

# 945 - E - 1011

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

## ORDER

April 16, 2003

FORMAL CASE NO. 945, PHASE II, IN THE MATTER OF THE INVESTIGATION INTO ELECTRIC SERVICE MARKET COMPETITION AND REGULATORY PRACTICES, Order No. 12704

### I. INTRODUCTION

1. By this Order, and as explained more fully below, the Public Service Commission of the District of Columbia ("Commission") adopts a method of crediting customers for the excess electricity that they provide to the electric grid. Additionally, we direct the Retail Competition Working Group ("Working Group") to submit proposed net energy metering rules that incorporate the credit method that we adopt today. In the event that the Working Group is unable to reach a consensus on proposed rules, the Working Group members shall submit their individual proposals. Consensus or non-consensus proposals must be filed with the Commission within 60 calendar days from the date on which this Order is issued.

### II. BACKGROUND

2. With the passage of the Retail Electric Competition and Consumer Protection Act of 1999 (the "Act"), the City Council of the District of Columbia adopted a comprehensive statutory scheme to restructure the District's retail electricity market.<sup>1</sup> Among other things, the Act authorizes the Commission to establish a program that affords eligible customer-generators the opportunity to participate in net energy metering.<sup>2</sup> 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."<sup>3</sup> A "customer generator" is "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;

<sup>1</sup> D.C. Code, 2001 Ed. § 34-1501 *et seq.*

<sup>2</sup> D.C. Code, 2001 Ed. § 34-1518.

<sup>3</sup> D.C. Code, 2001 Ed. § 34-1501(21).

- (c) Is located on customer 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."<sup>4</sup>

3. The Act provides that "[i]f electricity generated by the customer-generator and fed back into the electric grid exceeds the electricity supplied by the electricity supplier, the customer-generator may receive compensation based on the net metering rules established by the Commission."<sup>5</sup> On July 20, 2001, the Working Group proposed a tariff rider to several of the tariff schedules of the Potomac Electric Power Company ("PEPCO").<sup>6</sup> Section 3.a of the proposed rider requires PEPCO to provide a payment for any excess power fed into the grid.

4. PEPCO objected to Section 3.a, essentially arguing that a payment is a rate and that the establishment of rates for customer generators is a matter within the exclusive jurisdiction of the Federal Energy Regulatory Commission ("FERC").<sup>7</sup> The Office of the People's Counsel ("OPC") disagreed and argued that the Commission can review PEPCO's purchases of power, even if FERC has jurisdiction over sales for resale. Alternatively, OPC suggested that, instead of providing a monetary credit for excess usage, the Commission could require PEPCO to give customers a non-monetary credit that would be reflected on the customer's next monthly bill.<sup>8</sup> According to OPC, this alternative approach of carrying forward a usage credit avoids any jurisdictional problems with FERC.<sup>9</sup> PEPCO dismissed OPC's alternative suggestion as inconsistent with the Act. In PEPCO's view, if the Council had intended to establish a crediting mechanism, it would have done so. Because the Council did not provide for such a mechanism, PEPCO argued that an adoption of this approach would constitute an amendment of the Act, an action that is clearly beyond the Commission's authority. PEPCO also asserted that, even if the Council had provided for a crediting mechanism, it

<sup>4</sup> D.C. Code, 2001 Ed. §34-1501(15).

<sup>5</sup> D.C. Code, 2001 Ed. § 34-1519(b)(4).

<sup>6</sup> *In the Matter of The Investigation Into Electric Service Market Competition and Regulatory Practices, Formal Case No. 945* ("F.C. No. 945"), Report of the Working Group Regarding Aggregation Programs, Renewable Energy Resource Programs, Net Energy Metering, and Energy Efficiency Programs, filed July 20, 2001 ("Working Group Report").

<sup>7</sup> *F.C. No. 945*, Comments of the Potomac Electric Power Company, filed August 3, 2001 ("PEPCO's August 3, 2001 Comments"); Errata to Comments of Potomac Electric Power Company, filed August 6, 2001; Reply Comments of Potomac Electric Power Company (PEPCO's Reply Comments"), filed August 17, 2001.

<sup>8</sup> *F.C. No. 945*, Initial Comments of the Office of the People's Counsel, filed August 3, 2001.

<sup>9</sup> *F.C. No. 945*, Reply Comments of the Office of the People's Counsel, filed August 17, 2001.

would be the functional equivalent of a rate and, therefore, subject to the exclusive jurisdiction of FERC.<sup>10</sup>

5. After reviewing the comments, the Commission determined that a ruling on proposed tariff rider would be premature without first allowing the parties to further brief the jurisdictional issue and submit proposed rules governing net metering. Therefore, by Order dated January 8, 2002, the Commission directed the Working Group to submit comments on the jurisdictional issue as well as proposed net energy metering rules.<sup>11</sup>

### III. COMMENTS

6. PEPCO filed proposed net energy metering rules on February 7, 2002. Under PEPCO's proposed rules, if the electricity supplied by the customer-generator exceeds the electricity supplied by the Electricity Supplier, then the customer-generator would be compensated in accordance with the terms of the customer-generator's contract with the Electricity Supplier. Additionally, the rules provided that PEPCO would furnish, install, maintain, and own all equipment used for net energy metering.<sup>12</sup> OPC objected to both of these provisions. According to OPC, the credit mechanism that it advocated in its prior filing would obviate the need for any contract negotiation between individual customer-generators and the Electricity Suppliers that seemed implicit in PEPCO's rules. As for the rule governing the net metering equipment, OPC opposed this provision on the grounds that PEPCO was simply trying to frustrate competition.<sup>13</sup>

7. On February 22, 2002, PEPCO filed its comments on jurisdiction. PEPCO begins by assuming that the consumer-generator's facility is not a Qualifying Facility ("QF") within the meaning of the Public Utility Regulatory Policies Act of 1978 ("PURPA").<sup>14</sup> PEPCO points out that FERC has exclusive jurisdiction over the wholesale sale of electricity. In PEPCO's view, when a customer-generator produces electricity in excess of the amount consumed, the customer-generator's decision to "net out its on-site generation and consumption" is essentially a purchase of the electricity at a

<sup>10</sup> *F.C. No. 945*, PEPCO's Reply Comments.

<sup>11</sup> *F.C. 945*, Order No. 12291, rel January 8, 2002.

<sup>12</sup> *F.C. No. 945*, Potomac Electric Power Company, Proposed Rules, Net Energy Metering, filed February 7, 2002, at 2.

<sup>13</sup> *F.C. No. 945*, Preliminary Substantive Response of the Office of the People's Counsel to the Commission's Request for Net Energy Metering Rules Pursuant to Order No. 12292, filed February 7, 2002, at 4-5.

<sup>14</sup> If the customer-generator is a QF under PURPA, then PEPCO is obligated to buy the excess power at its avoided cost. However, because PEPCO has divested most of its generation assets, it obtains power from the marketplace. Therefore, avoided cost for PEPCO is the same as the market price and there is no economic advantage for a generator to be constructed in the District. *F.C. No. 945*, Comments of the Potomac Electric Power Company on Commission Jurisdiction, filed February 22, 2002, at 11.

wholesale rate and, consequently, establishing a rate for such sales is beyond the purview of this Commission. Moreover, PEPSCO notes that FERC has jurisdiction over all generator interconnection facilities. Thus, if the customer is capable of exporting energy for wholesale sale, the facility falls under the jurisdiction of FERC regardless of whether the facility is owned by a customer, PEPSCO, or a third party.<sup>15</sup>

8. OPC asserts that there is no "sale" subject to FERC jurisdiction when a customer uses its own generating resources for the purpose of self-supply and accounts for such usage through the practice of netting its energy generated against the energy it purchased.<sup>16</sup> Additionally, OPC reasserts that a credit mechanism is the appropriate method for compensating customer-generators for any excess electricity that they produce and suggests that the customer-generator be allowed to carry credits forward on a month-to-month basis until they are consumed or a designated 12-month period ends. Any unused credits at the end of the 12-month period would not be carried over, and the customer-generator would not receive compensation for them.<sup>17</sup> Finally, OPC states that it has not had sufficient time to reach any agreement with PEPSCO on the regulatory or tariff provisions nor has it had time to formulate its own rules. Furthermore, OPC asserts that any agreement between the parties is unlikely until the Commission makes some decision on the issue of jurisdiction.<sup>18</sup>

#### IV. DISCUSSION

9. In the absence of net metering, most customer-generators are treated as a QF under PURPA. As a QF, the customer-generator enters into a contract with the utility for the purchase and sale of electricity. The utility then installs two meters for the facility: one records the power that the customer-generator consumes, while the other records the power that the customer-generator transmits into the grid. The customer-generator pays a retail rate for the power it consumes while the utility pays a wholesale or avoided cost rate for any excess power that the customer-generator produces.

10. A number of states have implemented net metering as a means of encouraging the use of small power facilities and simplifying regulatory oversight. In some states, the utility is required to buy back the excess generation at avoided costs. In other states, if the customer-generator produces more power than it uses, the customer's excess generation in one month is carried forward to offset its consumption in subsequent months. Under this method, there is no need for two meters. Instead, the customer can use one meter that measures power flowing in both directions. Excess generation, at

<sup>15</sup> *F.C. No. 945*, Comments of the Potomac Electric Power Company on Commission Jurisdiction, filed February 22, 2002, at 8-9.

<sup>16</sup> In support of its position, OPC cites *MidAmerican Energy Company*, 94 FERC ¶ 61,340 (2001). *F.C. No. 945*, Comments Concerning Jurisdictional Issues Associated with Net Metering of the Office of the People's Counsel, filed February 22, 2002, (February 22, 2002 Comments") at 3-5.

<sup>17</sup> *Id.*, at 5-6.

<sup>18</sup> *Id.*, at 8.

least in a metaphorical sense, simply spins the meter backwards. This method of offsetting consumption against usage effectively gives the customer-generator full retail value for all the power it produces and it is the method that OPC suggests that we implement in the District. PEPSCO, however, argues that both federal and District law prohibit us from adopting this method. We disagree.

11. As we noted earlier, the Act expressly authorizes the Commission to establish a net metering program. With regard to the question of compensation for excess generation, the Act states that “a customer-generator may receive compensation.”<sup>19</sup> PEPSCO takes the position that the credit arrangement suggested by OPC is not compensation and, consequently, not authorized under the Act. Assuming for the moment that compensation means pay, we do not read this provision as limiting our options to the net metering programs that provide for payment. The word “may” is permissive rather than mandatory.<sup>20</sup> Thus, the Council did not mandate compensation but rather left it to us to determine whether compensation would be the best method of facilitating net metering.

12. Alternatively, we are not persuaded that the Council intended the word “compensation” to be defined as narrowly as PEPSCO does here. Compensation is defined as “something that constitutes an equivalent or recompense.”<sup>21</sup> In our view, the word compensation is broad enough to encompass a billing arrangement that allows a customer-generator to receive full retail value for the power it produces. Therefore, we see nothing in District law to prohibit the adoption of a credit arrangement.

13. As for any prohibition under federal law, FERC has already determined that netting practices like the one suggested by OPC are not “sales” within the meaning of the Federal Power Act. In *MidAmerican Energy Company*,<sup>22</sup> MidAmerican requested that FERC issue a declaratory order that certain final orders of the Iowa Utilities Board regarding net metering are preempted by PURPA, if the facility is a QF, or by the Federal Power Act (“FPA”) if the facility is not a QF. FERC declined to do so stating:

In essence, MidAmerican is asking this Commission to declare that when, for example, individual homeowners or farmers install generation facilities to reduce purchases from a utility, a state is preempted from allowing the individual homeowner’s or farmer’s purchase or sale of power from being measured on a net basis, *i.e.*, that PURPA and the FPA require that two meters be installed in these situations, one to measure the flow of power from the utility to the homeowner or farmer, and another to measure

<sup>19</sup> D.C. Code, 2001 Ed. § 34-1518(b)(4).

<sup>20</sup> *Stockard v. Moss*, 706 A.2d 561 (D.C. 1997).

<sup>21</sup> Merriam Webster’s Collegiate Dictionary, 234 (10th Ed. 1996).

<sup>22</sup> 94 FERC ¶ 61,340 (2001).

the flow of power from the homeowner or farmer to the utility. MidAmerican argues that every flow of power constitutes a sale, and, in particular, that every flow of power from a homeowner or farmer to MidAmerican must be priced in accordance with the requirements of either PURPA or the FPA. We see no such requirement.<sup>23</sup>

14. However, FERC went on to find that, if there were a net sale rather than a net billing arrangement, the result would be different. Specifically, FERC stated:

There may be, over the course of the billing period, either a net sale from the individual to the utility, or a net purchase by the individual from the utility. When there is a net sale to a utility, and the individual's generation is not a QF, the individual would need to comply with the requirements of the Federal Power Act.<sup>24</sup>

Consequently, there is no federal barrier to OPC's proposed method.

15. We have considered the various net metering programs in use throughout the country and find that the one proposed by OPC, and used in at least six states,<sup>25</sup> offers the best method for facilitating net metering in the District at this time. Under this arrangement, the customer's consumption is offset against the full retail value of the power produced and, as a result, the customer is billed only for the net energy consumed during the billing period. If the customer generates more power than can be consumed in that month, the utility or electricity supplier records a credit for the excess kilowatt-hours towards the customer's next bill. Any credit remaining at the end of the designated 12-month period is extinguished. With this method, there is no net sale of electricity at wholesale or retail, no conflict with federal law, and no need for contract negotiations or complicated ratemaking proceedings. Inasmuch as we have resolved the jurisdictional issue in this matter and adopted OPC's suggested method of net metering, the Working Group may now reconvene to consider appropriate rules consistent with this Order.<sup>26</sup>

<sup>23</sup> *MidAmerican* at 5.

<sup>24</sup> *Id.*, at 7.

<sup>25</sup> Those states are California, Maine, Montana, Rhode Island, Vermont, and Washington. *F.C. No. 945*, OPC February 22, 2002 Comments.

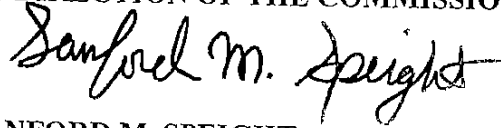
<sup>26</sup> OPC has also asked us to prohibit PEPCO from owning and operating all net metering equipment. We prefer to withhold judgement on this issue until we have had time to fully consider the question of competitive metering in general. For now, OPC's request is denied.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

16. The Working Group submit proposed net energy metering rules no later than sixty calendar days from the date of this Order. If the Working Group cannot reach a consensus regarding such rules, the Commission further directs the members of the Working Group to submit individual non-consensus rules by the same date.

**A TRUE COPY:**

**BY DIRECTION OF THE COMMISSION:**



**CHIEF CLERK**

**SANFORD M. SPEIGHT  
ACTING COMMISSION SECRETARY**

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