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PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
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WASHINGTON, DC 20005

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DISTRICT OF COLUMBIA
PUBLIC SERVICE COMMISSION

ORDER

June 25, 2008

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

Order No. 14840

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") adopts the attached rules and regulations, Chapter 9, "Net Energy Metering" of Title 15 of the District of Columbia Municipal Regulations ("Rules"). These Rules, as revised herein, shall become effective upon publication of a Notice of Final Rulemaking in the *D.C. Register*.

II. BACKGROUND

2. On February 10, 2005, the Commission issued Order No. 13501 adopting final rules and regulations implementing the net energy metering ("NEM") provisions of the District of Columbia Retail Electric Competition and Consumer Protection Act of 1999, as amended.¹ On February 18, 2005, a Notice of Final Rulemaking was published in the *D.C. Register*.² After a series of revisions, on July 26, 2006, Pepco filed a revised NEM tariff and a NEM Contract.³ By Order No. 14184, the Commission approved Pepco's tariff and contract and, on February 9, 2007, published a Notice of Final Rulemaking in the *D.C. Register*.⁴

3. In the final disposition of a NEM complaint filed by a District resident, the Commission noted that it would revisit the propriety of applying transmission and distribution charges to self-generated electricity as well as other issues regarding net energy metering within a new rulemaking.⁵

¹ *Formal Case No. 945, In the Matter of the Investigation into Electric Services Market Competition and Regulatory Practices ("F.C. 945")*, Order No. 13501, rel. February 10, 2005; Retail Electric Competition and Consumer Protection Act of 1999, D.C. Code §§ 34-1501-1520 (2001 and 2007 Supp.).

² 52 *D.C. Reg.* 1586-1590 (2005) ("Net Energy Metering Rules").

³ *F.C. 945*, Customer Net Energy Metering Contract of the Potomac Electric Power Company, filed July 25, 2006 ("Further Revised Proposed NEM Standard Contract").

⁴ *F.C. 945*, Order No. 14184, rel. January 26, 2007 (approving certain contract additions recommended by the Office of the People's Counsel); 54 *D.C. Reg.* 1311-1312 (2007).

⁵ See *F.C. 945*, Order No. 14602, rel. October 18, 2007 at 4.

4. On February 8, 2008, the Commission published a notice of proposed rulemaking (“NOPR”) in the D.C. Register revising various rules within the NEM regulations.⁶ In particular, the NOPR revises the language in Rule 902.3 as follows:

If the electricity generated during the billing period by the customer’s facility exceeds the customer’s kWh usage during the billing period, (excess generation), the customer-generator’s next bill will be credited for the excess generation at the Full Retail Rate applicable during the billing period in which the excess generation occurred. If the full credit for excess generation is not exhausted during the next billing period, the remaining credit shall be carried over until such time as the full credit has been exhausted.⁷

The NOPR proposes to define “Full Retail Rate” in Rule 999 as “the generation, transmission and distribution charges applicable to the net energy billing customer during the billing period.”⁸ The Commission solicited comments on the NOPR and gave notice of our intent to take final rulemaking action.

5. We received comments from OPC and Pepco, and reply comments from Pepco only.⁹

a. OPC opposes the Commission’s proposed Rule 902.3 in the NOPR. OPC argues that NEM customers should not receive compensation at the Full Retail Rate, *i.e.* generation, transmission, and distribution. OPC argues that NEM customers construct, operate, and maintain generation facilities only; thus, giving a generation credit is reasonable. Conversely, OPC avers that NEM customers do not create, operate and maintain transmission and distribution facilities; therefore giving NEM customers a credit for transmission and distribution is not reasonable. Furthermore, the Office contends that because NEM customers have generation facilities, the cost of generation for providers is reduced. On the other hand, OPC states that NEM customers do not lower the cost of transmission or distribution for providers. Therefore, OPC contends that providing a credit for transmission and distribution is unreasonable. As additional support, OPC attaches tariffs from Mid-Atlantic utilities that provide net energy metering in Delaware, Maryland, New Jersey, Pennsylvania, and Virginia. According to OPC, all such utilities provide only generation credits. Finally, OPC states that NEM customers already receive grants from the Renewable Energy Demonstration Program, which is financed through the ratepayer-funded RETF, thus to provide compensation at the Full Retail Rate, as defined by the NOPR, would be an additional, unnecessary subsidy. To conclude,

⁶ 55 D.C. Reg. 1327-1331 (2008) (revising various rules, such as Rules 902.2, 902.3, 902.4, 904.1, and 999).

⁷ 55 D.C. Reg. at 1328.

⁸ 55 D.C. Reg. at 1330.

⁹ F.C. 945, Comments of the Office of the People’s Counsel on January 25 Corrected Proposed Amendment Changes to Rule 902.3, Chapter 9 Net Energy Metering Rules (“OPC Comments”), filed Feb. 12, 2008; Comments of the Potomac Electric Power Company, filed Feb. 11, 2008; Reply Comments of Potomac Electric Power Company, filed March 6, 2008.

OPC recommends that the Commission compensate NEM customers with generation credits only.

b. Pepco also opposes the Commission's proposed Rule 902.3. Pepco argues that the NOPR would require non-NEM customers to unreasonably subsidize NEM customers.¹⁰ Pepco does recommend that for Rule 999, the Commission include the definition of renewable resources as it appears in D.C. Code § 34-1431, including the Tier 1 and Tier 2 definitions.¹¹ Pepco also recommends that the Commission revise the definition of "customer generator" in Rule 999 to include the terms "industrial" and "government."¹²

III. DISCUSSION

A. Proposed Rule 902.3: Compensation at the Full Retail Rate

6. As proposed, Rule 902.3 compensates NEM customers at the "Full Retail Rate," *i.e.* including generation, transmission, and distribution credits, for their excess energy. While, we do not dispute OPC's claim that compensating NEM customers at the "Full Retail Rate" creates a subsidy paid for by non-NEM customers, we believe that, from a public policy perspective, a comprehensive NEM program will inure to the benefit of District residents. We note that any such subsidy paid for by non-NEM customers will be constrained by the statutory 100 kilowatt size limit per installation.¹³ We believe that providing compensation at the Full Retail Rate may provide an important incentive to the development of solar energy in the District and that the distributed generation could have positive impacts on the transmission and distribution system. Finally, we note that other jurisdictions, such as New York and Vermont, also have NEM programs that provide compensation at the Full Retail Rate using the same definition of "Full Retail Rate" as we adopt today. By this Order, we adopt Rule 902.3 as proposed in the NOPR.

B. Proposed Rule 901.1: Sentence Restructuring

7. We believe that proposed Rule 901.1 needs minor sentence structure revisions. Therefore, we have revised Rule 901.1 to read as follows:

Eligible customer-generators utilizing renewable resources, cogeneration, fuel cells, or microturbines may elect and shall be afforded the opportunity to participate in net energy metering. An eligible customer-generator's facility shall meet all applicable safety and performance standards established by the National Electrical Code ("NEC"), National Electrical Safety Code ("NESC"), the Institute of Electrical and Electronics Engineers ("IEEE"), Underwriters Laboratories ("UL") and any other relevant standards specified by the Commission.

¹⁰ F.C. 945, Reply Comments of Potomac Electric Power Company, filed March 6, 2008 at 2.

¹¹ F.C. 945, Comments of Potomac Electric Power Company, filed February 11, 2008 at 1-2.

¹² *Id.* at 2.

¹³ See D.C. CODE § 34-1501 (15) (A) (2007 Supp.).

The non-substantive modification does not change the intent, meaning, application, or exceed the scope of the rules published in the NOPR. Therefore, we adopt proposed Rule 901.1 as revised.

C. Proposed Rule 999: Definition of “Customer-Generator”

8. D.C. Code § 34-1501 (15) defines the term “customer-generator” as:

a residential or commercial customer that owns and operates an electric generating facility that: (A) Has a capacity of not more than 100 kilowatts; (B) Uses renewable resources, cogeneration, fuel cells, or microturbines; (C) Is located on the customer’s premises; (D) Is interconnected with the electric company’s transmission and distribution facilities; and (E) Is intended primarily to offset all or part of the customer’s own electricity requirements.¹⁴

Proposed Rule 999 includes a definition for “customer generator” which is identical to the D.C. Code. Pepco recommends that we insert the terms “industrial and government” into the definition of “customer-generator.” However, we are precluded from defining “customer generator” in a manner inconsistent with D.C. Code § 34-1501. Therefore, Pepco’s proposed change is rejected and the definition of “customer-generator” as proposed by the Commission in Rule 999 is adopted.

D. Rule 999: Definition of “Renewable Resource”

9. Finally, Pepco recommends that we use the definition for “renewable resources” from D.C. Code Title 34 Chapter 14A, Renewable Energy Portfolio Standards. We note that our NOPR proposes regulations promulgated under D.C. Code Title 34, Chapter 15 Retail Electric Competition and Consumer Protection. We also note that D.C. Code § 34-1431 provides definitions “for the purposes of this chapter,” *i.e.* Chapter 14A. Insofar as the definitions for Chapter 14A are inapplicable to Chapter 15, we decline to adopt the Company’s recommendation.

¹⁴ D.C. Code § 34-1501 (15) (2001).

THEREFORE, IT IS ORDERED THAT:

10. The proposed Chapter 9 rules are ADOPTED; and

11. The Commission Secretary shall cause a Notice of Final Rulemaking to be published in the D.C. Register to be effective upon the date of publication.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:

CHIEF CLERK:



**DOROTHY WIDEMAN
COMMISSION SECRETARY**