

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET N.W., 2ND FLOOR, WEST TOWER
WASHINGTON, D.C. 20005

ORDER

November 9, 2006

**FORMAL CASE NO. 945, IN THE MATTER OF THE INVESTIGATION INTO
ELECTRIC SERVICES MARKET COMPETITION AND REGULATORY PRACTICES,**
Order No. 14111

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") grants the District Department of the Environment ("DDOE")¹ request to be reimbursed through the Reliable Energy Trust Fund ("RETF") for the costs that DDOE will incur to perform an All Ratepayers Test for six (6) proposed RETF energy efficiency programs.

II. BACKGROUND

2. On March 8, 2006, the RETF Working Group filed its Report ("RETF Report") in support of newly proposed RETF programs.² On May 31, 2006, the Commission issued Order No. 13953, which rejected both the Report and the Working Group's proposed RETF programs, without prejudice.³ The Commission also directed the Working Group to submit a revised report addressing certain deficiencies, in particular, the failure of the Working Group to include the required All-Ratepayers Test ("ART") results for six (6) new energy efficiency programs.⁴

3. On July 28, 2006, DDOE submitted a letter to the Commission requesting approval for DDOE to be reimbursed from the RETF for DDOE's costs incurred in performing the above-referenced ART analyses.⁵ On August 8, 2006, the Office of the People's Counsel ("OPC") filed a response in opposition to DDOE's Funding Request.⁶

¹ DDOE's predecessor was the District of Columbia Energy Office ("DCEO"). DCEO subsequently merged into DDOE and DDOE assumed all of DCEO's functions.

² See *Reliable Energy Trust Fund Working Group Report*, filed March 8, 2006.

³ See *Formal Case No. 945, In The Matter Of The Investigation Into Electric Services Market Competition And Regulatory Practices*, ("F.C. 945"), Order No. 13953, rel. May 31, 2006.

⁴ Order No. 13953 at 31.

⁵ See *F.C. No. 945*, Letter of the Office of the Attorney General on behalf of the District of Columbia Energy Office to D. Wideman, filed July 28, 2006 ("DDOE Funding Request").

⁶ See *F.C. No. 945*, Response of the Office of the People's Counsel to the District of Columbia Energy Office's Request To Obtain Reimbursement from the Reliable Energy Trust Fund for All-Ratepayers Test Costs, filed August 8, 2006 ("OPC Response").

4. On August 9, 2006, DDOE filed a Motion for Leave to Reply to OPC's Response⁷ and a Reply to the OPC's Response.⁸ In support of its motion, DDOE states that DDOE's Reply will provide a more developed record upon which the Commission may base its decision and that no other party will be prejudiced by the submission of DDOE's Reply.⁹ We accept DDOE's Reply for the record.

5. On August 17, 2006, the Commission issued Order No. 14021, inviting any other interested persons to file comments regarding DDOE's Funding Request.¹⁰ No further comments were filed in response to the Commission's invitation to file comments.

III. COMMENTS

A. DDOE's Funding Request

6. DDOE requests that the Commission give prior approval to allow DDOE to be reimbursed through the RETF for the costs that DDOE will incur to perform an ART analysis for each of the six proposed RETF energy efficiency programs.¹¹ DDOE indicates that if the Commission gives its approval of DDOE's request for reimbursement prior to DDOE conducting the ART analysis, DDOE expects to file the ART results within three (3) weeks of the Commission's approval.¹²

7. In support of its request, DDOE claims that in Order No. 13953, the Commission approved, in part, the Revised RETF Long-Term Program Plan and directed DDOE to submit ART results for the approved RETF programs after their implementation.¹³ According to DDOE, its funding request is consistent with that Commission directive.¹⁴

8. In addition, DDOE argues that unlike OPC, DDOE cannot recover ART-related costs through assessments and, therefore, DDOE should not be required to pay for costly ART analyses for programs that benefit all consumers out of its own limited resources.¹⁵

⁷ See *F.C. No. 945*, Motion for Leave to Reply to OPC's Response, filed August 9, 2006 ("DDOE Motion").

⁸ See *F.C. No. 945*, DCEO Reply to the OPC's Response, filed August 9, 2006 ("DDOE Reply").

⁹ *Id.*

¹⁰ See *F.C. 945*, Order No. 14021 at 3, rel. August 17, 2006.

¹¹ DDOE Funding Request at 1. The programs for which DDOE will conduct the ART are as follows (1) Affordable Housing Energy Efficient Rebate Program; (2) Weatherization Rehabilitation and Asset Preservation Partnership; (3) New Commercial Building Construction Energy Efficiency Program; (4) Existing Commercial Buildings Energy Efficiency Program; (5) Government Building Energy Efficiency Program; and (6) Condominium and Cooperative Building Energy Efficiency Program. *Id.* at 1-2.

¹² DDOE Funding Request at 1.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

9. DDOE estimates that the cost to perform the ART for the six (6) proposed RETF energy efficiency programs will be approximately \$20,000; however, DDOE reserves the right to seek reimbursement for the actual cost upon completion of the analysis.¹⁶

B. OPC's Response

10. OPC urges the Commission to deny DDOE's request for ART funding.¹⁷ First, OPC argues that because DDOE is the proponent of the proposed energy efficiency programs, DDOE must bear the burden of persuading the Commission that its proposals are in the public interest.¹⁸ According to OPC, a party that submits an energy efficiency proposal should be required to husband its resources as well as to produce a program that is sustainable and meets the Commission established criteria.¹⁹

11. OPC also emphasizes that unlike the circumstances surrounding the Commission's March 2005 Order, DDOE is requesting reimbursement for unapproved programs that DDOE has proposed, not for programs that have received the Commission's prior approval.²⁰ In OPC's view, if given a funding guarantee for conducting ART analysis, DDOE would be free to impose costs on consumers for programs that have little or no chance of passing the ART.²¹

12. OPC notes that DDOE is the statutorily designated administrator for universal service programs designed to assist low-income customers in the District.²² OPC also submits that in Order No. 12778, the Commission designated DDOE as the administrator of the universal service, energy efficiency and renewable energy resource programs, a role that DCEO had sought since 2000.²³ In OPC's view, given the large number of District consumers that are eligible to participate in the RETF energy efficiency programs, DDOE's concerns regarding the use of its own authorized funding is not justifiable and appears to be inconsistent with DDOE's mandate and mission under the Act.²⁴

13. OPC also contends that DDOE has expended a considerable amount of its limited resources in preparing and submitting incomplete data in support of its March 8, 2006 program proposals, which the Commission subsequently rejected.²⁵ According to OPC, DDOE was imprudent in its submission of these programs since the Commission, in Order No. 12778, had

¹⁶ *Id.* at 2.

¹⁷ OPC Response at 1

¹⁸ *Id.* at 2-3.

¹⁹ *Id.* at 3.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 3, *See also* Retail Electric Competition and Consumer Protection Act of 1999 ("Act"), D.C. Code §§ 34-1501-1520 (2004).

²³ *Id.* at 3.

²⁴ *Id.* at 4.

²⁵ *Id.* at 4.

directed that the ART must be performed for energy efficiency proposals.²⁶ In OPC's view, DDOE has unwisely utilized its "limited resources," and thus should not be provided additional cost support from ratepayers.²⁷

14. Finally, OPC argues that if the real obstacle to DDOE conducting the ART for its energy efficiency proposals is a lack of funds resulting from poor planning and budgeting, DDOE's recourse is to request additional funding for this purpose from the District's Council.²⁸

C. DDOE's Reply

15. DDOE contends that OPC's arguments are without merit and should be rejected. According to DDOE, there is nothing in either the statute or the Commission's orders that dictates or even implies that DDOE, as the fund administrator, must use its own resources to satisfy a Commission directive to conduct analyses of any RETF programs. DDOE notes that the statute places the obligation to establish programs on the shoulders of the Commission, not DDOE, and that DDOE's role in program development is purely as an aid to the Commission. Inasmuch as the ART analysis is part of the development phase of establishing an overall Commission-approved energy efficiency program package, as demonstrated by the Commission's directive that an ART analysis be conducted before an RETF energy efficiency program is approved, DDOE argues that it should be allowed to recover its ART costs.²⁹

IV. DISCUSSION

16. We have consistently declined to approve DDOE's proposed energy efficiency programs unless DDOE could first show that the programs are cost effective. In order to show that programs are cost effective, we have required DDOE to apply an ART analysis. However, we have not previously considered whether, and to what extent, DDOE may recover its ART costs.

17. D.C. Code §34-1514(a)(1) states that the RETF is a proprietary fund in the nature of an enterprise fund as classified under D.C. Code §47-373. Although §47-373 does not offer much guidance, it does state that enterprise funds are for activities operated in a manner similar to private business enterprises. See D.C. Code §47-373(2)(D). In the absence of any statutory limitation on the use of the fund or our discretion, we conclude that the fund may be used for any ordinary and reasonable expense associated with program development or implementation. Because the ART analysis is a necessary part of program development, we will allow DDOE to recover the ART costs from the RETF on a one-time basis for the six programs under consideration at this time, subject to the limitations discussed below.

18. For programs ultimately approved by the Commission, the approved ART screening costs are to be included as part of the approved program administrative cost budget,

²⁶ *Id.* at 4.

²⁷ *Id.* at 4-5.

²⁸ *Id.* at 5.

²⁹ DDOE Reply at 1.

which is limited to 10% of an individual program's total budget,³⁰ including that program's contribution to general administrative RETF program expenses. In the event that a program is ultimately rejected, DDOE will absorb the approved ART costs in the overall administrative budget for the RETF program such that there will be no additional cost to ratepayers. This will encourage prudent planning and program implementation.

19. In Order No. 13475, the Commission granted, on a one-time basis, DDOE's funding request for a portion of its RETF administration expense. In that instance, the Commission noted that its action was a one-time approval, subject to DDOE's reporting obligations.³¹ The Commission also emphasized that DDOE was prohibited from exceeding the approved funding without prior Commission authorization.³² We expect that DDOE's total ART expenses will not exceed \$20,000. If the ART costs exceed \$20,000, then DDOE must report the actual costs to the Commission. In any event, we expect that DDOE will show its actual expenditures for the ART tests in the Administrative Cost Reports.

20. As DDOE points out, the responsibility for establishing energy efficiency programs rests on the shoulders of the Commission, not DDOE, and it is the Commission that selects the program administrator. We invite the RETF Working Group to convene and consider methods by which program development and implementation might be improved in the future. The Working Group is encouraged to consider the full gamut of possibilities, including whether the Commission should adopt guidelines for DDOE's recovery of ART costs or even whether future program development/implementation/administration should be handled by a contractor selected by competitive solicitation. A report detailing the Working Group's consensus opinions shall be filed within 60 days of this Order. If the group is unable to reach consensus, individual members may submit their views in lieu of a consensus report.

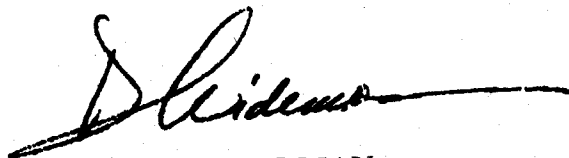
THEREFORE, IT IS ORDERED THAT:

21. DDOE's motion for leave to file reply comments is hereby granted.
22. DDOE's Funding Request is granted consistent with this Order.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:

CHIEF CLERK


DOROTHY WIDEMAN
COMMISSION SECRETARY

³⁰ See Order Nos. 12181 and 13204.

³¹ *Id.*

³² *Id.*