

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

IN THE MATTER OF THE APPLICATION            )  
OF PEOPLE'S POWER & GAS, LLC FOR A        )  
CERTIFICATE TO PROVIDE ELECTRIC            )       PSC DOCKET NO. 11-237  
SUPPLY SERVICES WITHIN THE STATE         )  
OF DELAWARE (FILED MAY 6, 2011)         )

**ORDER NO. 8053**

**ELECTRIC SUPPLIER CERTIFICATE**

**AND NOW**, this 3rd day of October, 2011:

1. On May 6, 2011, People's Power & Gas, LLC ("People's Power" or the "Company") filed an application with the Delaware Public Service Commission (the "Commission") seeking certification as a retail electric supplier. See 26 Del. C. §§1001(3), 1001(14), 1012. Under the Electric Utilities Restructuring Act of 1999 (the "Act"),<sup>1</sup> "electric suppliers" are not "public utilities" and the resulting sales of electric supply service to retail customers are not subject to traditional forms of rate-regulation. See 26 Del. C. §§102(2), 202(f).

2. In its application, People's Power stated that it is an electric supplier that will be providing retail energy services to residential, commercial and industrial customers.

3. As required by Section 2.2 of the Rules for Certification and Regulation of Electric Suppliers (the "ES Rules"), 26 Del. Admin. C. ch. 3001, the Company provided affidavits of publication of notice of its application in the Delaware State News and The News Journal.

---

<sup>1</sup> See 26 Del. C. ch. 10

Staff confirmed that no comments, interventions, or protests were filed within the required notice period.

4. Section 2.1.1.9 of the ES Rules requires an applicant that intends to provide retail electric service to residential and small commercial customers to submit its Standard Contract for Residential and Small Commercial Customer or a link to it on the Applicant's website. Commission Staff reviews such contracts, and if Staff determines that such contract is not consistent with the ES Rules, Staff has the authority to require changes to make the contract consistent with the ES Rules.

5. The ES Rules require such contracts to be "in clear and plain language," and to include, at a minimum, the following explicit terms and conditions:

A clear statement of the duration of the contract (26 Del. Admin. Code §3001-2.1.1.9.1);

The price stated in cents per kWh or a clear and unambiguous statement of the precise mechanism or formula by which the price will be determined (*Id.* §3001-2.1.1.9.2);

A complete list of any other fees, including early termination penalties, late fees, and interest charges, which can be imposed on the customer, including but not limited to the magnitude of the fees and the specific conditions under which such fees can be imposed (*id.* §3001-2.1.1.9.3);

A statement of the Electric Supplier's termination rights, which shall explain the specific conditions, under which the Electric Supplier may terminate service. At a minimum, the Electric Supplier shall provide the Residential or Small Commercial Customer with at least 30 days notice of termination of the contract and procedures to maintain ongoing service (*Id.* §3001-2.1.1.9.4);

The Electric Supplier's local or toll-free telephone number, address and the Commission's

address and telephone number (*Id.* §3001-2.1.1.9.5); and

A statement informing the Residential or Small Commercial Customer that, because of relocation outside of their current EDC's service territory, they he/she may terminate his/her contract with his/her Electric Supplier with no termination fee upon a 30-day notice in writing to the Electric Supplier (*Id.* §3001-2.1.1.9.6).

6. People's Power provided a sample Residential and Small Commercial customer contract for Staff's review. Staff expressed some concerns regarding the contract's terms. First, People's Power intended to offer "a month-to-month variable rate as determined by [People's Power] for all electric energy." Staff advised People's Power that this provision did not satisfy ES Rule §3001-2.1.1.9.2 requiring "the price stated in cents per kWh or a clear and unambiguous statement of the precise mechanism or formula by which the price will be determined." In response, People's Power revised the contract to provide that the "rate will not exceed [People's Power's] cost of electricity purchased through the PJM Interconnection in the DPL zone, based upon the blended hourly real time average over the previous month plus a maximum of \$(0.07) per kWh during the Term."

7. Staff noted that even with this modification, People's Power's contract differed from other previously-approved variable rate contracts because its enrollment term was for longer than one month:

The initial Term shall commence on the transferred meter read date, and continue until December 31 of the following calendar year. Thereafter, the Term shall be for a twelve month period, from January 1 through December 31 of each calendar year.

Staff asked People's Power to shorten the term for its variable rate product to one month to allow residential and small commercial

customers to exit the contract if the rate increased to an excessive level; however, People's Power declined to do so.

8. People's Power also planned to offer a fixed-rate product, which also carried a term that extended to the end of the calendar year following the year in which the customer transfers to People's Power. At the expiration of the initial term of this fixed-rate product, the fixed rate automatically converts into a variable rate and another year-long term commences. Staff noted that if a fixed-rate customer fails to notify People's Power 30 days prior to the end of the initial term that it wishes to terminate the contract, that customer automatically becomes a variable rate customer with a new one-year term. If that customer then wishes to terminate the contract, s/he must pay an exit fee equal to his/her average monthly usage for each of the months remaining in the term. Given that the variable rate can be as high as seven cents over the wholesale rate, Staff anticipated disputes when fixed-rate customers were rolled over to the variable rate for a year-long term.

8. With these caveats in mind, Staff reported that the Company's application appeared to fulfill all the requirements for an Electric Supplier Certificate to act as an electric supplier as set forth in the ES Rules. It prepared a proposed form of order approving People's Power's application for a certificate to supply retail electric service within Delaware. However, Staff also recommended that we consider reopening Regulation Docket 49 to revise the ES Rules to address the potential for residential and small commercial customers to mistakenly commit to variable rates for long terms.

9. We considered People's Power's application at our regularly-scheduled meeting on September 20, 2011. No representatives of People's Power attended. We expressed concern about some of the terms of the contract, particularly the long duration of the contract for the variable-rate product. Additionally, the Public Advocate objected to People's Power's intent to use e-mail, phone and texting to communicate with customers. Because People's Power was not present at the meeting, we were obviously unable to obtain its responses to our questions. Thus, rather than deny the application outright, we instructed Staff to contact People's Power, inform it of our concerns, and advise it that it should send a representative to the October 3 meeting.

10. By letter dated September 21, 2011, Staff counsel contacted People's Power's counsel as instructed. Thereafter, People's Power, Staff and the Public Advocate conducted discussions that ultimately resulted in People's Power submitting a revised contract to address those concerns.

11. As revised, the residential and small commercial customer contract states that:

Fixed prices are good until the end of the Term, when Customer's rate then becomes variable. The month-to-month variable rate will not exceed the Company's cost of electricity purchased through the PJM Interconnection in the DPL zone, based upon the blended hourly real time average over the previous month plus a maximum of seven cents (\$.07) per kWh. The People's Power fixed and variable rates do not include transmission and delivery charges, applicable federal, state, or local taxes and any tariff charges. The variable rate Term is monthly. The initial fixed rate Term shall commence on the transferred meter read date, and continue until December 31 of the following calendar year. Thereafter, the

fixed rate Term shall be for a twelve month period, from January 1 through December 31 of each calendar year. Customer may cancel this Agreement with a 30 day notice prior to the end of either the fixed or variable rate Term.

This language is satisfactory to Staff, which states that the contract now provides protection to residential and small commercial customers choosing the variable rate product to change to another supplier or return to Standard Offer Service with 30 days' notice to People's Power. Staff's concern that these customers would be locked into a long-term contract has been addressed.

12. In response to the Public Advocate's concern about the use of e-mail, phone or texting, Peoples' Power has confirmed that it will not use these forms of communication for substantive changes to a customer's contract.

13. Based on Staff's review of the Company's application as filed on May 6, 2011 and the revised contract submitted on September 28, 2011, it appears that People's Power & Gas, LLC has satisfied the requirements under the Act and the ES Rules to be a Certified Electric Supplier in the State of Delaware. Staff recommends that we approve People's Power's application to supply electric services within the State of Delaware

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

1. That, pursuant to 26 Del. C. §1012(a) and the Commission's "Rules for Certification and Regulations of Electric Suppliers," People's Power & Gas, LLC is hereby granted a certificate to operate as an "Electric Supplier" within this State. Under this certificate,

People's Power & Gas, LLC is authorized to provide Electric Supply Service within this State in accord with 26 *Del. C.* ch. 10.

2. That the Company shall at all times provide its Electric Supply Service in accordance with the requirements imposed by 26 *Del. C.* Ch. 10 and the Commission's "Rules for Certification and Regulations of Electric Suppliers" as presently adopted or as may be hereafter amended or supplemented. The Company is hereby notified that a violation of any applicable statute, rule or other controlling authority may be enforced by the sanctions permitted by 26 *Del. C.* §§1012(a) and 1019 and §10.2 of the "Rules for Certification and Regulations of Electric Suppliers".

3. That People's Power & Gas, LLC shall, pursuant to the provisions of 26 *Del. C.* §1012(c)(2) and §§3.9 and 3.10 of the "Rules for Certification and Regulations of Electric Suppliers," file such reports and pay such fees and assessments as may be required or may be imposed by 26 *Del. C.* §§114 and 115.

4. That People's Power & Gas, LLC consents to the jurisdiction of the courts of the State of Delaware for all acts or omissions related to its offering of electric supply services in this State.

5. That People's Power & Gas, LLC is hereby placed on notice that the costs of the proceedings will be charged to it under the provisions of 26 *Del. C.* §114(b)(1).

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

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae  
Chair

/s/ Joann T. Conaway  
Commissioner

/s/ Jaymes B. Lester  
Commissioner

/s/ Dallas Winslow  
Commissioner

/s/ Jeffrey J. Clark  
Commissioner

ATTEST:

/s/ Alisa Carrow Bentley  
Secretary