



STATE OF DELAWARE

**PUBLIC SERVICE COMMISSION**  
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October 27, 2016

MEMORANDUM

TO: The Chair and Members of the Commission

FROM: Toni Loper, Public Utility Analyst 

SUBJECT: IN THE MATTER OF THE ADOPTION OF RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF 26 DEL. C. CH. 10 RELATING TO THE CREATION OF A COMPETITIVE MARKET FOR RETAIL ELECTRIC SUPPLY SERVICE (OPENED APRIL 27, 1999; RE-OPENED JANUARY 7, 2003; RE-OPENED SEPTEMBER 22, 2009; RE-OPENED SEPTEMBER 7, 2010; RE-OPENED JULY 17, 2012)

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**Background**

The Delaware Public Service Commission (“PSC” or the “Commission”) has promulgated certain regulations pertaining to the certification of electric suppliers entitled “Rules for Certification and Regulation of Electric Suppliers,” *See 26 Del. Admin. C. § 3001* (“Reg. Docket No. 49” or the “Supplier Rules”). By Order No. 8187 dated July 17, 2012, the Commission re-opened the Supplier Rules to consider further revisions to the existing Supplier Rules. In Order No. 8424 dated July 30, 2013, the Commission authorized publication in the *Delaware Register of Regulation* the proposed amendments to the Supplier Rules. The Commission received several comments on the proposed amendments.

On December 15, 2015, the Commission issued PSC Order No. 8830, which authorized the Commission Secretary to publish the proposed revisions to the Supplier Rules, which have been amended several times.<sup>1</sup>

On February 23, 2016, the Commission approved an adjournment to the scheduled hearing on this matter in order for the parties to further narrow controversial issues before bringing the matter back to the Commission for consideration.

On September 6, 2016, the Commission, in PSC Order No. 8937, required that the Division of the Public Advocate (“DPA”) and Retail Energy Supply Association (“RESA”) proposed Supplier Rules be published in the October 2016 *Delaware Register of Regulations*, as well as cause the Notice of Proposed Rulemaking to be published in The News Journal and the Delaware State News on or before November 16, 2016, with a published hearing date of November 1, 2016.

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<sup>1</sup> See PSC Order No. 538 (October 1, 1999), 7023 (September 5, 2006), 7078 (January 1, 2007), 7435 (September 2, 2008), and 7984 (June 7, 2011).

## **Agreement**

Staff, the DPA, RESA, and Delmarva Power & Light (“DPL”) met on October 18, 2016, after Staff’s proposed comments/changes were circulated to the parties and subsequently filed in DelaFile on October 20, 2016. The parties discussed all the outstanding issues in an attempt to resolve as many issues as possible prior to the November 1, 2016 Commission hearing. A subsequent tele-conference further narrowed the outstanding issues between the parties. Staff is pleased to report that only two (2) issues remain unresolved, which will be brought before the Commission at the November 1<sup>st</sup> hearing. The following is a summary of the negotiated and outstanding issues.

## **Resolved Issues**

The parties were able to come to an agreement on the following issues which have been incorporated into a revised redline version of the Supplier Rules:

- Section 2.2.3 Authorization – the parties agreed to the change of the word “or” in the requirement to “and”, this change requires that both the Certificate of Good Standing and a Delaware Business License will be necessary with the initial application;
- Section 2.2 Certification Requirement - service of the application on the Division of Public Advocate – this requirement has been eliminated, as the DPA can subscribe to receive notification of electric supplier applications in the Commissions electronic filing system, DelaFile;
- Section 2.2.19.3.4 Other Jurisdictions – language was added in 2.2.19.3.4 that addressed Staff’s concerns with this section;
- Dynamic Pricing Options – Staff has agreed to remove the hourly pricing language from the rules, additionally, language was added in to clarify that time-of-use rates were not precluded from being offered in Delaware;
- Introductory Price – Staff agrees to the DPA/RESA definition of Introductory Price;
- Section 2.3.5 Security Instruments – Staff has agreed to eliminate parental guarantees from the types of security instruments allowed to satisfy this section of the rules. DPA and RESA accepted the remaining proposed types of security instruments proposed by Staff in this section and have incorporated cash, cash equivalents, certificates of deposit, preferred stock proceeds, line of credit, loans, and other identifiable assets;
- Section 2.3.3.3 – a provision was also added to the proposed rules whereby Brokers may be required to secure a bond, if the Commission determines on a case-by-case basis it is necessary for a Broker to do so;
- Section 17.3 Revocation of Certification – this section has been revised to address Staff’s concern, proposed language was reworded and incorporated into section 17.2;
- Affirmative consent – Staff has agreed to remove the requirement for affirmative consent of contract renewals;
- 13.0 Green Power Products – Staff agrees with DPR/RESA proposed changes to this section;
- Sections 3.0 and 4.0 Implementation Dates and Waivers – language was added to these two (2) sections which sets forth implementation dates of Pre-enrollment Information and Customer Lists, and Accelerated Switching. Additionally, language was included which would allow the

Electric Distribution Company (“EDC”) to request a waiver from the Commission of the implementation dates, the parties are in agreement with this change;

- Section 4.0 Enrollments and Drops – the parties have agreed to the proposed changes in this section;
- Section 4.3 Accelerated Switching - Staff agrees that three (3) day switching has been incorporated into the proposed rules, Section 4.0 Enrollments and Drops, and is satisfied that a parenthetical reference in the section heading to that effect was added;
- Section 3.3.3 Customer Lists – the parties have agreed to the proposed changes which requires Electric Suppliers to implement safeguards to prevent the improper disclosure of customer information contained in customer lists provided by the EDC;
- Section 3.3.4 – the parties have agreed to the proposed language which would allow an Electric Supplier to disclose a Customer’s billing, payment, and credit information for the purpose of facilitating billing, bill collection and credit reporting;
- Section 10.10.1 Assignment of Contracts – the parties have agreed proposed changes which would require Electric Suppliers to provide written notice to customers, and others, on the assignment or transfer of a contract;
- And finally, the identified minor formatting errors have been corrected.

### **Remaining Issues**

The negotiations identified two (2) issues on which the parties could not reach a consensus. Staff notes that although Staff did not directly address the issue of customer lists in its filed comments, DPL identified this issue during the meeting on October 18, 2016, and Staff supports DPL’s position with regard to customer lists. The following are the outstanding issues that Staff has provided addressed in its filed comments and which the parties are prepared to present arguments on at the November 1, 2016 hearing:

- Section 6.2.2.7.1 – Rescission Period – The parties could not come to a consensus on this issue – three (3) business days versus seven (7) business days. Staff maintains the arguments set forth in its filed comments support the seven (7) day rescission period; and
- Section 3.0 – Customer Lists – Staff supports DPL’s position that participation in a customer list provided by the EDC to Suppliers should be an “opt-in” program, if a customer chooses to “opt-out” of a customer list they should remain on the opt-out list for the duration of time they are a customer of the EDC unless the customer contacts the EDC and requests to no longer be opted out of the Customer List. In addition, DPL has expressed concerns with proposed modifications to this Section requiring that the EDC provide additional proprietary customer information on the Customer List and how frequently the Customer List would need to be updated.

### **Staff Recommendation**

The agreement represents a collaborative effort that addresses the balancing of various goals of the parties to strengthen customer protections, incorporates market enhancements that will support shopping in Delaware, and attract additional third party suppliers to this market, and also addresses Staff’s goal of modifying the Supplier Rules to deal with issues that this Commission has indicated that

Staff should be considering during the certification process. Staff recommends that the proposed agreement and revisions to the Supplier Rules be adopted by the Commission.