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PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

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DISTRICT OF COLUMBIA
PUBLIC SERVICE COMMISSION

ORDER

June 11, 2010

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

Order No. 15837

I. INTRODUCTION

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

II. BACKGROUND

2. On July 4, 2008, the Commission published a Notice of Final Rulemaking ("NOFR") in the *D.C. Register*, which repealed the previous Chapter 9 in its entirety and adopted the current Chapter 9 NEM Rules.¹ In accordance with the existing statute, these rules allowed customer-generators to participate in net-metering if their generating capacity was 100 kilowatts or less. Subsequently, on October 22, 2008, the Council of the District of Columbia ("Council") enacted the Clean and Affordable Energy Act of 2008 ("CAEA") which, among other things, increased the generation capacity for eligibility from 100 kW to 1000 kW.²

3. On April 3, 2009, the Commission published a Notice of Proposed Rulemaking ("NOPR") to amend the NEM Rules to comport with the CAEA.³ Public comment led to a revised NOPR, which was published on October 2, 2009.⁴ On February 26, 2010, the

¹ *Formal Case No. 945, In The Matter of the Investigation into Electric Service Market Competition and Regulatory Practices*, ("F.C. 945"), 55 *D.C. Reg.* 7301-7305 (July 4, 2008).

² D.C. Code § 34-1501 (15) (2009 Supp.). The Clean and Affordable Energy Act ("CAEA") amended this section of the D.C. Code. For the purposes of this Order, the Code Section and the acronym CAEA are used interchangeably. The CAEA became law on October 22, 2008. *See D.C. Law 17-250*.

³ *F.C. 945*, 56 *D.C. Reg.* 2600-2604 (April 3, 2009).

⁴ *F.C. 945*, 56 *D.C. Reg.* 7851-7856 (October 2, 2009).

Commission published another NOPR with additional modifications to the proposed rules.⁵ Only OPC filed Comments.⁶

III. DISCUSSION

A. OPC's Comments

4. OPC generally supports the proposed NEM Rules.⁷ However, OPC asserts that Paragraphs 902.3 and 903.5 are inconsistent with the CAEA.⁸ Specifically, OPC notes that although the Commission incorporated the new 1000 kW capacity limit into the general definition section, where appropriate, Paragraphs 902.3 and 903.5 continue to reflect a capacity limit of 100 kW.⁹

B. Commission Decision

5. Paragraph 902.3 states, in pertinent part:

For a customer-generator with an electric generating facility that has a capacity less than or equal to 100 kilowatts . . . the customer-generator's next bill will be credited by the Electric Company for the excess generation at the full retail distribution rate . . . In no event shall such distribution-related compensation for excess generation apply to customer-generators with electric generating facilities that have a capacity greater than 100 kilowatts.

Similarly, Paragraph 903.5 states, in pertinent part:

For a customer-generator with an electric generating facility that has a capacity less than or equal to 100 kilowatts . . . the customer-generator's next bill will also be credited for the excess generation at the full retail rate for transmission and distribution service applicable during the billing period in which the

⁵ *F.C. 945, 57 D.C. Reg. 1777-1782* (February 26, 2010).

⁶ *F.C. 945, Comments of the Office of the People's Counsel on the February 26, 2010 Notice of Proposed Rulemaking Regarding Chapter 9 – Net Metering Rules* ("OPC's Comments"), filed March 29, 2010.

⁷ *F.C. 945, OPC's Comments* at page 2.

⁸ *F.C. 945, OPC's Comments*, at page 3-4.

⁹ *F.C. 945, OPC's Comments*, at page 3-4.

excess generation occurred . . . In no event shall such transmission- and distribution-related compensation for excess generation apply to customer-generators with electric generating facilities that have a capacity greater than 100 kilowatts.

6. Paragraphs 902.3 and 903.5 both address compensation. Paragraph 902.3 sets forth how certain customers of competitive energy suppliers ("CES") will be compensated for their excess generation, while Paragraph 903.5 describes how certain Standard Offer Service ("SOS") customers will be credited for their excess generation. Although the CAEA increased the threshold for customer participation in net metering, it does not mandate any particular method for compensating them. As such, determining compensation is within the discretion of the Commission. The Commission has determined that a tiered approach, where CES facilities with capacities of less than or equal to 100 kW receive credit at the full retail distribution rate, is in the public interest.¹⁰ Likewise, we determined that it is in the public interest that SOS facilities with capacities of less than or equal to 100 kW shall receive credit at the full retail rates for transmission and distribution.¹¹ Inasmuch as OPC has not shown that our action is inconsistent with law or arbitrary, we see no reason to further modify these rules.

7. After careful review and consideration of the comments, the Commission hereby adopts the attached rules and regulations, Chapter 9 of Title 15 of the District of Columbia Municipal Regulations, the Net Energy Metering Rules. With the publishing of the new Chapter 9 in the *D.C. Register*, the current Chapter 9 will be repealed in its entirety. As a result of the adoption of the new NEM Rules, a new NEM tariff and standard contract must be filed with the Commission to replace the previous tariff and contract under the repealed Chapter 9. Therefore, we direct Pepco to file a new NEM tariff and standard contract in accordance with the new rules.

THEREFORE, IT IS ORDERED THAT:

8. The rules published in the February 26, 2010 Notice of Proposed Rulemaking are hereby **ADOPTED**;

9. The rules shall become effective upon publication of the Notice of Final Rulemaking in the *D.C. Register*; and

¹⁰ The Commission does not regulate generation and transmission rates for CES customers, but still regulates the distribution rates for such customers. The Commission established the threshold for CES facilities with capacities of 100 kW or less to receive compensation for their excess generation at the full retail distribution rate. Compensation for generation and transmission will be specified in the CES agreement, in accordance with Paragraph 902.1 of the NEM Rules.

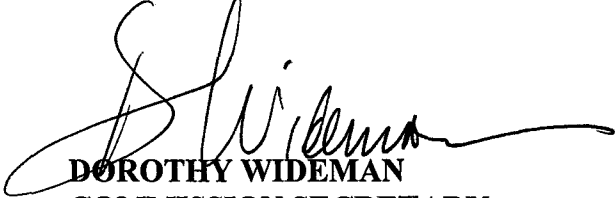
¹¹ In the case of SOS facilities, the Commission determined that SOS facilities, with capacities of 100 kW or less, shall be compensated for their excess generation based upon generation value and the full retail rates for transmission and distribution. See Paragraph 903.3 of the NEM Rules concerning generation value.

10. The Potomac Electric Power Company is directed to file a new Net Energy Metering tariff and standard contract with the Commission in conformity with the new Chapter 9 Net Energy Metering Rules, attached hereto, within 30 days of the date of this Order.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:

CHIEF CLERK:



**DOROTHY WIDEMAN
COMMISSION SECRETARY**

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

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

1. The Public Service Commission of the District of Columbia (“Commission”) hereby gives notice, pursuant to Sections 2-505 (a) and 34-1518 of the District of Columbia Official Code,¹ of its final rulemaking action taken on June 11, 2010, in Order No. 15837. The Commission repeals the current Chapter 9 in its entirety and adopts the following provisions for Chapter 9 of Title 15 of the District of Columbia Municipal Regulations (“DCMR”) governing net energy metering in the District of Columbia.²

2. The Commission published a Notice of Proposed Rulemaking (“NOPR”) on February 26, 2010 at 57 *D.C. Reg.* 1777-1782 (2010).³ Only the Office of People’s Counsel (“OPC”) filed Comments in response to the February 26, 2010 NOPR.⁴ On June 11, 2010, Order 15837 was issued addressing the comments and adopting the final regulations. The final rules will become effective upon the publication of this Notice of Final Rulemaking (“NOFR”) in the *D.C. Register*.

CHAPTER 9 NET ENERGY METERING

900 GENERAL PROVISIONS

900.1 The purpose of this chapter is to set forth the policies and procedures for implementation of the net energy metering provisions of the “Retail Electric Competition and Consumer Protection Act of 1999,” as amended, and the Clean and Affordable Energy Act of 2008 (“CAEA”).

900.2 This chapter establishes the Public Service Commission of the District of Columbia Rules and Regulations Governing Net Energy Metering, including eligibility for participating in net energy metering, a bill

¹ D.C. Code § 2-505 (a) (2001 Ed.) and D.C. Code § 34-1518 (2001 Ed.).

² See D.C. Code § 34-1501 (15) (2009 Supp.), which sets forth new capacity limits for net metering participation, which required amendment of the Chapter 9.

³ *F.C. 945, 57 D.C. Reg. 1777-1782* (February 26, 2010).

⁴ *F.C. 945*, Comments of the Office of the People’s Counsel on the February 26, 2010 Notice of Proposed Rulemaking Regarding Chapter 9 – Net Metering Rules (“OPC’s Comments”), filed March 29, 2010.

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¹¹ In the case of SOS facilities, the Commission determined that SOS facilities, with capacities of 100 kW or less, shall be compensated for their excess generation based upon generation value and the full retail rates for transmission and distribution. See Paragraph 903.3 of the NEM Rules concerning generation value.

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- 900.2 This chapter establishes the Public Service Commission of the District of Columbia Rules and Regulations Governing Net Energy Metering, including eligibility for participating in net energy metering, a bill

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⁴ *F.C. 945*, Comments of the Office of the People’s Counsel on the February 26, 2010 Notice of Proposed Rulemaking Regarding Chapter 9 – Net Metering Rules (“OPC’s Comments”), filed March 29, 2010.

crediting mechanism, net energy billing requirements for participants, net metering-related equipment requirements, a standard contract requirement, and safety and performance standards. This chapter shall be cited as the "District of Columbia Net Energy Metering Rules."

900.3 The provisions of this chapter are promulgated pursuant to the authority set forth in Section 34-1518 of the D.C. Official Code.

901 ELIGIBLE CUSTOMER-GENERATORS

901.1 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.

902 NET ENERGY BILLING AND CREDITING FOR CUSTOMERS OF COMPETITIVE ELECTRICITY SUPPLIERS

902.1 A customer that has elected net energy billing may obtain generation service from any Competitive Electricity Supplier that agrees to provide service on a net energy basis. In such circumstances, the net inflow or outflow of electricity supplied to or by the customer-generator will be billed or credited at the Competitive Electricity Supplier's energy rate specified in the agreement between the customer-generator and the Competitive Electricity Supplier. The Competitive Electricity Supplier shall be responsible for calculating the net energy bill (or credit) amount for each billing period.

902.2 For customer-generators purchasing generation and transmission service from a Competitive Electricity Supplier, if the customer-generator's kilowatt-hour usage during the billing period exceeds the kilowatt-hours generated by the customer-generator during that period, the customer-generator will be billed for the net energy delivered by the Electric Company at the full retail distribution rate for distribution service. In no event shall distribution-related usage charges be applied to the kilowatt-hours generated by the customer's net metering facility.

902.3 For a customer-generator with an electric generating facility that has a capacity less than or equal to 100 kilowatts, if the electricity generated during the billing period by the customer-generator's facility exceeds the customer-generator's kWh usage during the billing period (excess generation), the customer-generator's next bill will be credited by the Electric Company for the excess generation at the full retail distribution rate. The credit for excess generation shall be expressed as a dollar value on the customer-generator's bill. 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. In no event shall such distribution-related compensation for excess generation apply to customer-generators with electric generating facilities that have a capacity greater than 100 kilowatts.

902.4 Net energy billing applies only to kilowatt-hour usage charges. Net energy billing customers are responsible for all other charges applicable to the customer's rate class and recovered through fixed amounts or over units other than kilowatt-hours, including customer and/or demand charges, as applicable.

903 NET ENERGY BILLING AND CREDITING FOR SOS CUSTOMERS

903.1 This section governs the billing practices applicable to participating net energy billing customers receiving SOS generation service during a billing period. In no event shall transmission or distribution-related usage charges be applied to the kilowatt-hours generated by the customer's net metering facility.

903.2 If the value of the generation (generation value) used to supply the customer's usage exceeds the generation value of the electricity generated by the customer's net metering facility during the billing period, the customer-generator will be billed for the difference between the generation value of the energy consumed and the energy supplied.

903.3 For a customer-generator with an electric generating facility that has a capacity less than or equal to 1,000 kilowatts, if the generator value of the electricity generated by the customer's net metering facility exceeds the generation value of the electricity used to supply the customer's usage during the billing period, the customer-generator's next bill will be credited for the difference between the generation value of the energy supplied and the energy consumed. The credit for the difference in generation value shall be expressed as a dollar value on the customer-generator's bill. If the full credit 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.

903.4 If the customer's kWh usage exceeds the electricity generated by the customer's net metering facility during the billing period, the customer-generator will be billed transmission and distribution related usage charges on the net energy supplied to the customer during the billing period.

903.5 For a customer-generator with an electric generating facility that has a capacity less than or equal to 100 kilowatts, if the electricity generated during the billing period by the customer-generator's facility exceeds the customer-generator's kWh usage during the billing period (excess generation), the customer-generator's next bill will also be credited for

the excess generation at the full retail rate for transmission and distribution service applicable during the billing period in which the excess generation occurred. The credit for excess generation shall be expressed as a dollar value on the customer-generator's bill. If the sum of the full transmission and distribution credit for excess generation and the generation value credit 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. In no event shall such transmission- and distribution-related compensation for excess generation apply to customer-generators with electric generating facilities that have a capacity greater than 100 kilowatts.

- 903.6 Net energy billing applies only to kilowatt-hour usage charges. Net energy billing customers are responsible for all other charges applicable to the customer's rate class and recovered through fixed amounts or over units other than kilowatt-hours, including customer, demand and/or minimum charges, as applicable.

904 NET METERING-RELATED EQUIPMENT

- 904.1 The metering equipment installed for net energy metering shall be capable of measuring the flow of electricity in two directions.

- 904.2 Nothing in this section shall prohibit the Electric Company from installing additional meters to separately record electricity supplied to an eligible customer-generator from the electric grid and the electricity generated and supplied to the electric grid by the eligible customer-generator. However, no customer-generator that elects to be billed on a net energy basis shall be charged directly for the cost of the additional meters or other necessary equipment.

905 STANDARD CONTRACT

- 905.1 The Electric Company shall develop a standard contract that implements these rules, which shall be subject to the review and approval of the Commission. Such standard contract shall be consistent with the provisions of this chapter, as well as with the Energy Policy Act of 2005 and the Commission's Interconnection Rules under Chapter 40 of Title 15 of the DCMR.⁵

906 WAIVER

- 906.1 Upon request of any person subject to this chapter or upon its own motion, the Commission may, for good cause, waive any requirement of

⁵ Energy Policy Act of 2005, Pub.L. 109-58, 119 Stat. 594 (2005); *F.C. 1050, 56 D.C. Reg.* 001415-001487 (February 13, 2009) to be codified as 15 D.C.M.R. Chapter 40, District of Columbia Small Generator Interconnection Rules ("DCSGIR").

this chapter that is not required by statute or inconsistent with the purposes of this chapter.

999

DEFINITIONS

When used in this chapter; the following terms and phrases shall have the following meaning:

“Capacity” means the maximum output, expressed in kilowatts, of an electric generator under specific conditions designated by the manufacturer, as indicated on a nameplate physically attached to the generator.

“Commission” means the Public Service Commission of the District of Columbia.

“Competitive Electricity Supplier” means a person, including an aggregator, broker, or marketer, who generates electricity; sells electricity; or purchases, brokers, arranges or markets electricity for sale or retail customers: The term excludes the following: (A) Building owners, lessees, or managers who manage the internal distribution system serving such building and who supply electricity solely to occupants of the building for use by the occupants; (B)(1) Any person who purchases electricity for its own use or for the use of its subsidiaries or affiliates; or (2) Any apartment building or office building manager who aggregates electric service requirements for his or her building or buildings, or who does not: (a) Take title to the electricity; (b) Market electric services to the individually-metered tenants of his or her building; or (c) Engage in the resale of electric service to others; (C) Property owners who supply small amounts of power, at cost, as accommodation to lessors or licensees of the property; and (D) A consolidator.

“Customer-generator” means a residential or commercial customer that owns (or leases or contracts) and operates an electric generating facility that: (a) has a capacity of not more than 1000 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.

“Electric Company” means the company that provides distribution service.

“Eligible customer-generator” means a customer-generator whose net energy metering system for renewable resources, cogeneration, fuel cells, and microturbines meets all applicable safety and performance standards.

“Full Retail Distribution Rate” means the per kilowatt-hour distribution charges applicable to the net energy billing customer during the billing period.

“Full Retail Transmission Rate” means the per kilowatt-hour transmission charges applicable to the net energy billing customer during the billing period.

“Generation value” means the product of the applicable SOS kilowatt-hour rate times the number of kilowatt-hours consumed and/or supplied, during the time period(s) associated with such usage and/or supply.

“Net energy metering” means the difference between the kilowatt-hours consumed by a customer-generator and the kilowatt-hours generated by the customer-generator’s facility over any time period determined as if measured by a single meter capable of registering the flow of electricity in two directions.

“Net energy billing” means a billing and metering practice under which a customer-generator is billed on the basis of net energy over the billing period.

“Standard Offer Service Provider” means a provider of standard offer service chosen pursuant to Chapter 29 of the Commission's rules.