

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE COMMISSION'S)
CONSIDERATION OF THE FOUR STANDARDS)
ADDED TO THE PUBLIC UTILITY REGULATORY) PSC DOCKET NO. 08-414
POLICIES ACT OF 1978, ADDED BY THE)
ENERGY INDEPENDENCE AND SECURITY ACT)
OF 2007 (OPENED DECEMBER 16, 2008))

ORDER NO. 7502

This 16th day of December, 2008 the Commission determines and Orders the following:

1. On December 19, 2007, Congress enacted the "Energy Independence and Security Act of 2007" ("EISA"),¹ which, among other things, added the following "standards" for state regulatory authorities (with respect to each electric utility for which they have rate-making authority) and each non-regulated electric utility to "consider" implementing under the regime established by the "Public Utility Regulatory Policies Act of 1978" ("PURPA")²: (a) integrated resource planning; (b) smart grid investments; (c) smart grid information; and (d) rate design modifications to promote energy efficiency investments.³

¹Pub. L. No. 110-140, 121 Stat. 1492 (2007).

²See 16 U.S.C. §§ 2601, *et. seq.* Since its enactment in 1978, PURPA has been amended several times to add additional standards for state authorities to consider. This Commission has considered such standards previously. See, e.g., PSC Orders Nos. 7129 (Feb. 7, 2007) (consideration of new "smart-metering" standard) & 6983 (July 11, 2006) (consideration of new "interconnection" standard).

³See 16 U.S.C. § 2621(d)(16)-(17). The four new standards appear to have been enumerated incorrectly in section 2621(d). Prior to EISA, there were 15 PURPA standards listed in section 2621(d). Instead of the four new standards

2. PURPA provides general procedures for state regulatory authorities to use in considering whether to implement the PURPA standards. The consideration that must be given must be made after "public notice" and a hearing, and the determination of whether such standard should be implemented must be in writing, "based upon findings included in such determination and upon the evidence presented at the hearing, and available to the public."⁴ Otherwise, with limited exceptions, the procedures to be used are up to the state regulatory authority.⁵

3. The state regulatory authority may, to the extent consistent with otherwise applicable state law, implement any of the standards determined to be appropriate to carry out the purposes of PURPA or decline to implement any standard.⁶ The purpose of PURPA is to supplement otherwise applicable state law.⁷ Regulatory authorities are free to determine that it is not appropriate to implement any of the standards they are required to consider.⁸ Moreover, PURPA generally treats prior and pending proceedings commenced by regulatory authorities that "substantially conform to the requirements" of PURPA

being numbered sequentially, 16-19, they are numbered, 16, 16, 17, and 17. Thus, there are two standards numbered "16" and two numbered "17".

⁴See 16 U.S.C. § 2621(b).

⁵See 16 U.S.C. § 2621(b)(2).

⁶See 16 U.S.C. § 2621(c).

⁷See 16 U.S.C. § 2621(a).

⁸Id.

as fulfilling the consideration and determination requirements under PURPA.⁹

4. On December 16, 2008, the Commission held a hearing to consider the four new PURPA standards. Notice of the hearing was published on the Commission's website on December 5, 2008, and in *The News Journal* and *Delaware State News* newspapers on Sunday, December 7, 2008. The Delaware Public Advocate and Delmarva Power & Light Company ("DP&L") were also provided with notice of this proceeding.

5. At the hearing, the Commission Staff presented the testimony of Janis Dillard, the Commission's Regulatory Policy Administrator. As detailed below, Ms. Dillard testified regarding the four federal standards and how those standards are already being implemented in some fashion in Delaware. Accordingly, Staff recommended that it was not necessary for the Commission to take any further action with respect to the four federal standards.

Integrated Resource Planning

6. The integrated resource planning ("IRP") standard under EISA provides, in its entirety:

(16) Integrated resource planning

Each electric utility shall -

(A) integrate energy efficiency resources into utility, State, and regional plans; and

⁹See 16 U.S.C. § 2634. Section 2634 specifically refers to the 15 standards in PURPA that existed prior to EISA, and EISA did not amend section 2634 to include references to the four new standards. However, since the Commission is free to decline implementation of any of the standards (see 16 U.S.C. § 2621(c)(1)(B)), the Commission herein considers prior and pending state action in considering the new federal standards.

(B) adopt policies establishing cost-effective energy efficiency as a priority resource.

See 16 U.S.C. § 2621(d)(16).¹⁰

7. As Ms. Dillard testified, integrated resource planning is already mandated under Delaware law. The "Electric Utilities Retail Customer Supply Act of 2006" ("EURCSA"),¹¹ required DP&L to conduct integrated resource planning and file on December 1, 2006, and every two years thereafter, an IRP.¹² Specifically, under EURCSA, DP&L must evaluate all available supply options during a 10-year planning period in order to acquire "sufficient, efficient and reliable resources over time to meet its customers' needs at a minimal cost." See § 1007(c)(1).

8. On December 1, 2006, DP&L filed its first IRP as required by EURCSA. On November 5, 2008, DP&L updated its December 1, 2006 IRP. Since the original IRP was filed, DP&L has implemented many aspects of the IRP, including procuring contracts for the supply of electricity generated from land-based and off-shore wind farms and engaging in auctions to procure supply from the wholesale market. Aspects of DP&L's IRP also include a focus on energy efficiency and, to the extent the federal IRP standard requires more than that

¹⁰The IRP standard is the first subsection (16) in section 2621(d).

¹¹See 75 Del. Laws ch. 242 (2006)

¹²See 26 Del. C. § 1007(c); see also 26 Del. C. § 1002(4) (declaring it the policy of Delaware that electric distribution companies subject to Commission oversight 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."). EURCSA also requires that the Delaware Electric Cooperative, Inc. file annual plans, detailing its energy supply requirements and planned procurement strategies to meet forecasted demand. Id. at § 1007(c)(2).

contemplated by DP&L's IRP, the Commission notes that DP&L plans to work with the Sustainable Energy Utility (the "SEU") on energy efficiency programs, as discussed below.

9. In addition, the Commission has opened several matters with respect to integrated resource planning. It has opened a docket to evaluate DP&L's IRP.¹³ The Commission has also opened a regulation docket for the purpose of promulgating rules and regulations to govern the IRP process.¹⁴ The parties in these dockets continue to negotiate final rules and regulations for the Commission's approval.

Consideration of smart grid
investments and smart grid information

10. EISA added two "smart grid" standards to PURPA. The first provides:

(16) Consideration of smart grid investments

(A) In general

Each state consider requiring that, prior to undertaking investments in nonadvanced grid technologies, an electric utility of the State demonstrate that the electric utility considered an investment in a qualified smart grid system based on appropriate factors, including -

- (i) total costs;
- (ii) cost-effectiveness;
- (iii) improved reliability;
- (iv) security;
- (v) system performance; and
- (vi) societal benefit.

¹³ See PSC Docket No. 07-20.

¹⁴ See PSC Regulation Docket No. 60.

See 16 U.S.C. § 2621(d)(16).¹⁵

11. This standard further requires state authorities to consider (i) authorizing the recovery from ratepayers of any capital, operating expenditures, or other costs of the utility relating to the deployment of a "qualified" smart grid system; and (ii) authorizing the recovery of the remaining book-value costs of any equipment rendered obsolete from the deployment of qualified smart grid systems.¹⁶

12. The second "smart-grid" standard in EISA, "smart grid information," provides that electricity purchasers be provided direct access to information pertaining to time-based electricity prices in the wholesale and retail markets and the number of electricity units purchased, expressed in kwh's. See 16 U.S.C. § 2621(d)(17)(a).¹⁷ The standard further requires daily updates of the pricing and usage information and annual reports regarding the source of power provided by utilities and, to the extent it can be determined, by type of generation, including greenhouse gas emissions associated with each type of generation.¹⁸

13. As with the federal IRP standard, consideration of smart grid technology is already required under Delaware law. EURCSA required that the Commission open a docket to evaluate the

¹⁵The smart grid investments standard is the second subsection (16) standard in section 2621(d).

¹⁶See 16 U.S.C. § 2621(d)(16)(b)-(c).

¹⁷This smart grid standard is the second subsection (17) standard in section 2621(d).

¹⁸See 16 U.S.C. § 2621(d)(17)(B).

desirability, feasibility, and cost effectiveness of requiring advanced metering technology, also known as advanced meter infrastructure ("AMI"), a basic component of a smart grid.¹⁹ The Commission thereafter opened a regulation docket and held various workshops in which AMI was considered.²⁰ Although the Commission concluded ultimately that DP&L should not be required to implement a smart-metering pilot program as part of that docket, it recognized that DP&L would be submitting a comprehensive proposal that would address advanced metering technology and time-based rates.²¹

14. DP&L, accordingly, filed its Blueprint for the Future Plan (the "Blueprint"), a comprehensive demand-side management, advanced metering and energy efficiency plan. The Blueprint details, among other things, DP&L's plan to pursue AMI for its customers. The Commission opened PSC Docket No. 07-28 to consider the Blueprint, and a series of working group meetings were held to discuss, among other things, DP&L's AMI proposal.²² The Commission later entered an Order in which it approved "the diffusion of the advanced metering technology into the electric and natural gas distribution system networks" and permitted DP&L "to establish a regulatory asset to cover recovery of and on the appropriate operating costs associated with the deployment of Advanced Metering Infrastructure and demand response

¹⁹ See 26 Del. C. § 1008(b)(1)(b).

²⁰ See Regulation Docket No. 57.

²¹ See PSC Order No. 7129.

²² See PSC Order Nos. 7154, 7420.

equipment."²³ The Order further provided that the parties remained free to challenge the level or any other aspect of the asset's recovery in rates in DP&L's next base rate case and that, for ratemaking purposes, the Commission may wish to consider an "appropriately valued regulatory asset for advanced metering infrastructure investment consistent with the matching principle giving consideration to both costs and savings in the context of its next base rate case proceeding."²⁴

15. The Order also set the stage for further workshops regarding demand-side management or demand response programs.²⁵ Those workshops, which include discussions of DP&L's AMI program, are ongoing. Indeed, on October 14, 2008, Pepco Holdings, Inc., DP&L's parent company, gave a detailed presentation of its plan to implement smart grid technology.

Rate design modifications to promote energy efficiency investments

16. Finally, the last PURPA standard that we are required by EISA to consider, "rate design modifications to promote energy efficiency investments," provides, generally, that permitted rates "shall align utility incentives with the delivery of cost-effective energy efficiency" and "promote energy efficiency investments." See 16 U.S.C. § 2621(d)(17).²⁶ The standard then lists the six following

²³See PSC Order No. 7420, p. 5.

²⁴Id. at pp. 5-6.

²⁵See Report, p. 26 (attached to PSC Order No. 7420).

²⁶This standard is the first subsection (17) standard in section 2621(d).

"policy options" that the state regulatory authority shall consider in complying with the general standard:

- (i) removing the throughput incentive and other regulatory and management disincentives to energy efficiency;
- (ii) providing utility incentives for the successful management of energy efficiency programs;
- (iii) including the impact on adoption of energy efficiency as 1 of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives;
- (iv) adopting rate designs that encourage energy efficiency for each customer class;
- (v) allowing timely recovery of energy efficiency-related costs; and
- (vi) offering home energy audits, offering demand response programs, publicizing the financial and environmental benefits associated with making home energy efficiency improvements, and educating homeowners about all existing Federal and State incentives, including the availability of low-cost loans, that make energy efficiency improvements more affordable.

See 16 U.S.C. § 2621(d)(17)(B).

17. As with the IRP and smart grid standards considered above, the Commission has already considered, and continues to consider, rate design modifications for DP&L, with the goal of increasing energy efficiency. As part of a settlement of a previous base rate case, the Commission opened a docket to consider whether to implement a revenue decoupling mechanism for the electric and gas

utilities subject to its jurisdiction.²⁷ A series of workshops and presentations were held to discuss issues involving revenue decoupling, as well as other issues, such as demand-side management and demand response programs. The Commission ultimately entered an Order, approving various "policy recommendations,"²⁸ which included certain findings regarding rate design.²⁹ The Commission also noted that the implementation of surcharges for energy efficiency programs and revenue deficiencies related to conservation efforts were not a "preferred approach," but that it would not preclude the use of surcharges in the future under appropriate circumstances.³⁰ With respect to efficiency and conservation programs, the Commission said that it may consider those programs in the context of DP&L's next base rate case to the extent the programs would not conflict with or be unnecessarily duplicative of SEU programs. It should also be noted that DP&L's Blueprint also addresses energy efficiency measures that DP&L plans to implement in conjunction with the SEU.

18. In light of the above, and based upon Staff's testimony and recommendation, the Commission finds that no further action need be taken with respect to the four standards added to PURPA by EISA. Those standards, in some fashion, are already required under Delaware law and have been, or are currently being, considered by the Commission and interested parties.

²⁷See PSC Regulation Docket No. 59.

²⁸See PSC Order 7420.

²⁹Id. at pp. 4-6.

³⁰See id. at pp. 4-5.

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

1. That, as more fully set forth above, the Commission has considered the four standards added to the "Public Utility Regulatory Policies Act of 1978" by the "Energy Independence and Security Act of 2007" ("EISA"), and determines that no further consideration of those standards is necessary at this time. Therefore, the Commission determines that it will not implement the standards.

2. That, pursuant to 26 Del. C. § 102A, the notice of this proceeding meets the "public notice" requirement of 16 U.S.C. sec. 2621(b).

3. That this docket is hereby closed.

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

BY ORDER OF THE COMMISSION:

Chair

/s/ Joann T. Conaway
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

/s/ Jeffrey J. Clark