

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
DELMARVA POWER & LIGHT COMPANY)
FOR APPROVAL TO ISSUE UP TO \$350 MILLION) PSC DOCKET NO. 10-405
OF DEBT SECURITIES)
(FILED NOVEMBER 22, 2010))

ORDER NO. 7881

I. BACKGROUND

1. On November 22, 2010, Delmarva Power & Light Company ("Delmarva" or the "Company") filed an application (the "Application") with the Delaware Public Service Commission (the "Commission") pursuant to 26 Del. C. §215 seeking approval to issue up to \$350 million of long-term secured or unsecured debt securities at any time through December 31, 2012.

2. By way of background, Delmarva explains that in 2000 it issued two series of tax-exempt bonds aggregating \$31.24 million, maturing in 2025 and 2028, which contained a mandatory tender provision requiring Delmarva to repurchase the bonds at par from their holders on July 1, 2010 (the "2010 Put Bonds"). Delmarva repurchased the 2010 Put Bonds on July 1, 2010, and plans to remarket them with an expected 2012 maturity. (Application, ¶5).

3. In 2001, Delmarva issued a series of tax-exempt bonds aggregating \$34.5 million, maturing in 2025, which contained a similar mandatory tender provision requiring it to repurchase the bonds at par on May 1, 2011 (the "2011 Put Bonds"). Delmarva intends to remarket the 2011 Put Bonds after their repurchase. (Application, ¶6).

Docket No. 10-405, Order No. 7881 Cont'd

4. In 2002, Delmarva issued a series of tax-exempt bonds totaling \$31 million, maturing in 2019, which may be redeemed at par on or after February 1, 2012 (the "2010 Call Bonds"). Delmarva intends to redeem the 2012 Call Bonds in 2012. (Application, ¶7).

5. In the Application, Delmarva seeks authorization to refinance the aggregate proceeds of the 2010 Put Bonds, 2011 Put Bonds and 2012 Call Bonds with up to \$96.74 million of debt securities as described in Paragraph 6 below (the "Debt Securities"). Delmarva contemplates that the Debt Securities may be sold pursuant to an existing or new registration statement filed with the Securities and Exchange Commission ("SEC") under the Securities Act of 1933 (the "1933 Act") or pursuant to exemptions from registration under the 1933 Act. (Application, ¶11).

6. The Company states that the Debt Securities may include tax-exempt bonds issued through governmental authorities and/or may be issued as credit enhancement for such tax-exempt bonds. They may also include secured or unsecured bank loans, the terms of which (including interest rate and maturity) will depend on the prevailing market conditions at the time of execution. The Debt Securities may be issued and sold publicly or in private placements directly to prospective purchasers through underwriters or placement agents that Delmarva selects. Furthermore, Delmarva may issue Debt Securities consisting of secured first mortgage bonds issued under its Mortgage and Deed of Trust dated October 1, 1943 to the Bank of New York Mellon, as successor trustee ("Mellon"), or it may issue unsecured

Docket No. 10-405, Order No. 7881 Cont'd

notes under its Indenture dated November 1, 1988 to Mellon. Delmarva may issue Debt Securities under a new mortgage or indenture to be negotiated, in which case it will provide copies of any such new mortgage or indenture to the Commission upon execution. The Debt Securities may be issued in one or more series and will have maturities ranging from 12 months to 40 years from the date of issuance. (Application, ¶¶12-15).

7. Delmarva states that it will make "every effort" to issue Debt Securities in the most cost-effective manner, but that the actual type of Debt Securities issued will depend on the market conditions at the time of issuance. (Application, ¶16).

8. According to the Company, the construction of new infrastructure and the improvement of existing facilities are driving its request. Delmarva states that its projected 2011-12 capital budget is \$737 million. In addition to the funds required to refinance the 2010 and 2011 Put Bonds and the 2012 Call Bonds, it also seeks the flexibility to obtain permanent financing for up to \$253.26 million of short-term debt associated with its construction program. In this regard, it notes that a portion of its 2011-12 construction program relates to the Mid-Atlantic Power Pathway ("MAPP"), for which it has applied for financing from the Department of Energy ("DOE"). It expects that such federal financing will result in a lower interest rate than would generally be available to the Company. Before such financing may be granted, the DOE requires evidence that this Commission has granted the Company the authority to enter into such

Docket No. 10-405, Order No. 7881 Cont'd

financing transactions. Thus, the Company requests the Commission to consider any such federal financing up to \$253.26 million to be considered "Debt Securities," and states that if the DOE grants more than this amount, the Company will seek additional authorization from the Commission. (Application, ¶¶9-10).

9. The Company's counsel has issued an opinion that upon the occurrence of six different conditions, "all requisite action necessary to make the Debt Securities a valid, legal and binding obligation of the Company" will have been taken. (Application, Exhibit 1).

10. On December 7, 2010, as a result of a meeting with representatives of Staff and the Public Advocate (as discussed in greater detail below), the Company submitted an amended Schedule 2.

II. COMMISSION STAFF INVESTIGATION

11. Staff Public Utilities Analyst Funmi I. Jegede was assigned to review and investigate the Company's Application. She had several questions regarding the Application. On December 6, 2010, she and other representatives of Staff, as well as representatives of the Division of the Public Advocate, met with representatives of Delmarva to discuss the Application. Delmarva responded to Staff and the Public Advocate's questions, and subsequently provided additional information responsive to their inquiries.

III. STAFF'S RECOMMENDATION

12. After reviewing the Company's Application and supporting documentation and the Company's responses to Staff and Public Advocate

Docket No. 10-405, Order No. 7881 Cont'd

requests for additional information, Staff analyst Jegede concluded that the Company had complied with the filing requirements for the proposed issuance and that the proposed issuances satisfied the requirements of 26 *Del. C.* §215, and recommended that the Application be approved. She cautioned, however, that such approval should not be construed as approving any ratemaking treatment for future rate cases. She further recommended that, as a condition of its approval, the Commission order the Company to file copies of the note agreements for all transactions within thirty days of the closing of any debt issuances. Finally, in light of the economy and current market conditions, and Delmarva's large proposed capital spending program, she recommended that the Commission closely monitor Delmarva's financing activities.

IV. COMMISSION FINDINGS

13. 26 *Del. C.* §215(d) authorizes the Commission to investigate and hold such hearings in this matter as it deems necessary and, thereafter, to grant the application in whole or in part with such modification and upon such terms and conditions as may be appropriate. Section 215(d) further requires the Commission to approve any issuance when the proposed issuance is to be made in accordance with law, for a proper purpose, and is consistent with the public interest.

14. Section 215(d) further requires the Commission to grant, modify, refuse, or prescribe appropriate terms and conditions with respect to every such application within 30 days of its filing. In

Docket No. 10-405, Order No. 7881 Cont'd

the absence of such action within 30 days, the issuance described in the application will be deemed to be approved.

15. Commission Staff has examined the proposed issuance and the schedules and exhibits thereto, and Staff's inquiries have been answered satisfactorily. Thus, Staff has determined, pursuant to 26 Del. C. §215(d), that the proposed issuance of up to \$350 million of Debt Securities (as hereinbefore defined) will be made in accordance with law, will be made for a proper purpose, and will be consistent with the public interest. Accordingly, Staff recommends that the Commission approve Delmarva's Application, subject to the condition that the Commission directs the Company to provide notice to the Commission of the consummation of the transaction(s) within 30 days of their closing(s), including but not limited to copies of all note agreements. Staff further recommends that the Commission monitor Delmarva's financing activities closely in light of the large proposed capital spending program and current economic conditions.

V. ORDER

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

1. That the Commission, having independently reviewed this matter and having determined that public notice and hearing are not required, finds that the Application for approval of the issuance of up to \$350 million of Debt Securities filed by Delmarva Power & Light Company with the Commission on November 22, 2010, will be made in accordance with law, will be made for a proper purpose, and will be

Docket No. 10-405, Order No. 7881 Cont'd

consistent with the public interest. The Application is, therefore, approved.

2. That nothing in this Order shall be construed as a guarantee, warranty, or representation by the State of Delaware or by any agency, commission, or department thereof with respect to the Debt Securities that may be issued under the Application herein approved.

3. That approval of this Application by the Commission is not to be construed as approving the capitalization ratios that result for any purposes or procedures involving ratemaking, nor are the Commission's rules relative to proving the merits of any related issue hereby waived. Approval of this Application shall not be construed as endorsing any ratemaking treatment of these transactions in any future proceeding involving Delmarva Power & Light Company.

4. That, within 30 days of the closing of each transaction, the Company shall file with the Commission a written report setting forth the actions taken in connection with each such issuance, including: (a) the specific Debt Securities issued (i.e., tax-exempt bonds, secured loan, unsecured loan, etc.); (b) the date of the issuance; (c) the amount of the issuance; (d) the term of the Debt Security; (e) the interest rate of the Debt Security; and (f) any other term or condition of the issuance that was not set forth in the Application. The Company shall also provide to the Commission copies of all relevant documents.

5. The authority granted in this Application shall expire on December 31, 2012.

