Docket No. 16-0254
Filed March 7, 2016

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**Todd L. Goodman**
Associate General Counsel

March 7, 2016

**Via Delafile:**

Donna Nickerson
Secretary, Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, DE 19904

Re: Filing – Request to Establish Regulatory Asset
Pursuant to 29 *Del. C.* § 8059 (h) (1) e 2

Dear Secretary Nickerson:

Attached for filing with the Commission is Delmarva Power & Light Company's Request to Establish a Regulatory Asset Pursuant to the 2014 Amendments to the Delaware Energy Act (the "EE Amendments"). As the attached filing explains in detail, Delmarva Power seeks approval by the Commission to establish a regulatory asset for the purpose of complying with the deferred accounting requirement of the EE Amendments.

The EE Amendments require all electric and natural gas utilities in Delaware to implement cost-effective energy efficiency, conservation and peak demand reduction programs. The EE Amendments created a comprehensive process for developing programs through the Energy Efficiency Advisory Counsel. The EE Amendments provide, at 29 *Del. C.* § 8059 (h)(1) e 2, that "...costs incurred arising out of activities and programs recommended by the advisory council that are not subject to contemporaneous recovery shall be subject to deferred accounting treatment . . . ." Delmarva Power requests authority to establish a regulatory asset to comply with § 8059 (h) (1) e 2.

Should you have any questions, please do not hesitate to contact either Heather Hall (302-454-4828) or me (302-353-7979).

Sincerely,

Todd L. Goodman

cc: David Bonar (with att., by email)
Pam Knotts (with att., by email)
Heather Hall (w/o att.)

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

| | | |
|---|---|---|
| IN THE MATTER OF THE ACTIVITIES OF<br>DELMARVA POWER AND LIGHT COMPANY<br>PURSUANT TO THE ENERGY EFFCIENCY<br>AND FUEL SWITCHING PROVISIONS OF<br>THE 2014 AMENDMENTS TO THE<br>DELAWARE ENERGY ACT | )<br>)<br>)<br>)<br>)<br>) | PSC DOCKET NO. 16 - _____ |

**Request of Delmarva Power & Light Company**
**To Establish A Regulatory Asset Pursuant To 29 Delaware Code, Section 8059**

Delmarva Power & Light Company ("Delmarva Power"), by and through its undersigned counsel, hereby requests authority from the Delaware Public Service Commission (the "Commission") to establish a regulatory asset for the purpose of tracking, and to cover recovery of and on the appropriate costs associated with Delmarva Power's compliance with the mandates of the 2014 Amendments to the Delaware Energy Act.[1] In support of its request, Delmarva Power provides as follows:

1. In August 2014, Delaware Governor Markell signed into law various amendments to the Delaware Energy Act (the "Amendments").[2] With respect to the portions of the Amendments relevant to this request, all electric and natural gas utilities in Delaware are required to "implement energy efficiency, energy conservation, and peak demand reduction programs that are cost-effective, reliable, and feasible . . . ."[3]

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[1] 29 *Del. C.* § 8059 *et seq.*

[2] 79 *Del. Laws*, c. 395, §1.

[3] 29 *Del. C.* § 8059(h).

2. The Amendments create a process through which energy efficiency ("EE") program portfolios and plans must be developed for all Delaware utilities. The Amendments direct the Department of Natural Resources and Environmental Control ("DNREC") to establish and chair a 13 member Energy Efficiency Advisory Council ("EEAC"), consisting of Delmarva Power, the Delaware Municipal Electric Corporation, Chesapeake Utilities, the Delaware Electric Cooperative, the Delaware Sustainable Energy Utility and additional appointed members.[4] Although Commission Staff ("Staff") and the Division of the Public Advocate ("DPA") are not members of the EEAC, the Amendments require "collaboration" between Staff, DPA, and the EEAC in furtherance of the EEAC's duty to "recommend candidate energy efficiency, and reduction, and emission-reducing fuel-switching program elements that are cost-effective, reliable, and feasible."[5] Representatives of both Staff and DPA have attended, either in person or through conference call, the various EEAC meetings to date.

3. The statutory responsibilities of the EEAC include, among others, assisting utilities with developing EE program portfolios.[6] With respect to regulated utilities, such as Delmarva Power, the Amendments provide that the EEAC shall review EE program plans and recommend them for approval by the Public Service Commission.[7] Before Delmarva Power can implement any EE programs, the programs must be reviewed and approved by the Commission.[8]

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[4] *See* 29 *Del. C.* § 8059 (h)(1) a.

[5] 29 *Del. C.* § 8059 (h)(1) b.

[6] *See* 29 *Del. C.* § 8059 (h)(1) a 7, "[T]he [EEAC] will assist affected energy providers in the development of energy efficiency, peak demand reduction, and emission-reducing fuel switching programs . . . ."

[7] *See* 29 *Del. C.* § 8059 (h)(1) c, "[T]he [EEAC] shall review energy efficiency, peak demand reduction, and fuel switching program plans for each affected energy provider and recommend them for approval by the appropriate regulatory authority . . . ."

[8] 29 *Del. C.* § 8059 (h)(1) e.

Likewise, recovery by Delmarva Power of and on all costs arising out of the EEAC process and EE programs is subject to approval by the Commission.[9]

4. The EEAC has met fifteen times since January 2014. As part of the EEAC process, the EEAC determined that each utility should begin to develop portfolios of proposed EE programs for its customers. Delmarva Power has been an actively involved EEAC member and has used its experience operating EE programs in Maryland (and the experience of its affiliate, Pepco, in Maryland) to help move the EEAC process forward in an efficient and timely manner.

5. In recognition that utilities incur costs both in the EEAC process and in implementing EE programs, the Amendments provide that regulated utilities are entitled to deferred accounting for the costs arising out of the activities of the EEAC and EE programs.[10]

6. Public utilities, including Delmarva Power, use regulatory assets for deferred accounting purposes. The term "regulatory asset" refers to a deferred accounting mechanism which allows public utilities to defer the recognition of certain costs to its balance sheet. Without a regulatory asset, those costs would be required to appear on the company's income statement and would be charged against current expenses or revenues.

7. The Commission has previously approved the establishment of regulatory assets where Delmarva Power has been directed to incur costs for programs designed to benefit its customers. For example, the Commission approved the establishment of a regulatory asset to cover recovery of and on the appropriate costs associated with Delmarva Power's deployment of

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[9] *Id.*

[10] 29 *Del. C.* § 8059 (h)(1) e 2 - "appropriate costs incurred arising out of activities and programs recommended by the advisory council that are not subject to contemporaneous recovery *shall be subject to deferred accounting* treatment . . . ." (*emphasis added*).

Advanced Metering Infrastructure.[11] The Commission approved establishment of regulatory assets to cover recovery of and on the appropriate costs associated with Delmarva Power's dynamic pricing and direct load control programs.[12] More recently, the Commission approved the establishment of a regulatory asset to recover the costs of reprogramming Delmarva's billing system to separately list the monthly costs associated with various legislatively-mandated initiatives.[13]

8. Regulatory assets serve as an efficient and practical deferred accounting mechanism. Regulatory assets help utilities, Staff, and the DPA track costs incurred by utilities in carrying out certain programs and projects.

9. The requested regulatory asset is an accounting mechanism. Delmarva Power will be required to obtain approval for recovery of all amounts within the requested regulatory asset pursuant to Delaware law before those amounts can be reflected in customer rates.[14] Proceedings to obtain authority to recover the regulatory asset will be an open and transparent process with the full participation of Staff, DPA, and any other approved intervenors.[15]

10. In summary:

a. the Amendments provide that costs arising out of the activities of the EEAC and EE programs shall be subject to deferred accounting treatment, making establishment of a regulatory asset necessary,

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[11] Order No. 7420 in Docket No. 0728 (*combined with Regulation Docket No. 59*) at ¶ 3, September 16, 2008 (A.K.A., the Advanced Metering or "AMI" docket).

[12] The dynamic pricing regulatory asset was approved in Docket No. 09-311, Order No. 8105, January 31, 2012. The direct load control regulatory asset was approved in Docket No. 11-330, Order No. 8253, December 18, 2012.

[13] Order No. 8556 in Docket No. 13-250 at ¶ 2, April 29, 2014 (A.K.A, the "Billing Transparency Docket, Phase I").

[14] 29 *Del. C.* § 8059 (h)(1) e.

[15] *See* Order No. 7420 in Docket No. 0728 (*combined with Regulation Docket No. 59*) at ¶ 3, page 5, September 16, 2008.

b. regulatory assets serve as an efficient and practical deferred accounting mechanism that helps utilities, Staff and the DPA track costs incurred by utilities in carrying out certain programs and projects, and

c. the Commission has previously approved regulatory assets where Delmarva Power has been directed to incur costs for programs designed to benefit its customers.

Accordingly, Commission approval of Delmarva Power's request to establish a regulatory asset is appropriate in this case.

**WHEREFORE**, for the reasons addressed herein, Delmarva Power respectfully requests the Commission to approve its request to establish a regulatory asset to cover recovery of and on the appropriate costs associated with Delmarva Power's compliance with the 2014 Amendments to the Delaware Energy Act, including the costs arising out of the activities of the EEAC and EE programs, as provided by 29 *Del.C.* § 8059 (h) (1) e 2.

Respectfully Submitted,

Todd L. Goodman (Bar No. 3096)
Associate General Counsel
Delmarva Power & Light Company
P.O. Box 6066
Newark, Delaware 19714
(302) 353-7979
todd.goodman@pepcoholdings.com

Dated: March 7, 2016

**PROPOSED FORM OF ORDER**

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

| | | |
|---|---|---|
| IN THE MATTER OF THE ACTIVITIES OF | ) | |
| DELMARVA POWER AND LIGHT COMPANY | ) | |
| PURSUANT TO THE ENERGY EFFCIENCY | ) | PSC DOCKET NO. 16 - _____ |
| AND FUEL SWITCHING PROVISIONS OF | ) | |
| THE 2014 AMENDMENTS TO THE | ) | |
| DELAWARE ENERGY ACT | ) | |

Order No. [ ]

**AND NOW** this [ ] day of [ ], 2016:

**WHEREAS,** on March 4, 2016, Delmarva Power & Light Company ("Delmarva") filed a Request to Establish a Regulatory Asset pursuant to the August 2014 Amendments to the Delaware Energy Act, 29 Delaware Code, Section 8059; and

**WHEREAS,** on August 6, 2014, Delaware Governor Markell signed into law various amendments to the Delaware Energy Act (the "Amendments");[1] and

**WHEREAS,** the Amendments provide, among other things, that all electric and natural gas utilities in Delaware are required to "implement energy efficiency, energy conservation, and peak demand reduction programs that are cost-effective, reliable, and feasible . . . ."[2]; and

**WHEREAS,** the Amendments direct the Department of Natural Resources and Environmental Control ("DNREC") to establish and chair a 13 member Energy Efficiency Advisory Council ("EEAC"), consisting of Delmarva, the Delaware Municipal Electric

[1] 79 *Del. Laws*, c. 395, §1.

[2] 29 *Del. C.* § 8059(h).

Corporation, Chesapeake Utilities, the Delaware Electric Cooperative, the Delaware Sustainable Energy Utility and additional appointed members;[3] and

**WHEREAS**, the responsibilities of the EEAC include, among others, assisting utilities with developing EE program portfolios;[4] and

**WHEREAS**, with respect to regulated utilities, such as Delmarva, the Amendments provide that the EEAC shall review EE program plans and recommend them for approval by the Commission;[5] and

**WHEREAS**, recovery by Delmarva of and on all costs arising out of the EEAC process and EE programs is subject to approval by the Commission; and[6]

**WHEREAS**, the EEAC has met fifteen times since January 2014; and

**WHEREAS**, the EEAC has determined that each utility should begin to develop portfolios of proposed EE programs for its customers; and

**WHEREAS**, the Amendments provide that regulated utilities are entitled to deferred accounting for the costs arising out of the activities of the EEAC and EE programs;[7] and

**WHEREAS**, regulated public utilities, including Delmarva Power, use regulatory assets for deferred accounting purposes; and

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[3] *See* 29 *Del. C.* § 8059 (h)(1) a.

[4] *See* 29 *Del. C.* § 8059 (h)(1) a 7.

[5] 29 *Del. C.* § 8059 (h)(1) c.

[6] 29 *Del. C.* § 8059 (h)(1) e.

[7] 29 *Del. C.* § 8059 (h)(1) e 2.

## PROPOSED FORM OF ORDER

**WHEREAS,** a "regulatory asset" is a deferred accounting mechanism that allows public utilities to defer the recognition of certain costs to its balance sheet; otherwise, those costs would be required to appear on the utility's income statement and would be charged against current expenses or revenues; and

**WHEREAS,** the Commission has previously approved the establishment of regulatory assets where Delmarva has been directed to incur costs for programs designed to benefit its customers.[8]

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

1. That the Commission approves the establishment of a regulatory asset by Delmarva pursuant to 29 *Del. C.* § 8059 (h) (1) e 2 of the Amendments.

2. That, despite the Commission's approval of a regulatory asset, Delmarva will be required to obtain Commission approval for recovery of and on all amounts within the regulatory asset pursuant to Delaware law before those amounts can be reflected in customer rates.

3. That proceedings to obtain authority to recover the regulatory asset will be open and transparent with opportunity for full participation of Commission Staff, the Division of the Public Advocate, and any approved intervenors.

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[8] *See:* Order No. 7420 in Docket No. 0728, September 16, 2008 (regulatory asset for advanced metering infrastructure), Order No. 8105, in Docket No. 09-311, January 31, 2012 (regulatory asset for dynamic pricing), Order No. 8253 in Docket No. 11-330, December 18, 2012 (regulatory asset for direct load control) and Order No. 8556 in Docket No. 13-250, April 29, 2014 (regulatory asset for "bill transparency" modifications to Delmarva's billing system).

## PROPOSED FORM OF ORDER

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

BY ORDER OF THE COMMISSION:

_____
CHAIR

_____
COMMISSIONER

_____
COMMISSIONER

_____
COMMISSIONER

_____
COMMISSIONER

ATTEST:

_____
SECRETARY

**BEFORE THE PUBLIC SERVICE COMMISSION**

**OF THE STATE OF DELAWARE**

| | | |
|---|---|---|
| IN THE MATTER OF THE ACTIVITIES OF DELMARVA POWER & LIGHT COMPANY PURSUANT TO THE ENERGY EFFICIENCY AND FUEL SWITCHING PROVISIONS OF THE 2014 AMENDMENTS TO THE DELAWARE ENERGY ACT (FILED MARCH 7, 2016) | ) | DOCKET NO. 16-0254 |

STATE OF DELAWARE )
) SS.
COUNTY OF NEW CASTLE )

On this 27th day of April 2016, personally came before me, the subscriber, a Notarial Officer in and for the State and County aforesaid Gary R Stockbridge, Vice President of Delmarva Power & Light Company, a Corporation existing under the laws of the State of Delaware, party to this Application, known to me personally to be such, and acknowledged that the "Request of Delmarva Power & Light Company To Establish A Regulatory Asset Pursuant To 29 Delaware Code, Section 8059," filed on or about March 7, 2016 to be his act and deed and the act and deed of such Corporation, that the signature of such Vice President is in his own proper handwriting, and that the facts set forth in this Application are true and correct to the best of his knowledge and belief.

Gary R Stockbridge
Vice President

SWORN TO AND SUBSCRIBED before me this 27th day of April 2016.

Notarial Officer + DE Bar 2443

My Commission expires: N.A.