



STATE OF DELAWARE
THE PUBLIC SERVICE COMMISSION
861 SILVER LAKE BOULEVARD, SUITE 100
CANNON BUILDING
DOVER, DELAWARE 19904

May 13, 2011

William O'Brien, Executive Director
Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, DE 19904

RE: PSC Docket No. 10-237 and 09-277T

Dear Mr. O'Brien:

Pursuant to Commission Order No. 7808 (July 22, 2010), I have conducted an evidentiary hearing on February 15, 2011 in the captioned docket and submit herewith the following:

- 1) An original of my Findings of fact, Conclusions of Law and Recommendations ("Report") of the Hearing Examiner for the Commission's consideration. This report includes:

Exhibit "A"- Proposed Settlement Agreement of the Parties dated February 9, 2011;

Exhibit "B"- Letter from Rep. John A. Kowalko dated February 9, 2011;

Exhibit "C"- Reply letter from Todd Goodman on behalf of Delmarva Power & Light dated February 16, 2011

Exhibit "D"- Proposed Form of Order for the Commission in PSC Docket No. 10-237 and 09-277T

- 2) An Exhibit Log, identifying Exhibits 1 through 39, which form part of the evidentiary record.

A current service list for this docket is also attached for your information.

Very truly yours,

A handwritten signature in cursive script that reads "Ruth Ann Price".

Ruth Ann Price,
Senior Hearing Examiner

Attachment (4)

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
DELMARVA POWER & LIGHT COMPANY) PSC DOCKET NO. 10-237
FOR A CHANGE IN NATURAL GAS BASE RATES)
(FILED JULY 2, 2010))

IN THE MATTER OF THE APPLICATION OF)
DELMARVA POWER & LIGHT COMPANY)
FOR APPROVAL OF A MODIFIED FIXED) PSC DOCKET NO. 09-277T
VARIABLE RATE DESIGN FOR NATURAL)
GAS CUSTOMERS (FILED JUNE 25, 2009))

FINDINGS of FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS
OF THE
HEARING EXAMINER

DATED: May 13, 2011

RUTH ANN PRICE
SENIOR HEARING EXAMINER

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HEARING EXAMINER

Ruth Ann Price, duly appointed Hearing Examiner in this Docket pursuant to *26 Del. C. §502* and *29 Del. C. ch. 101*, by Commission Order No. 7808, dated July 22, 2010 and Commission Order No. 7882 dated December 21, 2010, reports to the Commission as follows:

I. APPEARANCES

On behalf of the Applicant, Delmarva Power & Light Company
("Delmarva" or "the Company"):

By: TODD GOODMAN, Esq., Associate General Counsel

On behalf of the Public Service Commission Staff ("Staff"):

By: REGINA IORII, Esq., Deputy Attorney General

Janis Dillard, Deputy Executive Director

Susan Neidig, Regulatory Policy Administrator

Courtney Stewart, Public Utilities Analyst

On behalf of Joseph R. Biden, III, Attorney General of the State
of Delaware ("Attorney General"):

Lawrence W. Lewis, Esq., State Solicitor

KENT WALKER, Esq., Deputy Attorney General

On behalf of the Division of the Public Advocate ("DPA"):

By: KENT WALKER, Esq., Deputy Attorney General (up to and
including December 31, 2010)

G. Arthur Padmore, Public Advocate (up to and including
December 31, 2010)

Michael D. Sheehy, Public Advocate (as of and after April
23, 2011) and Deputy Director (up to and including April
22, 2011).

On behalf of State Representative, Intervenor, John A. Kowalko:

John A. Kowalko, Pro se.

II. BACKGROUND

A. THE APPLICATION

1. On July 2, 2010, Delmarva Power & Light Company ("Delmarva" or "the Company") filed with the Commission an Application, captioned as PSC Docket No. 10-237, seeking approval of: (a) an increase in its natural gas base rates; (b) a proposed revenue decoupling rate design, and (c) miscellaneous tariff changes. In its Application, Delmarva requested an increase in annual operating revenues of \$11,915,381, or 6.3% over total revenues.

2. On July 22, 2010, the Commission entered PSC Order No. 7808 suspending the proposed rates, except for temporary authorized interim

rates, and revised tariff sheets filed by the Company pending a final order in this proceeding. Further, the Commission granted Delmarva's request to implement interim rates intended to produce an annual increase of \$2.5 million in intrastate operating revenues effective on August 31, 2010, subject to proration and refund.

3. Prior to its gas base rate case filing, PSC Docket No. 10-237, Delmarva filed, on June 25, 2009, an application for approval of a modified fixed variable ("MFV") rate design for gas customers, which was denominated by the Commission as PSC Docket No. 09-277T. This filing was "intended to better levelize and stabilize recovery of delivery-related costs from all customer classes over the course of each year," to "eliminate the relationship between delivery revenue and the level of customer gas consumption," and to remove disincentives to promote conservation programs to better align the interests of customers, utilities, the environment and the State in the area of energy conservation (Application at 2). Delmarva contends that establishing a MFV rate design, which is a form of decoupling, for its natural gas distribution business is consistent with the goals of energy-related federal stimulus funding and demonstrates that the State of Delaware, the Commission, and the Company remain dedicated to achieving energy conservation.

4. On October 20, 2010, the parties to PSC Docket No. 09-277T submitted a proposed settlement agreement to the Hearing Examiner. Thereafter, on November 4, 2010, a meeting was held with the parties to discuss the path forward for this docket during which there was a discussion of consolidating PSC Docket No. 09-277T with

PSC Docket No. 10-237. At the meeting the Division of the Public Advocate, the Commission Staff and Delmarva agreed that for purposes of administrative efficiency the two dockets should be consolidated. At that juncture, the parties reasoned that the settlement reached in PSC Docket No. 09-277T would serve as the resolution of the rate design portion of Delmarva's gas base rate case, PSC Docket No. 10-237.

5. On December 14, 2010, Delmarva filed a Motion to Consolidate Docket No. 09-277T with PSC Docket No. 10-237. Finding that none of the parties opposed Delmarva's motion, the Commission entered PSC Order No 7882 on December 21, 2010 consolidating the two cases and expressly stating that the issues present in PSC Docket No. 09-277T should be considered in PSC Docket No. 10-237. PSC Order No.7882 at ¶2.

B. INTERVENORS

6. **State Representative, John A. Kowalko, Jr.** On August 23, 2010, State Representative, John A. Kowalko, Jr., filed a Petition to Intervene in this proceeding alleging that he personally is a natural gas customer of Delmarva's and that he is Chairman of the Delaware House of Representatives Energy Committee. Petition at ¶¶ 1, 2. Representative Kowalko stated that in his capacity as Chair of the Energy Committee he has held public hearings regarding natural gas and electricity rate increases as well as other pertinent matters before the Delaware Public Service Commission, such as decoupling, smart meters and pension fund replenishment. Representative Kowalko

asserted that these matters have potentially serious consequences for Delaware ratepayers, many of whom are his constituents. Petition at ¶ 2.

7. In addition, Representative Kowalko noted that for several years he has been actively involved with energy policy issues in this State and, particularly, matters of affordability of utility service for residential customers. Petition at ¶ 3. Representative Kowalko stated that "In [his] opinion, it is in the best interests of my constituents and all of the Delmarva customers in Delaware that their interests be better represented by someone who has been elected by them and whose only obligation is to their best interests." Petition at ¶ 4.

8. Representative Kowalko added that he was seeking intervention because he has "major concerns" that the requested rate increase may not be justified and that, if granted, the increase may not be affordable in the current economic climate. Petition at ¶ 5.

9. On August 24, 2010, by electronic mail, I asked the parties to notify me by letter or electronic mail no later than August 26, 2010 whether they intended to oppose Representative Kowalko's Petition. Anyone intending to oppose the Petition was given until Monday, August 30, 2010 to file an answer.

10. Delmarva Power & Light Company, Commission Staff and the Division of the Public Advocate responded, as requested, on August 26, 2010 by separate electronic mail messages advising me that there were no objections to Representative Kowalko's intervention in this matter.

On August 26, 2010, I entered PSC Order No. 7825 granting Representative Kowalko's petition for leave to intervene.

11. **Attorney General of the State of Delaware.** On January 24, 2011, the Attorney General of the State of Delaware ("Petitioner"), by and through his counsel, State Solicitor Lawrence W. Lewis and Deputy Attorney General Kent Walker¹, filed a Petition for Leave to Intervene Out-of-Time in this consolidated case. Petitioner noted that the position of the Public Advocate became vacant on December 31, 2010 with the retirement of G. Arthur Padmore, the Public Advocate until that date. Since Mr. Padmore's retirement no replacement had been nominated by the Governor or confirmed by the Senate, as required by 29 Del C. §8761(a). Petitioner contended that without his participation in this proceeding the interests of the public would not be represented.

12. Further, the Attorney General agreed that he would adopt all of the discovery, positions and the witness previously employed by the Public Advocate. Tr. 79.

13. Finding that there was no object to the Attorney General's intervention, that no party would be prejudiced by the late intervention and, most importantly, the interests of the public would be protected by his intervention, I granted the Petition on January 26, 2011.

¹ At the evidentiary hearing, Mr. Walker explained that as of January 1, 2011, he was asked by the Attorney General himself to represent him. Therefore, as of that date he did not represent the Office of the Attorney General or the Public Advocates in the office was vacant, but rather the Attorney General in his person. Tr. 79.

C. PUBLIC COMMENT SESSION

14. A duly noticed² public comment session was conducted at 7:00 p.m. on September 22, 2010 in the Auditorium of the Carvel State Office Building located at 820 North French Street in Wilmington, Delaware.³ The public notice for this session was advertised in the legal classified section of *The News Journal* newspaper on August 16 and August 26, 2010. In addition, the Commission received some thirty-nine (39) letters from the public, all of which urged the Commission to deny Delmarva's requested increase.

D. EVIDENTIARY HEARING

15. An evidentiary hearing⁴ was conducted on February 15, 2011, in the Third Floor Conference Room in the Carvel State Office Building in Wilmington.⁵ No members of the public attended the evidentiary hearing. The record, as developed at the hearing, consists of an eight-two (82) page verbatim transcript and thirty-nine (39) hearing exhibits.

² The Affidavit of Publication of Notice of the Public Comment Session and the Evidentiary Hearing are included in the record as composite Exhibit 1.

³ The public comment session was originally scheduled for October 27, 2009. Notice of cancellation for that date and rescheduling of the public comment session for November 17, 2009 was published in *The News Journal* on October 18, 2009 and in *The Delaware State News* newspapers on October 20, 2009.

⁴ Notice of the evidentiary hearings was published in *The News Journal* newspaper on January 14, 26 and February 5, 2011.

⁵ The evidentiary hearing was originally noticed for February 15 and 16, 2011. At the conclusion of the session on February 15, the session for the next day, February 16, was found to be unnecessary. Notice of its cancellation was published on the Commission's website and the Statewide Calendar on February 15, 2011.

16. At the February 15, 2011 evidentiary hearing, the parties, except for Intervenor, State Representative John Kowalko, jointly submitted a proposed Settlement Agreement ("Proposed Settlement"), which, if adopted by the Commission, would resolve all issues in this docket. See Exhibit "A" attached hereto; (Hrg Ex. 33). As there were no issues in dispute, post-hearing briefs were deemed unnecessary. I have considered all of the record evidence, including the Proposed Settlement and, based thereon, I submit for the Commission's consideration these Findings of Fact, Conclusions of Law and Recommendations.

III. SUMMARY OF THE EVIDENCE

A. COMPANY'S TESTIMONY

17. With its Application, Delmarva submitted the pre-filed testimony of W. Michael Von Steuben, J. Mack Wathen, Jay C. Zimsky, Joseph F. Janocha, George W. Potts, Ernest L. Jenkins, Jr., Timothy J. White, Frank J. Hanley, Kathleen A. White, Philip L. Phillips, Jr. and Elliott P. Tanos. At the evidentiary hearing, the Company presented the live testimony of W. Michael Von Steuben, Manager of Revenue Requirements and Regulatory Accounting. Tr. 53-77. Mr. Von Steuben noted that that for purposes of the evidentiary hearing he was adopting as his own the testimony of all of the Delmarva witnesses, Exhibits 1 through 32. Tr. 55.

18. Mr. Von Steuben stated that signatories to the Proposed Settlement were the Company, Commission Staff and the Attorney General

of the State of Delaware. He noted that State Representative Kowalko was not a signatory. Tr. 55-56.

19. Mr. Von Steuben highlighted the salient provisions of the settlement: (1) beginning with usage on or after April 1, 2011, with proration, rates will be modified to reflect a \$5.8 million dollar increase in total natural gas distribution base rate revenue and (2) the company would receive a ten (10%) percent return on equity. Tr. 56. Mr. Von Steuben noted that since the rates currently in effect were higher than the proposed settlement rates, ratepayers would receive a refund. *Id.* Mr. Steuben clarified that the Company had originally applied for an increase of \$11.9 million dollars, but that request had been revised in their rebuttal testimony to reflect an increase of \$10.2 million, which is the amount currently reflected in rates. The proposed settlement increase amount would be \$5.8 million.

20. Mr. Von Steuben explained that Delmarva originally filed its Application on July 2, 2010 based upon six months of actual accounting data and six months of forecasted data ending June 2010. Tr. 58. The accounting data as filed demonstrated a requested increase of \$11,915,000 increase based on a 10.75 percent return on equity. *Id.* The initial requested increase reflected the modified fixed variable decoupling mechanism that had been developed in workshops prior to this proceeding. Tr. 59.

21. Mr. Von Steuben testified that on August 31, 2010, that the Company placed into effect an interim increase of \$2.5 million, subject to refund. *Id.* Thereafter, on September 2, 2010, Delmarva filed supplemental testimony that updated the actual and forecasted

data that had been originally filed. The supplemental actual data reduced Delmarva's revenue requirements to \$11.6 million. *Id.*

22. The Company filed supplemental testimony on October 11, 2010 which Mr. Von Steuben represented removed the impact of AMI savings and costs associated with the first year of AMI. *Id.*

23. In his summary of the case, Mr. Von Steuben stated that on December 3, 2010, Delmarva filed its rebuttal testimony, which reduced its revenue requirement to \$10,163,000 or rounded to \$10.2 million. Tr. 60. Subsequently, the Company placed into effect the full amount of its requested revenue requirement of \$10.2 million. He noted that the amount placed into effect was the difference between the Company's rebuttal position of \$10.2 million minus the \$2.5 million that had already been placed into rates. *Id.*

24. Mr. Von Steuben related that during the course of this proceeding discovery was provided to Delmarva totaling some 560 discovery requests which generated 5,000 pages of responses provided to the parties. Tr. 59.

25. Mr. Von Steuben recommended that the Commission approve the proposed settlement because it balances the concerns of the various stakeholders, the customers and the needs of the Company to maintain safe and reliable service. Tr.61. He noted that the Company, Commission Staff and the Attorney General, all participated in settlement discussions and represented different stakeholder groups, each representing various interests, which cumulatively cared for the public interest. *Id.* In addition, he advanced the reason that the

public interest is served when the rates charged to customers recover the costs of providing services to those customers.

26. Mr. Von Steuben asserted that the rate increase is needed because Delmarva continues to make investments in the system to provide safe and reliable gas. Further, recovery of these costs is paramount to ensure the financial health of the gas business because the Company has invested a significant amount of capital in its delivery infrastructure. As an example of this investment, Mr. Von Stueben asserted that the major plant category, its distribution function, which delivers gas and makes up 80 percent of the Company's total gas plant, increased over \$62 million dollars since the company's last base case in 2006. Mr. Von Stueben maintained that the investment of \$62 million dollars of additional plant represents an increase of twenty-one percent (21%) in distribution plant since the company's last base case. Tr. 62.

27. Mr. Von Steuben also noted that the Company's Application requested a regulatory asset to account for significant pension losses due to the unprecedented drop in the market in 2008 caused by the recession. Tr. 63. However, the Company has abandoned its request for a regulatory asset and that the request for a regulatory was not made part of the settlement. Tr. 63, 69.

28. According to Mr. Von Steuben, the effect of the proposed settlement will, if approved, result in an increase that is slightly more than 2.8 percent for a typical residential customer as compared to that customer's winter bill a year 2009. Tr. 63-65.

29. Mr. Von Steuben clarified that the settlement agreed to by these same parties in PSC Docket No. 09-277T would not be presented at the evidentiary hearing or to the Commission for its consideration. Rather, the parties in this docket had entered into a new proposed settlement agreement (Ex. 33) that would, among other things, resolve the rate design issues that were part of the proposed settlement in PSC Docket No. 09-277T. Tr. 65. Understanding that decoupling is a controversial issue for customers, Mr. Von Steuben stated:

[D]ecoupling will not be implemented under the terms of this settlement. The settlement requires the participants to develop a comprehensive decoupling implementation plan. This includes additional workshops on all of the issues associated with decoupling rate design. Just as in the electric case, there will be an open intervention period for people who wish to become parties to the workshop process and provide their views or input into the process."

Tr. Tr. 66, LL 14-19.

30. Further, Mr. Von Steuben elaborated about the goals and design of the proposed workshops by stating that "[T]he ultimate purpose of the workshops is to develop a decoupling implementation plan that will be presented to the Commission for its consideration." Tr. 67, LL 13-15. Under the proposed settlement, the participants would have additional workshops on all of the issues associated with a decoupled rate design and the concerns of the public would be addressed and considered. Tr. 67. The process, including the workshops, would be consistent with the process approved by the Commission in Delmarva's electric case, PSC Docket No. 09-414, for electric customers.

B. THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

31. The Attorney General presented the testimony of Andrea C. Crane, President of The Columbia Group, Inc., a consulting firm, whose prefiled testimony was marked as Exhibit 34. Ms. Crane testified that her prefiled testimony addressed the revenue requirement and cost of capital issues in the case. Based upon expense and rate base adjustments, Ms. Crane, in her prefiled testimony, recommended a rate reduction for Delmarva of \$4.7 million. Tr. 81.

32. In addition, Ms. Crane recommended that the Commission deny Delmarva's request for a regulatory asset for its 2008 pension losses. As of the date of the evidentiary hearing, Ms. Crane believed that the Company removed this request from consideration. However, she explained that although the proposed settlement agreement uses the term "2008 pension losses" it is the same expense as addressed in her testimony as the "2009 pension expense." Tr. 82. Ms. Crane noted that it was the losses incurred by the pension fund in 2008 that resulted in Delmarva having a higher than projected pension expense in 2009. *Id.*

33. Ms. Crane testified that after her review of all of the issues pertinent to the case, and her review of the proposed settlement agreement, she believed that the proposed settlement was just and reasonable and in the public interest. Tr. 82-83. Consequently, she recommended that the Commission adopt the settlement. Tr. 83.

34. Ms. Crane stated that in order to review the settlement, she looked at the recommendations in her prefiled testimony. In order

to test the reasonableness of the return on equity proposal, she reran her schedule using the proposed return on equity (10%) which resulted in an increase from a negative \$4.7 million to about zero. Tr. 83. Ms. Crane noted additionally that she had recommended a return on equity, without decoupling, of 9.07 percent. Tr. 85. The revised return on equity calculation was therefore worth approximately \$4.7 million. Tr. 83.

35. Further, Ms. Crane observed that the proposed settlement return on equity yields an increase of approximately fifty-seven percent(57%) of the Company's rebuttal claim, which she believed is either equal to or possibility below the range that the Commission could have determined was reasonable for Delmarva if this case were to have been fully litigated. Tr. 83-84.

36. Ms. Crane concluded that for those reasons and the savings in litigation costs derived in the settlement, she believed the proposed settlement to be in the public interest. Tr. 84.

C. STAFF'S TESTIMONY

37. Susan Neidig, a senior regulatory policy administrator, testified at the evidentiary hearing on behalf of Staff. At the hearing, she adopted as her own the prefiled testimonies of Ralph C. Smith, James A. Rothschild and Howard Solganick. Tr. 87-89.

38. Ms. Neidig summarized the pertinent issues of the settlement: The Company's total revenue requirement will be increased by \$5.8 million dollars as compared to the original request for \$11.9 million dollars and adjusted to approximately \$10.1 million in the rebuttal testimony. Tr. 90. The revenue requirement increase in the

proposed settlement of \$5.8 million represents approximately 3.09 percent of the Company's total gas revenues. *Id.*

39. Ms. Neidig noted that the agreed upon proposed return on equity of ten percent (10%) produces an overall rate of return of 7.56 percent. *Id.* The parties intend that the proposed rate increase will be applied across the board among all customer classes becoming effective on April 1, 2011. Further, since the rates agreed to in the proposed settlement are lower than the rates that the Company currently has in effect, pursuant to statute, as of February 2, 2011, customers will receive a refund including interest. *Id.*

40. Ms. Neidig noted that the proposed settlement is a "black box", meaning that no specific amounts were attributed to any specific rate base or expense item. Tr. 90-91. Ms. Neidig noted that the proposed settlement does contain an express provision that none of the proposed rate increase will be used to reimburse the company for the pension losses incurred in 2008 for which the Company had requested permission to create a regulatory asset. *Id.*

41. Further, Ms. Neidig stated that the proposed settlement contains the parties' agreement to a 15-year amortization period for AMI related costs of \$1.057 million dollars through August of 2010. Tr. 91. The amortized portion of this amount will be included in rate base. Tr. 91. Ms Neidig testified that with regard to the decoupling workshops referred to in the settlement agreement, she would agree with the process as described by Company Witness Von Steuben and support it. Tr. 92. Ms. Neidig related that Staff is looking forward to participation in a collaborative process with the parties and any

potential intervenors in considering any comments or concerns that need to be addressed. Tr.91-92.

42. Ms. Neidig emphasized that "[I]f the Commission approves this proposed settlement, it is not approving a revenue decoupling rate design for implementation at this point." Tr. 92. The parties would develop a plan that would be presented to the Commission. Further, Ms. Neidig opined, "There is no guarantee the Commission will implement any form of revenue decoupling at this time." Tr. 92. Additionally, Ms. Neidig noted that the workshops would be open to persons who are not parties to PSC Docket No. 10-237. She observed that while the proposed settlement agreement does provide parameters around workshops and scheduling, there is not a deadline for completion of the workshops. Tr. 92.

43. Ms. Neidig stated that she believed the proposed settlement was in the public interest and resulted in just and reasonable rates. Tr. 92. Further, Staff supports the settlement because the revenue decoupling part of the settlement requires public education meetings before any decoupling plan is presented to the Commission. Tr.93.

44. Regarding the revenue requirement portion of the settlement, Ms. Neidig testified that Staff is aware of Section 512 of the Public Utilities Act which encourages parties to resolve matters through settlement or stipulation. Tr. 93. Further, Staff typically supports settlements when they will avoid substantial, further administrative hearings and the associated costs, and "when they yield a reasonable outcome in light of Staff's filed position." Tr. 94. Ms. Neidig asserted that in this case, Staff had been guided by the

Commission's recent deliberations in the electric distribution base rate case. PSC Docket No. 10-237. She reflected that although a final order has not been entered in that case, the Commission did deliberate and decide on many of the same issues that are the instant case. Tr. 94. Staff does not believe that the Commission would rule any differently on those matters than it did in the electric distribution rate case.

45. Moreover, settling PSC Docket No. 10-237 will enable the parties to avoid significant hearing costs. Staff and the other parties and their consultants do not need to appear at the hearing, which results in significant cost savings and the time saved can be used to attend to other matters. Tr. 94-95. Staff also believes the settlement results in a reasonable outcome in light of Staff's filed position and in light of the Commission's recent determination of the same issues in the electric case.

III. OBJECTION OF STATE SENATOR JOHN A. KOWALKO, Jr.

46. In a letter to me dated February 9, 2010 (Ex. 38), which is attached hereto as Exhibit "B", State Representative John K. Kowalko, Jr. made the following points:

- a. He reiterated his objection to the establishment of a decoupling rate design as a result of this case or in the future.
- b. Representative Kowalko rejected any proposed increase in Delmarva's gas base rate case. Ex. 38. Basically, Representative Kowalko argues that decoupling is

unnecessary because Delmarva has in place a mechanism (i.e. filing a base rate case) for recovery of any reasonable expenses incurred since rates were established in its last base rate case.

- c. Representative Kowalko objects to Delmarva's proposal to recover pension costs.

47. At the evidentiary hearing, State Representative Kowalko made a passionate objection to implementation of a decoupling mechanism. He stated that he believed that the Proposed Settlement Agreement should not mention the term because its use could be construed to conclude that the Commission had approved implementation of decoupling (modified fixed variable rate design). Tr. 101. State Representative Kowalko stated that decoupling had not been proven, that it was a relatively new program and that it has taken various forms throughout the country. Tr. 102. Therefore, State Representative Kowalko opined that it was premature to move forward with decoupling. He stated that this jurisdiction had not had time to study decoupling mechanisms. *Id.* He contended that the proposed settlement would restrict the type of dialogue or consideration needed to analyze the issues attendant in a decoupling mechanism. Tr. 102. However, State Representative Kowalko stated that he was prepared to participate any workshops that the Commission may order to the extent that his time demands allowed him to do so. Tr. 106. State Representative Kowalko's primary contention voiced at the evidentiary hearing was that this Commission should revisit the establishment of a decoupling mechanism. Tr. 110.

48. At the conclusion of the evidentiary hearing in this case, I permitted the Commission to file a response to State Representative Kowalko's position statement, which is attached hereto as Exhibit "B". The Company's reply was forwarded to me on February 16, 2011 by its counsel Todd L. Goodman, Esquire in which Mr. Goodman refutes point-by-point the statements made by Representative Kowalko⁶. See Exhibit "C" attached hereto. I have reviewed the Company's reply and carefully considered and securitized its statements.

IV. DISCUSSION

46. Each of the parties who have engaged in a extensive and in-depth analysis of the Company's Application and who have retained consultants to conduct their own studies of the proposals and data submitted by Delmarva agree that the Proposed Settlement Agreement is just and reasonable and in the public interest.

47. As discussed by the witnesses, the Proposed Settlement is based upon a ten percent (10%) return on equity (as opposed to the 10.75% requested by the Company), which will produce a rate increase of \$5.8 million. The resulting increase is less than half the requested increase in the Application as originally filed.

48. In addition, the Company has abandoned its request for establishment of a regulatory asset for its 2008 pension losses.

⁶ Although I did not expressly ask the parties if they had objections to the admission Delmarva's reply dated February 16, 2011, I note that I did tell the parties at the hearing that I was inclined to reserve exhibit no. 39 for the letter. Tr. 124. The parties have had both Representative Kowalko's and Mr. Goodman's correspondence on this issue since on or about February 16, 2011. I have received no objection from any party raising an objection to Mr. Goodman's letter. I do think it is an important document insofar as it provides a succinct refutation of Representative Kowalko's objections to the Proposed Settlement. Therefore, I will admit the letter authored by Todd L. Goodman, Esquire to me dated February 16, 2011 in evidence as Exhibit No. 39.

49. The Proposed Settlement does not propose the implementation of a decoupled rate design at this time. Rather, the parties, and those who apply for intervention will discuss and debate the issues in workshops to be convened after the final order in this case. These workshops will refine the details for a decoupled rate design.

50. While Representative Kowalko has vigorously stated his objection to the Proposed Settlement as it relates to even the remote possibility of a decoupled rate design. It is this hearing examiner's understanding that the Commission in Regulation Docket No. 51 has determined that such a rate design is in the public interest. However, it is my understanding, the Commission has not yet decided how such a decoupling rate design should look, which is the issue to be determined in the workshops that the parties will convene at the conclusion of this docket. Representative Kowalko opposes the Proposed Settlement, in part, because he objects to the mere mention of the term "decoupling" and refuses to lend his signature to any document that contains the word. I surmise from his objection that he would only be satisfied if the Commission completely abandoned the notion of implementing a decoupled rate design in its entirety. Since this is not my understanding of the Commission's current position on the subject of the decoupling, I find no basis for recommending State Representative Kowalko's position to the Commission based upon the record in this docket. Nevertheless, in the future, the Commission has the right, power and privilege of expressly rejecting a decoupling rate design provided it finds that such a rate design is not in the

public interests because it would not produce fair and reasonable rates or terms of service.

51. The evidence of record has convincingly established that the settling parties in the proceeding have engaged in a thoughtful, meaningful and thorough examination of the issues in this proceeding which has resulted in a proposed settlement that produces just and reasonable rates and serves the public interests. I am mindful that 26 Del. C. Section 521 provides that "[t]he Commission may upon hearing approve the resolution of matters brought before it by stipulations or settlements *whether or not* such stipulations or settlements are agreed to or approved by all parties where the Commission finds such resolutions to be in the public interest." Italics added. In this case, I do not find the objections of State Senator Kowalko sustainable on this record where the Commission has expressly ordered the parties to investigate a decoupling mechanism as provided in PSC Regulation Docket 51.

V. RECOMMENDATIONS

52. In summary, and for the reasons discussed above, I propose and recommend to the Commission the following:

a. That the Commission approve as just and reasonable and in the public interest the Proposed Settlement Agreement of the parties, which is Exhibit "A" to the attached proposed Order. The Company, Staff and Attorney General have approved and endorsed this Settlement. A proposed form of Order, which will implement the

foregoing Findings and Recommendations, is attached hereto as Exhibit "D".

Respectfully Submitted,

A handwritten signature in cursive script that reads "Ruth Ann Price".

Ruth Ann Price
Senior Hearing Examiner

Dated: May 13, 2011

EXHIBIT

A

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF DELMARVA POWER & LIGHT COMPANY FOR AN CHANGE IN NATURAL GAS BASE RATES (FILED JULY 2, 2010))))))	PSC DOCKET NO. 10-237
IN THE MATTER OF THE APPLICATION OF DELMARVA POWER & LIGHT COMPANY FOR APPROVAL OF A MODIFIED FIXED VARIABLE RATE DESIGN FOR NATURAL GAS RATES (FILED JUNE 25, 2009))))))	PSC DOCKET NO. 09-277T

PROPOSED SETTLEMENT

On this day, February 9, 2011, Delmarva Power & Light Company ("Delmarva" or the "Company"), the Delaware Public Service Commission Staff (the "Staff"), and the Attorney General (together, the "Parties" or "Settling Parties") hereby propose a complete settlement of all issues that were raised or could have been raised in this proceeding and to establish final rates as follows.

I. INTRODUCTION AND PROCEDURAL BACKGROUND

On July 2, 2010, Delmarva filed with the Delaware Public Service Commission (the "Commission") an application (the "Rate Application") seeking approval of: (a) an increase of \$11,915,381, or 6.3% over total revenues in its natural gas base rates; (b) a proposed revenue decoupling rate design; and (c) miscellaneous tariff changes. The application was accompanied by various schedules, tables, and data required by the Commission's minimum filing requirements and the pre-filed testimony of several witnesses.

Pursuant to its authority under 26 *Del. C.* §306(a)(1), the Commission reviewed the Rate Application and determined in PSC Order No. 7808 (July 22, 2010) that the proposed rate and tariff changes should be suspended pending full and complete evidentiary hearings into their justness and reasonableness. The Commission also granted the Company's request made pursuant to 26 *Del. C.* §306(c) permitting interim rates intended to produce an annual increase in intrastate operating revenues of \$2.5 million to be placed into effect on August 31, 2010, with proration and subject to refund.

Pursuant to the procedural schedule established by the Hearing Examiner, the Parties engaged in discovery with respect to the application and accompanying testimony and other material filed with the Application. On October 25 and 28, 2010, Staff and DPA each submitted testimony. Delmarva filed rebuttal testimony on December 3, 2010. The Parties engaged in substantial discovery with respect to their respective testimony.

On June 25, 2009, Delmarva filed an application seeking approval of a modified fixed-variable ("MFV") revenue-decoupled rate design for its gas distribution business for implementation in its next gas distribution rate case, which application was docketed as Docket No. 09-277T. By Order No. 7882 dated December 21, 2010, the Commission consolidated Docket Nos. 10-237 and 09-277T.

On December 31, 2010, the Public Advocate retired. Because of the vacancy in that office, the Attorney General moved for leave to intervene out of time. Hearing Examiner Price granted the Attorney General's motion on January 26, 2011.

On January 19, 2011, Delmarva submitted an Application in these Dockets with proposed tariff sheets (the "Interim Application") seeking to implement, subject to refund, under bond, the remainder of the full amount of its proposed gas delivery rates

based upon its rebuttal position, as permitted by 26 *Del. C.* §306.¹ The Commission approved this request by Commission Order No. 7904 dated January 27, 2011. Rates went into effect on February 2, 2011.

On January 18, 2011, the Commission met in Docket Nos. 09-414/09-276T, the Company's electric distribution rate case proceeding, to deliberate and decide many of the same issues raised in this docket. A minute order, Order No. 7897, was approved on January 18, 2011 and amended on January 27, 2011 by Order No. 7903.

The Parties desire to avoid the substantial cost which would be incurred if the case were to proceed to evidentiary hearings; and the Parties have conferred in an effort to resolve the issues raised in this proceeding, specifically referring to the Commission's recent decision in Docket Nos. 09-414/09-276T.

As such, it is acknowledged that the Parties differ as to the proper resolution of many of the underlying issues in the rate proceeding and are preserving their rights to raise those issues in future proceedings; however, the Parties believe that settlement of the pending rate proceeding on the terms and conditions contained herein will serve the interest of the public as well as meet the statutory requirement that rates be both just and reasonable.

II. SETTLEMENT PROVISIONS

IT IS HEREBY STIPULATED AND AGREED by Delmarva, Staff, and the Attorney General that the Parties will submit to the Commission for its approval the following terms and conditions for resolution of this rate proceeding, which are consistent with the Commission's decisions in Docket Nos. 09-414/09-276T:

¹ On December 3, 2010, Delmarva filed rebuttal testimony in which it reduced the amount of its requested increase from \$11,915,381 to \$10,163,325. The Interim Application requested implementation of this

A. Rates and Charges.

1. The total gas base rate revenue increase should be \$5.8 million, or approximately 3.09% of total gas revenues.

2. The Parties have agreed to an across-the-board distribution of the base rate revenue changes among all classes of customers as shown in Exhibit 1.

3. The cost of equity for the gas business shall be 10.0%. This produces a return on rate base of 7.56 %.

4. The rates approved for service on and after April 1, 2011, shall be as set forth in the tariff leafs attached as Exhibit 2.

5. Since the rates agreed to in this settlement are lower than the existing gas distribution rates placed into effect on February 2, 2011, customers are entitled to a refund from the date Delmarva's full requested rate increase was placed in effect, with interest on the deferred amounts as calculated in accordance with Regulation Docket No. 11.

B. Modified Fixed Variable Rate Design

1. The Parties agree that Docket 09-277T should remain open solely for the purposes of conducting the modified fixed variable ("MFV") rate design workshops and future Commission determination on the implementation of the MFV rate design. Senior Hearing Examiner Price shall remain as Hearing Examiner to rule on petitions to intervene and for such other actions as may be necessary.

2. The parties agree that prior to implementation of an MFV rate design, an implementation plan will be developed, through workshops outlined below. The implementation plan shall articulate the consumer benefits from the proposed

reduced amount.

MFV rate design and describe the integrated programs that will be initiated to maximize energy conservation and reduce customer costs. Within 30 days of a final order in this consolidated docket, the Parties will schedule a date for the first of several workshops designed to develop a proposed comprehensive plan for the implementation of the MFV rate design. While these workshops will not be public comment sessions, the Parties agree that the workshops shall be open to the participation of persons and entities other than the Parties to this consolidated docket. At least 35 days prior to the date of the first workshop, Delmarva shall cause to be published for two consecutive days, in the *Delaware News Journal* and the *Delaware State News*, a notice to customers of Delmarva that customers may, within 15 calendar days of the second notice, file a petition for leave to intervene in the workshops pursuant to Rule 21 of the Commission's Rules of Practice and Procedure. Participation in such workshops shall be for the purpose of constructively participating in the development of the proposed implementation plan for the MFV rate design.

3. The Parties agree that the plan for implementation of the MFV rate design to be proposed will include, but will not be limited to:

a. a strategy for educating Delmarva's customers on issues concerning the MFV rate design, including, but not limited to:

- (1) The purposes of the MFV rate design,
- (2) How the MFV rate design will affect customer bills,
- (3) Explanation of impacts on existing low energy use customers and efforts to mitigate such impacts,

(4) Programs/mechanisms designed to save customers money through energy conservation, including explanations of how customers can use the programs/mechanisms to manage energy costs,

(5) How customers can learn more about the MFV rate design and both current and future money saving programs.

b. the programs and mechanisms that Delmarva will make available to help consumers save money under the MFV rate design, including timeframes for implementation.

c. any proposed modifications to the existing MFV rate design,

d. a proposed date for the implementation of MFV rates.

4. Once a proposed plan for the implementation of the MFV rate design has been completed, the Parties shall present the proposed plan to the Commission for its consideration.

5. The parties agree that the Company may defer costs associated with decoupling education and workshops, and the ratemaking treatment associated with those costs shall be addressed in the Company's next base rate case; provided, however, the Parties do not waive their right to challenge such costs.

6. The workshops and procedures set forth in this Part B with respect to development of a MFV implementation plan shall, whenever practicable, be conducted jointly (though separately docketed) with the electric MFV implementation workshops agreed to in the Settlement Agreement dated January 18, 2011 in Docket No. 09-276T.

C. Miscellaneous Issues.

1. The Settling Parties agree to an amortization period of 15 years with the unamortized balance included as a rate base item for the Advanced Metering Infrastructure costs of \$1,057,530 accumulated through August 2010. Additional costs associated with Advanced Metering Infrastructure accumulated after August 2010 will be reviewed in the context of future proceedings.

2. No portion of the gas distribution revenue increase proposed herein shall be used to reimburse Delmarva for the 2008 pension losses for which it requested creation of a regulatory asset.

D. Additional Provisions

1. The provisions of this settlement are not severable.

2. This Settlement is the product of extensive negotiations and reflects a mutual balancing of various issues and positions. This Settlement represents a compromise for the purposes of settlement and shall not be regarded as a precedent with respect to any ratemaking or any other principle in any future case. No Party to this settlement necessarily agrees or disagrees with the treatment of any particular item, any procedure followed, or the resolution of any particular issue in agreeing to this settlement other than as specified herein, except that the Parties agree that the resolution of the issues herein taken as a whole results in just and reasonable rates and that the non-rate tariff changes are reasonable and in the public interest.

3. This Settlement pertains only to Dockets 10-237 and 09-277T and to none others. To the extent opinions or views were expressed or issues were raised in the pre-

filed testimony that are not specifically addressed in the Settlement, no findings, recommendations, or positions with respect to such opinions, views or issues should be implied or inferred. This Settlement shall not set any precedents, shall not have issue or claim preclusion effect in any pending or future proceeding, and no party shall be prohibited from arguing a different policy or position before the Commission or the courts in any pending or future proceeding. The purpose of this Settlement is to provide just and reasonable rates for the customers of Delmarva.

IN WITNESS WHEREOF, intending to bind themselves and their successors and assigns, the undersigned Parties have caused this Proposed Settlement to be signed by their duly-authorized representatives.

DELMARVA POWER & LIGHT COMPANY

By: *[Signature]*
Title *Associate General Counsel*

DELAWARE PUBLIC SERVICE COMMISSION STAFF

By: *[Signature]*
Title *Deputy Director*

ATTORNEY GENERAL OF THE STATE OF DELAWARE

By: *[Signature]*
Title *Deputy Attorney General*

Settlement Exhibit 1

Delmarva Power & Light Company - Delaware
 Development of Full Interim Gas Delivery Rates
 General Gas (GG) Service Rate Design
 General Volume Firm Transportation (GVFT) Service

Total	\$	18,703,547
Customer GG	\$	3,347,818
Customer GVFT	\$	134,184

Rate Element	Test Year Billing Determinants	Existing Rate	Existing Revenue	Test Year Billing Determinants	Proposed Rate	Proposed Revenue
Customer Charge (\$ per month)						
GG	112,681	\$ 27.31	\$ 3,077,318	112,681	\$ 29.71	\$ 3,347,818
GVFT	408	\$ 302.31	\$ 123,342	408	\$ 328.88	\$ 134,184
						\$ 3,482,003
First 750 CCF Commodity Rate	20,819,001	\$ 0.34975	\$ 7,281,446	20,819,001	\$ 0.38049	\$ 7,921,484
Over 750 CCF Commodity Rate	25,685,033	\$ 0.26125	\$ 6,710,215	25,685,033	\$ 0.28421	\$ 7,300,046
Total			\$ 17,192,321			\$ 18,703,533

Delmarva Power & Light Company - Delaware
 Development of Full Interim Gas Delivery Rates
 Medium Volume Gas (MVG) Service Rate Design
 Medium Volume Firm Transportation (MVFT) Service

Total \$ 3,171,831

Rate Element	Test Year Billing Determinants	Existing Rate	Existing Revenue	Test Year Proposed Rate	Proposed Revenue
MVG					
Customer Charge (\$ per month)	339	\$ 419.27	\$ 142,133	\$ 456.12	\$ 154,626
Demand MDQ MCF Rate	54,480	\$ 13.39	\$ 729,487	\$ 14.57	\$ 793,610
Commodity MCF Rate	383,496	\$ 0.42979	\$ 164,823	\$ 0.46757	\$ 179,311
			<u>\$ 1,036,442</u>		<u>\$ 1,127,547</u>
MVFT					
Customer Charge (\$ per month)	390	\$ 694.27	\$ 270,765	\$ 755.30	\$ 294,566
Demand MDQ MCF Rate	84,276	\$ 13.39	\$ 1,128,456	\$ 14.57	\$ 1,227,648
Commodity MCF Rate	1,116,561	\$ 0.42979	\$ 479,887	\$ 0.46757	\$ 522,069
			<u>\$ 1,879,108</u>		<u>\$ 2,044,284</u>
Total			<u>\$ 2,915,550</u>		<u>\$ 3,171,831</u>

Delmarva Power & Light Company - Delaware
 Development of Full Interim Gas Delivery Rates
 Large Volume Gas (LVG) Service Rate Design
 Large Volume Firm Transportation (LVFT) Service

Total \$ 3,126,023

Rate Element	Test Year Billing Determinants	Existing Rate	Existing Revenue	Test Year Proposed Rate	Proposed Revenue
LVG					
Customer Charge (\$ per month)	24	\$ 634.58	\$ 15,230	\$ 690.36	\$ 16,569
Demand MDQ MCF Rate	6,972	\$ 8.24721	\$ 57,500	\$ 8.97	\$ 62,554
Commodity MCF Rate	165,787	\$ 0.10339	\$ 17,141	\$ 0.11248	\$ 18,647
			<u>\$ 89,870</u>		<u>\$ 97,770</u>
LVFT					
Customer Charge (\$ per month)	144	\$ 909.58	\$ 130,980	\$ 989.53	\$ 142,493
Demand MDQ MCF Rate	270,492	\$ 8.24721	\$ 2,230,804	\$ 8.97	\$ 2,426,895
Commodity MCF Rate	4,079,601	\$ 0.10339	\$ 421,790	\$ 0.11248	\$ 458,866
			<u>\$ 2,783,574</u>		<u>\$ 3,028,253</u>
Total			<u>\$ 2,873,444</u>		<u>\$ 3,126,023</u>

Delmarva Power & Light Company - Delaware
 Development of Full Interim Gas Delivery Rates
 Gas Lighting Sales Service (GL) Rate Design

Total \$ 773

Rate Element	Test Year Billing Determinants	Existing Rate	Existing Revenue	Test Year Proposed Rate	Proposed Revenue
Customer Charge (\$ per month)	120 \$	5.92 \$	710	6.44 \$	773
Total			<u>\$ 710</u>		<u>\$ 773</u>

Settlement Exhibit 2

Delmarva Power & Light Company
P.S.C. Del. No. 5 - Gas

RATES AND CHARGES
CORE SALES RATE LEAF

<u>SERVICE CLASSIFICATION</u>	<u>BASE RATE</u>	<u>BASIS</u>
<u>Residential Gas Sales Service ("RG")</u>		
Customer Charge	\$10.40	per month
Commodity Charge	\$0.45802	per CCF
Space Heating Commodity Charge 1/ Over 50 CCF	\$0.36754	per CCF
Environmental Surcharge Rider	\$0.00100	per CCF
Gas Cost Rate (GCR)	\$0.94042	per CCF
<u>General Gas Sales Service ("GG")</u>		
Customer Charge	\$29.71	per month
Commodity Charge		
First 750 CCF	\$0.38049	per CCF
Over 750 CCF	\$0.28421	per CCF
Environmental Surcharge Rider	\$0.00100	per CCF
Gas Cost Rate (GCR)	\$0.94042	per CCF
<u>Gas Lighting Sales Service ("GL")</u>		
(Estimated Usage - 15 CCF per month)		
Monthly Charge	\$ 6.44	per gas light
Gas Cost Rate (GCR)	\$14.11	per gas light
<u>Medium Volume Gas Sales Service ("MVG")</u>		
Customer Charge	\$456.12	per month
Demand Charge	\$ 14.57	per MCF of Billing MDQ
Commodity Charge 2/	\$0.46757	per MCF
Environmental Surcharge Rider	\$0.01001	per MCF
Gas Cost Rate (GCR) Demand Charge	\$12.0266	per MCF of Billing MDQ
Gas Cost Rate (GCR) Commodity Charge 2/	\$7.5811	per MCF
<u>Large Volume Gas Sales Service ("LVG")</u>		
Customer Charge	\$690.36	per month
Demand Charge	\$8.97	per MCF of Billing MDQ
Commodity Charge 2/	\$0.11248	per MCF
Environmental Surcharge Rider	\$0.01001	per MCF
Gas Cost Rate (GCR) Demand Charge	\$12.0266	per MCF of Billing MDQ
Gas Cost Rate (GCR) Commodity Charge 2/	Varies	per MCF

Public Utilities Tax: 5.00% Applies to all non-residential services, including the GCR, unless pursuant to Title 30 Chapter 55, the Customer is eligible for a different tax rate or is exempt from such tax.

City of Wilmington Local Franchise Tax: 2% Charged on all non-exempt services, in the City of Wilmington, including the GCR.

1/ Gas used by Customers with permanently installed gas-fired space heating equipment qualifies for the space heating commodity rate for all gas used in excess of 50 ccf for the billing months of October through May, inclusive.

2/ All LVG and "Electing" MVG Customers pay a monthly Commodity Charge GCR based upon the system Weighted Average Commodity Cost of Gas ("System WACCOG"). "Non-Electing" MVG Customers pay the annual GCR Commodity Charge listed here.

Order No.
Docket Nos.

Filed: February 4, 2011
Effective with Usage On and After April 1, 2011

Proposed

RATES AND CHARGES

CORE TRANSPORTATION RATE LEAF

<u>SERVICE CLASSIFICATION</u>	<u>BASE RATE</u>	<u>BASIS</u>
<u>General Volume Firm Transportation Service ("GVFT")</u>		
Customer Charge	\$328.88	per month
Delivery Charge		
First 750 CCF	\$0.38049	per CCF Redelivered
Over 750 CCF	\$0.28421	per CCF Redelivered
Balancing Fee Non-Base Rate	\$0.03737	per CCF of Imbalance Volumes
Environmental Surcharge Rider	\$0.00100	per CCF
<u>Medium Volume Firm Transportation Service ("MVFT")</u>		
Customer Charge	\$755.30	per month
Demand Charge	\$ 14.57	per MCF of Billing MDQ
Delivery Charge	\$ 0.46757	per MCF Redelivered
Balancing Fee Non-Base Rate	\$ 0.3737	per MCF of Imbalance Volumes
Environmental Surcharge Rider	\$ 0.01001	per MCF
<u>Large Volume Firm Transportation Service ("LVFT")</u>		
Customer Charge	\$989.53	per month
Demand Charge	\$ 8.97	per MCF of Billing MDQ
Delivery Charge	\$ 0.11248	per MCF Redelivered
Balancing Fee Non-Base Rate	\$ 0.3737	per MCF of Imbalance Volumes
Environmental Surcharge Rider	\$ 0.01001	per MCF
<u>Standby Service ("SBS")</u>		
Demand Charge Non-Base Rate	\$12.0266	per MCF of Standby MDQ
Commodity Charge		Monthly System WACCOG per MCF (adjusted for losses and unaccounted for)

Public Utilities Tax: 5.00% Applies to all non-residential services, including the GCR, unless pursuant to Title30 Chapter 55, the Customer is eligible for a different tax rate or is exempt from such tax.

City of Wilmington Local Franchise Tax: 2.00% Charged on all non-exempt Services, in the City of Wilmington, including the GC.

Order No.
Docket Nos.

Filed: February 4, 2011
Effective with Usage On and After April 1, 2011

Proposed

Exhibit B

SUMMARY OF PROPOSED SETTLEMENT

Proposed Rates

a. Beginning with usage on and after April 1, 2011 (with proration), rates will be modified to reflect: (1) a \$5.8 million increase in total natural gas distribution base rate revenue and (2) a return on equity of 10.0 percent.

- This proposed increase represents an increase in total revenues of approximately 3.09 percent.
- The new rates shall be developed using the existing rate design service classifications. These will not be decoupled MFV rates.

b. Because the provisional rates placed in effect on February 2, 2011 are higher than the rates sought through the proposed Settlement Agreement, all Residential Delmarva customers will see a reduction in their total current bill of approximately 2.2% if the proposed Settlement Agreement is approved.¹

Rate Refund to Customers

a. All Delmarva natural gas customers will receive an additional refund in the form of bill credits for amounts charged to customers for usage between the period that the February 2, Provisional Rate Increase became effective and the new lower rates requested in this Settlement become effective (April 1, 2011).

b. Delmarva will provide the Commission with a report that describes the refunds, including the amount of such refunds, the manner in which the refunds were calculated, the proposed manner in which the refunds will be credited to customer bills, and a proposed implementation schedule. After Comments, if any, by the Parties, the Parties will ask the Commission to rule on the proposed refunds.

¹ Provisional Rates were authorized by 26 Del. C. §306 and Commission Order No. 7904. \$10.1 million was put into effect, subject to refund, pending the completion of this docket.

Modified Fixed Variable (MFV) Rate Design

- a. The MFV rate design will not be placed into effect with the new rates proposed in the proposed Settlement Agreement.
- b. Prior to any request to implement the MFV rate design, an implementation plan will be developed, through workshops to be conducted, where practicable, in conjunction with the electric MFV implementation workshops agreed to in the Settlement Agreement dated January 18, 2011 in Docket No. 09-276T.
- c. When completed, the implementation plan will be presented to the Commission for approval.

EXHIBIT

B

Ruth



JOHN A. KOWALKO
STATE REPRESENTATIVE
25th District

HOUSE OF REPRESENTATIVES
STATE OF DELAWARE
411 LEGISLATIVE CENTER
DOVER, DELAWARE 19901

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COMMITTEES
Sunset, Chair
Energy, Chair
Education
Health & Human Development
Manufactured Housing
Natural Resources

DELAWARE P.S.C.
February 9, 2011

Ruth Ann Price
Senior Hearing Examiner
Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, DE 19904

IN THE MATTER OF THE APPLICATION OF DP&L FOR APPROVAL OF A
MODIFIED FIXED VARIABLE RATE DESIGN FOR GAS RATES
PSC DOCKET NO. 09-277T

IN THE MATTER OF THE APPLICATION OF DP&L FOR A CHANGE IN
NATURAL GAS BASE RATES
PSC DOCKET NO. 10-237

Dear Ms. Price,

The following are my comments on the above listed matters before the PSC. I realize that some settlement agreements have been reached rendering some of my points moot but I hope that the Commission will consider the perspective I am suggesting in these matters.

I wish to reaffirm my concern with co-mingling the MFV Rate Design application with the Base Rate change request since settlement of all or parts of one may cause a prejudicial predisposition to move forward or not deny approval. There also seems to have been a provocative use of the Electric Base Rate and MFV Electric rate design to elicit a settlement agreement that I do not feel has been justified as a stand-alone/independent consideration.

I wish to reaffirm my objection to implementation of any Decoupling/MFV rate design not only at this time but moving forward as well. The argument for Decoupling has been made using infrastructural needs and maintenance as a driving factor to justify approval in both the Electric case and the Natural Gas case. Since there is already an expense recovery procedure available to the utility and since there is hardly the enormity or responsibility of infrastructural maintenance and growth in the Natural Gas distribution I believe that the MFV Rate Design request for Gas Rates should be denied and not tabled to a future proceeding.

I wish to reaffirm my objection to any rate increase granted to sustain and/or recoup company pension fund losses suffered by DP&L.

I wish to reaffirm my objection to recovery of any costs or installation costs of "smart meters" from Natural Gas customers since the return on investment is solely beneficial to DP&L. I realize this proceeding is not intended to consider a "smart meter" system-wide installation and cost assessment but the previously approved "pilot" program and the request for amortization of cost recovery could lead to a presumption of approval for cost recovery when approval to install has been to only assertion.

Thank you for your consideration and I hope to see you at the evidentiary hearing on the matter scheduled for February 15, 2011.

Respectfully,

A handwritten signature in black ink that reads "John Kowalko Sr." in a cursive style.

John Kowalko
State Representative
25th District

EXHIBIT

C



Todd L. Goodman
Associate General Counsel

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Wilmington, DE 19801

P.O. Box 231
Wilmington, DE 19899-0231

302.429.3786 – Telephone
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todd.goodman@pepcoholdings.com

February 16, 2011

Ruth Ann Price
Senior Hearing Examiner
Delaware Public Service Commission
861 Silver Lake Blvd., Suite 100
Dover, Delaware 19904

Re: MODIFIED FIXED VARIABLE RATE DESIGN FOR GAS RATES -
PSC DOCKET NO. 09-277T

DP&L CHANGE IN NATURAL GAS BASE RATES
PSC DOCKET NO. 10-237

Dear Hearing Examiner Price:

I write in response to the letter sent to you by intervener John Kowalko.¹ Although the letter is not dated, it appears that it was sent to you on February 9, 2011. As you know, the letter criticizes certain aspects of the proposed settlement reached jointly between Staff, Delmarva and the A.G./DPA.² Because the letter was admitted into evidence at yesterday's hearing and is now part of the record in this docket, I am compelled to respond on behalf of my client. My responses to the comments in the letter of Mr. Kowalko are as follows:

Mr. Kowalko writes: *"I wish to reaffirm my concern with co-mingling the MFV Rate Design application with the Base Rate change request since settlement of all or parts of one may cause a prejudicial predisposition to move forward or not deny approval."*

¹ Although Mr. Kowalko is a member of the House of Representatives of the Delaware General Assembly, he made it clear that he sought to intervene in this docket in his individual capacity, as a customer of Delmarva, and not in his capacity as a member of the House. As such, I refer to him as "Mr. Kowalko" in this letter, rather than as "Representative Kowalko." While I am confident that Mr. Kowalko is aware of the respect I have for him, I want to avoid any misunderstanding as to why I am not using the title of "Representative" in this response.

² The Attorney General ("A.G.") was permitted to intervene in this docket due to the fact that the former Public Advocate ("DPA") retired in December 2010 and a new Public Advocate has not yet been appointed. The term "A.G./DPA" is used in this letter to signify the fact that the A.G.'s office is acting in the absence of a Public Advocate.

Response: First, Mr. Kowalko does not explain how the fact that the MFV rate design was investigated in the same docket as the base rate application could create a “prejudicial disposition.”

Second, base rate proceedings always involve the issue of the appropriate rate design to be applied.

Third, the base rate and the pre-existing MFV rate design docket were consolidated because the Commission, in Order No. 7420, specifically provided that the MFV rate design should be addressed in the context of Delmarva’s subsequent base rate proceeding:

“The Commission approves the adoption of Staff’s recommendations regarding the potential adoption of a modified fixed variable rate design for Delaware distribution utilities in the context of a rate case proceeding.”

Order No. 7420 at page 5, paragraph (2) (*emphasis added*). Accordingly, Staff, DPA and Delmarva were following the Commission’s prior well-reasoned directive in considering the MFV rate design in this base rate proceeding.

Finally, through the proposed Settlement Agreement, Staff, AG/DPA and Delmarva actually seek to separate the MFV rate design from the gas base rate proceeding. Unless I am misinterpreting his letter, Mr. Kowalko appears concerned that base rates and the MFV rate design were being considered together. Accordingly, one would think that the separation of the MFV rate design from the base rate proceeding, as requested in the proposed Settlement Agreement, would be exactly what Mr. Kowalko would want.

Mr. Kowalko writes: “*There also seems to have been a provocative use of the Electric Base Rate and MFV Electric rate design to elicit a settlement agreement that I do not feel has been justified as a stand- alone/independent consideration.*”

Response: Mr. Kowalko offers no explanation as to why the recent decision of the Commission should not be used by the parties in evaluating and developing a settlement position. In fact, failing to follow such recent precedent would constitute a waste of the time and resources of the Commission, its Staff, the Attorney General’s office, the DPA and Delmarva in the sense that the Commission has recently ruled on many of the same issues in their recent electric decision.

The allegation that the gas proceeding was not subjected to “stand-alone/independent consideration” is also incorrect. The gas base rate proceeding has been through full discovery, a “12 and 0” update filing, public comment sessions, direct testimony by all parties, rebuttal testimony, and an evidentiary hearing on the proposed Settlement Agreement. In other words, the gas base rate proceeding has been through full

independent consideration by AG/DPA and Staff, with assistance of numerous experienced outside experts.

Mr. Kowalko writes: *“The argument for Decoupling has been made using infrastructural needs and maintenance as a driving factor to justify approval in both the Electric case and the Natural Gas case.”*

Response: The argument for decoupling has not been based upon “infrastructural needs and maintenance as a driving factor.” The need for decoupling is based primarily upon aligning rate design with both (1) the cost of service driving those costs and (2) national and Delaware energy policies by removing the conservation disincentive that exists in the current volumetric-based distribution rate design. Volumetric rate design may have made sense in an era where national policy was to promote growing consumption of electricity, natural gas, coal, and the sale of inefficient energy consuming appliances. When the nation sought to promote growth in energy consumption and the regulated utilities also generated electricity, it made sense to reward regulated utilities based upon the highest amount of energy they could sell to their customers. Today, however, Delmarva does not generate the electricity or gas its customers consume and both national and Delaware policies promote energy efficiency and the reduction of emissions. Decoupling breaks the link between increased energy consumption and delivery revenues, thus aligning the interests of the utilities, customers, the environment and the state to achieve energy efficiency, energy savings and reduced emissions.

Mr. Kowalko writes: *“there is hardly the enormity or responsibility of infrastructural maintenance and growth in the Natural Gas distribution...”*

Response: Mr. Kowalko cites no facts supporting his comment challenging the level of need for maintenance and infrastructure improvement in natural gas distribution. To the contrary, the record in this case is replete with evidence concerning the ongoing maintenance and improvement Delmarva continues to invest in its natural gas distribution system. Over \$62 million in capital plant has been invested by Delmarva since its last natural gas base rate case in 2006. Staff and DPA carefully investigated this evidence through extensive discovery and investigation in the case. Moreover, outside of base rate proceedings, Staff performs ongoing safety and compliance monitoring of Delmarva’s natural gas operations to ensure that appropriate maintenance and infrastructure investment continues. The fact is, Delmarva makes substantial and ongoing reliability and safety investments in its natural gas distribution system to provide safe and reliable service to its customers.

Mr. Kowalko writes: *“I wish to reaffirm my objection to any rate increase granted to sustain and/or recoup company pension fund losses suffered by DP&L.”*

Response: This objection is unnecessary. The proposed Settlement Agreement specifically provides: “No portion of the gas distribution revenue increase proposed

Ruth Ann Price
Senior Hearing Examiner
February 16, 2011
Page Four

herein shall be used to reimburse Delmarva for the 2008 pension losses for which it requested creation of a regulatory asset.”

Mr. Kowalko writes: *“I wish to reaffirm my objection to recovery of any costs or installation costs of ‘smart meters’ from Natural Gas customers since the return on investment is solely beneficial to DP&L.”*

Response: As Mr. Kowalko admits, this proceeding is “not intended to consider a “smart meter” system-wide installation....” In any event, the allegation that smart meters benefit only Delmarva is incorrect. In Docket No. 07-28, the Commission, Staff, DPA and Senior Hearing Examiner Price carefully investigated the issue of adopting an advanced meter infrastructure (“AMI”) for Delmarva’s Delaware natural gas and electric customers. That investigation covered numerous issues, including, but not limited to, energy savings and other the benefits AMI offers to customers and the environment. After a lengthy investigation, followed by a recommendation from the Hearing Examiner, the Commission: “approve[d] the diffusion of the advanced metering technology into the electric and natural gas distribution system networks....” Order No. 7420 at page 5, para (3).

As for Mr. Kowalko’s assertion that the “request for amortization of [AMI] cost recovery could lead to a presumption of approval for cost recovery,” the Commission specifically stated that Commission Staff, DPA and any affected party will remain free to challenge the level of recovery for AMI in future base rate cases. Order No. 7420 at page 5, para (3). Staff and DPA have proven time and time again that they will not hesitate to challenge costs they feel are too high.

Let me be clear that Delmarva’s disagreement with some of the statements contained in Mr. Kowalko’s letter should not be misinterpreted to suggest that Delmarva discourages the participation of its customers in Commission proceedings. Mr. Kowalko, as a customer of Delmarva who was granted intervener status in this docket, is absolutely entitled to raise his concerns in this matter. He has done so in both his letter and at yesterday’s evidentiary hearing. Delmarva continues to both respect and encourage public involvement in matters pending before the Commission. Mr. Kowalko showed us yesterday that he has many helpful suggestions and Delmarva looks forward to continuing to work with Mr. Kowalko and other interested parties as we move forward on the issue of decoupling and other important matters.

Respectfully,



Todd L. Goodman

cc: Service List (via email)

EXHIBIT

D

E X H I B I T "D"

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
DELMARVA POWER & LIGHT COMPANY) PSC DOCKET NO. 10-237
FOR A CHANGE IN NATURAL GAS BASE RATES)
(FILED JULY 2, 2010))

IN THE MATTER OF THE APPLICATION OF)
DELMARVA POWER & LIGHT COMPANY)
FOR APPROVAL OF A MODIFIED FIXED) PSC DOCKET NO. 09-277T
VARIABLE RATE DESIGN FOR NATURAL)
GAS CUSTOMERS (FILED JUNE 25, 2009))
)

ORDER NO. _____

AND NOW, this ____ day of _____ 2011.

WHEREAS, the Commission has received and considered the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Examiner issued in the above-captioned docket (attached to the original hereof as Attachment "A") after a duly-noticed public evidentiary hearing held on February 15, 2011;

WHEREAS, the Hearing Examiner recommends that the Proposed Settlement Agreement (attached to the original hereof as Attachment "B"), submitted by Delmarva Power & Light Company, the Commission Staff and the Attorney General of the State of Delaware, be approved as just and reasonable and in the public interest for service rendered on and after April 1, 2011;

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE

OF NOT FEWER THAN THREE COMMISSIONERS:

1. That, by and in accordance with the affirmative vote of a majority of the Commissioners, the Commission hereby adopts the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Examiner, appended to the Original hereof as Attachment "A";

2. That the Commission approves as just and reasonable and in the public interest the Proposed Settlement Agreement, in its entirety, submitted by Delmarva Power & Light Company, the Commission Staff and the Attorney General of the State of Delaware, appended to the original hereof as Attachment "B";

3. That the rates as provided in the Proposed Settlement Agreement are approved as just and reasonable and in the public interest for usage on or after April 1, 2011;

4. That Delmarva Power & Light Company, Inc. is authorized a return on equity of ten percent (10%) to produce an overall rate of return of 7.56 percent.

5. 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:

Chair

Commissioner

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary

**PSC DOCKET NO. 10-237/09-277T
 DELMARVA POWER & LIGHT COMPANY
 GAS BASE RATE CASE/
 REVENUE DECOUPLING APPLICATION
 EVIDENTIARY HEARING – FEBRUARY 15, 2011**

EXHIBIT LOG

Exhibit Number	Date Proffered	Date Admitted	Sponsored By	Exhibit Description
1	02/15/11	02/15/11	Delmarva	Affidavit of Publication
2	02/15/11	02/15/11	Delmarva	Application
3	02/15/11	02/15/11	Delmarva	Direct Testimony of W. Michael Von Steuben
4	02/15/11	02/15/11	Delmarva	Supplemental Testimony of W. Michael Von Steuben
5	02/15/11	02/15/11	Delmarva	AMI Supplemental Testimony of W. Michael Von Steuben
6	02/15/11	02/15/11	Delmarva	Rebuttal Testimony of W. Michael Von Steuben
7	02/15/11	02/15/11	Delmarva	Direct Testimony of J. Mack Wathen
8	02/15/11	02/15/11	Delmarva	Supplemental Testimony of J. Mack Wathen
9	02/15/11	02/15/11	Delmarva	AMI Supplemental Testimony of J. Mack Wathen
10	02/15/11	02/15/11	Delmarva	Rebuttal Testimony of J. Mack Wathen
11	02/15/11	02/15/11	Delmarva	Direct Testimony of Jay C. Ziminsky
12	02/15/11	02/15/11	Delmarva	Supplemental Testimony of Jay C. Ziminsky
13	02/15/11	02/15/11	Delmarva	AMI Supplemental Testimony of Jay C. Ziminsky
14	02/15/11	02/15/11	Delmarva	Rebuttal Testimony of Jay C. Ziminsky
15	02/15/11	02/15/11	Delmarva	Direct Testimony of Joseph F. Janocha
16	02/15/11	02/15/11	Delmarva	Supplemental Testimony of Joseph F. Janocha
17	02/15/11	02/15/11	Delmarva	AMI Supplemental Testimony of Joseph F. Janocha
18	02/15/11	02/15/11	Delmarva	Rebuttal Testimony of Joseph F. Janocha

19	02/15/11	02/15/11	Delmarva	Direct Testimony of George W. Potts
20	02/15/11	02/15/11	Delmarva	AMI Supplemental Testimony of George W. Potts
21	02/15/11	02/15/11	Delmarva	Direct Testimony of Ernest L. Jenkins, Jr.
22	02/15/11	02/15/11	Delmarva	Rebuttal Testimony of Ernest L. Jenkins, Jr.
23	02/15/11	02/15/11	Delmarva	Direct Testimony of Timothy J. White
24	02/15/11	02/15/11	Delmarva	Rebuttal Testimony of Timothy J. White
25	02/15/11	02/15/11	Delmarva	Direct Testimony of Frank J. Hanley
26	02/15/11	02/15/11	Delmarva	Supplemental Testimony of Frank J. Hanley
27	02/15/11	02/15/11	Delmarva	Rebuttal Testimony of Frank J. Hanley
28	02/15/11	02/15/11	Delmarva	Direct Testimony of Kathleen A. White
29	02/15/11	02/15/11	Delmarva	Direct Testimony of Philip L. Phillips, Jr.
30	02/15/11	02/15/11	Delmarva	Supplemental Testimony of Philip L. Phillips, Jr.
31	02/15/11	02/15/11	Delmarva	Direct Testimony of Elliott P. Tanos
32	02/15/11	02/15/11	Delmarva	Supplemental Testimony of Elliott P. Tanos
33	02/15/11	02/15/11	Delmarva/Staff/ Attorney General	February 09, 2011 Settlement Agreement
34	02/15/11	02/15/11	Attorney General	Direct Testimony of Andrea C. Crane
35	02/15/11	02/15/11	Staff	Direct Testimony of Ralph C. Smith
36	02/15/11	02/15/11	Staff	Direct Testimony of James A. Rothschild
37	02/15/11	02/15/11	Staff	Direct Testimony of Howard Solganick
38			Staff	02/09/11 Letter from Rep. Kowalko opposing gas rate design mechanism
39	02/15/11	02/15/11	Delmarva	02/15/11 Letter of response to Kowalko letter from Todd Goodman on behalf of Delmarva Power & Light

PSC DOCKET NO. 10-237

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