

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

IN THE MATTER OF THE PROVISION OF)
RENEWABLE ENERGY PORTFOLIO)
STANDARDS COMPLIANCE CHARGE) PSC DOCKET NO. 15-0890
AND CREDIT RATE TO RETAIL CUSTOMERS)
IN THE SERVICE TERRITORY OF)
DELMARVA POWER & LIGHT COMPANY)
(FILED APRIL 1, 2015))

ORDER NO. 8839

AND NOW, this 5th day January, 2016, the Public Service Commission ("Commission") determines and orders the following:

WHEREAS, On April 1, 2015, Delmarva filed its Application for Approval of the 2015 Renewable Energy Portfolio Standards compliance charge rate and credit rate (the "Application"); and

WHEREAS, on May 5, 2015, the Commission adopted Order No. 8732 (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; 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 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, 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. 8732. 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;¹

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

¹ 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.

1. For the reasons set forth above, the Commission imposes a penalty of \$14,000 upon Delmarva for noncompliance with Order No. 8732 pursuant to its authority under 26 *Del. C.* § 217, directs 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:

Chair

Commissioner

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary