

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) PSC DOCKET NO. 16-0254
AND FUEL SWITCHING PROVISIONS OF)
THE 2014 AMENDMENTS TO THE DELAWARE)
ENERGY ACT (SUBMITTED MARCH 7, 2016))
FILED APRIL 27, 2016))

ORDER NO. 8879

AND NOW, this 23rd day of August, 2016, the Public Service Commission ("Commission") determines and orders the following:

WHEREAS, on March 7, 2016, Delmarva Power & Light Company ("Delmarva") submitted a request to establish a regulatory asset¹ pursuant to 2014 amendments to the Delaware Energy Act (the "Act"), 29 *Del. C.* §8051, et seq.; and

WHEREAS, the Act provides, among other things, that "each affected energy provider² shall implement energy efficiency, energy conservation, and peak demand reduction programs that are cost-effective, reliable, and feasible" as determined

¹ Delmarva states that a "regulatory asset" is a deferred accounting mechanism that allows public utilities to defer the recognition of certain costs to its balance sheet. See p. 3 of filing. Delmarva also explained in its filing that if a regulatory asset were not used, "those costs would be required to appear on the utility's income statement and would be charged against current expenses or revenues." *Id.*

² Under 29 *Del. C.* §8059(a)(2), an "affected energy provider" means an affected electric energy provider or affected natural gas distribution company. Under 29 *Del. C.* §8059(a)(1), an "affected electric energy provider" means an electric distribution company, rural electric cooperative, or municipal electric company serving energy customers in Delaware. Under 29 *Del. C.* §8059(a)(3), an "affected natural gas distribution company" means a natural gas distribution company serving energy customers in Delaware.

through regulations promulgated pursuant to 29 *Del. C.* §8059(h)(3) and "delivered in collaboration with the Sustainable Energy Utility" ("SEU") as described in 29 *Del. C.* §8059(h); and

WHEREAS, the Act directs the Secretary of the Department of Natural Resources and Environmental Control to establish and chair a thirteen-member Energy Efficiency Advisory Council ("EEAC"),³ of which Delmarva is a member; and

WHEREAS, the Act further states the EEAC will assist affected energy providers (which by definition includes Delmarva) in developing energy efficiency, peak demand reduction, and emission-reducing fuel switching programs (collectively, the "Programs") to meet the requirements of 29 *Del. C.* §8059 and in evaluating, measuring and verifying energy savings;⁴ and

WHEREAS, the Act further requires that the Programs must be designed "to maximize the cost-savings benefits for ratepayers by utilizing private financing and allowance proceeds from the Regional Greenhouse Gas Initiative to the maximum extent practicable" and consistent with 29 *Del. C.* §8059 "as the preferred sources of program financing prior to expenditures that would otherwise be eligible for rate recovery;"⁵ and

WHEREAS, the Act specifically states that the costs of EE

³ 29 *Del. C.* §8059(h)(1)a.

⁴ 29 *Del. C.* §8059(h)(1).

⁵ *Id.*

programs "shall be reimbursed first by any direct revenues from the programs, including but not limited to revenues from wholesale capacity markets;"⁶ and

WHEREAS, the EEAC must also recommend the adoption of financing mechanisms, including, but not limited to, on-bill financing, property assessed clean energy ("PACE") models, and other innovative financing tools;⁷ and

WHEREAS, the EEAC, "in collaboration with the Public Service Commission staff and the Public Advocate," must "recommend candidate energy efficiency, and reduction, and emission-reducing fuel-switching program elements that are cost-effective, reliable, and feasible, including financing mechanisms;" that such Programs must "prioritize the use of energy audits to identify comprehensive energy efficiency measures that maximize cost-effective savings;" and that the EEAC must "recommend 3-year program portfolios and define associated savings targets for the consideration of each affected energy provider;"⁸ and

WHEREAS, unless otherwise provided in the Act, Delmarva (as an affected energy provider) must prepare and submit to the EEAC 3-year Program plans, schedules, and budgets designed to reflect the recommended Program portfolios, including the defined energy savings targets; and

WHEREAS, the EEAC must review the energy efficiency, peak demand reduction, and fuel switching Program plans for each

⁶ *Id.* §8059(h)(1)d.

⁷ *Id.* §8059(h)(1).

⁸ 29 *Del. C.* §8059(h)(1)b.

affected energy provider (such as Delmarva) on a 3-year cycle and recommend them for approval by the appropriate regulatory authority (i.e., in the case of Delmarva, this Commission) if it finds that they are "cost-effective through a net-cost-benefit analysis that quantifies expected cost savings when considered in their entirety" pursuant to regulations required by 29 Del. C. §8059(h)(3)⁹ and that they "must reduce overall utility bills;"¹⁰ and

WHEREAS, the Act also provides a process by which the Commission will review the Programs and portfolios recommended by the EEAC, including evaluating the projected net cost savings, in determining whether to approve the Programs for implementation by affected energy providers;¹¹ and

WHEREAS, this process requires the Commission to approve cost recovery for cost-effective energy savings resulting from cost-effective Programs and portfolios of affected energy providers that "are verified through procedures established in regulations promulgated pursuant to" 29 Del. C. §8059(h)(3) and "determined not to increase overall utility bills;"¹² and

WHEREAS, in addition, and assuming that the costs of the Programs have not been paid through the mechanisms described in 29 Del. C. §§8059(h)(1) and (h)(1)d., the Act provides that the recovery of appropriate costs for the Programs and portfolios must be "through a rate-recovery mechanism that is consistent

⁹ 29 Del. C. §8059(h)(1)c.

¹⁰ *Id.*

¹¹ 29 Del. C. §8059(h)(1)e.

¹² *Id.*

with the goals and objectives of" 29 Del. C. §8059 and must be recommended by the EEAC, filed by the affected energy providers, and approved by the Commission; and

WHEREAS, the Act states that for the portion of Programs not financed through SEU-secured private financing or Regional Greenhouse Gas Initiative allowance proceeds, or other SEU resources, the Commission must utilize a process that achieves the efficient and timely recovery on an annual basis by affected energy providers of appropriate costs and associated rates of return related to implementing activities and Programs recommended by the EEAC;¹³ and

WHEREAS, the Act also provides that for Commission-regulated affected energy providers (such as Delmarva), appropriate costs incurred arising out of activities and Programs recommended by the EEAC that are not subject to contemporaneous recovery must be subject to deferred accounting treatment to ensure that Program costs are less than expected savings;¹⁴ and

WHEREAS, the Act also provides that Program costs may not be placed in permanent rate base; and¹⁵

WHEREAS, Delmarva states that the Commission has previously approved the establishment of regulatory assets for deferred accounting treatment where Delmarva has been directed to incur costs for programs designed to benefit its customers;¹⁶ and

¹³ 29 Del. C. §8059(h)(1)e.1.

¹⁴ 29 Del. C. §8059(h)(1)e.2.

¹⁵ *Id.*

¹⁶ See PSC Order No. 7420 (September 16, 2008) in PSC Docket No. 0728(regulatory asset for advanced metering infrastructure); PSC Order No. 8105 (January 31, 2012) in PSC Docket No. 09-311 (regulatory asset

WHEREAS, by this filing, Delmarva seeks to obtain Commission approval to establish a regulatory asset to defer and track the costs arising out of the activities of the EEAC and EE Programs; and

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

1. We approve the establishment of a regulatory asset by Delmarva to defer and track costs incurred arising out of activities and Programs recommended by the EEAC pursuant to 29 *Del. C.* §8059(h)(1)e.2.

2. The amortization schedule should not exceed the expected life of the Program as approved by the Commission and respective Program costs may not exceed its amortization schedule.

3. The deferred asset shall accrue at the rate of return approved as reasonable by the Commission in Delmarva's most recent base rate case.

4. If Delmarva receives reimbursement for any costs deferred into the regulatory asset from another source, or receives revenues from other sources such as PJM, the Regional Greenhouse Gas Initiative, the Sustainable Energy Utility, or otherwise, the balance of the regulatory asset shall be reduced by the revenues or the amount reimbursed.

5. Delmarva shall track costs incurred, return on, and the regulatory asset accrued balance for each Program

for dynamic pricing); PSC Order No. 8253 (December 18, 2012) in PSC Docket No. 11-330 (regulatory asset for direct load control); and PSC Order No. 8556 (April 29, 2014) in PSC Docket No. 13-250 (regulatory asset for "bill transparency" modifications to Delmarva's billing system).

individually in order to meet the Act's requirement of implementing Programs that are cost-effective. For costs incurred that cannot be practicably assigned to an individual Program, such costs shall be allocated reasonably among all Programs.

6. The Commission's approval of the establishment of a regulatory asset shall not be interpreted to mean that the costs so deferred are appropriate or that recovery of and on any or all costs arising out of activities and Programs recommended by the EEAC have been approved or will be approved. In a future evidentiary proceeding, Delmarva will be required to obtain Commission approval for both actual recovery of and on all costs deferred into the regulatory asset and an appropriate recovery mechanism, pursuant to Delaware law, before such amounts may be reflected in customer rates. The parties to the future evidentiary proceeding may also propose that a different rate of return should be approved for recovery on costs arising out of activities and Programs recommended by the EEAC.

7. Delmarva is hereby notified that it will be charged the costs incurred in this proceeding by Staff and by DPA under the provisions of 26 Del. C. §114(b)(1). In order to meet the Act's requirement of implementing Programs that are cost-effective, when charging costs to Delmarva, Staff and DPA shall identify which costs were incurred in connection with each individual Program. For costs charged to Delmarva by Staff and DPA that cannot be practicably assigned to an individual

Program, Staff and DPA shall identify such costs as costs to be allocated reasonably by Delmarva across all Programs.

8. 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