delmarva power
A PHI Company

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December 29, 2015

FILED VIA DELAFILE AND
SENT VIA ELECTRONIC MAIL
Ms. Donna Nickerson, Secretary
Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, DE 19904

Re: PSC Docket Nos. 15-0890 – Delmarva Power & Light Company's Response to Public Service Commission Staff's Motion to Impose Penalties Pursuant to 26 *Del. C.* §217 for Failure to Comply with Order No. 8732 Pertaining to the Publication of Notice

Dear Ms. Nickerson:

Enclosed please find Delmarva Power & Light Company's Response to Public Service Commission Staff's Motion to Impose Penalties Pursuant to 26 *Del. C.* §217 for Failure to Comply with Order No. 8732 Pertaining to the Publication of Notice. I understand that the Motion will be presented to the Public Service Commission at their regularly scheduled meeting on January 5, 2016; therefore, I ask that you please include copies of this Response in the packets provided to the Commission members for the January 5th meeting so that they have an opportunity to review same before the meeting.

Thank you for your assistance. Should you have any questions, please feel free to contact me at the number referenced above.

Respectfully submitted,

Pamela J. Scott

Enclosure
cc: Service List in Docket No. 15-0890 (via electronic mail w/enclosures)

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

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

RESPONSE OF DELMARVA POWER & LIGHT COMPANY TO PUBLIC SERVICE COMMISSION STAFF'S MOTION TO IMPOSE PENALTIES PURSUANT TO 26 *DEL. C.* §217 FOR FAILURE TO COMPLY WITH ORDER NO. 8732 PERTAINING TO THE PUBLICATION OF NOTICE

Delmarva Power & Light Company ("Delmarva" or the "Company"), by and through its counsel, hereby responds to the Motion of Public Service Commission Staff ("Staff") to Impose Penalties upon Delmarva pursuant to 26 *Del. C.* §217 for Failure to Comply with Order No. 8732 Pertaining to the Publication of Notice, filed on December 10, 2015 (the "Motion"), and in support thereof states as follows:

1. 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").

2. 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.

3. The Order provided that Delmarva would publish the public notice of the Application 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 inadvertently failed to publish the public notice in compliance with the Order, which was discovered on or about November 24, 2015.

5. Immediately upon discovering the error, Delmarva contacted Staff to discuss the manner in which to rectify the situation.

6. Delmarva notes that the failure to publish notice in compliance with the Order was a mistake and not an intentional act. Despite the lack of publication of notice in *The News Journal* and *Delaware State News*, customers were notified of the proposed change in rates through a bill insert issued to customers between June 1- 30, 2015, a copy of which is attached as Exhibit "A".

7. The rates implemented by the Order have not yet been finalized but remain in effect on a temporary basis, subject to refund.

8. After discussions with Staff concerning the appropriate remedy, on December 9, 2015, Delmarva filed a Motion to Amend Order No. 8732 to establish new publication dates and a new deadline for the filing of petitions to intervene or to file comments in this docket.

9. On December 15, 2015, the Commission approved Amended Order No. 8732 setting new publication dates of January 5th and 6th, 2016, as well as a new deadline of January 26, 2016 for the filing of petitions to intervene or to file comments in this docket.

10. Staff, in its Motion, acknowledges that Delmarva's failure to publish notice was inadvertent and that upon discovering the issue Delmarva worked with Staff to immediately

rectify the situation; however, regardless of the circumstances leading to the failure to publish the required notice, Staff insists that Delmarva should be penalized in the amount of $14,000.00.[1]

11. Delmarva acknowledges that the provisions of 26 *Del. C.* §217 give to the Commission the authority to impose a penalty of "up to $1,000 per day for every day during which such default continues" for failure to comply with an order of the Commission. Under the specific circumstances involved here, however, Delmarva asserts that the imposition of a penalty is not appropriate in this instance. In the alternative, if the Commission is inclined to impose a penalty, Delmarva submits that the amount of such penalty should be significantly less than that proposed by PSC Staff, based upon the factors outlined in Paragraphs 13 and 14 below.[2]

12. Delmarva submits that the analysis performed by the Commission in Docket No. 98-492, *In the Matter of Reports by Utilities and Cable Operators Concerning their Efforts to Meet the Year 2000 Computer Challenge and Provide Safe and Reliable Utility Cable Services in the Year 2000*, a copy of which is attached as Exhibit "B" is instructive, and that such analysis should be followed in the instant docket.

13. In Docket No. 98-492, the Commission was faced with: (a) the failure of several utilities to comply with Order No. 5020 which required the filing of certain reports and statements by public utilities and cable television system operators pertaining to "Y2K readiness"; and (b) failure to comply with Order No. 5192 which extended the original deadline for each utility to file the required reports and statements. Order Nos. 5020 and 5192 both provided for the imposition of sanctions for failure to comply, specifically, the imposition of penalties pursuant to the provisions of 26 *Del. C.* 217, and, in egregious cases, provided for the

[1] Staff notes in its Motion that the penalty proposed is the maximum penalty each day for the period from the date of discovery of the noncompliance until the date of receipt of the proposed remedy from Delmarva (a period of fourteen days), and notes that this amount considers Delmarva's "inadvertence in noncompliance and cooperation in remediation".

[2] If, similar to the Commission's findings in Docket No. 98-492, the Commission were to impose a penalty of $5 per day, but for the full period of noncompliance (201 days), the penalty would be $1,005.00.

revocation of the utility's Certificate of Public Convenience and Necessity. In determining that the imposition of penalties was the appropriate sanction, the Commission noted that the provisions of 26 *Del. C.* §217 do not set forth any criteria for when, and then in what amount, the Commission should impose penalties for failure to comply with its Orders. In further reviewing this issue, the Commission noted that in other statutes involving administrative agency oversight of other regulated industries, the General Assembly explicitly listed several factors as appropriate considerations for an agency in determining both the need for an administrative penalty and the amount of any such sanction. Those factors include: (a) the nature, extent and seriousness of the default or violation; (b) the culpability, intent or (conversely) the good faith of the defaulting entity or violator; (c) the entity's or violator's prior history of non-compliance or violations; (d) the adverse effect of the default or violation on the public interest and the regulated industry; (e) the ability of the entity or violator to pay any particular sanction; and (f) the efforts undertaken by the entity or violator to correct the default or violation and prevent any recurrence. Under the circumstances before it, the Commission determined to impose a penalty of $5 per day for the period from the original deadline for filing the reports/statements until the expiration of the grace period granted by the Commission (approximately 2 months), plus a penalty of $10 per day for a period of 29 days, representing the time frame between when the utilities were put on notice of their failure to comply with the Commission's Order and the expiration of the extended grace period. In imposing the penalties, the Commission noted that what it found to be most problematic was that it had notified each utility of its failure to timely file the required reports/statements, after a grace period had been extended, yet none of the utilities in question responded.

14. In evaluating Delmarva's inadvertence in publishing the required notice in terms of the Commission's findings in Docket No. 98-492, Delmarva notes the following: (a) the nature, extent and seriousness of the failure to publish notice does not rise to the level of imposing a penalty as customers were notified of the rate change through bill inserts and the rate change (in this case a reduction) went into effect on a temporary basis subject to refund as of June 1, 2015, therefore, customers have not been harmed; (b) there was no culpability or intent on Delmarva's part in failing to comply with Order No. 8732, and, in fact, upon discovery, Delmarva immediately brought the matter to Staff's attention and worked with Staff to remedy the situation; (c) Delmarva does not have a prior history of non-compliance or violations; (d) the adverse effect, to the extent that there is one, is the delay in finalizing the new rates by approximately 6 weeks; (e) if sanctions are imposed, Delmarva does have the ability to pay, however, Delmarva again asserts its position that the imposition of penalties in this instance is inappropriate; and (f) upon discovery of the oversight Delmarva acted immediately to remedy the situation and has established internal procedures to ensure no recurrence.

WHEREFORE, for the reasons set forth herein, Delmarva respectfully requests that the Commission deny the Motion.

Respectfully submitted,

Pamela J. Scott
Pepco Holdings, Inc.
PO Box 6066
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(302) 429-3143
pjscott@pepcoholdings.com

Dated: December 29, 2015

Counsel for Delmarva Power & Light Company

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

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

CERTIFICATE OF SERVICE

I, Pamela J. Scott, hereby certify that on December 29, 2015, I caused a copy of the attached **RESPONSE OF DELMARVA POWER & LIGHT COMPANY TO PUBLIC SERVICE COMMISSION STAFF'S MOTION TO IMPOSE PENALTIES PURSUANT TO 26 *DEL. C.* §217 FOR FAILURE TO COMPLY WITH ORDER NO 8732 PERTAINING TO THE PUBLICATION OF NOTICE** to be served upon all persons on the attached service list by electronic mail.

Pamela J. Scott
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Newark, DE 19714-6066
(302) 429-3143
pjscott@pepcoholdings.com

Attachments: Service List – Docket No. 15-0890

DOCKET NO. 15-0890

SERVICE LIST

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EXHIBIT "A"

New Electric Rates Take Effect for Delaware Customers

Rates for Standard Offer Service (SOS) change effective June 1, 2015 for our Delaware electric customers. A typical residential customer who uses about 1,000 kilowatt hours of electricity per month will see their overall electric bill decrease $2.48 or about 1.7 percent as a result of the rate adjustment. Charges for SOS pay for the electricity you use and equal about two-thirds of your bill.

See the chart below for the new rates. Listed in the chart below are the new Standard Offer Service rates including a comparison of summer and winter rates. Please note that summer rates take effect with the billing month of June. Delmarva Power, as with many other utilities, charges different rates for electricity use in the summer (June-Sept) than it does in the winter (Oct-May).

For more information on the Renewable Compliance Charge which varies monthly, please visit delmarva.com/my-home/choices-and-rates/delaware/tariffs.

The information contained in this bill insert has been prepared as a general guideline for our customers. The company's tariff, as filed and approved by the Public Service Commission, is the official document regarding all rates and rules and regulations affecting service. For further information and details, copies of the tariff are available by contacting Delmarva Power Customer Care at 1-800-375-7117 or by visiting delmarva.com.

delmarva power

30906-I-0431

RATE SCHEDULE	RATES EFFECTIVE 6/1/15		PREVIOUS RATES	
	Summer (Jun-Sept)	Winter (Oct-May)	Summer (Jun-Sept)	Winter (Oct-May)
Residential – Rate R				
Supply Service Charges				
Supply Capacity, Energy and Ancillary				
First 500 kWh	$0.083960/kWh	$0.085564/kWh	$0.087140/kWh	$0.087706/kWh
Excess kWh	$0.083960/kWh	$0.085564/kWh	$0.087140/kWh	$0.087706/kWh
Residential Space Heating – RSH				
Supply Service Charges				
Supply Capacity, Energy and Ancillary				
Summer First 500 kWh	$0.083821/kWh		$0.085267/kWh	
Summer Excess kWh	$0.083821/kWh		$0.085267/kWh	
Winter First 1200 kWh Rate		$0.077442/kWh		$0.077619/kWh
Winter Excess kWh Rate		$0.077442/kWh		$0.077619/kWh
Residential Time of Use Non-Demand – R-TOU-ND				
Supply Service Charges				
Supply Capacity, Energy and Ancillary				
On-Peak Rate	$0.134713/kWh	$0.130831/kWh	$0.139720/kWh	$0.134243/kWh
Off-Peak Rate	$0.047400/kWh	$0.053571/kWh	$0.050544/kWh	$0.056313/kWh

New Electric Rates Take Effect for Delaware Customers

Rates for Standard Offer Service (SOS) will change effective June 1, 2015 for our Delaware electric customers. The impact to commercial and industrial customers will vary. Charges for SOS pay for the electricity you use and equal approximately two-thirds of your bill.

See the chart below for the new rates. Listed in the chart below are the new Standard Offer Service rates including a comparison of summer and winter rates. Please note that summer rates take effect with the billing month of June. Delmarva Power, as with many other utilities, charges different rates for electricity use in the summer (June-Sept) than it does in the winter (Oct-May).

For more information on the Renewable Compliance Charge which varies monthly, please visit delmarva.com/my-home/choices-and-rates/delaware/tariffs.

The information contained in this bill insert has been prepared as a general guideline for our customers. The company's tariff, as filed and approved by the Public Service Commission, is the official document regarding all rates and rules and regulations affecting service. For further information and details, copies of the tariff are available by contacting Delmarva Power Customer Care at 1-800-375-7117 or by visiting delmarva.com.

delmarva power

30906-I-0432

RATE SCHEDULE	RATES EFFECTIVE 6/1/15		PREVIOUS RATES	
	Summer (Jun-Sept)	Winter (Oct-May)	Summer (Jun-Sept)	Winter (Oct-May)
Small General Service – Secondary Non Demand SGS-ND				
Supply Service Charges				
Supply Capacity, Energy and Ancillary	$0.084631/kWh	$0.081449/kWh	$0.087523/kWh	$0.082972/kWh
Separately Metered Space Heating – Secondary Service: SGS-ND and MGS-S				
Supply Service Charges				
Supply Capacity, Energy and Ancillary	$0.083373/kWh	$0.081395/kWh	$0.086345/kWh	$0.083075/kWh
Separately Metered Water Heating – Secondary Service: SGS-ND and MGS-S				
Supply Service Charges				
Supply Capacity, Energy and Ancillary	$0.080372/kWh	$0.071090/kWh	$0.085926/kWh	$0.073693/kWh

RATE SCHEDULE	RATES EFFECTIVE 6/1/15		PREVIOUS RATES	
	Summer (Jun-Sept)	Winter (Oct-May)	Summer (Jun-Sept)	Winter (Oct-May)
Medium General Services – Secondary: MGS-S				
Supply Service Charges				
Supply Capacity, Energy and Ancillary				
Demand Rate	$12.241908/kW	$7.975398/kW	$11.118955/kW	$6.867899/kW
Energy Rate	$0.040507/kWh	$0.051672/kWh	$0.036674/kWh	$0.044459/kWh
Outdoor Recreational Lighting – Secondary: ORL				
Supply Service Charges				
Supply Capacity, Energy and Ancillary	$0.068195/kWh	$0.064477/kWh	$0.070260/kWh	$0.065218/kWh
Large General Service – Secondary: LGS-S				
Supply Service Charges				
Supply Capacity, Energy and Ancillary				
Demand Rate	$13.643553/kW	$9.394926/kW	$12.222741/kW	$7.503942/kW
On-Peak Rate	$0.055292/kWh	$0.063356/kWh	$0.049979/kWh	$0.051442/kWh
Off-Peak Rate	$0.039799/kWh	$0.045425/kWh	$0.036100/kWh	$0.037120/kWh
RARM (eligible HPS Customers Only)				
Capacity PLC < 600kW	$150 per month plus $0.133499 per kW of Capacity PLC		$150 per month plus $0.272506 per kW of Capacity PLC	
Capacity PLC >=600kW	$1,019.77 per month		$2,306.15 per month	
General Service – Primary: GS-P				
Supply Service Charges				
Supply Capacity, Energy and Ancillary				
Demand Rate	$13.882191/kW	$9.625108/kW	$11.368230/kW	$7.702405/kW
On-Peak Rate	$0.046172/kWh	$0.054326/kWh	$0.039437/kWh	$0.044903/kWh
Off-Peak Rate	$0.034537/kWh	$0.041018/kWh	$0.029909/kWh	$0.034254/kWh
RARM (eligible HPS Customers Only)				
Capacity PLC < 600kW	$150 per month plus $0.133499 per per kW of Capacity PLC		$150 per month plus $0.272506 per kW of Capacity PLC	
Capacity PLC >=600kW	$1,019.77 per month		$2,306.15 per month	
General Service – Transmission: GS-T				
Supply Service Charges				
RARM (eligible HPS Customers Only)				
Capacity PLC < 600kW	$400 per month plus $0.133499 per kW of Capacity PLC		$400 per month plus $0.272506 per kW of Capacity PLC	
Capacity PLC >=600kW	$1,269.77 per month		$2,556.15 per month	
Outdoor Lighting: OL				
Supply Service Charges				
Outdoor Lighting	$0.050225/kWh	$0.050225/kWh	$0.050825/kWh	$0.050825/kWh
Traffic and Pedestrian Signals	$0.050225/kWh	$0.050225/kWh	$0.050825/kWh	$0.050825/kWh

EXHIBIT "B"

2000 WL 36573857 (Del.P.S.C.)
Slip Copy

IN THE MATTER OF REPORTS BY UTILITIES AND CABLE OPERATORS CONCERNING THEIR EFFORTS TO MEET THE YEAR 2000 COMPUTER CHALLENGE AND PROVIDE SAFE AND RELIABLE UTILITY AND CABLE SERVICES IN THE YEAR 2000 (OPENED NOVEMBER 17, 1998)

PSC Docket No. 98-492
Order No. 5392

Delaware Public Service Commission

March 28, 2000

NOTICE OF ASSESSMENT OF MONETARY PENALTIES ON THE FOLLOWING PUBLIC UTILITIES FOR FAILURE TO COMPLY WITH ORDERS

BY ORDER OF THE COMMISSION:Robert J. McMaho, ChairmanJoshua M. Twilley, Vice ChairmanArnetta McRae, CommissionerDonald J. Puglisi, Commissioner

AFFINITY FUND, INC.
ALL AMERICAN TELEPHONE, INC.

AMERICAN TELNET INCORPORATED

ASSOCIATION ADMINISTRATORS, INC.

ATLANTIC TELECOM CORPORATION

ATLANTIC TELEPHONE COMPANY, INC.

BLACKSTONE COMMUNICATIONS COMPANY

CALL FOR LESS, INC.

CALL MANAGE, INC.

CLARICOM NETWORK, INC.

CORPORATE CALLING SERVICES, INC.

CORPORATE SERVICES TELCOM, INC.

EQUALITY LONG DISTANCE

ERBIA NETWORK, INC.

EZ TALK COMMUNICATIONS, LLC

EZTALK COMMUNICATIONS, LLC (Local)

HJN TELECOM, INC.

INTELICOM INTERNATIONAL CORP.

LDC TELECOMMUNICATIONS, INC.

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LEAST COST ROUTING, INC.

MERIDIAN TELECOM CORPORATION

MVX COMMUNICATIONS, LLC

NETEL, INC.

NEW MEDIA TELECOMMUNICATIONS, INC.

NORSTAN NETWORK SERVICES, INC.

NTI TELECOM, INC.

OMNICALL, INC.

PARADIGM COMMUNICATIONS CORPORATION

PNG TELECOMMUNICATIONS, INC.

PROMISE NET INTERNATIONAL LTD.

QUARTER CALL, INC.

QUINTEL ENTERTAINMENT, INC.

RDST, INC.

STARLINK COMMUNICATIONS, LLC

TELEC, INC.

TELSAVE CORPORATION

THE FREE NETWORK, LLC

TOTAL COMMUNICATIONS NETWORK, INC.

TRACOM, INC.

TRANSCOMMUNICATIONS, INC.

TRI-M COMMUNICATIONS, INC.

U.S. NETWORK SERVICES, INC.

USA TELE CORP.

VISTA INTERNATIONAL COMMUNICATIONS, INC.

VOICE VISION INTERNATIONAL, INC.

XTRACOM, INC.

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This 28th day of March, 2000, the Commission finds, determines, and Orders the following:

I. The Utilities' Obligation to File Statements of Y2K Readiness and Contingency Plan Reports

1. In PSC Order No. 5020 (March 9, 1999), this Commission directed each public utility and cable television system operator subject to the Commission's regulatory jurisdiction to file with the Commission: (a) a Statement of Y2K Readiness ("Statement"); and (b) a Report summarizing the utility's or cable television system operator's contingency planning and plans ("Report"). In imposing these reporting requirements on utilities, the Commission sought to gain assurances that each utility had taken reasonable precautions to ensure that, as the year 2000 dawned, the utility would be able to continue to meet - without interruption or disruption - its statutory and regulatory obligations to provide safe, adequate, and proper service and products. See 26 Del. C. § § 201(a), 205(a), and 209(a). In PSC Order No. 5020, the Commission described the appropriate officer within each utility to execute the required Statement and also set forth specific requirements for those utilities reselling services provided over another utility's facilities. Each utility was directed to file its Statement and Report on or before July 30, 1999.

2. In PSC Order No. 5192 (Aug. 10, 1999), the Commission extended the deadline for each utility to file its Statement and Report until, on or before, September 30, 1999. On August 11, 1999, the Secretary sent, by certified mail, copies of PSC Orders Nos. 5020 and 5192 to each regulated entity. In both of these Orders, the Commission warned that a utility's failure to comply with the Y2K directives could result in the imposition of sanctions, including not only the penalties permitted by 26 Del. C. § 217, but also, in egregious cases, the revocation of the utility's Certificate of Public Convenience and Necessity.

II. The Initial and Subsequent Defaults by the Listed Utilities

3. In November, 1999, the Commission Staff reported that numerous utilities had not filed the Statement and Report as required by PSC Orders Nos. 5020 and 5192. Consequently, the Commission entered PSC Order No. 5263 (Nov. 16, 1999). That Order and Rule to Show Cause instructed each of the recalcitrant utilities to file a written response (the "Response") setting forth what justification, if any, such utility had for failing to comply with the reporting requirements imposed in the two previous Orders. In addition, each utility was to include in its Response its view of the appropriate sanction to be imposed for its earlier defaults and an indication whether it desired a formal hearing to determine the issues of its non-compliance and the appropriate sanctions. Such Response (including any request for a hearing) was to be filed with the Commission by December 15, 1999. In this later Order, the Commission again warned of the consequences. If the utility did not file a Response by the mid-December deadline, the Commission would enter further Orders, both finding the utility in violation and imposing sanctions and penalties (including, possibly, revocation of the utility's Certificate of Public Convenience and Necessity ("CPCN")), without any further notice to the non-responding utility. However, at the same time, the Commission extended to the delinquent utilities one final grace period: if the utility would file the required Statement and Report by December 1, 1999, the Order and Rule to Show Cause would be lifted. In November, 1999, the Secretary sent, by certified mail, a copy of PSC Order No. 5263 to each utility which Staff had identified as not having complied with PSC Orders Nos. 5020 and 5192.

A. The "Exhibit A" Defaulting Utilities

4. The Commission Staff now reports that each of the utilities listed in Exhibit "A" to this Order: (a) failed to file a Statement and Report by September 30, 1999; (b) failed to file a Statement and Report by the grace period extension deadline of December 1, 1999; and (c) failed to file an Answer as required by PSC Order No. 5263. In addition, Staff reports that none of the utilities listed in Exhibit "A" have, to this date, filed any type of responses to the directives set forth in PSC Orders Nos. 5020, 5192, and 5263.

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B. The "Exhibit B" Defaulting Utilities

5. The Commission Staff also now reports that each of the utilities listed in Exhibit "B" to this Order also: (a) failed to file a Statement and Report by September 30, 1999; (b) failed to file a Statement and Report by the grace period extension deadline of December 1, 1999; and (c) failed to file an Answer as required by PSC Order No. 5263. But, in contrast to the utilities listed in Exhibit "A," each of the utilities listed in Exhibit "B" did eventually file the information required under Orders Nos. 5020 and 5192. However, Staff reports, that each utility submitted its Statement after the turn of this year. As such, the utility's Y2K preparedness statement came to the Commission after the crucial Y2K date had passed.[1]

III. The Imposition of Sanctions

6. In PSC Orders Nos. 5020, 5192, and 5263, the Commission cautioned, if not down-right warned, utilities and cable system operators that if they did not comply with the Y2K directives, the Commission would not be reluctant to impose sanctions, including monetary penalties or, in some cases, revocation of the utility's or operator's certificate or franchise. In particular, in PSC Order No. 5263, the Commission directed each of the then non-compliant utilities to file a Response by December 15, 1999, which not only explained the reasons for its earlier defaults but also set forth: (1) what the utility believed to be an appropriate penalty; and (2) whether the utility desired a hearing on its default or the appropriate penalty. The Commission emphasized that if a utility did not file such a Response, the Commission would impose sanctions without any further notice to the defaulting utility. As noted above, none of the utilities listed in Exhibit "A" filed such Response. Moreover, the utilities listed in Exhibit "B," although submitting (albeit substantially late) the required Statement, also never filed the Response required by Order No. 5263.

7. The Commission considered what sanctions to impose against the utilities listed in Exhibits "A" and "B" at its public meeting on March 28, 2000.[2] The Commission Staff recommended the imposition of penalties instead of revocation of the utilities' CPCNs, given that these utilities had filed annual reports in 1999. Staff also recommended a procedure to allow a defaulting utility the opportunity to surrender its CPCN in lieu of paying the monetary sanctions. After deliberations, the Commission decided to impose the sanctions set forth below. Those sanctions impose penalties for the utilities' earlier failures to file the Y2K documents. However, the Commission adopts a procedure which will allow a utility to be relieved of such penalty if such utility, within a narrow window of time, chooses the alternative of surrendering its CPCN to provide utility services within Delaware.

IV. Findings, Determination of Penalties, and Alternative Method for Surrender of Certificate

8. The Public Utility Act of 1974 grants this Commission the power to require special reports from every regulated public utility. 26 Del. C. § 205(a). The Commission is also empowered to enter such Orders necessary to ensure that each jurisdictional public utility keeps and maintains its property in such condition so as to enable it to furnish safe, adequate, and proper service. 26 Del. C. § 209(a)(2). In conjunction, these statutory provisions empowered the Commission to seek assurances from each regulated utility that the utility had taken reasonable steps to ensure that the threatened Y2K computer difficulties would not impair the utility's ability to offer and provide regulated intrastate utility services to Delawareans. The defaults of the utilities listed in this Order - first in failing to provide the Commission with such assurances in a timely fashion and then ignoring the Commission's directive to provide an explanation for such silence -substantially and materially undermined the Commission's ability to exercise its regulatory supervision over the public utility services offered within this State.

9. When a utility subject to the jurisdiction of the Commission fails to comply with lawful Order, the Commission can utilize two sanctions to compel compliance and punish the default. First, in some cases, the Commission can exercise the power to revoke the utility's CPCN. See PSC Order No. 5338 (Jan. 31, 2000) (revoking CPCNs of utilities for failing to file Y2K Statements and annual returns).[3] But the Commission also has the authority to impose monetary penalties under the provisions of 26 Del. C. § 217. By its language, section 217 explicitly warns every public utility that if it fails to comply with any Order of the Commission, it may face penalties of up to $1000 for each day its default continues.

10. In this matter, the utilities listed in Exhibits "A" and "B" double-defaulted: first by not filing the required Y2K statements by either September 30 or by December 1, and by then failing to submit a Response explaining the reasons for such earlier silence. These defaults were not trivial omissions. When the Commission directs a regulated utility to file a report (or explain its earlier failure to respond) the Commission expects the utility to promptly comply with the directive. However, despite the two violations in the Y2K arena, each of the utilities listed here did comply with its obligations to file an annual report in 1999. Thus, none of the utilities has a prior history of neglecting its regulatory obligations. This, the Commission believes, tilts the balance of the appropriate sanction in favor of a monetary penalty rather than revocation of the utility's CPCN.

11. Moreover, the fact that each utility here filed an annual report in 1999 suggests that the utility may truly value its ability to offer utility services in Delaware and would like to continue to do so, even if it would have to suffer some consequences for its serious Y2K defaults. The Commission will now adopt a scheme of sanctions which will test this hypothesis. First, the Commission will impose a monetary penalty on each of the defaulting utilities. However, it will grant any penalized utility the opportunity to elect to surrender its CPCN (and thus abandon its intrastate utility services within this State) in lieu of paying the monetary penalty. If a defaulting utility views the monetary penalty imposed, or the costs of complying with this Commission's future Orders, too high to justify its Delaware business, the utility can now surrender its certificate and forego offering utility services within this State. On the other hand, if a utility believes that its present, or future, intrastate operations within Delaware do have value, then the utility can simply pay the penalty for its earlier failures to comply with the Commission's Y2K directives. To effectuate this pay or no-play election scheme, each utility listed here will have a period of 30 days after the entry of this Order to make its choice. Within such period, each of the utilities listed in Exhibits "A" and "B" shall either: (1) file a statement indicating that it wishes to surrender its CPCN, accompanied by the appropriate application and affidavit to allow it to abandon its services under 26 Del. C. § 203A(c); or (2) file a statement indicating that it will pay the monetary sanction within 45 days of the date of this Order. If a utility does not file either of such statements within the above time-frame, the Commission will deem such omission as a request by the utility that the Commission revoke its CPCN and the Commission will grant such request without any further notice to the utility.

12. Having chosen penalties over revocation as the appropriate sanction, the Commission must then determine the amount of the penalty to be imposed on each of the defaulting utilities. Section 217 does not set forth the criteria for when, and then in what amount, this Commission should impose penalties for failing to comply with its Orders. However, in other statutes involving administrative agency oversight of other regulated industries, the General Assembly has explicitly listed several factors as appropriate considerations for an agency in determining both the need for an administrative penalty and the amount of any such sanction. Those factors include: (a) the nature, extent, and seriousness of the default or violation; (b) the culpability, intent, or (conversely) the good faith of the defaulting entity or violator; (c) the entity's or violator's prior history of non-compliance or violations; (d) the adverse effect of the default or violation on the public interest and the regulated industry; (e) the ability of the entity or violator to pay any particular sanction; and (f) the efforts undertaken by the entity or violator to correct the default or violation and prevent any recurrence. See, e.g., 5 Del. C. § 143(a)-(b) (Banking Commissioner); 7 Del. C. § 6005(b)(3) (Dept. of Natural Resources and Environmental Control); 18 Del. C. § 329 (Insurance Commissioner). The Commission believes that these same factors should be utilized by it in determining the monetary penalties for the defaulting utilities here.

13. Looking to the factors, the Commission finds that the appropriate penalty is $5 per day for the period October 1, 1999 (the original date for filing the Statement) until December 1, 1999 (the expiration of the grace period granted in PSC Order No. 5263). The total penalty for this period would thus be $310.00. In addition, the Commission finds that the appropriate penalty for the period December 2, 1999 until December 31, 1999 is $10 per day. The total penalty for this period would thus be $225.00.

14. Initially, there is no question that the defaults involved here were serious. In 1999, the Y2K bug was viewed as a potentially significant problem - one carrying the possibility of working major disruptions in the provision of essential utility services. In such a context, the Commission was surely entitled to have each utility under its regulatory supervision provide a certification that the utility was treating this looming problem as a serious one. The utilities listed here provided no such timely assurance. But, maybe more importantly, the utilities' failure to submit timely Statements and then Responses undermined the entire regulatory regime. A system of utility regulation - even if exercised with a light hand in some areas - still imposes a duty on each jurisdictional utility to stand ready to promptly and fully respond to the Commission's legally authorized inquiries and directives. The utilities here ignored that fundamental responsibility.

15. Second, the defaulting utilities can hardly plead either innocence or good faith to excuse their non-compliance. A utility might suggest that, through mix-up or office routing, the initial Order directing the utility to file the Y2K statement was either mislaid or simply overlooked. That "oversight" would hardly be an excuse. When an entity is offering utility services to the general public, this Commission would expect that such entity would have in place procedures to make sure that Orders served by this Commission, requiring attention and action, simply do not get lost in some shuffle at the utility's headquarters. But even more problematic, the Commission notified each utility here, by PSC Order No. 5263, that it had not filed the Y2K statement in a timely fashion. The Commission also extended a grace period to allow the utility to remedy its prior "oversight." But none of the utilities here responded to that explicit notice within the time-frames set by the Commission. At worst, such silence by the utility reflects an intentional snub of the Commission; at best, it suggests reckless indifference to the Commission's regulatory powers. Indeed, the failure of these utilities to file a Response, as also required by PSC Order No. 5263, reinforces the view that these utilities simply chose not to - or deemed it not important enough to - comply with the Commission's directives.

16. Indeed, this is why the Commission imposes an increased per diem penalty of $10 for the period December 2 to December 31. During that period, each utility here had already been put on notice how seriously the Commission was treating the failure to file the Y2K statements. In response to all the warnings, each utility did nothing, letting the year turn without providing any assurances to the Commission that it had made reasonable efforts to prevent any Y2K problems.

17. Some of the utilities - if they had filed the required Response - may have argued that no penalty should be assessed because, with the acuity of hindsight, one can now see that Y2K catastrophes did not occur. Yet, as the Commission emphasized in PSC Order No. 5338, this "defense" misapprehends the injury worked by the utility's defaults. It is the injury inflicted on the Commission's ability to exercise regulatory oversight which now drives the imposition of monetary sanctions. A regulatory regime cannot work effectively, if a regulated utility can unilaterally choose to ignore a Commission Order, simply on the hope that, when later called to task, it might be able to show that the harm which the agency sought to avoid never fully materialized.

18. The Commission recognizes that most of these defaulting utilities are resellers of telecommunications services who operate in a substantially competitive market and who may not have either Delaware facilities or even Delaware customers. Without facilities or customers, the argument would go, there was in fact no need to file Delaware Y2K statements. A Y2K catastrophe could not have caused any injury to nonexistent customers or equipment. But, once more, this assertion misses the central point for imposing the present sanctions. Perhaps, if a no-facility, no-customer utility had filed a timely Statement indicating the impossibility of Y2K injury within Delaware, or perhaps if the same utility had offered such defense in a timely Response, then, perhaps, the Commission might have waived the filing of a formal Statement or decided to not impose sanctions. However, the utilities listed here did nothing, thus leaving the Commission with no knowledge of whether any Delaware customers were ever placed at risk.

19. At the same time, the Commission has not totally ignored the lack of Y2K disruptions. Nor has the Commission overlooked the fact that most of the derelict utilities are small telecommunications resellers, many without substantial assets or resources. Both of these factors are reflected in the relatively small per diem penalties imposed. The penalty amounts adopted by the Commission represent an effort to evaluate the "costs" to these utilities for not respecting the regulatory regime in place within this State. The utilities had three prior chances either to avoid sanctions by complying or asking for lesser punishment. None of them sought to seize those opportunities.

20. As noted above, the utilities listed in Exhibit "B" did file the required Y2K Statements, but only after the turn of the year. By then, the Statements were of little value in ensuring that the utility had taken appropriate steps prior to January 1, 2000, to prevent disruptions. These late submissions might not, in other instances, prevent imposition of the full weight of sanctions. But in this instance, the Commission finds that such submissions, although late, reflect some modicum of respect both for the Commission's regulatory authority and the utility's corresponding obligation to comply with Commission directives. The utilities listed in Exhibit "B" have at least acknowledged their prior defaults and have recognized the duty to reply to the Commission's directives. Given that, the Commission finds that it is appropriate to remit all but one hundred dollars ($100.00) of the above-ordered penalties for these utilities. While this reduction is proportionally large, the Commission believes that it is consistent with the Commission's overall view, repeated several times above, that the harm to be remedied is respect for the regulatory regime.

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21. It also might be suggested that pursuant to the provisions of 29 Del. C. § 10122, the Commission may not impose the above penalties without providing a specific notice to each utility (including a specific date for a hearing) and then holding a full-blown trial-like hearing. However, in PSC Order No. 5263, the Commission directed each of the listed utilities to file a Response, not only setting forth its defenses to the defaults, but also setting forth its view of the appropriate sanctions. In addition, each utility was directed to include within such Response a statement indicating whether it desired an evidentiary hearing on either the liability or penalty issues. That Order, served on each utility, also recited that if the utility requested a hearing, it could be represented by an attorney, could offer evidence, and would have both its alleged default and the appropriate sanctions judged on the evidentiary record to be developed at the later hearing. As noted, none of the utilities listed here filed any Response. Given this pleading default (and indeed complete silence), the Commission does not believe that section 10122 now requires it to provide further notice and to conduct a formal hearing, when the utility chose not to request such later procedure.[4]

22. In summary, the Commission imposes a monetary penalty totaling $535.00 against each of the utilities listed in Exhibit "A" for such utility's failure to comply with PSC Orders Nos. 5020, 5192, and 5263. The amount of such total is calculated from the per diem penalties set forth in paragraph 13 above. In addition, the Commission imposes a monetary penalty totaling $100.00 against each of the utilities listed in Exhibit "B" for such utility's failure to comply with PSC Orders Nos. 5020, 5192, and 5263. The amount of such penalty is calculated from the per diem penalties set forth in paragraph 13, but is reduced to $100.00 for the reasons set forth in paragraph 20 above. The penalties imposed on a utility listed in Exhibits "A" or "B" will be ignored and withdrawn if such utility, within 30 days of the entry of this Order, files a statement, accompanied by the appropriate application to abandon service, indicating that the utility has elected to abandon service in Delaware and surrender its current CPCN. Alternatively, the utility must file within the same 30 day period, a statement indicating that it elects to continue its CPCN and that it will pay the monetary penalties imposed here on a date within 45 days of this Order.

V. Ordering Clauses

Now therefore, **IT IS ORDERED:**

1. That the Commission finds that each utility listed in Exhibits "A" and "B" to this Order has failed to comply with PSC Orders Nos. 5020 and 5192 by failing to file within the time specified in those Orders: (a) a Statement of Y2K Readiness; and (b) a Report summarizing the utility's or cable television system operator's contingency planning and plans. In addition, the Commission finds that each utility listed in Exhibits "A" and "B" to this Order has failed to comply with PSC Order No. 5263 by: (a) first failing to file within the grace period extended in that Order the required Statement of Y2K Readiness and Report summarizing the utility's contingency planning and plans; and (b) by then further failing to file by December 15, 1999, the Response as described in that earlier Order.

2. That a penalty of five dollars ($5) per day for the period from October 1, 1999, until December 1, 1999, is imposed on each utility listed in Exhibits "A" and "B" for that utility's failure to comply with PSC Orders Nos. 5020, 5192, and 5263. In addition, a penalty of ten dollars ($10) per day for the period from December 2 until December 31, 1999, is imposed on each utility listed in Exhibits "A" for that utility's failure to comply with PSC Orders Nos. 5020, 5192, and 5263.

3. That, for each utility listed in Exhibit "A," the total penalty assessed under Ordering paragraph 2 is five hundred dollars ($500.00).

4. That, for the reasons set forth in the body of this Order, all but $100.00 of the total of the above penalties are remitted for each utility listed in Exhibit "B." Each such utility shall be assessed a total penalty of $100.00.

5. That, within thirty (30) days after the date of the entry of this Order, each utility listed in Exhibit "A" or "B" shall file a "Statement of Election" with the Commission. In that Statement, a utility may indicate that it elects to abandon its intrastate utility services within this State and to surrender its Certificate of Public Convenience and Necessity. If a utility elects such a course, the utility shall accompany its Statement with the necessary application and supporting materials necessary for it to abandon service under 26 Del. C. § 203A(c). If a utility makes such an election and surrenders its Certificate, then the assessment of penalties imposed under either Ordering paragraph 2 or 3 above shall be withdrawn, effective at the time of the utility's surrender of its Certificate and the entry of the Order approving the utility's abandonment of service. If the utility

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electing to abandon service and surrender its Certificate presently has subscribers or customers in Delaware receiving intrastate utility services, each such utility shall submit with its Statement of Election a report explaining how it intends to end its intrastate services to such customers or subscribers, including a plan for the refund of any deposits or advances. The Commission retains the right to continue to exercise jurisdiction over each utility electing to surrender its Certificate in order to ensure the proper termination of services without harm or injury to Delaware subscribers or customers.

6. That, alternatively, a utility listed in Exhibits "A" or "B" may state in the required Statement of Election that it elects to pay the penalty and continue to be authorized to offer and provide intrastate utility services within Delaware. A utility so electing to pay the penalty assessed in Ordering paragraphs 2, 3, and 4 above shall state in its Statement a date when it will remit the total penalty amount. Such date shall be within 45 days of the date of the entry of this Order.

7. That if a utility listed in Exhibits "A" or "B" fails to file the Statement of Election as described in Ordering paragraphs 5 and 6 within 30 days of the entry of this Order, then such utility shall be deemed to have requested, and consented to, the Commission revoking its Certificate of Public Convenience and Necessity and the Commission will do so without further notice to such utility.

8. That the Secretary shall forthwith send, by certified mail, return receipt requested, a copy of this Order to each utility listed in Exhibits "A" and "B."

9. That the penalties imposed in Ordering paragraphs 2,3, and 4 shall be effective thirty days from the date of this Order, subject to the conditions explained in this Order.

10. 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/ Robert J.

McMahon Chairman

/s/ Joshua M. Twilley

Vice Chairman

/s/ Arnetta McRae

Commissioner

/s/ Donald J. Puglisi

Commissioner

Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

Footnotes

1 The utilities listed in Exhibits "A" and "B" here are not the only ones which failed to comply with PSC Orders Nos. 5020, 5192,

and 5263. Earlier, in PSC Order No. 5338 (Jan. 31, 2000), the Commission revoked the CPCNs of 14 other utilities because they too had failed to comply with the Commission's Y2K readiness Orders. However, the utilities subject to the earlier Order had also failed in 1999 to file the annual return required of all public utilities. See 26 Del. C. § 115(e). The Commission determined that this earlier dereliction pushed each of those utility's Y2K defaults into a more egregious category, sufficient to justify revocation of the utility's license to provide public utility services within this State. In comparison, the utilities here did file annual reports in 1999.

2 The Commission did so without any further notice to the derelict utilities, consistent with its warnings in PSC Order No. 5263.

3 Cf. Formosa Plastics Corp. v. Wilson, Del. Supr., 504 A.2d 1083, 1088-89 (1986) (power to grant regulatory license includes power to revoke for non-compliance).

4 The Commission notes that the Administrative Procedures Act allows an agency to revoke a license, such as a CPCN, without conducting a formal hearing, if the licensee has not requested such a procedure. 29 Del. C. § 10131(c). If the arguably greater sanction of license revocation can be imposed without a hearing, in the absence of a request, it would seem that monetary penalties may, in the absence of a plea, also be imposed without a hearing. Cf. 5 Del. C. § 143(e) and 7 Del. C. § 6005(b)(3) (both allowing, in the absence of a request for a hearing, the imposition of administrative penalties without hearing).

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BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

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

ORDER NO. XXXX

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, on December 9, 2015, Delmarva filed a Motion to Amend the Order requesting approval to republish the public notice and set a new deadline for leave for petitions to intervene and to file comments; and

WHEREAS, on December 10, 2015, Commission Staff filed a Motion to Impose Penalties on Delmarva pursuant to 26 *Del. C.* §217 for Failure to Comply with Order No. 8732 pertaining to the Publication of Notice; and

WHEREAS, Delmarva informed the Commission that the failure to publish notice in compliance with the Order was a mistake and not an intentional act. Delmarva further 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; and

WHEREAS, on December 15, 2015, the Commission approved Amended Order No. 8732 setting new dates for the publication of public notice of the Application and a new deadline for leave for petitions to intervene and to file comments; 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; and

WHEREAS, the Commission acknowledges that Delmarva's noncompliance was inadvertent, there was no culpability or intent on Delmarva's part in failing to comply with the Order, Delmarva has no prior history of non-compliance or violations, there is no adverse impact to customers and Delmarva quickly and cooperatively took action to remedy the situation.

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 denies Commission Staff's Motion to Impose a Penalty upon Delmarva for noncompliance with Order No. 8732.
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