A."

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 Regulation Docket No. 49, Order No. 7435 Cont'd.

/s/ Dallas Winslow  
Commissioner

/s/ Jeffrey J. Clark  
Commissioner

ATTEST:

/s/ Norma J. Sherwood  
Acting Secretary

A T T A C H M E N T "A"

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**FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER**

Ruth Ann Price, duly appointed Hearing Examiner in this Docket pursuant to 26 Del. C. § 502 and 29 Del. C. Ch. 101, by Commission Order No. 7326, dated December 4, 2007, reports to the Commission as follows regarding the hearing held on March 25, 2008:

**APPEARANCES**

On behalf of the Public Service Commission Staff ("Staff"):

BRUCE BURCAT, Executive Director

FUNMI I. JEGEDE, Public Utilities Analyst

On behalf of Delmarva Power & Light Company ("DP&L"):

TODD L. GOODMAN, ESQUIRE

LEONARD J. BECK, SENIOR REGULATORY ANALYST

On behalf of the Delaware Energy Office ("DEO"):

BRIAN GALLAGHER, CONSULTANT

On behalf of the Division of the Public Advocate ("DPA"):  
JOHN CITROLO, DEPUTY PUBLIC ADVOCATE

## I. A BRIEF HISTORY OF THE ENERGY POLICY ACT OF 2005

1. The federal Energy Policy Act of 2005<sup>2</sup> added five additional 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").<sup>3</sup> 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 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.<sup>4</sup>

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-regulated 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

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

<sup>3</sup>92 Stat. 3117 (1978). See 16 U.S.C. §§ 2611-13, 2621-27, 2631-34. See also PSC Orders Nos. 7129 (Feb. 7, 2007) (consideration of new "smart-metering" standard) and 6983 (July 11, 2006) (consideration of new "interconnection" standard).

<sup>4</sup>See 16 Del. U.S.C. § 2621(d)(11) as added by EPAct 2005, § 1251(a).

electric production and consumption.<sup>5</sup> In 2007, the General Assembly expanded that statutory command to: (a) widen the customer classes eligible for net metering; (b) increase permissible generator capacities for these additional classes of eligible customers; (c) define the types of renewable generation eligible for net metering; and (d) expand the "net metering" obligation beyond Commission-regulated utilities.<sup>6</sup>

3. In 1999, the Delaware legislature made the decision to implement "net metering" and it has now further defined the appropriate state standard governing its implementation. 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. Therefore, 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 the State, by administrative or legislative action prior to enactment of EAct 2005,

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<sup>5</sup>See 26 Del. C. § 1014(d) (2006 Supp.) (reflecting net metering provisions prior to the 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)).

<sup>6</sup>See 76 Del. Laws. Ch. 164 §§ 1-3 (July 24, 2007), amending 26 Del. C. § 1014(d), (d)(1) & (d)(2).

had implemented the standard or a comparable one); 2627(b) (State may adopt standard which is different than federal standard).<sup>7</sup>

4. 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 2007, the Commission had thought that it was appropriate to once again revisit its rules to see if further changes need to be made. The statutory changes made to § 1014(d) expanded the classes of customers who could pursue "net metering" and recalculated the allowed capacities for behind-the-meter generation. More significantly, the new amendments added a new subsection 1014(e) which set forth a complex description of the various payment and metering obligations involved in "net metering."<sup>8</sup> Consequently, the Commission directed 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 would then propose such revisions for adoption under the rule-making process under the State administrative procedures law, 29 *Del. C.* §10101 *et seq.*, as amended.

5. The Commission also raised the issue of whether it had regulatory jurisdiction over the Delaware Electric Cooperative ("DEC") regarding the net metering rules. Under the provisions of 26 *Del. C.* § 224(9), so long as DEC continued to implement a restructuring plan which provided for retail competition, it apparently remained subject

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

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

to the Commission's limited regulatory authority in order to implement the commands of §1014(d), net energy metering.<sup>9</sup> However, the Commission had some questions whether § 224(9) remained operative. Did the DEC still operate under a retail competition model? Also, did the July 2007 amendments to § 1014(d) implicitly repeal the Commission's surviving limited authority over DEC in the net metering context?<sup>10</sup> The answer to whether the DEC is "in" or "out" of the Commission's "net metering" regulatory reach might make a difference in the context of the contemplated rule revisions. Consequently, the Commission asked the DEC and other interested persons to submit to the Commission their positions on the Commission's current regulatory jurisdiction over the DEC as it relates to implementing "net metering."

## **II. PSC ORDER NO.7252 DATED AUGUST 21, 2007**

6. On August 21, 2007, the Commission in PSC Order No. 7252 ordered Staff to submit proposed revisions to the Net Metering provisions within the "Rules for Certification and Regulation of Electric Suppliers," § 8.0 (as adopted by PSC Orders Nos. 7023

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<sup>9</sup>See 26 Del. C. § 224(9)a.1. (2006 Supp.). Pursuant to DEC. 26 Del. C. §223, this Commission generally has no regulatory supervision over the electric cooperatives. In August 2006, the members of DEC voted to be exempt from PSC regulation pursuant to this section.

<sup>10</sup>In 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. In any event, this issue has been resolved through passage of Senate Bill 193.

(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). Under the rule-making procedures set forth in 29 Del. C. ch. 101, the Commission would then decide what revisions should be proposed for adoption based on Staff's submission of the revisions relating to PSC Regulation Docket No. 49. By PSC Order No. 7326, the Commission accepted Staff's memorandum and proposed revisions (Appendix "1" hereto) to the Net Metering provisions.

### **III. PSC ORDER NO. 7326 DATED DECEMBER 4, 2007**

7. On December 4, 2007, in PSC Order No. 7326, the Public Service Commission issued Proposed Revisions to the "Net Energy Metering" provisions of its "Rules for Certification and Regulation of Electrical Suppliers."

8. PSC Order No. 7326 directed that the Secretary transmit to the Registrar of Regulations for publication in the Delaware Register of Regulations a copy of Staff's revised RPS Rules and a Notice of Proposed Rule-Making ("the revised RPS Rules"). The Secretary was also requested to publish a copy of the rule-making notice on January 3, 2008 in The News Journal and the Delaware State News newspapers advising the public that comments on the proposed revised rules should be submitted on or before February 6, 2008. The Commission directed the Secretary to forward a copy of the Notice of Proposed Rule-Making to the DPA, the DEO, DP&L, DEC, all certificated electric suppliers, and each person or entity who requested notice of the rule-making proceeding. See PSC Order No. 7326, ¶ 2.

9. In addition, PSC Order No. 7326 set a date for a public evidentiary hearing for consideration of any comments received on the revised RPS Rules. Further, this hearing examiner was charged with organizing, classifying, and summarizing the comments submitted by the public and interested persons, and to prepare a report on her finding with the Commission.

#### **IV. COMMENTS ON PROPOSED RULES**

10. The DEO provided its Comments dated February 6, 2008 through Charlie T. Smisson, Jr., the State Energy Coordinator. The DEC sent a letter regarding the contemplated rule revisions on September 20, 2007, which included comments from Delaware State Senator F. Gary Simpson. Senator Simpson subsequently co-sponsored proposed Senate Bill No. 193 relating to the DEC and Net Energy Metering.

#### **V. THE HEARING ON MARCH 25, 2008**

11. After duly advertised public notice<sup>11</sup>, an evidentiary hearing was held on March 25, 2008 at the Commission's office in Dover. Staff presented the pre-filed and live testimony of one (1) witness, Public Utilities Analyst Ms. Funmi I. Jegede. Exs. 1 and 1A.<sup>12</sup> Ms. Jegede testified that she was assigned to submit proposed

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<sup>11</sup>The affidavits of publication for announcing amendments to the net metering rules and advising the public of the March 25, 2008 evidentiary hearing were not available at the evidentiary hearing although all parties agreed that they should become a part of the record in this case. Tr. 347. At the time of the hearing, I stated that were the affidavits were submitted they would be marked collectively as Exhibit 1. However, in order to avoid confusion with other exhibits, I have marked the affidavits as Exhibit 2 and they are hereby entered into evidence as such.

<sup>12</sup> Ms. Jegede originally filed prefiled testimony on March 13, 2008, which at the March 25, 2008 evidentiary hearing was admitted into evidence as Ex.1.

revisions to Commission rules originating from the statutory changes enacted by legislation regarding Net Metering. See 26 Del. C. § 1014; Exhibit 1A (Transcript, page 2).

12. Ms. Jegede testified that, after publication of Staff's proposed revisions to the Rules in the Delaware Register of Regulations, Staff made additional non-substantive changes to the Rules pursuant to 29 Del. C. § 10113(b)(4). Ms. Jegede also testified that the Final Version of the proposed rules was attached to her revised testimony. See Exhibit 1A, Exhibit A(Clean Version).

13. Based on her review of the proposed Net Metering provisions of Title 26, Ms. Jegede further testified that she made the following Findings and Recommendations, which are reproduced here verbatim:

- (a) The new statute expands the classes, facility capacity, and treatment of excess generation credits for eligible net energy metering customers;
- (b) The statute does not provide a definition of "NEG", however, Staff assumes this could mean Net Excess Generation;
- . . . .
- (d) Clarification is required for the statutory provision, "RECs (Renewable Energy Credits) associated with NEG convey to the purchasing Electric Supplier." Staff's interpretation of this statement is that at the end of the annualized period (12-month billing), the customer will forfeit any excess credits available for Net Metering and any RECs that equate to those accrued excess credits to the Green Energy Fund. Those RECs should be turned over to the Electric Supplier;
- (e) The statute requires that excess credits remaining at the end of a twelve-month period,

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However, at the hearing, Ms. Jegede submitted a corrected version of her prefiled testimony that was admitted into evidence as Ex.1A.

ending either December 31 or July 31, be forfeited. Electric Suppliers however have different billing cycles, therefore a twelve-month billing cycle may occur immediately after the stipulated December 31<sup>st</sup> and July 31<sup>st</sup> billing periods. Therefore, Staff has interpreted the twelve-month period to be the Annualized Period of 12 consecutive monthly billing periods ending either on December 31<sup>st</sup> or July 31<sup>st</sup> of each year, at the discretion of the Customer, or *the nearest billing cycle*;

- (f) The Electric Supplier must transfer excess credits (forfeited) to the Green Energy Fund at the end of the Annualized Period. However, the statute does not state where the revenue for those credits will come from. Staff is reluctant to burden ratepayers because Delmarva Power and Light's ratepayers already contribute to the Green Energy Fund. With regard to NEG, Staff is uncertain how additional payments into the Green Energy Fund will be generated. This issue of revenue generation will also apply to the RECs that are associated with NEG;
- (g) With regard to No. 6 above, Staff recommends that Delmarva should address the issue of revenue generation for the Green Energy Fund in legislation. Staff also recommends that Delmarva's ratepayers should not subsidize the funding of Net Metering excess credits to the Green Energy Fund;
- (h) The statute does not explain how the RECs associated with NEG are to be conveyed to the Electric Supplier. Staff is uncertain who will monitor these RECs. This may be a burden for the Electric Suppliers;
- (i) The statute does not address the termination of service or the switching of Electric Suppliers by the Customer. Staff made the assumption that if a Net Metering Customer terminates its service with the electric provider (or switches electric providers), the electric provider shall treat the end of service period as if it were the end of the Annualized Period for any excess kWh credits at the electric provider's Avoided Cost of Wholesale Power;
- (j) Senator Simpson and DEC's letters attached with this testimony assert that the Commission has no

authority over DEC for Net Metering purposes. The Senator claims that failing to remove DEC from the Commission's authority was in error and he will therefore propose legislation in January 2008 clarifying the situation. Staff will revisit this issue once the Senator's amendment to Net Metering legislation passes, or when it becomes evident that no such bill will become law. Senate Bill No. 193 of January 11, 2008 is attached to this testimony;

- (k) Mr. Charlie T. Smisson's letter to the Commission regarding his comments on the definition of "Annualized Period" is attached to this testimony. Staff has not made any changes to the proposed rules with regard to Mr. Smisson's comments;
- (l) Staff has not found any material objections to the proposed amended rules to the Net Metering provisions as originally submitted in its memorandum pursuant to PSC Order No. 7326 of Dec. 4, 2007 (Exhibit A - redlined and clean versions). Therefore, Staff now respectfully submits the clean version of the same Exhibit A, as its final proposed revision for Commission approval to be published in the *Delaware Register of Regulations* as final rules and regulations for Net Metering.

Ex. 1A at pgs. 5-7.

14. Based on her review of the proposed Net Metering provisions of Title 26, Ms. Jegede testified that she was raising the following issues, which are reproduced here verbatim:

(a) Interpretation of Acronyms

- "NEG" - The statute does not provide a definition for this term. However, Staff assumes this could mean Net Excess Generation.
- "DEC" - The Statute refers to the Delaware Energy Office as DEC. DEC has always been associated with the Delaware Electric Cooperative, therefore, Staff deems this an error.

(b) Interpretation of Certain Provisions

- "RECs associated with NEG convey to the purchasing Electric Supplier." This statement requires additional clarification. Staff's interpretation of this statement is that at the end of the annualized period (12-month billing), the customer will forfeit any excess credits available from Net Metering and any RECs (Renewable Energy Credits) that equate to those accrued excess credits to the Green Energy Fund. Those RECs should be turned over to the Electric Supplier.
- "Annualized Period." Electric suppliers have different billing cycles, therefore a twelve-month billing cycle may occur immediately after the stipulated December 31<sup>st</sup> and July 31<sup>st</sup> billing periods. Staff has interpreted the Annualized Period of 12 consecutive monthly billing periods ending at the discretion of the Customer to be either December 31<sup>st</sup> or July 31<sup>st</sup> of each year or the nearest billing cycle.

(c) Transfer of Credits to the Green Energy Fund

The Electric Supplier must transfer excess credits (forfeited) to the Green Energy Fund at the end of the Annualized Period. However, the statute does not state where the revenue for those credits will come from. Staff is reluctant to burden the ratepayers because Delmarva's ratepayers already contribute to the Green Energy Fund.<sup>13</sup> With regards to NEG, Staff is uncertain how additional payments into the Green Energy Fund will be generated. This issue of revenue generation will also apply to the RECs that are associated with NEG (No. 2 above).

(d) Monitoring of RECs Associated With NEG

The statute does not explain how these RECs are to be conveyed to the Electric supplier. Staff is uncertain who will monitor these RECS. This may be a burden for the Electric Suppliers.

(e) Termination of Service

The statute does not address the termination of service or the switching of Electric suppliers by

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<sup>13</sup>Delmarva Power Electric Tariff Leaves Nos. 39-47.

the Customer. Staff made the assumption that if a Net Metering Customer terminates its service with the electric provider (or switches electric providers), the electric provider shall treat the end of service period as if it were the end of the Annualized Period for any excess kWh credits at the electric provider's Avoided Cost of Wholesale Power.

(f) Commission's Authority Over DEC

Senator Simpson and DEC's letters attached with this testimony assert that the Commission has no authority over DEC for Net Metering purposes. The Senator claims that failing to explicitly remove DEC from the Commission's authority was in error and he will therefore propose legislation in January 2008 clarifying the situation. As stated earlier in my testimony, Staff will revisit this issue once the outcome of the Senator's amendment to Net Metering legislation is determined.

Q. Do you have additional comments regarding the issue of revenue generation for the Green Energy Fund mentioned in Issue No. 3 above?

A. Yes. Staff already stated that Delmarva's ratepayers currently contribute to the Green Energy Fund and that the statute does not indicate how revenue from those excess credits (forfeited) will be generated. In light of this

development, Staff recommends that Delmarva Power should address this issue in legislation. Staff also believes Delmarva's ratepayers should not subsidize the funding of the excess credits to the Green Energy Fund.

15. Mr. Smisson, the State Energy Coordinator of the DEO, addressed the issue of Annualized Period by offering four scenarios as to how the start and end dates of the twelve-month period could favorably or adversely affect a Net Metering customer. He "recommended additional language to the definition of the Annualized Period that allows Electric Suppliers to offer to bill net metering customers utilizing an annualized period arrangement more favorable to customers such as an 'Anniversary Date,' Annualized Period, or 'Rolling Annualized Period.'"

16. Mr. Smisson further stated in his letter that his office was familiar with the legislative process that led to the "Winter and Summer Dates" method of determining an annualized period being included in Delaware's net metering law and believes that this method was intended to be a "minimum requirement." Mr. Smisson's letter further stated that, based on his office's "experience in issuing grants and communications with customers and renewable energy contractors, there are at least 75 net metering customers eligible under the new net metering law and there have been few or no issues with DP&L's administration of net metering billing."

17. Staff agrees with Mr. Smisson that its definition for Annualized Period meets the minimum requirement (or intent) of the

statute. However, Staff disagrees with Mr. Smisson's recommendation that this definition be modified since it appears that his proposal is not consistent with the statute. Staff therefore recommends that the Commission adopt the proposed revised rules as originally submitted in PSC Order No. 7326. DP&L has already assured Staff that it will track the anniversary dates like it already does for other states. For example, the July 31st reporting would include customers with anniversary dates from November of the previous year through May of the current year while the December 31<sup>st</sup> report would include customers with anniversary dates from June through October.

18. Senator Simpson's and DEC's letters sought an interpretation of the statute which would remove the Commission's authority over DEC for Net Metering purposes. The Senator argued that failing to remove DEC from the Commission's authority was an oversight and he would therefore propose legislation in January, 2008 clarifying the situation. Thereafter, on January 11, 2008, Senator Simpson co-authored Senate Bill No. 193, a proposed act to amend Title 26 of the Delaware Code relating to Net Metering for cooperatives. Thereafter, the Act passed the Delaware legislature and was signed into law by the Governor on March 25, 2008. The Act removes the Commission's authority over DEC for Net Metering purposes and "clarifies that electric cooperatives exempt from §223, Title 26 of the Delaware Code shall be authorized to promulgate rules and regulations which provide for net energy metering."

## **VI. DISCUSSION**

19. The Commission has jurisdiction in this matter pursuant to 26 Del. C. § 362. I have considered all of the evidence of record in this case, including but not limited to, the comments provided by the DEO and the sponsor of Senate Bill No. 193, Delaware State Senator F. Gary Simpson and, based thereon, I submit for the Commission's consideration these findings and recommendations.

20. As stated by Staff's witness, Funmi I. Jegede, the Commission was compelled to conform its rules to the amendments passed by the legislature at the end of the 2007 legislative session. I note that the revised RPS Rules closely track the amended legislation and that the Staff has carefully considered each of the legislative changes. Further, I find that the revised RPS Rules are reasonable, in the public interest, and necessary because they implement the requirements of the amended Act which the Commission is bound to enforce.

21. While there were some differences of opinion regarding the Commission's interpretation of the legislation, in the end, none of the participants, which included DP&L, the DEO, and the DPA, opposed the Staff's proposed Rules.

22. Further, I note that no members of the public submitted written comments in response to the public notice or attended the evidentiary hearing. I find that, due to the passage of Senate Bill No. 193 by the Delaware General Assembly, the Commission has no authority over DEC for Net Metering purposes. Moreover, I find that, as to the "Annualized Period," Electric Suppliers have different

billing cycles, therefore a twelve-month billing cycle may occur immediately after the stipulated December 31<sup>st</sup> and July 31<sup>st</sup> billing periods. I concur with the Staff's interpretation that the Annualized Period of twelve (12) consecutive monthly billing periods ending at the discretion of the Customer is either December 31<sup>st</sup> or July 31<sup>st</sup> of each year or the nearest billing cycle.

23. In summary, and for the reasons discussed above, I propose and recommend to the Commission that it adopt as just, reasonable, and in the public interest, Staff's proposed revised "Rules for Certification and Regulation of Electric Suppliers" attached hereto as "Appendix 1."

Respectfully submitted,

Dated: August 22, 2008

/s/ Ruth Ann Price\_\_\_\_\_  
Ruth Ann Price  
Senior Hearing Examiner

**E X H I B I T "A"**

**DELAWARE PUBLIC SERVICE COMMISSION  
PSC REGULATION DOCKET NO. 49**

**RULES FOR  
CERTIFICATION AND REGULATION  
OF ELECTRIC SUPPLIERS**

**EFFECTIVE \_\_\_\_\_: 2008**

## **8.0 Net Energy Metering**

### **8.1 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Annualized Period" means a period of 12 consecutive monthly billing periods ending at the discretion of the Customer, either December 31<sup>st</sup> or July 31<sup>st</sup> of each year or the nearest billing cycle. A Customer-generator's first Annualized Period begins on the first day of the first full monthly billing period after which the Customer-generator's facility is interconnected and is generating electricity.

"Avoided Cost of Wholesale Power" means the annual average locational marginal price ("LMP") of energy in the applicable energy supplier's transmission zone. This cost (including the method of calculation) can be obtained through the Electric Supplier's tariff as approved by the Commission.

"Customer-generator" means a residential, commercial, or industrial Customer that generates electricity on the Customer's side of the meter.

"Customer-generator Facility" means the equipment used by a Customer-generator to generate, manage, and monitor electricity. A Customer-generator facility typically includes an electric generator and/or an equipment package, as defined herein (also referred to as the "generating facility" or "generator").

"NEG" means Net Excess Generation.

"Net Metering" means a system of metering electricity in which the Electric Supplier credits a Customer-generator at the full applicable retail rate by classification for each kilowatt-hour produced by a renewable energy system installed on the Customer-generator's side of the electric revenue meter, up to the total amount of electricity used by that Customer during an Annualized Period. At the end of the Annualized Period, any remaining credits are to be credited to the Green Energy Fund at a rate equal to the Electric Supplier's Avoided Cost of Wholesale Power.

### **8.2 General Provisions**

8.2.1 Each Electric Supplier providing Electric Supply Service to Residential and Non Residential Customers shall offer these Retail Electric Customers the option of net energy metering if a Retail Electric Customer generates electricity at the Customer's premises, subject to all of the following requirements:

8.2.1.1 The Retail Electric Customer owns or operates the electric generation facility with a capacity that:

8.2.1.2 Will not exceed 25 kW per DP&L meter for Residential Customers;

8.2.1.3 Will not exceed 2 MW per DP&L meter for Non Residential Customers;

8.2.1.4 Is intended primarily to offset all or part of the Customer's own electricity requirements;

8.2.1.5 Uses as its primary source of fuel - solar, wind, hydro, a fuel cell powered by renewable fuels, or gas from the anaerobic digestion of organic material;

8.2.1.6 Is interconnected and operated in parallel with an Electric Supplier's transmission and distribution facilities; and

8.2.1.7 Is not used by the Retail Electric Customer to supply property other than the Customer's premises.

**8.3** Net metering is the interconnection with Distribution Facilities through a single meter at the supplier's expense, that runs forward and backward in order to measure net energy flow during a billing period.

8.3.1 An additional meter or meters to monitor the flow of electricity in each direction may be installed with the consent of the net-metering Customer, at the expense of the Electric Supplier.

8.3.2 Where a larger capacity meter is required to serve the Customer, or a larger capacity meter is requested by the Customer, the Customer shall pay the Electric Supplier the difference between the larger capacity meter investment and the metering investment normally provided under the Customer's service classification. If an additional meter or meters are installed, the net energy metering calculation shall yield a result identical to that of a single meter.

**8.4** If, during any billing period, a Retail Electric Customer's facility generates more energy than that consumed by the Customer, the Electric Supplier will credit the Customer in kilowatt-hours (kWh), valued at an amount per kilowatt-hour: (1) equal to the sum of delivery service charges and supply service charges for Residential Customers but not to include the monthly Customer charge; and (2) the sum of the volumetric energy (kWh) components of the delivery service charges and supply service charges for non Residential Customers.

8.4.1 Excess kWh credits shall be credited to subsequent billing periods to offset a Customer's consumption in those billing periods until all credits are used or until the end of the annualized billing period.

8.4.2 Any unused credits at the end of the 12-month period shall be forfeited to the Electric Supplier at the Electric Supplier's Avoided Cost of Wholesale Power for use solely to augment existing funding for the Green Energy Fund.

8.4.3 Any excess kWh credits shall not reduce any fixed monthly Customer charges imposed by the Electric Supplier.

8.4.4 The Customer-generator retains ownership of Renewable Energy Credits (“REC”) associated with electric energy produced and consumed by the Customer-generator. The RECs associated with NEG convey to the purchasing Electric Supplier.

8.4.5 Electric Suppliers shall provide net-metered Customers electric service at non-discriminatory rates that are identical, with respect to rate structure and monthly charges, to the rates that a Customer who is not net-metering would be charged. Electric Suppliers shall not charge a net-metering Customer any stand-by fees or similar charges.

8.4.6 If a net metering Customer terminates its service with the electric provider (or switches electric providers), the electric provider shall treat the end of service period as if it were the end of the Annualized Period for any excess kWh credits at the electric provider’s Avoided Cost of Wholesale Power.

8.4.7 If the total generating capacity of all Customer-generation using net metering systems served by an electric utility exceeds 1 percent (1%) of the capacity necessary to meet the electric utility's aggregated Customer monthly peak demand for a particular calendar year, the electric utility may elect not to provide net metering services to any additional Customer-generators

**8.5** Any requirements necessary to permit interconnected operations between the Retail Electric Customer’s generating facility and the Electric Supplier, and the costs associated with such requirements, shall be dealt with in a manner consistent with a standard tariff filed with the Commission by the Electric Supplier. An Electric Supplier's interconnection rules shall be developed by using the Interstate Renewable Energy Council's (“IREC”) Model Interconnection Rules and best practices identified by the U.S. Department of Energy.

**8.6** Each Electric Supplier shall submit an annual net-metering report to the Commission 90 days after the annualized billing period. The report shall include the following information from the prior compliance year:

8.6.1 The total number of Customer-generator facilities;

8.6.2 The total estimated rated generating capacity of its net-metered Customer-generators;

8.6.3 The total estimated net kilowatt-hours received from Customer-generators;  
and

8.6.4 The total estimated amount of energy produced by Customer-generators, using a methodology approved by the Commission.

**8.7** The Commission shall periodically review the impact of net-metering rules in this section and recommend changes or adjustments necessary for the economic health of utilities.