

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
DELMARVA POWER & LIGHT COMPANY) PSC DOCKET NO. 10-237
FOR A CHANGE IN NATURAL GAS BASE RATES)
(FILED JULY 2, 2010))

IN THE MATTER OF THE APPLICATION OF)
DELMARVA POWER & LIGHT COMPANY)
FOR APPROVAL OF A MODIFIED FIXED) PSC DOCKET NO. 09-277T
VARIABLE RATE DESIGN FOR NATURAL)
GAS CUSTOMERS (FILED JUNE 25, 2009))

ORDER NO. 7990

AND NOW, this 21st day of June, 2011.

WHEREAS, the Commission has received and considered the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Examiner issued in the above-captioned docket (attached to the original hereof as Attachment "A") after a duly-noticed public evidentiary hearing held on February 15, 2011;

WHEREAS, the Hearing Examiner recommends that the Proposed Settlement Agreement (attached to the original hereof as Attachment "B"), submitted by Delmarva Power & Light Company, the Commission Staff and the Attorney General of the State of Delaware, be approved as just and reasonable and in the public interest for service rendered on and after July 1, 2011;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE
OF NOT FEWER THAN THREE COMMISSIONERS:**

1. That, by and in accordance with the affirmative vote of a majority of the Commissioners, the Commission hereby adopts the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Examiner, appended to the Original hereof as Attachment "A";

2. That the Commission approves as just and reasonable and in the public interest the Proposed Settlement Agreement, in its entirety, submitted by Delmarva Power & Light Company, the Commission Staff and the Attorney General of the State of Delaware, appended to the original hereof as Attachment "B";

3. That the rates as provided in the Proposed Settlement Agreement are approved as just and reasonable and in the public interest for usage on or after July 1, 2011;

4. That Delmarva Power & Light Company, Inc. is authorized a return on equity of ten percent (10%) to produce an overall rate of return of 7.56 percent.

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/ Jaymes B. Lester
Commissioner

/s/ Joann T. Conaway
Commissioner

/s/ Jeffrey J. Clark
Commissioner

Commissioner

ATTEST:

/s/ Alisa Carrow Bentley
Secretary

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

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FINDINGS of FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS
OF THE
HEARING EXAMINER

DATED: May 13, 2011

RUTH ANN PRICE
SENIOR HEARING EXAMINER

TABLE OF CONTENTS

	<u>Page</u>
I. APPEARANCES	1
II. BACKGROUND	2
A. THE APPLICATION.....	2
B. INTERVENORS.....	4
C. PUBLIC COMMENT SESSION.....	7
D. EVIDENTIARY HEARING.....	7
III. SUMMARY OF THE EVIDENCE.....	8
A. COMPANY'S TESTIMONY	8
B. THE ATTORNEY GENERAL OF THE STATE OF DELAWARE	13
C. STAFF'S TESTIMONY	14
IV. OBJECTION OF STATE SENATOR JOHN A. KOWALKO, Jr.....	17
IV. DISCUSSION.....	19
V. RECOMMENDATIONS.....	21

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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. 7808, dated July 22, 2010 and Commission Order No. 7882 dated December 21, 2010, reports to the Commission as follows:

I. APPEARANCES

On behalf of the Applicant, Delmarva Power & Light Company ("Delmarva" or "the Company"):

By: TODD GOODMAN, Esq., Associate General Counsel

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

By: REGINA IORII, Esq., Deputy Attorney General

Janis Dillard, Deputy Executive Director

Susan Neidig, Regulatory Policy Administrator

Courtney Stewart, Public Utilities Analyst

On behalf of Joseph R. Biden, III, Attorney General of the State
of Delaware ("Attorney General"):

Lawrence W. Lewis, Esq., State Solicitor

KENT WALKER, Esq., Deputy Attorney General

On behalf of the Division of the Public Advocate ("DPA"):

By: KENT WALKER, Esq., Deputy Attorney General (up to and
including December 31, 2010)

G. Arthur Padmore, Public Advocate (up to and including
December 31, 2010)

Michael D. Sheehy, Public Advocate (as of and after April
23, 2011) and Deputy Director (up to and including April
22, 2011).

On behalf of State Representative, Intervenor, John A. Kowalko:

John A. Kowalko, Pro se.

II. BACKGROUND

A. THE APPLICATION

1. On July 2, 2010, Delmarva Power & Light Company ("Delmarva" or "the Company") filed with the Commission an Application, captioned as PSC Docket No. 10-237, seeking approval of: (a) an increase in its natural gas base rates; (b) a proposed revenue decoupling rate design, and (c) miscellaneous tariff changes. In its Application, Delmarva requested an increase in annual operating revenues of \$11,915,381, or 6.3% over total revenues.

2. On July 22, 2010, the Commission entered PSC Order No. 7808 suspending the proposed rates, except for temporary authorized interim rates, and revised tariff sheets filed by the Company pending a final order in this proceeding. Further, the Commission granted Delmarva's request to implement interim rates intended to produce an annual increase of \$2.5 million in intrastate operating revenues effective on August 31, 2010, subject to proration and refund.

3. Prior to its gas base rate case filing, PSC Docket No. 10-237, Delmarva filed, on June 25, 2009, an application for approval of a modified fixed variable ("MFV") rate design for gas customers, which was denominated by the Commission as PSC Docket No. 09-277T. This filing was "intended to better levelize and stabilize recovery of delivery-related costs from all customer classes over the course of each year," to "eliminate the relationship between delivery revenue and the level of customer gas consumption," and to remove disincentives to promote conservation programs to better align the interests of customers, utilities, the environment and the State in the area of energy conservation (Application at 2). Delmarva contends that establishing a MFV rate design, which is a form of decoupling, for its natural gas distribution business is consistent with the goals of energy-related federal stimulus funding and demonstrates that the State of Delaware, the Commission, and the Company remain dedicated to achieving energy conservation.

4. On October 20, 2010, the parties to PSC Docket No. 09-277T submitted a proposed settlement agreement to the Hearing Examiner. Thereafter, on November 4, 2010, a meeting was held with the parties

to discuss the path forward for this docket during which there was a discussion of consolidating PSC Docket No. 09-277T with PSC Docket No. 10-237. At the meeting the Division of the Public Advocate, the Commission Staff and Delmarva agreed that for purposes of administrative efficiency the two dockets should be consolidated. At that juncture, the parties reasoned that the settlement reached in PSC Docket No. 09-277T would serve as the resolution of the rate design portion of Delmarva's gas base rate case, PSC Docket No. 10-237.

5. On December 14, 2010, Delmarva filed a Motion to Consolidate Docket No. 09-277T with PSC Docket No. 10-237. Finding that none of the parties opposed Delmarva's motion, the Commission entered PSC Order No 7882 on December 21, 2010 consolidating the two cases and expressly stating that the issues present in PSC Docket No. 09-277T should be considered in PSC Docket No. 10-237. PSC Order No.7882 at ¶2.

B. INTERVENORS

6. **State Representative, John A. Kowalko, Jr.** On August 23, 2010, State Representative, John A. Kowalko, Jr., filed a Petition to Intervene in this proceeding alleging that he personally is a natural gas customer of Delmarva's and that he is Chairman of the Delaware House of Representatives Energy Committee. Petition at ¶¶ 1, 2. Representative Kowalko stated that in his capacity as Chair of the Energy Committee he has held public hearings regarding natural gas and electricity rate increases as well as other pertinent matters before

the Delaware Public Service Commission, such as decoupling, smart meters and pension fund replenishment. Representative Kowalko asserted that these matters have potentially serious consequences for Delaware ratepayers, many of whom are his constituents. Petition at ¶ 2.

7. In addition, Representative Kowalko noted that for several years he has been actively involved with energy policy issues in this State and, particularly, matters of affordability of utility service for residential customers. Petition at ¶ 3. Representative Kowalko stated that "In [his] opinion, it is in the best interests of my constituents and all of the Delmarva customers in Delaware that their interests be better represented by someone who has been elected by them and whose only obligation is to their best interests." Petition at ¶ 4.

8. Representative Kowalko added that he was seeking intervention because he has "major concerns" that the requested rate increase may not be justified and that, if granted, the increase may not be affordable in the current economic climate. Petition at ¶ 5.

9. On August 24, 2010, by electronic mail, I asked the parties to notify me by letter or electronic mail no later than August 26, 2010 whether they intended to oppose Representative Kowalko's Petition. Anyone intending to oppose the Petition was given until Monday, August 30, 2010 to file an answer.

10. Delmarva Power & Light Company, Commission Staff and the Division of the Public Advocate responded, as requested, on August 26, 2010 by separate electronic mail messages advising me that there were

no objections to Representative Kowalko's intervention in this matter. On August 26, 2010, I entered PSC Order No. 7825 granting Representative Kowalko's petition for leave to intervene.

11. **Attorney General of the State of Delaware.** On January 24, 2011, the Attorney General of the State of Delaware ("Petitioner"), by and through his counsel, State Solicitor Lawrence W. Lewis and Deputy Attorney General Kent Walker¹, filed a Petition for Leave to Intervene Out-of-Time in this consolidated case. Petitioner noted that the position of the Public Advocate became vacant on December 31, 2010 with the retirement of G. Arthur Padmore, the Public Advocate until that date. Since Mr. Padmore's retirement no replacement had been nominated by the Governor or confirmed by the Senate, as required by 29 Del C. §8761(a). Petitioner contended that without his participation in this proceeding the interests of the public would not be represented.

12. Further, the Attorney General agreed that he would adopt all of the discovery, positions and the witness previously employed by the Public Advocate. Tr. 79.

13. Finding that there was no object to the Attorney General's intervention, that no party would be prejudiced by the late intervention and, most importantly, the interests of the public would be protected by his intervention, I granted the Petition on January 26, 2011.

¹ At the evidentiary hearing, Mr. Walker explained that as of January 1, 2011, he was asked by the Attorney General himself to represent him. Therefore, as of that date he did not represent the Office of the Attorney General or the Public Advocates in the office was vacant, but rather the Attorney General in his person. Tr. 79.

C. PUBLIC COMMENT SESSION

14. A duly noticed² public comment session was conducted at 7:00 p.m. on September 22, 2010 in the Auditorium of the Carvel State Office Building located at 820 North French Street in Wilmington, Delaware.³ The public notice for this session was advertised in the legal classified section of *The News Journal* newspaper on August 16 and August 26, 2010. In addition, the Commission received some thirty-nine (39) letters from the public, all of which urged the Commission to deny Delmarva's requested increase.

D. EVIDENTIARY HEARING

15. An evidentiary hearing⁴ was conducted on February 15, 2011, in the Third Floor Conference Room in the Carvel State Office Building in Wilmington.⁵ No members of the public attended the evidentiary hearing. The record, as developed at the hearing, consists of an

² The Affidavit of Publication of Notice of the Public Comment Session and the Evidentiary Hearing are included in the record as composite Exhibit 1.

³ The public comment session was originally scheduled for October 27, 2009. Notice of cancellation for that date and rescheduling of the public comment session for November 17, 2009 was published in *The News Journal* on October 18, 2009 and in *The Delaware State News* newspapers on October 20, 2009.

⁴ Notice of the evidentiary hearings was published in *The News Journal* newspaper on January 14, 26 and February 5, 2011.

⁵ The evidentiary hearing was originally noticed for February 15 and 16, 2011. At the conclusion of the session on February 15, the session for the next day, February 16, was found to be unnecessary. Notice of its cancellation was published on the Commission's website and the Statewide Calendar on February 15, 2011.

eight-two (82) page verbatim transcript and thirty-nine (39) hearing exhibits.

16. At the February 15, 2011 evidentiary hearing, the parties, except for Intervenor, State Representative John Kowalko, jointly submitted a proposed Settlement Agreement ("Proposed Settlement"), which, if adopted by the Commission, would resolve all issues in this docket. See Exhibit "A" attached hereto; (Hrg Ex. 33). As there were no issues in dispute, post-hearing briefs were deemed unnecessary. I have considered all of the record evidence, including the Proposed Settlement and, based thereon, I submit for the Commission's consideration these Findings of Fact, Conclusions of Law and Recommendations.

III. SUMMARY OF THE EVIDENCE

A. COMPANY'S TESTIMONY

17. With its Application, Delmarva submitted the pre-filed testimony of W. Michael Von Steuben, J. Mack Wathen, Jay C. Zimsky, Joseph F. Janocha, George W. Potts, Ernest L. Jenkins, Jr., Timothy J. White, Frank J. Hanley, Kathleen A. White, Philip L. Phillips, Jr. and Elliott P. Tanos. At the evidentiary hearing, the Company presented the live testimony of W. Michael Von Steuben, Manager of Revenue Requirements and Regulatory Accounting. Tr. 53-77. Mr. Von Steuben noted that that for purposes of the evidentiary hearing he was adopting as his own the testimony of all of the Delmarva witnesses, Exhibits 1 through 32. Tr. 55.

18. Mr. Von Steuben stated that signatories to the Proposed Settlement were the Company, Commission Staff and the Attorney General of the State of Delaware. He noted that State Representative Kowalko was not a signatory. Tr. 55-56.

19. Mr. Von Steuben highlighted the salient provisions of the settlement: (1) beginning with usage on or after April 1, 2011, with proration, rates will be modified to reflect a \$5.8 million dollar increase in total natural gas distribution base rate revenue and (2) the company would receive a ten (10%) percent return on equity. Tr. 56. Mr. Von Steuben noted that since the rates currently in effect were higher than the proposed settlement rates, ratepayers would receive a refund. *Id.* Mr. Steuben clarified that the Company had originally applied for an increase of \$11.9 million dollars, but that request had been revised in their rebuttal testimony to reflect an increase of \$10.2 million, which is the amount currently reflected in rates. The proposed settlement increase amount would be \$5.8 million.

20. Mr. Von Steuben explained that Delmarva originally filed its Application on July 2, 2010 based upon six months of actual accounting data and six months of forecasted data ending June 2010. Tr. 58. The accounting data as filed demonstrated a requested increase of \$11,915,000 increase based on a 10.75 percent return on equity. *Id.* The initial requested increase reflected the modified fixed variable decoupling mechanism that had been developed in workshops prior to this proceeding. Tr. 59.

21. Mr. Von Steuben testified that on August 31, 2010, that the Company placed into effect an interim increase of \$2.5 million,

subject to refund. *Id.* Thereafter, on September 2, 2010, Delmarva filed supplemental testimony that updated the actual and forecasted data that had been originally filed. The supplemental actual data reduced Delmarva's revenue requirements to \$11.6 million. *Id.*

22. The Company filed supplemental testimony on October 11, 2010 which Mr. Von Steuben represented removed the impact of AMI savings and costs associated with the first year of AMI. *Id.*

23. In his summary of the case, Mr. Von Steuben stated that on December 3, 2010, Delmarva filed its rebuttal testimony, which reduced its revenue requirement to \$10,163,000 or rounded to \$10.2 million. Tr. 60. Subsequently, the Company placed into effect the full amount of its requested revenue requirement of \$10.2 million. He noted that the amount placed into effect was the difference between the Company's rebuttal position of \$10.2 million minus the \$2.5 million that had already been placed into rates. *Id.*

24. Mr. Von Steuben related that during the course of this proceeding discovery was provided to Delmarva totaling some 560 discovery requests which generated 5,000 pages of responses provided to the parties. Tr. 59.

25. Mr. Von Steuben recommended that the Commission approve the proposed settlement because it balances the concerns of the various stakeholders, the customers and the needs of the Company to maintain safe and reliable service. Tr.61. He noted that the Company, Commission Staff and the Attorney General, all participated in settlement discussions and represented different stakeholder groups, each representing various interests, which cumulatively cared for the

public interest. *Id.* In addition, he advanced the reason that the public interest is served when the rates charged to customers recover the costs of providing services to those customers.

26. Mr. Von Steuben asserted that the rate increase is needed because Delmarva continues to make investments in the system to provide safe and reliable gas. Further, recovery of these costs is paramount to ensure the financial health of the gas business because the Company has invested a significant amount of capital in its delivery infrastructure. As an example of this investment, Mr. Von Stueben asserted that the major plant category, its distribution function, which delivers gas and makes up 80 percent of the Company's total gas plant, increased over \$62 million dollars since the company's last base case in 2006. Mr. Von Stueben maintained that the investment of \$62 million dollars of additional plant represents an increase of twenty-one percent (21%) in distribution plant since the company's last base case. Tr. 62.

27. Mr. Von Steuben also noted that the Company's Application requested a regulatory asset to account for significant pension losses due to the unprecedented drop in the market in 2008 caused by the recession. Tr. 63. However, the Company has abandoned its request for a regulatory asset and that the request for a regulatory was not made part of the settlement. Tr. 63, 69.

28. According to Mr. Von Steuben, the effect of the proposed settlement will, if approved, result in an increase that is slightly more than 2.8 percent for a typical residential customer as compared to that customer's winter bill a year 2009. Tr. 63-65.

29. Mr. Von Steuben clarified that the settlement agreed to by these same parties in PSC Docket No. 09-277T would not be presented at the evidentiary hearing or to the Commission for its consideration. Rather, the parties in this docket had entered into a new proposed settlement agreement (Ex. 33) that would, among other things, resolve the rate design issues that were part of the proposed settlement in PSC Docket No. 09-277T. Tr. 65. Understanding that decoupling is a controversial issue for customers, Mr. Von Steuben stated:

[D]ecoupling will not be implemented under the terms of this settlement. The settlement requires the participants to develop a comprehensive decoupling implementation plan. This includes additional workshops on all of the issues associated with decoupling rate design. Just as in the electric case, there will be an open intervention period for people who wish to become parties to the workshop process and provide their views or input into the process."

Tr. Tr. 66, LL 14-19.

30. Further, Mr. Von Steuben elaborated about the goals and design of the proposed workshops by stating that "[T]he ultimate purpose of the workshops is to develop a decoupling implementation plan that will be presented to the Commission for its consideration." Tr. 67, LL 13-15. Under the proposed settlement, the participants would have additional workshops on all of the issues associated with a decoupled rate design and the concerns of the public would be addressed and considered. Tr. 67. The process, including the workshops, would be consistent with the process approved by the Commission in Delmarva's electric case, PSC Docket No. 09-414, for electric customers.

B. THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

31. The Attorney General presented the testimony of Andrea C. Crane, President of The Columbia Group, Inc., a consulting firm, whose prefiled testimony was marked as Exhibit 34. Ms. Crane testified that her prefiled testimony addressed the revenue requirement and cost of capital issues in the case. Based upon expense and rate base adjustments, Ms. Crane, in her prefiled testimony, recommended a rate reduction for Delmarva of \$4.7 million. Tr. 81.

32. In addition, Ms. Crane recommended that the Commission deny Delmarva's request for a regulatory asset for its 2008 pension losses. As of the date of the evidentiary hearing, Ms. Crane believed that the Company removed this request from consideration. However, she explained that although the proposed settlement agreement uses the term "2008 pension losses" it is the same expense as addressed in her testimony as the "2009 pension expense." Tr. 82. Ms. Crane noted that it was the losses incurred by the pension fund in 2008 that resulted in Delmarva having a higher than projected pension expense in 2009. *Id.*

33. Ms. Crane testified that after her review of all of the issues pertinent to the case, and her review of the proposed settlement agreement, she believed that the proposed settlement was just and reasonable and in the public interest. Tr. 82-83. Consequently, she recommended that the Commission adopt the settlement. Tr. 83.

34. Ms. Crane stated that in order to review the settlement, she looked at the recommendations in her prefiled testimony. In order

to test the reasonableness of the return on equity proposal, she reran her schedule using the proposed return on equity (10%) which resulted in an increase from a negative \$4.7 million to about zero. Tr. 83. Ms. Crane noted additionally that she had recommended a return on equity, without decoupling, of 9.07 percent. Tr. 85. The revised return on equity calculation was therefore worth approximately \$4.7 million. Tr. 83.

35. Further, Ms. Crane observed that the proposed settlement return on equity yields an increase of approximately fifty-seven percent (57%) of the Company's rebuttal claim, which she believed is either equal to or possibility below the range that the Commission could have determined was reasonable for Delmarva if this case were to have been fully litigated. Tr. 83-84.

36. Ms. Crane concluded that for those reasons and the savings in litigation costs derived in the settlement, she believed the proposed settlement to be in the public interest. Tr. 84.

C. STAFF'S TESTIMONY

37. Susan Neidig, a senior regulatory policy administrator, testified at the evidentiary hearing on behalf of Staff. At the hearing, she adopted as her own the prefiled testimonies of Ralph C. Smith, James A. Rothschild and Howard Solganick. Tr. 87-89.

38. Ms. Neidig summarized the pertinent issues of the settlement: The Company's total revenue requirement will be increased by \$5.8 million dollars as compared to the original request for \$11.9 million dollars and adjusted to approximately \$10.1 million in the rebuttal testimony. Tr. 90. The revenue requirement increase in the

proposed settlement of \$5.8 million represents approximately 3.09 percent of the Company's total gas revenues. *Id.*

39. Ms. Neidig noted that the agreed upon proposed return on equity of ten percent (10%) produces an overall rate of return of 7.56 percent. *Id.* The parties intend that the proposed rate increase will be applied across the board among all customer classes becoming effective on April 1, 2011. Further, since the rates agreed to in the proposed settlement are lower than the rates that the Company currently has in effect, pursuant to statute, as of February 2, 2011, customers will receive a refund including interest. *Id.*

40. Ms. Neidig noted that the proposed settlement is a "black box", meaning that no specific amounts were attributed to any specific rate base or expense item. Tr. 90-91. Ms. Neidig noted that the proposed settlement does contain an express provision that none of the proposed rate increase will be used to reimburse the company for the pension losses incurred in 2008 for which the Company had requested permission to create a regulatory asset. *Id.*

41. Further, Ms. Neidig stated that the proposed settlement contains the parties' agreement to a 15-year amortization period for AMI related costs of \$1.057 million dollars through August of 2010. Tr. 91. The amortized portion of this amount will be included in rate base. Tr. 91. Ms Neidig testified that with regard to the decoupling workshops referred to in the settlement agreement, she would agree with the process as described by Company Witness Von Steuben and support it. Tr. 92. Ms. Neidig related that Staff is looking forward to participation in a collaborative process with the parties and any

potential intervenors in considering any comments or concerns that need to be addressed. Tr.91-92.

42. Ms. Neidig emphasized that "[I]f the Commission approves this proposed settlement, it is not approving a revenue decoupling rate design for implementation at this point." Tr. 92. The parties would develop a plan that would be presented to the Commission. Further, Ms. Neidig opined, "There is no guarantee the Commission will implement any form of revenue decoupling at this time." Tr. 92. Additionally, Ms. Neidig noted that the workshops would be open to persons who are not parties to PSC Docket No. 10-237. She observed that while the proposed settlement agreement does provide parameters around workshops and scheduling, there is not a deadline for completion of the workshops. Tr. 92.

43. Ms. Neidig stated that she believed the proposed settlement was in the public interest and resulted in just and reasonable rates. Tr. 92. Further, Staff supports the settlement because the revenue decoupling part of the settlement requires public education meetings before any decoupling plan is presented to the Commission. Tr.93.

44. Regarding the revenue requirement portion of the settlement, Ms. Neidig testified that Staff is aware of Section 512 of the Public Utilities Act which encourages parties to resolve matters through settlement or stipulation. Tr. 93. Further, Staff typically supports settlements when they will avoid substantial, further administrative hearings and the associated costs, and "when they yield a reasonable outcome in light of Staff's filed position." Tr. 94. Ms. Neidig asserted that in this case, Staff had been guided by the

Commission's recent deliberations in the electric distribution base rate case. PSC Docket No. 10-237. She reflected that although a final order has not been entered in that case, the Commission did deliberate and decide on many of the same issues that are the instant case. Tr. 94. Staff does not believe that the Commission would rule any differently on those matters than it did in the electric distribution rate case.

45. Moreover, settling PSC Docket No. 10-237 will enable the parties to avoid significant hearing costs. Staff and the other parties and their consultants do not need to appear at the hearing, which results in significant cost savings and the time saved can be used to attend to other matters. Tr. 94-95. Staff also believes the settlement results in a reasonable outcome in light of Staff's filed position and in light of the Commission's recent determination of the same issues in the electric case.

III. OBJECTION OF STATE SENATOR JOHN A. KOWALKO, Jr.

46. In a letter to me dated February 9, 2010 (Ex. 38), which is attached hereto as Exhibit "B", State Representative John K. Kowalko, Jr. made the following points:

- a. He reiterated his objection to the establishment of a decoupling rate design as a result of this case or in the future.
- b. Representative Kowalko rejected any proposed increase in Delmarva's gas base rate case. Ex. 38. Basically, Representative Kowalko argues that decoupling is

unnecessary because Delmarva has in place a mechanism (i.e. filing a base rate case) for recovery of any reasonable expenses incurred since rates were established in its last base rate case.

- c. Representative Kowalko objects to Delmarva's proposal to recover pension costs.

47. At the evidentiary hearing, State Representative Kowalko made a passionate objection to implementation of a decoupling mechanism. He stated that he believed that the Proposed Settlement Agreement should not mention the term because its use could be construed to conclude that the Commission had approved implementation of decoupling (modified fixed variable rate design). Tr. 101. State Representative Kowalko stated that decoupling had not been proven, that it was a relatively new program and that it has taken various forms throughout the country. Tr. 102. Therefore, State Representative Kowalko opined that it was premature to move forward with decoupling. He stated that this jurisdiction had not had time to study decoupling mechanisms. *Id.* He contended that the proposed settlement would restrict the type of dialogue or consideration needed to analyze the issues attendant in a decoupling mechanism. Tr. 102. However, State Representative Kowalko stated that he was prepared to participate any workshops that the Commission may order to the extent that his time demands allowed him to do so. Tr. 106. State Representative Kowalko's primary contention voiced at the evidentiary hearing was that this Commission should revisit the establishment of a decoupling mechanism. Tr. 110.

48. At the conclusion of the evidentiary hearing in this case, I permitted the Commission to file a response to State Representative Kowalko's position statement, which is attached hereto as Exhibit "B". The Company's reply was forwarded to me on February 16, 2011 by its counsel Todd L. Goodman, Esquire in which Mr. Goodman refutes point-by-point the statements made by Representative Kowalko⁶. See Exhibit "C" attached hereto. I have reviewed the Company's reply and carefully considered and securitized its statements.

IV. DISCUSSION

46. Each of the parties who have engaged in a extensive and in-depth analysis of the Company's Application and who have retained consultants to conduct their own studies of the proposals and data submitted by Delmarva agree that the Proposed Settlement Agreement is just and reasonable and in the public interest.

47. As discussed by the witnesses, the Proposed Settlement is based upon a ten percent (10%) return on equity (as opposed to the 10.75% requested by the Company), which will produce a rate increase of \$5.8 million. The resulting increase is less than half the requested increase in the Application as originally filed.

48. In addition, the Company has abandoned its request for establishment of a regulatory asset for its 2008 pension losses.

⁶ Although I did not expressly ask the parties if they had objections to the admission Delmarva's reply dated February 16, 2011, I note that I did tell the parties at the hearing that I was inclined to reserve exhibit no. 39 for the letter. Tr. 124. The parties have had both Representative Kowalko's and Mr. Goodman's correspondence on this issue since on or about February 16, 2011. I have received no objection from any party raising an objection to Mr. Goodman's letter. I do think it is an important document insofar as it provides a succinct refutation of Representative Kowalko's objections to the Proposed Settlement. Therefore, I will admit the letter authored by Todd L. Goodman, Esquire to me dated February 16, 2011 in evidence as Exhibit No. 39.

49. The Proposed Settlement does not propose the implementation of a decoupled rate design at this time. Rather, the parties, and those who apply for intervention will discuss and debate the issues in workshops to be convened after the final order in this case. These workshops will refine the details for a decoupled rate design.

50. While Representative Kowalko has vigorously stated his objection to the Proposed Settlement as it relates to even the remote possibility of a decoupled rate design. It is this hearing examiner's understanding that the Commission in Regulation Docket No. 51 has determined that such a rate design is in the public interest. However, it is my understanding, the Commission has not yet decided how such a decoupling rate design should look, which is the issue to be determined in the workshops that the parties will convene at the conclusion of this docket. Representative Kowalko opposes the Proposed Settlement, in part, because he objects to the mere mention of the term "decoupling" and refuses to lend his signature to any document that contains the word. I surmise from his objection that he would only be satisfied if the Commission completely abandoned the notion of implementing a decoupled rate design in its entirety. Since this is not my understanding of the Commission's current position on the subject of the decoupling, I find no basis for recommending State Representative Kowalko's position to the Commission based upon the record in this docket. Nevertheless, in the future, the Commission has the right, power and privilege of expressly rejecting a decoupling rate design provided it finds that such a rate design is not in the

public interests because it would not produce fair and reasonable rates or terms of service.

51. The evidence of record has convincingly established that the settling parties in the proceeding have engaged in a thoughtful, meaningful and thorough examination of the issues in this proceeding which has resulted in a proposed settlement that produces just and reasonable rates and serves the public interests. I am mindful that 26 Del. C. Section 521 provides that “[t]he Commission may upon hearing approve the resolution of matters brought before it by stipulations or settlements *whether or not* such stipulations or settlements *are agreed to or approved by all parties* where the Commission finds such resolutions to be in the public interest.” Italics added. In this case, I do not find the objections of State Senator Kowalko sustainable on this record where the Commission has expressly ordered the parties to investigate a decoupling mechanism as provided in PSC Regulation Docket 51.

V. RECOMMENDATIONS

52. In summary, and for the reasons discussed above, I propose and recommend to the Commission the following:

a. That the Commission approve as just and reasonable and in the public interest the Proposed Settlement Agreement of the parties, which is Exhibit “A” to the attached proposed Order. The Company, Staff and Attorney General have approved and endorsed this Settlement. A proposed form of Order, which will implement the

foregoing Findings and Recommendations, is attached hereto as Exhibit "D".

Respectfully Submitted,

A handwritten signature in cursive script that reads "Ruth Ann Price".

Ruth Ann Price
Senior Hearing Examiner

Dated: May 13, 2011

ATTACHMENT "B"

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION OF DELMARVA POWER & LIGHT COMPANY FOR AN CHANGE IN NATURAL GAS BASE RATES (FILED JULY 2, 2010))))))	PSC DOCKET NO. 10-237
IN THE MATTER OF THE APPLICATION OF DELMARVA POWER & LIGHT COMPANY FOR APPROVAL OF A MODIFIED FIXED VARIABLE RATE DESIGN FOR NATURAL GAS RATES (FILED JUNE 25, 2009))))))	• PSC DOCKET NO. 09-277T

PROPOSED SETTLEMENT

On this day, February 9, 2011, Delmarva Power & Light Company ("Delmarva" or the "Company"), the Delaware Public Service Commission Staff (the "Staff"), and the Attorney General (together, the "Parties" or "Settling Parties") hereby propose a complete settlement of all issues that were raised or could have been raised in this proceeding and to establish final rates as follows.

I. INTRODUCTION AND PROCEDURAL BACKGROUND

On July 2, 2010, Delmarva filed with the Delaware Public Service Commission (the "Commission") an application (the "Rate Application") seeking approval of (a) an increase of \$11,915,381, or 6.3% over total revenues in its natural gas base rates; (b) a proposed revenue decoupling rate design; and (c) miscellaneous tariff changes. The application was accompanied by various schedules, tables, and data required by the Commission's minimum filing requirements and the pre-filed testimony of several witnesses.

Pursuant to its authority under 26 *Del. C.* §306(a)(1), the Commission reviewed the Rate Application and determined in PSC Order No. 7808 (July 22, 2010) that the proposed rate and tariff changes should be suspended pending full and complete evidentiary hearings into their justness and reasonableness. The Commission also granted the Company's request made pursuant to 26 *Del. C.* §306(c) permitting interim rates intended to produce an annual increase in intrastate operating revenues of \$2.5 million to be placed into effect on August 31, 2010, with proration and subject to refund.

Pursuant to the procedural schedule established by the Hearing Examiner, the Parties engaged in discovery with respect to the application and accompanying testimony and other material filed with the Application. On October 25 and 28, 2010, Staff and DPA each submitted testimony. Delmarva filed rebuttal testimony on December 3, 2010. The Parties engaged in substantial discovery with respect to their respective testimony.

On June 25, 2009, Delmarva filed an application seeking approval of a modified fixed-variable ("MFV") revenue-decoupled rate design for its gas distribution business for implementation in its next gas distribution rate case, which application was docketed as Docket No, 09-277T. By Order No, 7882 dated December 21, 2010, the Commission consolidated Docket Nos. 10-237 and 09-277T.

On December 31., 2010, the Public Advocate retired. Because of the vacancy in that office, the Attorney General moved for leave to intervene out of time. Hearing Examiner Price granted the Attorney General's motion on January 26, 2011.

On January 19, 2011, Delmarva submitted an Application in these Dockets with proposed tariff sheets (the "Interim Application") seeking to implement, subject to refund, under bond, the remainder of the full amount of its proposed gas delivery rates

based upon its rebuttal position, as permitted by 26 *Del. C.* §306.¹ The Commission approved this request by Commission Order No. 7904 dated January 27, 2011. Rates went into effect on February 2, 2011.

On January 18, 2011, the Commission met in Docket Nos. 09-414109-276T, the Company's electric distribution rate case proceeding, to deliberate and decide many of the same issues raised in this docket. A minute order, Order No. 7897, was approved on January 18, 2011 and amended on January 27, 2011 by Order No. 7903.

The Parties desire to avoid the substantial cost which would be incurred if the case were to proceed to evidentiary hearings; and the Parties have conferred in an effort to resolve the issues raised in this proceeding, specifically referring to the Commission's recent decision in Docket Nos. 09-414/09-276T.

As such, it is acknowledged that the Parties differ as to the proper resolution of many of the underlying issues in the rate proceeding and are preserving their rights to raise those issues in future proceedings; however, the Parties believe that settlement of the pending rate proceeding on the terms and conditions contained herein will serve the interest of the public as well as meet the statutory requirement that rates be both just and reasonable.

H. SETTLEMENT PROVISIONS

IT IS HEREBY STIPULATED AND AGREED by Delmarva, Staff, and the Attorney General that the Parties will submit to the Commission for its approval the following terms and conditions for resolution of this rate proceeding, which are consistent with the Commission's decisions in Docket Nos. 09-414/09-276T:

¹ On December 3, 2010, Delmarva filed rebuttal testimony in which it reduced the amount of its requested increase from \$11,915,381 to \$10,163,325. The Interim Application requested implementation of this

A Rates and Charges.

1. The total gas base rate revenue increase should be \$5.8 million, or approximately 3.09% of total gas revenues.
2. The Parties have agreed to an across-the-board distribution of the base rate revenue changes among all classes of customers as shown in Exhibit 1.
3. The cost of equity for the gas business shall be 10.0%. This produces a return on rate base of 7.56 %.
4. The rates approved for service on and after April 1, 2011, shall be as set forth in the tariff leafs attached as Exhibit 2.
5. Since the rates agreed to in this settlement are lower than the existing' gas distribution rates placed into effect on February 2, 2011, customers are entitled to a refund from the date Delmarva's full requested rate increase was placed in effect, with interest on the deferred amounts as calculated in accordance with Regulation Docket No. 11.

B Modified Fixed Variable Rate Design

1. The Parties agree that Docket 09-2771' should remain open solely for the purposes of conducting the modified fixed variable ("MFV") rate design workshops and future Commission determination on the implementation of the 1V1FV rate design. Senior Hearing Examiner Price shall remain as Hearing Examiner to rule on petitions to intervene and for such other actions as may be necessary.
2. The parties agree that prior to implementation of an MFV rate design, an implementation plan will be developed, through workshops outlined below. The implementation plan shall articulate the consumer benefits from the proposed

reduced amount

MFV rate design and describe the integrated programs that will be initiated to maximize energy conservation and reduce customer costs. Within 30 days of a final order in this consolidated docket, the Parties will schedule a date for the first of several workshops designed to develop a proposed comprehensive plan for the implementation of the MFV rate design. While these workshops will not be public comment sessions, the Parties agree that the workshops shall be open to the participation of persons and entities other than the Parties to this consolidated docket. At least 35 days prior to the date of the first workshop, Delmarva shall cause to be published for two consecutive days, in the *Delaware News Journal* and the *Delaware State News*, a notice to customers of Delmarva that customers may, within 15 calendar days of the second notice, file a petition for leave to intervene in the workshops pursuant to Rule 21 of the Commission's Rules of Practice and Procedure. Participation in such workshops shall be for the purpose of constructively participating in the development of the proposed implementation plan for the MFV rate design.

3 The Parties agree that the plan for implementation of the MFV rate design to be proposed will include, but will not be limited to:

a. a strategy for educating Delmarva's customers on issues concerning the MFV rate design, including, but not limited to:

- (1) The purposes of the MFV rate design,
- (2) How the MFV rate design will affect customer bills,
- (3) Explanation of impacts on existing low energy use customers and efforts to mitigate such impacts,

(4) Programs/mechanisms designed to save customers money through energy conservation, including explanations of how customers can use the programs/mechanisms to manage energy costs,

(5) How customers can learn more about the MFV rate design and both current and future money saving programs.

b. the programs and mechanisms that Delmarva will make available to help consumers save money under the MFV rate design, including timeframes for implementation.

c. any proposed modifications to the existing MFV rate design,

d. a proposed date for the implementation of MFV rates.

4. Once a proposed plan for the implementation of the MFV rate design has been completed, the Parties shall present the proposed plan to the Commission for its consideration.

5. The parties agree that the Company may defer costs associated with decoupling education and workshops, and the ratemaking treatment associated with those costs shall be addressed in the Company's next base rate case; provided, however, the Parties do not waive their right to challenge such costs.

6. The workshops and procedures set forth in this Part B with respect to development of a MFV implementation plan shall, whenever practicable, be conducted jointly (though separately docketed) with the electric MFV implementation workshops agreed to in the Settlement Agreement dated January 18, 2011 in Docket No. 09-276T.

C Miscellaneous Issues.

1. The Settling Parties agree to an amortization period of 15 years with the unamortized balance included as a rate base item for the Advanced Metering Infrastructure costs of \$1,057,530 accumulated through August 2010. Additional costs associated with Advanced Metering Infrastructure accumulated after August 2010 will be reviewed in the context of future proceedings.

2. No portion of the gas distribution revenue increase proposed herein shall be used to reimburse Delmarva for the 2008 pension losses for which it requested creation of a regulatory asset.

D Additional Provisions

1. The provisions of this settlement are not severable.

2. This Settlement is the product of extensive negotiations and reflects a mutual balancing of various issues and positions. This Settlement represents a compromise for the purposes of settlement and shall not be regarded as a precedent with respect to any ratemaking or any other principle in any future case. No Party to this settlement necessarily agrees or disagrees with the treatment of any particular item, any procedure followed, or the resolution of any particular issue in agreeing to this settlement other than as specified herein, except that the Parties agree that the resolution of the issues herein taken as a whole results in just and reasonable rates and that the non-rate tariff changes are reasonable and in the public interest.

3. This Settlement pertains only to Dockets 10-237 and 09-2771 and to none others. To the extent opinions or views were expressed or issues were raised in the pre-

filed testimony that are not specifically addressed in the Settlement, no findings, recommendations, or positions with respect to such opinions, views or issues should be implied or inferred. This Settlement shall not set any precedents, shall not have issue or claim preclusion effect in any pending or future proceeding, and no party shall be prohibited from arguing a different policy or position before the Commission or the courts in any pending or future proceeding. The purpose of this Settlement is to provide just and reasonable rates for the customers of Delmarva.

IN WITNESS WHEREOF, intending to bind themselves and their successors and assigns, the undersigned Parties have caused this Proposed Settlement to be signed by their duly-authorized representatives.

DELMARVA POWER & LIGHT COMPANY

By: /s/ Todd L. Goodman
Title Associate General Counsel

DELAWARE PUBLIC SERVICE COMMISSION STAFF

By /s/ Janis L. Dillard
Title Deputy Director

ATTORNEY GENERAL OF THE STATE OF DELAWARE

By: /s/ Kent Walker
Title Deputy Attorney General