

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

IN THE MATTER OF THE PROVISION OF )  
STANDARD OFFER SUPPLY TO RETAIL )  
CONSUMERS IN THE SERVICE TERRITORY OF ) PSC DOCKET NO. 15-0889  
DELMARVA POWER & LIGHT COMPANY )  
(FILED APRIL 1, 2015) )

**MOTION OF PUBLIC SERVICE COMMISSION STAFF TO IMPOSE PENALTIES  
PURSUANT TO 26 DEL. C. § 217 UPON DELMARVA POWER & LIGHT COMPANY FOR  
FAILURE TO COMPLY WITH ORDER NO. 8731 PERTAINING TO  
THE PUBLICATION OF NOTICE**

Pursuant to 26 Del. C. § 217, the Staff of the Public Service Commission (“Staff”), by and through its undersigned counsel, moves the Commission to impose monetary penalties upon Delmarva Power & Light Company (“Delmarva”) for failure to comply with the publication of notice requirements in Order No. 8731, and in support of its motion states as follows:

1. On April 1, 2015, Delmarva filed its Application for Approval of the 2015 SOS Rates, Procurement Cost Adjustment and RARM Filing (the “Application”).
2. On May 5, 2015, the Commission adopted Order No. 8731 (the “Order”), which approved revised tariff sheets including the revised rates filed by Delmarva in the Application, on a temporary basis, subject to refund for usage on and after June 1, 2015. Attached to the Order was a form of public notice to all DPL SOS customers pertaining to the changes in rates.
3. The Order provided that Delmarva would publish the public notice as follows: May 21, 2015 in *The News Journal*, and May 22, 2015 in the *Delaware State News*. The Order also set the deadline of July 17, 2015 for the filing of petitions to intervene, or to file written comments or objections.
4. Delmarva notified Staff on or about November 24, 2015 that it had discovered that it had inadvertently failed to publish the public notice in compliance with the Order.

5. Upon discovering the issue, Delmarva contacted Staff to discuss the manner in which to rectify the situation. After discussions with Staff, Delmarva agreed to file a motion requesting approval to republish the public notice and set a new deadline for leave for petitions to intervene and to file comments. During these discussions, Counsel for Staff informed Delmarva that Staff would seek to impose a monetary penalty for failure to comply with the order – even if such failure was inadvertent.

6. Delmarva provided Staff a draft motion and form of order for review on December 8, 2015.

7. Delmarva has informed Staff that the failure to publish notice in compliance with the Order was a mistake and not an intentional act. Delmarva has informed Staff that despite the lack of publication of notice in *The News Journal* and *Delaware State News*, customers were notified of the proposed change in rates by way of a press release issued on June 1, 2015, as well as through a bill insert issued to customers between June 1 and June 30, 2015. Delmarva has informed Staff that it has since implemented internal procedures to prevent future noncompliance.

8. The rates implemented by the Order have not yet been finalized but remain in effect on a temporary basis as of June 1, 2015, subject to refund.

9. On September 22, 2015, the Commission adopted Order No. 8795 in this docket approving certain changes to the 2016 Request for Proposals for Full Requirements Wholesale Electric Power Supply in Delaware and the Full Requirements Service Agreement. Staff and interested stakeholders were afforded notice and opportunity to participate in the revisions to these documents, and consensus was reached among all interested stakeholders before presentation to the Commission for consideration.

10. Although Staff acknowledges that Delmarva's noncompliance was inadvertent and recognizes that Delmarva quickly and cooperatively took action to remedy the situation, Staff takes any noncompliance with a Commission order seriously and urges this Commission to do the same. In the instant case, the Commission's consideration of approval of the temporary rates will be delayed by at least two months due to Delmarva's failure to publish the notice as required by Order No. 8731. To the

extent any refund is due to customers, such refund will be further delayed due to Delmarva's noncompliance. Finally, the valuable time and resources of the Commission and Staff have been consumed in remedying this situation.

11. Under 26 *Del. C.* § 217, the Commission may impose “a penalty of up to \$1,000 per day for every day during which such default continues” in “default of compliance with any order of the Commission when the same becomes effective.” Staff recommends that the Commission impose the maximum penalty for each day from the discovery of the noncompliance (November 24, 2015) until the receipt of the proposed remedy from Delmarva (December 8, 2015) – a fourteen-day period resulting in a penalty of \$14,000. Staff's recommendation considers Delmarva's inadvertence in noncompliance and cooperation in remediation.<sup>1</sup>

WHEREFORE, for the reasons set forth above, Staff respectfully requests that the Commission impose penalties of \$14,000 upon Delmarva for noncompliance with Order No. 8731.

A proposed form of order is attached to this motion as Exhibit “A”.

Respectfully submitted,

/s/ Brenda R. Mayrack

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*Attorney for Public Service Commission Staff*

Dated: December 10, 2015

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<sup>1</sup> Calculation of a penalty from the initial date of noncompliance (May 21, 2015) results in a 201-day period on noncompliance and a penalty of up to \$201,000.

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DELMARVA POWER & LIGHT COMPANY )  
(FILED APRIL 1, 2015) )

**CERTIFICATE OF SERVICE**

I, Brenda R. Mayrack, hereby certify that on December 10, 2015, I caused a copy of the attached **MOTION OF PUBLIC SERVICE COMMISSION STAFF TO IMPOSE PENALTIES PURSUANT TO 26 DEL. C. § 217 UPON DELMARVA POWER & LIGHT COMPANY FOR FAILURE TO COMPLY WITH ORDER NO. 8731 PERTAINING TO THE PUBLICATION OF NOTICE** to be served upon all persons listed below by electronic mail and via DelaFile.

Pamela J. Scott, Esq.  
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*/s/ Brenda R. Mayrack*

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*Attorney for Public Service Commission Staff*

Dated: December 10, 2015

**EXHIBIT "A"**

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

IN THE MATTER OF THE PROVISION OF )  
STANDARD OFFER SUPPLY TO RETAIL )  
CONSUMERS IN THE SERVICE TERRITORY ) PSC DOCKET NO. 15-0889  
OF DELMARVA POWER & LIGHT COMPANY )  
(FILED APRIL 1, 2015) )

**ORDER NO. XXXX**

**AND NOW**, this 15<sup>th</sup> day December, 2015, the Public Service Commission ("Commission") determines and orders the following:

WHEREAS, on April 1, 2015, Delmarva filed its Application for Approval of the 2015 SOS Rates, Procurement Cost Adjustment and RARM Filing (the "Application"); and

WHEREAS, on May 5, 2015, the Commission adopted Order No. 8731 (the "Order"), which approved revised tariff sheets including the revised rates filed by Delmarva in the Application, on a temporary basis, subject to refund for usage on and after June 1, 2015. Attached to the Order was a form of public notice to all DPL SOS customers pertaining to the changes in rates; and

WHEREAS, the Order provided that Delmarva would publish the public notice as follows: May 21, 2015 in *The News Journal*, and May 22, 2015 in the *Delaware State News*. The Order also set the

deadline of July 17, 2015 for the filing of petitions to intervene, or to file written comments or objections; and

WHEREAS, Delmarva notified Staff on or about November 24, 2015 that it had discovered that it had inadvertently failed to publish the public notice in compliance with the Order; and

WHEREAS, upon discovering the issue, Delmarva contacted Staff to discuss the manner in which to rectify the situation. After discussions with Staff, Delmarva agreed to file a motion requesting approval to republish the public notice and set a new deadline for leave for petitions to intervene and to file comments. During these discussions, Counsel for Staff informed Delmarva that Staff would seek to impose a monetary penalty for failure to comply with the order - even if such failure was inadvertent; and

WHEREAS, Delmarva provided Staff a draft motion and form of order for review on December 8, 2015; and

WHEREAS, Delmarva has informed the Commission that the failure to publish notice in compliance with the Order was a mistake and not an intentional act. Delmarva has informed the Commission that despite the lack of publication of notice in *The News Journal* and *Delaware State News*, customers were notified of the proposed change in rates by way of a press release issued on

June 1, 2015, as well as through a bill insert issued to customers between June 1 and June 30, 2015. Delmarva has informed the Commission that it has since implemented internal procedures to prevent future noncompliance; and

WHEREAS, the rates implemented by the Order have not yet been finalized but remain in effect on a temporary basis as of June 1, 2015, subject to refund; and

WHEREAS, on September 22, 2015, the Commission adopted Order No. 8795 in this docket approving certain changes to the 2016 Request for Proposals for Full Requirements Wholesale Electric Power Supply in Delaware and the Full Requirements Service Agreement. Staff and interested stakeholders were afforded notice and opportunity to participate in the revisions to these documents, and consensus was reached among all interested stakeholders before presentation to the Commission for consideration; and

WHEREAS, the Commission acknowledges that Delmarva's noncompliance was inadvertent and recognizes that Delmarva quickly and cooperatively took action to remedy the situation, but takes any noncompliance with a Commission order seriously. The Commission recognizes that the Commission's consideration of approval of the temporary rates will be delayed by at least two months due to Delmarva's failure to publish the notice as

required by Order No. 8731. To the extent any refund is due to customers, such refund will be further delayed due to Delmarva's noncompliance. Finally, the valuable time and resources of the Commission and Staff have been consumed in remedying this situation; and

WHEREAS, under 26 *Del. C.* § 217, the Commission may impose "a penalty of up to \$1,000 per day for every day during which such default continues" in "default of compliance with any order of the Commission when the same becomes effective"; and

WHEREAS, Staff has recommended that the Commission impose the maximum penalty for each day from the discovery of the noncompliance (November 24, 2015) until the receipt of the proposed remedy from Delmarva (December 8, 2015) - a fourteen-day period resulting in a penalty of \$14,000. Staff's recommendation considers Delmarva's inadvertence in noncompliance and cooperation in remediation;<sup>2</sup>

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

1. For the reasons set forth above, the Commission imposes a penalty of \$14,000 upon Delmarva for noncompliance with Order No. 8731 pursuant to its authority under 26 *Del. C.*

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<sup>2</sup> Calculation of a penalty from the initial date of noncompliance (May 21, 2015) results in a 201-day period on noncompliance and a penalty of up to \$201,000.

§ 217, direct Delmarva to pay such amount to the Commission, and directs Staff and Counsel to take such action as necessary to recover the penalty.

2. Delmarva is hereby notified that it will be charged the costs of this proceeding under the provisions of 26 Del. C. §114(b) (1).

3. 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:

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Chair

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Commissioner

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Commissioner

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Commissioner

\_\_\_\_\_  
Commissioner

ATTEST:

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Secretary