

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET N.W., SUITE 200, WEST TOWER
WASHINGTON, D.C. 20005

ORDER APPROVING ADOPTION OF RULES
GOVERNING NET ENERGY METERING

February 10, 2005

FORMAL CASE NO. 945, IN THE MATTER OF THE INVESTIGATION INTO
ELECTRIC SERVICES MARKET COMPETITION AND REGULATORY PRACTICES,
ORDER NO. 13501

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 DCMR ("Rules"), implementing the net energy metering provisions of the District of Columbia Retail Electric Competition and Consumer Protection Act of 1999, as amended (the "Act").¹ The Rules, as revised herein, shall become effective upon publication of a Notice of Final Rulemaking in the *D.C. Register*.

II. BACKGROUND

2. With the passage of the Act, the Council of the District of Columbia adopted a comprehensive statutory scheme to restructure the District of Columbia's retail electricity market. Among other provisions, the Act authorizes the Commission to establish a program that affords eligible customer-generators the opportunity to participate in net energy metering. As used in the Act, the term "net metering" means "measuring the difference between the electricity supplied to an eligible customer-generator from the electric grid and the electricity generated and fed back to the electric grid by the eligible customer generator."²

3. On April 16, 2003, in Order No. 12704, the Commission adopted a method of crediting customers for the excess electricity that they provide to the electric grid and directed the Retail Competition Working Group ("Working Group") to submit proposed net energy metering rules that incorporate the adopted crediting method.³ On October 8, 2004, a Notice of Proposed Rulemaking was published in the *D.C. Register* indicating the Commission's intent to adopt final rules and regulations implementing the net energy metering provisions of the Act.

4. The Working Group was unable to reach consensus on net energy metering rules. On July 1, 2003, the Potomac Electric Power Company ("PEPCO") the Office of the People's

¹ See Retail Electric Competition and Consumer Protection Act of 1999, D.C. Code §§ 34-1501-1520 (2004).

² D.C. Code, 2001 Ed. § 34-1501(21).

³ *Formal Case No. 945, In the Matter of the Investigation Into Electric Services Market Competition and Regulatory Practices* ("F.C. 945"), Order No. 12704, rel. April 16, 2003.

Counsel of the District of Columbia ("OPC"), and the District of Columbia Water and Sewer Authority filed individual sets of proposed rules. Following comments from the parties, on October 8, 2004, a Notice of Proposed Rulemaking was published in the *D.C. Register* indicating the Commission's intent to adopt final rules and regulations implementing the net energy metering provisions of the Act.⁴ Initial comments were due by November 8, 2004 and reply comments were due by November 22, 2004.

5. On November 8, 2004, OPC filed comments.⁵ On November 22, 2004, PEPCO filed reply comments.⁶ Washington Gas Energy Services ("WGES") filed comments in reply to PEPCO's comments on December 8, 2004.⁷ On December 22, 2004, OPC filed a motion for leave to reply to PEPCO's reply comments.⁸

III. COMMENTS

A. OPC Comments

6. OPC supports adoption of the proposed rules but requests clarification of Section 902.3 which sets forth the calculation and application of the credits to be provided customer-generators that generate electricity that exceeds the electricity delivered by their suppliers.⁹ OPC states that clarification is needed so that the situation does not arise wherein customers whose rates vary with the wholesale price of energy receive less than full credit for the excess electricity they generate.¹⁰

7. OPC notes that proposed Rule 902.3 provides:

If the electricity generated by the customer-generator in a billing period exceeds that supplied by the SOS Provider or Competitive Electricity Supplier during that period (excess generation), the customer-generator's next bill(s) will be credited for the excess generation during the period in which the excess generation occurred, at the full retail rate for the kilowatt-hours provided during the billing period. *The excess shall be applied to the customer-generator's bill as a reduction in the customer-generator's kilowatt-hour usage.*¹¹

⁴ NOPR published October 8, 2004, 51 *D.C. Reg.* 9462-9465 (2004).

⁵ *F.C. No. 945*, Comments of the Office of the People's Counsel on the Notice of Proposed Rulemaking Regarding Net Energy Metering, filed November 8, 2004 ("OPC Comments").

⁶ *F.C. No. 945*, Reply Comments of Potomac Electric Power Company, filed November 22, 2004 ("PEPCO Reply Comments").

⁷ *F.C. No. 945*, Reply Comments of Washington Gas Energy Services, filed December 8, 2004 ("WGES Reply Comments").

⁸ *F.C. No. 945*, Motion for Leave to Files Reply Comments and Reply Comments of the Office of the People's Counsel on Reply Comments of Potomac Electric Power Company, filed December 22, 2004 ("OPC Reply Comments").

⁹ *F.C. No. 945*, OPC Comments at 1.

¹⁰ *Id.*

¹¹ *Id.* at 2-3 (emphasis added).

8. OPC states that the last sentence in Rule 902.3 is ambiguous. According to OPC, this sentence calls for the credit for excess generation to be applied to the customer's bill as a reduction in the customer-generator's kWh usage, i.e., a kWh for kWh reduction. OPC asserts that in those circumstances where the customer's rate is not fixed but varies with the wholesale price of energy, this credit application creates the potential for customers to receive less than full credit for the excess electricity they generate because, if the retail electricity rate in the period in which the credit is to be applied is less than the retail rate in effect during the period in which the excess electricity is generated, the customer will not receive full credit for excess electricity that was generated.

9. Thus, OPC proposes the following revision for the last sentence of 902.3 in bold, below:

The excess shall be applied to the customer-generator's bill as a reduction in the customer-generator's kilowatt-hour usage **in the following manner: (1) the dollar value of the credit will be determined by multiplying the kWh of excess generation times the full retail per kWh rate in effect in the month in which the excess is generated, (2) the dollar value resulting from (1), above, will be divided by the full retail per kWh rate in effect in the month in which the credit is to be applied, and (3), for billing purposes, the kWh resulting from (2), above, will be deducted from the customer-generator's kWh usage for the month in which the credit is to be applied.**¹²

10. For example, assume that during a billing period, a customer generates 100 kWh of excess electricity at a retail rate of 2.0 cents per kWh. In such case, the customer would be entitled to a credit of 100 kWh at 2 cents per kWh, or \$2.00. If during the next billing period, however, the retail rate per kWh falls to 1.0 cent per kWh, then the customer's credit would be 200 kWhs at the rate of 1.0 cent per kWh, having a value of \$2.00. Conversely, if during the next billing period the retail kWh rate rose to 4.0 cents, then the customers' credits would be 50 kWhs at 4.0 cents per kWh, also having a value of \$2.00.

B. PEPCO Reply Comments

11. PEPCO agrees with OPC that the last sentence in proposed Rule 902.3 is ambiguous.¹³ Specifically, PEPCO contends that despite the first sentence of proposed Rule 902.3 which states that excess generation delivered by the customer-generator is to be credited at the full retail rate applicable to that billing period, the last sentence can be construed such that the credit would be applied solely as a usage reduction. Although PEPCO acknowledges OPC's proposed revision to the rule may address the ambiguity, PEPCO submits that "there is a simple solution to the problem" available.¹⁴

12. PEPCO states that the ambiguity can be eliminated by simply deleting the last sentence of proposed Rule 902.3, as well as deleting proposed Rules 902.4 and 902.5 in their entirety.¹⁵

¹² *Id.* at 3-4.

¹³ PEPCO Reply Comments at 2.

¹⁴ *Id.* at 1.

¹⁵ *Id.* at 3.

PEPCO explains that if a customer-generator delivers excess generation to its supplier in a particular month, the supplier would provide a credit derived by multiplying the excess generation by the applicable SOS or alternate supplier price for generation and that the credit would be provided on the same month's bill.¹⁶ According to PEPCO, the customer-generator would automatically receive full credit for the excess generation delivered to its supplier, and there would be no need to carryover any excess energy to a subsequent month.¹⁷ Finally, PEPCO states that the elimination of any carryover of excess energy would obviate the need for proposed Rules 902.4 and 902.5, both of which relate solely to the carryover of excess kWh for crediting purposes.¹⁸

13. As a separate matter, PEPCO states, "proposed Rule 904.1 provides that PEPCO is to develop a standard customer-generator contract for review and approval by the Commission."¹⁹ PEPCO contends that because the proposed rules are applicable to all suppliers, the Commission may wish "to clarify whether any supplier other than PEPCO should also be required to develop a contract in the event such a supplier were to serve a customer-generator."²⁰

C. WGES Reply Comments

14. WGES supports in part, and disagrees in part, with PEPCO's comments. Specifically, WGES agrees with PEPCO that proposed Rules 902.4 and 902.5 should be eliminated because "the monthly bill of a supplier to a customer-generator, whether Pepco or a competitive supplier, should include a full credit for any excess delivery consistent with the first sentence of proposed Rule 902.3."²¹

15. WGES disagrees with PEPCO's suggestion that the Commission should clarify whether any supplier other than PEPCO should also be required to develop a contract in the event such a supplier were to serve a customer-generator.²² Regarding proposed Rule 904.1, WGES argues that "[n]o clarification is necessary as, except for consumer protection rules; Commission oversight of contract terms and conditions applies only to the SOS provider."²³ WGES further states that competitive suppliers "are free to structure private, bilateral contracts and arrangements that fund and facilitate the construction of renewable energy facilities without Commission review."²⁴

¹⁶ PEPCO notes that the "next bill" language, as referenced in proposed Rule 902.3, is, in fact, the bill that is applicable to the month in which the excess generation is supplied by the customer-generator. *Id.* at 3, n.1.

¹⁷ *Id.* at 3-4.

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 5.

²⁰ *Id.*

²¹ WGES Reply Comments at 1.

²² *Id.* at 1.

²³ *Id.* at 1.

²⁴ *Id.* at 1-2.

16. In addition, WGES suggests the following language (in bold) be added to the end of proposed Rule 902.1 so as to recognize that competitive electric suppliers can contract with a customer-generator:

This section governs the annualized bill crediting mechanism applicable to the customer-generators that generate electricity during a billing period, **unless such terms and conditions are incorporated into the contract between Competitive Electric Suppliers and the customer-generator.**²⁵

D. OPC Reply Comments

17. OPC filed a motion for leave to file reply comments. According to OPC, good cause exists for granting its motion because its reply comments may clarify an issue in dispute and thereby potentially eliminate that dispute.²⁶

18. OPC states that as it understands PEPCO's proposed rule changes -- "if, in a given month, a customer-generator generates more electricity than PEPCO delivers to it, the customer generator will receive a monetary payment from its supplier for the excess generation in the amount of the credit shown on that same month's bill."²⁷ If this understanding is correct, OPC endorses PEPCO's suggestion.²⁸ According to OPC, "PEPCO's approach simplifies the Commission's proposed rules and provides an equitable means of compensation for the output of customer-owned generation."²⁹ As such, OPC recommends that the Commission adopt PEPCO's proposal.³⁰ If OPC's understanding is not correct, OPC objects to PEPCO's proposal because it would deny customer-generators full compensation for the energy that they provide.³¹

IV. DISCUSSION

A. OPC's Motion for Leave to File Reply Comments

19. As an initial matter, we find that OPC has shown good cause to grant its motion for leave to file reply comments out of time. Accordingly, the Commission will grant OPC's motion.

B. Proposed Rule 902.3

20. We note that the parties agree that a customer-generator should receive full credit for any excess generation in a given billing month, consistent with the first sentence of the proposed Rule 902.3. We also note that the parties also agree that the deletion of the last sentence of proposed Rule 902.3 will eliminate the ambiguity regarding the crediting mechanism, and

²⁵ *Id.* at 2 (emphasis in original).

²⁶ OPC Reply Comments at 1-2.

²⁷ *Id.* at 2.

²⁸ *Id.*

²⁹ *Id.* at 2-3.

³⁰ *Id.* at 3.

³¹ *Id.*

eliminate the need for proposed Rules 902.4 and 902.5. Therefore, we find that PEPCO's proposed revision will simplify the net energy metering rules and will ensure that customer-generators will receive full credit at the appropriate retail rate. PEPCO's proposed revision is based on the assumption that the term "next bill" as used in proposed Rule 902.3 means the bill that is applicable to the month in which the excess generation is supplied by the customer-generator. In other words, customer-generators that deliver excess generation to their electricity supplier(s) in a given billing month will be credited for that excess generation on their next bill. The credit provided to the customer-generator shall be calculated by multiplying the amount of excess generation supplied in kilowatt-hours by the applicable retail rate for that customer-generator in the same billing month as the excess generation was supplied. Accordingly, we shall revise proposed Rule 902.3 to read as follows and shall delete proposed Rules 902.4 and 902.5:

If the electricity generated by the customer-generator in a billing period exceeds that supplied by the SOS Provider or Competitive Electricity Supplier during that period (excess generation), the customer-generator's next bill will be credited for the excess generation during the period in which the excess generation occurred, at the full retail rate for the kilowatt-hours provided during the billing period.

21. We further find that all the interested parties support the adoption of the proposed net energy metering rules with the clarification addressed above. Accordingly, we will adopt the proposed rules with the revisions discussed above.

C. Standard Contract Language

22. PEPCO seeks clarification as to whether proposed Rule 904.1 is applicable to all electricity suppliers. Rule 904.1 provides that:

The Electric Company shall develop a standard contract, which shall be subject to the review and approval of the Commission. Such standard contract shall be consistent with the provisions of this chapter.

In contrast, WGES asserts that competitive suppliers are free to structure private, bilateral contracts and arrangements that fund and facilitate the construction of renewable energy facilities without Commission review. We recognize that, subject to compliance with relevant Commission rules and orders, each electricity supplier may offer net metering service under differing terms and conditions. Accordingly, we shall not amend that proposed Rule 904.1 to require a competitive electricity supplier to develop a "standard" customer-generator contract.

23. Further, we find that proposed Rules 902.2 and 902.3 expressly apply to both Standard Offer Service Providers and Competitive Electricity Suppliers and as such there is no question that a competitive provider may also contract with a customer-generator. Moreover, Section 34-1518(b)(1) of the Act provides, in part, that any net energy metering program established by the Commission may include such requirements as the Commission determines will facilitate the provision of net energy metering. The Act further provides that such requirements may be applicable to (a) retail sellers, (b) owners or operators of distribution or transmission facilities or (c) providers of default service. In light of the discretion granted to the Commission under the Act, we have proposed rules applicable to both Standard Offer Service Providers and

Competitive Electricity Suppliers. Accordingly, we decline to amend proposed Rule 902.1 as suggested by WGES simply to recognize that contracts between Competitive Electricity Suppliers and Customer-Generators are allowable under these proposed Rules.

THEREFORE, IT IS ORDERED THAT:

24. OPC's motion for leave to file reply comments is hereby granted.

25. The proposed Chapter 9 rules, as revised by this Order are **ADOPTED**.

26. 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

**CHRISTINE D. BROOKS
COMMISSION SECRETARY**

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., 2nd Floor, West Tower
WASHINGTON, D.C. 20005**

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), 34-302, and 34-1516 of the District of Columbia Code,¹ of its final rulemaking action taken on February 10, 2005, in Order No. 13501, adopting the attached new Chapter 9 of Title 15 DCMR governing Net Energy Metering in the District of Columbia.

2. The Commission published a Notice of Proposed Rulemaking ("NOPR") on October 8, 2004, at 51 D.C. Reg. 9462-9465 (2004). Comments were filed by the Office of People's Counsel, and the Potomac Electric Power Company and Washington Gas Energy Services, Inc. in response to the NOPR.² The Commission made clarifying changes to the regulations. The Commission's changes do not substantially change the intent, meaning, or application of the proposed rules or exceed the scope of the rules published in the NOPR. Additional copies of the final rules may be obtained by writing Christine D. Brooks, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., 2nd Floor, West Tower, Washington, D.C. 20005.

¹ D.C. Code, 2001 Ed. §§ 2-505, 34-320, and 34-1516.

² *Formal Case No. 945*, Comments of the Office of the People's Counsel on the Notice of Proposed Rulemaking Regarding Net Energy Metering, filed November 8, 2004; Reply Comments of Potomac Electric Power Company, filed November 22, 2004; Reply Comments of Washington Gas Energy Services, filed December 8, 2004; Motion for Leave to File Reply Comments and Reply Comments of the Office of the People's Counsel on Reply Comments of Potomac Electric Power Company, filed December 22, 2004.

CHAPTER 9 NET ENERGY METERING**900 GENERAL PROVISIONS; SCOPE AND APPLICABILITY**

- 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.
- 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 crediting mechanism 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. Code.

901 ELIGIBLE CUSTOMER-GENERATORS

Eligible customer-generators may elect and shall be afforded the opportunity to participate in net energy metering. An eligible customer-generator's net energy metering system for renewable resources, cogeneration, fuel cells, and microturbines 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

- 902.1 This section governs the annualized bill crediting mechanism applicable to customer-generators that generate electricity during a billing period.
- 902.2 If the electricity supplied during the billing period by the Standard Offer Service ("SOS") Provider or Competitive Electricity Supplier exceeds the electricity generated by the customer-generator during that period, the customer-generator will be billed for the net energy supplied at the full retail rate for electricity service.
- 902.3 If the electricity generated by the customer-generator in a billing period exceeds that supplied by the SOS Provider or Competitive Electricity Supplier during that period (excess generation), the customer-generator's next bill(s) will be credited for the excess generation during the period in which the excess generation occurred, at the full retail rate for the kilowatt-hours provided during the billing

period. The excess shall be applied to the customer generator's bill as a reduction in the customer generator's kilowatt-hour usage.

~~902.4 An eligible customer generator may accumulate unused kilowatt-hour credits and apply them against kilowatt-hour usage over a 12-month period. All crediting of excess generation, as defined in Section 902.3 of these rules, shall terminate at the earlier of: (a) the end of a 12-month period, the first month of which shall be the first month in which the customer generator provides excess generation to the SOS Provider or Competitive Electricity Supplier, or (b) when the customer generator switches suppliers. A new 12-month period shall commence as of the first month following the prior 12-month period during which the customer generator provides excess generation to the SOS provider or a Competitive Electricity Supplier.~~

~~902.5 When crediting of excess generation terminates, as provided in Section 902.4 of these rules, any remaining carry-over balance (credit) will be removed from the customer generator's account. The customer generator will receive no compensation for such unused kilowatt-hours.~~

903 NET METERING-RELATED EQUIPMENT

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

903.2 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, provided, however, that 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.

904 STANDARD CONTRACT

904.1 The Electric Company shall develop a standard contract, which shall be subject to the review and approval of the Commission. Such standard contract shall be consistent with the provisions of this chapter.

905 WAIVER

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

"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 to 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 an accommodation to lessors or licensees of the property; and (D) A consolidator.

"Customer-generator" means 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.

"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.

"Net energy" 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 ~~taking into account accumulated unused kilowatt-hour credits from the previous billing period.~~

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