

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

IN THE MATTER OF THE ADOPTION OF )  
RULES AND REGULATIONS TO )  
IMPLEMENT THE PROVISIONS OF 26 *DEL.* )  
C. CH. 10 RELATING TO THE CREATION )  
OF A COMPETITIVE MARKET FOR ) PSC REGULATION DOCKET NO. 49  
RETAIL ELECTRIC SUPPLY SERVICE )  
(OPENED APRIL 27, 1999; REOPENED )  
JANUARY 7, 2003; SEPTEMBER 22, 2009; )  
SEPTEMBER 7, 2010; JULY 17, 2012; AND )  
JULY 14, 2021) )

**ORDER NO. 9976**

**AND NOW**, this 16<sup>th</sup> day of March 2022, the Delaware Public Service Commission (“Commission”) having reviewed the Delaware Division of the Public Advocate’s (“DPA”) Motion for Rehearing and Reconsideration of Order No. 9965 (“Motion”), and having considered the responses to the Motion, and having heard oral argument on the Motion at our regularly-scheduled meetings on February 23, 2022 and March 16, 2022:

**WHEREAS**, in Order No. 9965 we reserved the jurisdiction and authority to enter such further Orders in this matter as we deemed necessary or proper; and

**WHEREAS**, we find that the record was unclear regarding the DPA’s argument and that we did not fully address the argument that the DPA raised; and

**WHEREAS**, we now understand the DPA’s argument to be that Senate Bill 2 does not provide a specific method of recovery for Community Energy Facility bill credits, and acknowledge that subsection 16.10.4 could suggest that we have approved a specific method of recovery despite the language in Order No. 9965 that says otherwise; and

**WHEREAS**, we find that because we now better understand the DPA's argument, we would have reached a different conclusion with respect to including subsection 16.10.4 in the final regulations; and

**WHEREAS**, we do not find that this change is a substantive change warranting commencement of a new publication and 30-day comment period as would be required by the Administrative Procedures Act for a substantive change;

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

**OF NOT LESS THAN THREE COMMISSIONERS:**

1. The Motion is **GRANTED** for the reasons set forth above.
2. Order No. 9965 is amended as follows:

~~**Subsection 16.10.4—Delmarva's recovery of the billing credits.** Subsection 16.10.4 authorizes Delmarva "to recover the credited supply and distribution costs provided to Subscribers and the Community Energy Facility in accordance with its tariff." While Delmarva's tariff does not at this time specify how such recovery will take place, the The participants agree that subsection 16.10.4 paves the way for Delmarva to should file for approval of a mechanism for recovery of the billing credits it will provide to CEF subscribers not from CEFs but from its customers. In this way,~~

59. The DPA argued that because Senate Bill 2 provides that CEFs "shall be responsible for any additional costs incurred by the electric distribution company..." Delmarva must recover the billing credits from the CEFs as an "additional cost."<sup>90</sup> The Commission disagrees that the intent of the General Assembly was to include the billing credits as an "additional cost" to be collected from the CEFs. As many of the participants asserted, collecting the billing credits from the CEFs would, in effect, take away the full retail rate<sup>91</sup> compensation the General Assembly provided to CEF subscribers under Senate Bill 2.<sup>92</sup>

60. Moreover, it is unclear that the billing credits for distribution are an "additional cost" or whether they are more accurately viewed as a reallocation of existing distribution costs necessary to serve CEF subscribers that will be socialized across Delmarva's customer base ~~(in a manner to be determined later).~~<sup>93</sup> The billing credits for generation are not an "additional cost" because much of the supply cost will be "recovered" by virtue of the

savings to Delmarva from the avoided supply purchases from its wholesale suppliers (due to the generation from the CEFs),<sup>94</sup> with any remaining supply costs (due in part to the difference between the price of wholesale supply and Delmarva's standard offer service rates) reallocated from CEF subscribers to Delmarva's customer base (in a manner to be determined later).

~~61. By approving subsection 16.10.4, the Commission is not approving any particular mechanism for recovery of the billing credits and, to be clear, is not determining whether such recovery of the distribution credits will take place via rate rider (as Delmarva prefers)<sup>96</sup> or via the distribution rate itself or whether such recovery of the remaining supply costs will be recovered via the PCA (as Delmarva prefers)<sup>97</sup> or otherwise. The Commission is acknowledging, however, that Delmarva's recovery of the billing credits from its customers (rather than the CEFs) is appropriate, given the intent of Senate Bill 2 to facilitate the development of CEFs by applying the billing credits against both the supply and distribution rates of CEF subscribers.<sup>95</sup> Delmarva will socialize the cost of the billing credits across all or part of its customer base, and the Commission hereby establishes a Regulatory Asset regarding the Community Solar subscriber bill credits. Delmarva is entitled to earn a return on the amount of the Regulatory Asset equivalent to the Company's authorized rate of return approved by the Commission in future rate cases. In future rate cases, the Regulatory Asset shall be subject to review by any other party, and any party is permitted to contest the amount of the Regulatory Asset. will be permitted to as it does now for the billing credits it provides for net metered rooftop solar generation via its distribution rate, which is set by base rate cases.~~

All other paragraphs remain as set forth in Order No. 9965.

3. The Commission instructs Staff to remove subsection 16.10.4 from the final regulations to be sent to the Registrar of Regulations for publication in the April 2022 Register of Regulations. All other directions to Staff in Order No. 9965 remain the same.

**BY ORDER OF THE COMMISSION:**

/s/ Dallas Winslow

Dallas Winslow, Chairman

/s/ Joann Conaway

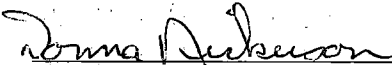
Joann Conaway, Commissioner

  
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Harold Gray, Commissioner

  
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Manubhai "Mike" Karia, Commissioner

/s/ Kim Drexler  
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Kim F. Drexler, Commissioner

ATTEST:

  
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Donna Nickerson, Secretary

