

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

IN THE MATTER OF REVISIONS TO THE)
RULES AND REGULATIONS TO IMPLEMENT)
THE PROVISIONS OF 26 *DEL. C.* CH. 10)
RELATING TO THE CREATION OF A) REGULATION DOCKET NO. 49
COMPETITIVE MARKET FOR RETAIL)
ELECTRIC SUPPLY SERVICE (OPENED)
APRIL 27, 1999; REOPENED JANUARY 7, 2003;))
SEPTEMBER 22, 2009; SEPTEMBER 7, 2010)
JULY 17, 2012; JULY 14, 2021; AND)
OCTOBER 12, 2022)

**COMMENTS OF THE DELAWARE DIVISION OF THE PUBLIC ADVOCATE
ON THE PROPOSED AMENDMENTS TO THE DELAWARE PUBLIC SERVICE
COMMISSION’S RULES REGARDING NET ENERGY METERING**

BACKGROUND

On July 22, 2022, the Governor signed Senate Bill 298 (“SB 298”) into law. SB 298 made several changes to the net metering provisions of 26 *Del. C.* § 1014, including the following:

- (1) Increased the cap at which an electric utility may elect not to provide net metering services from 5% of the utility’s peak demand to 8%;
- (2) Inserted a provision requiring the Commission's net energy metering rules to consider the reliability, safety, and capacity of the electric distribution system;
- (3) Defined "Excess kWh Credit" as any excess production in kWh of a net metering customer's generating facility that exceeds the customer's on-site consumption of kWh in a billing period;
- (4) Defined “Societal Benefits Programs;”
- (5) Removed the charges for societal benefits programs from those charges against which a regulated utility applies a net metering customer's "Excess kWh Credits" in subsequent monthly billing periods (and to define "societal benefits programs");

- (6) Provided that electric utilities shall not reimburse or credit net energy metering customers for any "Excess kWh Credits" at the end of the annualized billing period, and that "Excess kWh Credits" shall revert to the electric distribution company at the end of the annualized billing period;
- (7) Provided that if a net metering customer abandons the property where the generating equipment is located, the equipment may remain connected to the electric distribution system unless the equipment presents a risk to the safety and reliability of the system;
- (8) Provided that non-residential customers are responsible for the reasonable cost of meters installed for net metering purposes, and residential customers are responsible for up to \$200 of the installation costs of meters installed or modified for net metering purposes; and
- (9) Provided that the electric utility owns all meters.

The Staff of the Delaware Public Service Commission (the "Commission") prepared revisions to the Rules for Certification and Regulation of Electric Suppliers, Net Metering, and Community Energy Facilities, 26 *Del. Admin. C.* §§ 3001 *et seq.* (the "Rules") to comport with SB 298's amendments to 26 *Del. C.* § 1014 governing net metering. On October 12, 2022, the Commission issued Order No. 10109 reopening Regulation Docket No. 49 and directing publication of Staff's proposed amendments to the Rules in the November 1, 2022 Delaware Register of Regulations.

The proposed Rules were published in the November 2022 Delaware Register of Regulations. Pursuant to Order No. 10109, the Commission will hold a public hearing on the proposed Rules on December 14, 2022, and parties who provide written comments on the proposed

Rules must do so on or before November 28, 2022 in order for the Commission to consider them at its December 14, 2022 hearing.

These are the Delaware Division of the Public Advocate's ("DPA") comments on the proposed Rules.

DPA COMMENTS

The DPA thanks Staff for a thorough examination and application of SB 298 to the proposed Rules. The DPA believes that most of the proposed Rules correctly interpret and apply the changes that SB 298 made to 26 *Del. C.* § 1014, and should be approved.

The DPA does, however, believe that one point requires clarification. Staff proposes to change the definition of "Annualized Billing Period" to provide that "[e]ffective January 1, 2023, a Net Metering Customer may elect to change the end of the Annualized Billing Period on one occasion in order to better utilize excess generation." Will net metering customers who have already made this election once be permitted to make it a second time? Or is this election only for net metering customers who have not previously made such an election? The DPA respectfully submits that this question must be answered before the proposed Rules can be adopted in their entirety.

CONCLUSION

The DPA respectfully requests the Commission to approve the proposed Rules, with the clarification identified above.

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