

DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))

PROPOSED

PUBLIC NOTICE

IN THE MATTER OF THE INVESTIGATION INTO THE	
ADOPTION OF PROPOSED RULES AND REGULATIONS	
TO ACCOMPLISH INTEGRATED RESOURCE PLANNING	
FOR THE PROVISION OF STANDARD OFFER SERVICE	PSC REGULATION DOCKET NO. 60
BY DELMARVA POWER & LIGHT COMPANY UNDER	
26 DEL.C. §1007(c) & (d) (OPENED AUGUST 21, 2007)	

ORDER NO. 7518

This 6th day of January, 2009, the Commission determines and Orders the following:

1. The "Electric Utility Retail Customer Supply Act of 2006" ("the Act") directs Delmarva Power & Light Company ("DP&L") to file an "Integrated Resource Plan" ("IRP") with the Commission, the State Energy Office, the Controller General, and the Director of the Office of Management and Budget (collectively "the State Agencies").¹ The Act requires DP&L to systematically evaluate all available supply options (including procurement, generation, transmission, conservation, and load management) over a ten-year planning period.² The Act further directs DP&L to craft an IRP comprised of the appropriate mix of such resources that will be utilized to meet the needs of its Standard Offer Service ("SOS") customers at the lowest reasonable cost, while supporting or improving the reliability of electric service to all customers in Delaware.³

2. The Act further provides for Delmarva to consider the economic and environmental value of resources that utilize new or innovative baseload technologies, resources that provide short- or long-term environmental benefits to the citizens of the State, facilities that have existing fuel and transmission infrastructure, facilities that utilize existing brownfield or industrial sites, resources that promote fuel diversity, resources that support or improve reliability, and resources that encourage price stability

3. The Act confers on the Commission the authority to "promulgate any rules and regulations it deems necessary to accomplish the development of IRPs by DP&L."⁴

4. As of this date, DP&L has filed its initial IRP and three updates. In Order No. 7122 (Jan. 23, 2007), the Commission opened PSC Docket No. 07-20 to perform its oversight and review of the IRP. By Order No. 7623 (Aug. 21, 2007), the Commission opened this proceeding to consider the development of rules and regulations to accomplish integrated resource planning for DP&L's SOS customers. The Commission directed Staff to prepare proposed rules, regulations, or other needed documents ("the Draft Regulations") for the Commission's review.

5. Staff circulated initial Draft Regulations to the parties in PSC Docket No. 07-20 ("the IRP parties") and the State Agencies on August 31, 2007. The IRP parties and the State Agencies filed comments on Staff's initial drafts on October 12, 2007. Following comment from the IRP Parties and State Agencies, Staff submitted revised Draft Regulations on November 14, 2007.

6. In Order No. 7318 (Dec. 4, 2007), the Commission approved the Draft Regulations, initiated the formal rulemaking procedure dictated by the Administrative Procedures Act, and directed written comments on the Draft

1. See 26 Del. C. § 1007(c) (as amended by 75 Del. Laws ch. 242 § 6 (2006)).
2. Id.
3. See 26 Del. C. §§ 1001, 1007(c)(1)(as amended by 75 Del. Laws. Ch. 242 § 6 (2006)).
4. See 26 Del. C. § 1007(c)(1)c. (as amended by 75 Del. Laws. Ch. 242 § 6 (2006)).

Regulations to be filed by February 1, 2008.⁵ On March 3, 2008, Staff further revised the Draft Regulations (“Revised Draft Regulations”) to incorporate its analysis of the comments submitted through February 1, 2008. On March 12, 2008, a duly-noticed evidentiary hearing was held to consider the Revised Draft Regulations.

7. On October 24, 2008, the Hearing Examiner submitted her proposed findings and recommendations regarding the Revised Draft Regulations (the “Hearing Examiner’s Report”) (hereafter “HER at ____”). The HER focused on the issues that remained in dispute following the lengthy evidentiary hearing: (1) the definition of “acknowledgment” in Sections 1.7, 2.0, and 9.3; (2) the definition of “environmental benefit” in Section 2.0; (3) the definition of “external costs” in Section 6.0;⁶ and (4) Delmarva’s role in developing demand-side management programs in light of the establishment of the Sustainable Energy Utility (“SEU”).⁷

8. The Hearing Examiner recommended that the Commission adopt Staff’s proposed Revised Draft Regulations with two revisions. First, to avoid confusion between the terms “acknowledgement” and “approval,” the Hearing Examiner recommended that the following language be inserted into Section 1.7:

Approval or disapproval of an IRP must be made by the Commission after, at a minimum, Staff’s analysis of and public comment on the proposed IRP.

(HER at ¶ 26). The Hearing Examiner rejected the Clean Air Council’s position that the term “acknowledgement” is consistent with Commission approval after evidentiary hearings because use of the term “approval” materially changes the meaning of the Revised Draft Regulations. (HER at ¶ 15). The Hearing Examiner reasoned that an extensive rewrite of the Revised Draft Regulations was not warranted simply to clarify the treatment of an initial filing vis-à-vis a filing that had been subject to evidentiary hearings. *Id.* Second, the Hearing Examiner recommended changing the definition of price stability from variation in the “real” price paid by SOS customers over the planning period to “actual” price to make the definition more “concrete and identifiable.” (HER at ¶¶ 19, 26).

9. The Clean Air Council and Professor Jeremy Firestone filed written exceptions to the Hearing Examiner’s report, and Green Delaware “generally agreed” with those exceptions. (Dec. 2, 2008 Tr. at 187:5-6). In its exceptions, the Clean Air Council argued that substituting the term “approval” for “acknowledgement” would not require an extensive rewrite of the Revised Draft Regulations because the term was only used in three subsections. (Clean Air Council Brief on Exceptions at 5) (hereafter “CAC Br. at ____”). The Clean Air Council contended that the IRP should be subject to a full contested proceeding prior to Commission acknowledgment. *Id.* In response, Staff argued that use of the term “approval” would inappropriately impute ratemaking treatment to the components of the IRP filing prior to the time a rate case was filed. (Dec. 2, 2008 Tr. at 200:9-22).

10. Additionally, the Clean Air Council and Dr. Firestone argued that health costs should be specifically delineated as “environmental costs” under Section 6.1.3 because analysis thereof was integral to the evaluation of resource options pursuant to 26 Del. C. § 1007(c). (Firestone Brief on Exceptions at ¶ 7) (hereafter “Firestone Br. at ____”); CAC Br. at 7-9). Both Dr. Firestone and the Clean Air Council further asserted that it was not feasible for the public to evaluate and analyze the health effects of the IRP components. *Id.* Staff argued that the regulations governing the IRP should be flexible and that other state agencies, such as the Department of Natural Resources and Environmental Control (“DNREC”), had more expertise in determining the potential health costs of an IRP program than the Commission. (Dec. 2, 2008 Tr. at 199-200).

5. The Sustainable Energy Utility Task Force, Jeremy Firestone (“Dr. Firestone”), Bluewater Wind LLC, Delmarva Power & Light Company (“DP&L”), the Delaware Energy Office, and the Clean Air Council all filed written comments regarding the Draft Regulations. In addition, Green Delaware participated in the proceedings.

6. With regard to the definition of plan development in Sections 2.0 and 6.1.3, the Hearing Examiner accepted Staff’s argument that the broad language of both sections encompassed health and environmental effects, and that DP&L or the public could provide analyses of health costs to the Commission for consideration in evaluating the IRP. (HER at ¶ 22). The Hearing Examiner observed that inclusion of a “laundry list” could discourage utilities from considering other unenumerated factors (Mar. 12, 2008 Tr. at 101:21).

7. The Hearing Examiner adopted Staff’s position that although the SEU has specific jurisdiction to develop energy efficiency programs, DP&L may propose energy efficiency programs in its IRP. (HER at ¶ 24).

11. Dr. Firestone further objected to the Hearing Examiner's recommended change of the definition of price stability from "real" to "actual" price. He argued that this change materially altered the definition because the term "real price" has an economic meaning – it is adjusted for the effects of inflation. (Firestone Br. at ¶ 11). Staff agreed with the Hearing Examiner that calculation of "real" price can be nebulous and, although recognizing that using an "actual" price might not include the effects of inflation, believed that it was a more certain starting place than the "real" price. (Dec. 2, 2008 Tr. at 198:12-18; 201:18-24 – 202:1-6).

12. Dr. Firestone next contended that the term "efficient" should be deleted from Section 1.1 because it was redundant of the term "cost effective." (Firestone Br. at ¶ 10). In response, Staff argued that the term "efficient" encompassed more than merely economic efficiency, and both terms were used in several places throughout the EURCSA. (Dec. 2, 2008 Tr. at 196-197).

13. Finally, Dr. Firestone challenged the effective date of the Revised Draft Regulations. He urged the Commission to apply the rules and regulations retroactively to both the 2006 and 2008 IRPs. (Firestone Br. at ¶ 9). Staff pointed out that a regulation may not be applied retroactively unless the legislature provides for such retroactive application in the regulation's governing statute, which was not the case here. (Dec. 2, 2008 Tr. at 195:17-196:8). Moreover, Staff observed that DP&L had indicated on the record that it would comply with the regulations in its current filings. (*Id.* at 196:12-23).

14. The Commission convened on December 2, 2008 to hear oral argument and deliberate on the Hearing Examiner's findings and recommendations regarding the Revised Draft Regulations. After hearing such oral argument and conducting its deliberations in public, we hereby find as follows.

15. We adopt the Hearing Examiner's and Staff's positions that "health costs" should not be included as a specific externality for consideration in the proposed regulations. DNREC and the Delaware Energy Office have an interest in environmental and health costs, and interveners and the public can look to these agencies on these issues. Furthermore, we are not convinced that the public cannot calculate the potential impact of this externality on an IRP; Dr. Firestone's participation in this docket and the information he has submitted demonstrates that interested members of the public can indeed calculate (or submit information that calculates) the impact of including an externality such as health costs in an IRP. In this regard, we observe that while the externality of health costs may be important to some people, there are other externalities that are important to other people. If health costs are specifically included as an externality but others are not, it suggests that we do not intend for those other externalities to be considered and addressed. That is not the case: we intend for the regulations to cast as broad a net as possible with respect to externalities to be considered and addressed. (5-0).

16. Although we acknowledge and appreciate the efforts of Staff and the parties in preparing the Revised Draft Regulations, our deliberations at the December 2, 2008 meeting and our questioning of the parties demonstrate that we believe that several important issues have not been adequately addressed in the Revised Draft Regulations. Specifically, we reject the Hearing Examiner's recommendation with respect to the distinction between "acknowledgement" and "approval" as used in the Revised Draft Regulations. As a review of the transcript of our deliberations demonstrates, this issue caused us great concern. We were advised that the difference between "approval" and "acknowledgement" as set forth in these Revised Draft Regulations was designed to address a distinction this Commission first drew in IRP cases arising in the mid 1990s as a way to prevent a utility whose IRP had been "approved" from later contending, in a rate case filed subsequent to Commission approval of an IRP, that the generation assets included in that IRP had also been approved for ratemaking purposes. However, we believe that that concept is not clear in the Revised Draft Regulations, and direct Staff to revisit this particular issue to clarify the difference between "acknowledgement" and "approval," or indeed to determine whether the distinction is warranted. (5-0).

17. We also direct Staff to consider the following issues in redrafting the proposed regulations:

- Incorporation of the role of the SEU vis-à-vis this Commission in the regulations governing demand-side management;
- Whether the Examiner's modification of Section 2.0, "Price Stability," to provide for the "actual" price as opposed to the "real" price, is appropriate;
- How confidential information in the IRP should be treated;
- Whether other state agencies, such as DNREC and the Office of Management and Budget, should be included in the IRP review process and, if so, in what manner;
- The impact and effect of DP&L's hedging policy on its IRP;
- The potential impact of federal climate change legislation on the IRP;

- Whether Staff should consider the input of agencies other than DNREC, or the input of the public, in assessing the “environmental benefits” of the IRP as defined in Section 2.0; and
- Whether DP&L’s assessment of any transmission enhancements should be included.

(5-0).

18. We hereby direct Staff to revise the Revised Draft Regulations to address the issues outlined in Paragraphs 16 and 17, and to circulate those revisions to the IRP Parties and the interveners in this docket. All revised regulations shall be subject to the provisions of the Administrative Procedures Act with respect to notice and publication. See 29 Del. C. §§ 10115, 10118.

19. We further designate a different Hearing Examiner to preside over this docket going forward.

Now, therefore, **IT IS ORDERED:**

1. That, pursuant to 26 Del. C. § 502 and 29 Del. C. ch. 101, Mark C. Lawrence is assigned as the Hearing Examiner for this docket. Hearing Examiner Lawrence shall conduct such procedures and hearings as may be necessary to construct a record sufficient for the Commission to investigate the proposed rules and regulations. Hearing Examiner Lawrence shall conduct such procedures and hearings in accordance with the notice and other procedural requisites imposed by State law and those required under the Administrative Procedures Act.

2. That this docket is remanded to Hearing Examiner Lawrence to schedule and conduct such evidentiary hearings as may be necessary to resolve the issues delineated in Paragraphs 16 and 17 above, and to thereafter submit his recommendations with the Commission. Dates and times for serving comments regarding, and responding to Staff’s proposed revisions addressing, the issues identified in Paragraph 17 above shall be included in said procedural schedule. Hearing Examiner Lawrence is specifically delegated the authority to determine the form and manner of any further public notice in this matter. James McC. Geddes, Esquire, shall continue as Rate Counsel in this matter.

3. That Staff is directed to revise the Revised Draft Regulations to address the issues identified in Paragraphs 16 and 17 above and circulate those revisions to the parties, and that Staff follow the procedures outlined in Section 10118 of the Administrative Procedures Act with respect to these newly-revised draft regulations.

4. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair
Joann T. Conaway, Commissioner
Jaymes B. Lester, Commissioner
Dallas Winslow, Commissioner
Jeffrey J. Clark, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

**Notice of Seeking Comments from Public Concerning Regulations Proposed by Public Service
Commission Staff**

In Order No. 7263 (Aug. 21, 2007), the Delaware Public Service Commission (“PSC” or the “Commission”) opened this docket to consider promulgating rules to govern Delmarva Power & Light Company’s (“DP&L”) development of Integrated Resource Plans (“IRPs”) for its Standard Offer Service (“SOS”) customers, as authorized by the Electric Utility Retail Customer Supply Act of 2006 (“the Act”).⁸ Pursuant to that Order, the Commission Staff drafted proposed IRP rules after consulting with the parties in DP&L’s ongoing IRP docket (PSC

Dckt. No. 07-20) and with the three (3) state agencies then involved in DP&L's IRP process.⁹ On November 14, 2007, Staff submitted draft rules entitled "Integrated Resource Planning Regulations."

In PSC Order No. 7318 (Dec. 4, 2007), the Commission accepted Staff's draft IRP rules and initiated the formal rule-making procedure dictated by the Administrative Procedures Act ("APA").¹⁰ Thereafter, the Commission directed publication in the Delaware Register (among other places) of Staff's proposed IRP Rules and directed a Hearing Examiner to conduct proceedings regarding the proposed IRP rules.

After holding a duly-noticed public evidentiary hearing, the Hearing Examiner issued Findings and Recommendations (Sept. 12, 2008). The Hearing Examiner recommended Commission approval of Staff's proposed IRP Rules, as described in the Hearing Examiner's Report.

In PSC Order No. 7518 (Jan. 6, 2009), however, the Commission did not approve Staff's proposed IRP Rules. The Commission asked Staff to clarify certain aspects of the Regulations and to issue revised Regulations. Staff has now issued its revised Regulations.

The Commission now solicits comments from the Public regarding Staff's revised Regulations.

Written comments must be filed with the Delaware Public Service Commission, 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, DE, 19904 no later than May 6, 2009. The PSC will utilize the comments received to evaluate Staff's revised Regulations.

All prior filings in this Docket can be reviewed at the PSC's office at the address listed above. Anyone who plans to submit comments should also review PSC Order No. 7518 (Jan. 6, 2009).

If you have questions, you may contact the Commission in person, by writing, by telephone (including text telephone), and by Internet e-mail. You may call the Commission at 1-800-282-8574 (toll-free in Delaware) or you may call (302) 736-7500 (voice or text telephone). You may also send questions or request further information by Internet e-mail addressed to pamela.knotts@state.de.us. If you have a disability and wish to participate in, or to review the materials in these proceedings, please contact the Commission to discuss any auxiliary aids or services which you might need to help you.

3010 Integrated Resource Planning for the Provision of Standard Offer Service by Delmarva Power & Light Company

1.0 General

- 1.1 The reliability of electric service and the security of energy supply are of great importance to the Delaware Public Service Commission ("Commission"), because they are essential services to the citizens of Delaware. This regulation, in support of 26 Del.C. §1007, sets forth the minimum Delmarva Power and Light ("DP&L" or "Company") Integrated Resource Plan ("IRP" or "the Plan") requirements needed to ensure a cost effective, price stable, reliable, efficient and environmentally sound energy supply for all Standard Offer Service ("SOS") customers.
- 1.2 Nothing in this regulation relieves DP&L from compliance with any requirement set forth under any other regulation, statute, or order. Compliance with this regulation meets the minimum IRP requirements. Compliance with this regulation does not imply plan approval or automatic cost recovery.
- 1.3 In accord with 26 Del.C. §1007, DP&L, as the Standard Offer Service Supplier, shall file an IRP on December 1st, 2006 and on the anniversary date of the first filing date every other year thereafter (i.e. 2008, 2010 et seq.). The Company may request and the Commission may change the filing date for good cause shown. These regulations shall apply to all IRPs filed pursuant to 26 Del.C. §1007. These regulations shall not apply to an IRP docket opened prior to the effective date of these regulations.

8. See 26 Del.C. § 1007(c)(1)(c)(as amended by 75 Del. Laws ch. 242 § 6 (2006).

9. According to 26 Del.C. § 1007(c), DP&L files its IRP on a biennial basis with the Commission, the Delaware Energy Office, the Controller General, and the Director of the Office of Management and Budget.

10. See 29 Del.C. § 10111, et. seq.

- 1.4 The IRP shall be filed in compliance with normal Commission policies and practices.
- 1.5 The plan shall identify the year of the filing, the individuals responsible for its preparation and those individuals who shall be available to respond to inquires during the Commission's review of the plan.
- 1.6 Because an IRP may contain Trade secrets and commercial or financial information, the Company may request that information, required under this regulation, be classified as confidential, proprietary and/or privileged material. The Company must explain how the material deemed confidential, if disclosed, will cause substantial harm to the competitive position of the Company or other party. The Company must attest that such information is not subject to inspection by the public or other parties without execution of an appropriate proprietary agreement. In requesting such treatment of information the Company is also obligated to file an additional copy of the information, excluding the confidential or proprietary information. The Commission, in accordance with Rule 11, Rules of Practice and Procedure of the Delaware Public Service Commission, effective May 10, 1999, shall treat such information as "confidential, not for public release" upon receipt of a properly filed request. Any dispute over the confidential treatment of information shall be resolved by the Commission, designated Presiding Officer or Hearing Examiner. Confidential utility documents shall be presented under separate seal.
- 1.7 Commission Recognition of a filed IRP implies only that the plan is in compliance with the administrative requirements of this regulation and the Electric Utility Retail Customer Supply Act of 2006 ("Act"), 26 Del.C. § 1001-1012. The recognition or ratification of an IRP does not confer or imply Commission approval unless so stated by an Order of the Commission. Approval or disapproval of an IRP must be made by the Commission after, at a minimum, Staff's analysis of and public comment on the proposed IRP. Any specific ratemaking treatment for the plan or any portions thereof is neither directly nor indirectly guaranteed by virtue of the recognition or ratification.
- 1.8 The utility shall provide whatever detail and commentary necessary to demonstrate that it has met or exceeded the planning requirements as set forth in this regulation. An effort shall be made to ensure that the IRP is clearly stated and can be readily comprehended by the Commission, State Agencies, and other interested parties. The IRP shall include an Executive Summary.
- 1.9 Compliance with this regulation is a minimum standard for IRPs. Company needs to exercise its professional judgment based on its systems and customer needs. The Company shall include all information that assists the reader to fully understand the IRP concept and the Company's plans to meet SOS energy needs.
- 1.10 This regulation requires the maintenance and retention of supply resource planning data and the reporting of plan achievements on an annual basis starting in 2009 to the Commission, Governor and General Assembly. The Company shall retain such data, consistent with Federal data retention guidelines and make it available for further review as necessary.
- 1.11 The Company shall submit a total of 14 copies of its IRP - eight (8) copies to the Commission, two (2) copies to the Controller General's office, two (2) copies to the Office of Management and Budget, and two (2) copies to the Energy Office/DNREC. The Commission may request up to six (6) additional copies of combined and common filings as may be necessary for review.
- 1.12 These Integrated Resource Planning Regulations shall be effective for IRP dockets opened after the effective date of these regulations and may be reviewed, revised, or extended as necessary to ensure continued compliance with 26 Del.C. § 1001-1012 and to ensure adequate SOS energy supply.
- 1.13 Failure of the Company to file an IRP or to provide progress reports as required may subject the Company to the penalty and remedial provisions of the Delaware statute (26 Del.C. § 1019).

2.0 Definitions

The following words and terms, as used in these regulations, shall have the following meanings, unless the context clearly indicates otherwise.

"Brownfield" or "Industrial site" means a site that has been previously used for industry and may be contaminated, or need environmental remediation for continued use or redevelopment.

“Capacity” means the maximum power capability of a piece of equipment. For example, a generating unit might have a rated capacity of 50 megawatts.

“Commission” means the Delaware Public Service Commission.

“Commission Recognition” means that within 45 days after the Company has filed its IRP the Commission finds that the plan is administratively complete in fulfilling the requirements of the rules and regulations.

“Commission Ratification” means that after the completion of the regulatory process, including analysis by Staff and input from the public and other parties, the Commission finds that the IRP is not unreasonable and appears to be in the best interest of the ratepayers. Any specific ratemaking treatment for the plan or any portions thereof is neither directly nor indirectly guaranteed by virtue of the ratification.

“Commission Approval” means that if the Company requests and the Commission approves specific policies, contracts or guidelines that are attached to the IRP for rate making purposes. Certain policies, contracts, or guidelines previously approved by the Commission will not need additional Commission approval in the IRP unless materially changed.

“Conservation” means any reduction in electric power consumption that results from improved efficiency, avoidance of waste, reduced consumption, or other energy usage reductions that may result from installing new equipment, modifying existing equipment to improve efficiency, adding insulation or changing behavior patterns.

“Customer-Sited Generation” means a generation unit that is interconnected on the end-use customer’s side of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the end-use customer.

“Demand Response (“DR”) means programs that are designed specifically to reduce electricity demand during periods of supply constraint. These programs do not necessarily reduce total annual energy consumption.

“Demand-Side Management (“DSM”) means cost effective energy efficiency programs that are designed to reduce customers’ electricity consumption, especially during peak periods.¹¹

“DNREC” means the Delaware Department of Natural Resources and Environmental Control

“DP&L” or “Company” means Delmarva Power & Light Company, Inc. or its successor organizations.

“Energy” means electrical energy. In this sense, energy is a measure of the quantity of units of electricity used in a given time period, measured in megawatt- hours.

“Environmental Benefit” means the positive environmental impact of environmental services, practices or other ecological influences attained by specific actions, minus the negative environmental impacts caused by those actions. Staff will give due consideration to input from DNREC, interveners and public comment.

“Fuel Diversity” means the utilization of resources to supply energy to SOS customers that are procured in such a way as to diminish the risk of adverse changes in fuel prices for electric generation, either through a mix of electric generating resources that utilize a variety of fuel sources, fuel hedges, Customer-Sited Generation resources, both renewable and nonrenewable, application of appropriate risk management practices, DSM or a combination of these activities and assets.

“Generation Attributes” means non-price characteristics of the electrical energy output of a generation unit including, but not limited to, the units fuel type, geographical location, emissions, vintage and Renewable Energy Portfolio Standards (26 Del.C. § 351-363) eligibility.

“Implementation Plan” means an action plan which outlines the short and long term planned actions of the Company to secure necessary energy, capacity, transmission and other appropriate resources as further described in the Integrated Resource Plan.

“Integrated Resource Plan (IRP)” means the planning process of an Electric Distribution Company that systematically evaluates all available options, including but not limited to: generation, Supply

11. 26 Del.C. § 1001(5).

Contracts, transmission and Demand-Side Management programs during the planning period to ensure that the electric distribution Company acquires sufficient and reliable resources over time that meet their customers' needs at a minimal cost.¹²

"Integrated Resource Evaluation" means a process within the IRP that considers and compares supply- and demand-side resources to select a final resource mix.

"Load Forecast" means the estimated future annual electricity usage, that is used to help electric utilities make resource allocation decisions.

"New or Innovative Baseload Technologies" means energy resources using new technologies to generate electricity on a typical round- the- clock basis.

"Nominal Price" means the price paid for a product or service at the time of the transaction that has not been adjusted to reflect the effects of inflation.

"PJM Interconnection, L.L.C. ('PJM)" means the Regional Transmission Organization or successor organization that is responsible for wholesale electricity markets and the interstate transmission of electricity throughout a multi-state operating area that includes Delaware.

"Portfolio" or "Resource Portfolio" means the combination of physical assets (e.g. electric generating, self generating, and transmission assets), financial products (e.g. Supply Contracts for energy and related services), market resources (e.g. spot market energy purchases), DSM and DR programs, and Customer-Sited Generation resources, both renewable and non renewable, that the Electric Distribution Company uses to satisfy current and future energy procurement requirements for SOS customers, while managing the risk of adverse price changes to SOS customers.

"Plan Objectives" means the targets or goals of an IRP plan needed to measure the impact and/or success of the plan's actions. Such goals or targets must be definitive, measurable and verifiable. Refer to 1.1 for IRP objectives.

"Price Stability" means the lack of significant variation in the real price and nominal price paid by SOS customers over the planning period.

"Real Price" means the value after adjusting for inflation. Real price is expressed in constant dollars reflecting buying power relative to a base year.

"Reliability" means the degree of performance of the elements of the bulk electric system that results in electricity being delivered to customers within accepted standards and in the amount desired. Reliability may be measured by the frequency, duration, and magnitude of adverse effects on the electric supply. Electric system Reliability can be addressed by considering two basic and functional aspects of the electric system – Adequacy and Security.

- Adequacy is the ability of the electric system to supply the aggregate electrical demand and energy requirements of customers at all times, taking into account scheduled and reasonably expected unscheduled outages of system elements.
- Security is the ability of the electric system to withstand sudden disturbances such as electric short circuits or unanticipated loss of system elements.¹³
- As applied to distribution facilities, Reliability is further described as the degree to which safe, proper and adequate electric service is supplied to customers without interruption.

"Resource Portfolio" see "Portfolio"

"Retail Competition" means the right of a customer to purchase electricity from a certified electric supplier.

"Standard Offer Service ("SOS")" means the provision of electric supply service by a Standard Offer Service Supplier to customers who do not otherwise receive electric supply service from a certified electric supplier.

"Standard Offer Service Supplier" means the electric distribution company serving within its certificated service territory.

12. 26 Del.C. § 1001(13).

13. NERC definition - NERC's Reliability Assessment 2001–2010, dated October 16, 2001.

“Supply Contracts” means short or long term power procurement contracts as may be negotiated and agreed upon to meet defined requirements, more specifically for Delaware’s Standard Offer Service customers.

“Scenario Analysis” means a component of integrated resource planning that analyzes and assigns probabilities to a variety of possible future conditions and the options available to deal with them. Its primary purpose is to facilitate better resource planning decisions by assessing and quantifying the economic and other risks related to a particular decision.

“Transmission Service” means the delivery of electricity from supply sources through transmission facilities to distribution system interconnection points.

“Wholesale Electricity Market” means the various PJM markets in which the purchase and sale of electric energy, capacity, and ancillary services from generators to resellers/wholesale suppliers (who sell to retail customers) takes place at the transmission level.

3.0 General Requirements

3.1 Consistent with the requirements of 26 Del.C. §1007 and this regulation, the Company shall file an IRP every two years, starting on December 1 of the first even-numbered year after the effective date of these regulations, that adheres to the following general principals:

3.1.1 The IRP shall provide a framework for comparing a comprehensive resource mix of supply- and demand-side and Transmission Service resource costs and attributes.

3.1.2 The IRP shall utilize a Resource Portfolio in achieving the objectives of the IRP, shall incorporate a Portfolio approach to securing resources and incorporating an analysis of risk versus certainty into the planning process, or absent such a Portfolio approach, the rationale supporting the exclusion.

3.1.3 The IRP process shall provide for regulatory, stakeholder and public input.

3.1.4 The IRP shall include provisions for the IRP to be modified from time to time, as may be necessary to conform with any subsequent legislative or regulatory directives.

3.2 The IRP shall include the following minimum requirements:

3.2.1 An executive summary with a short description of the utility, its customers, service territory, current facilities, planning objectives, notable areas of departure in the new IRP from the old, citing specific location within the IRP where the new aspects shall be found, Load Forecast, recommended Resource Portfolio and action plan.

3.2.2 Established Plan Objectives in quantitative and qualitative terms by which the plan achievements may be measured and shall not be biased against any particular option. Measures must be ascribed to each objective. The Company must include a summary of the overall process, and models used in developing the IRP.

3.2.3 A description of the load forecast, the assumptions used or implicit in creating the forecast, the range of forecast examined, and the forecast selected for the filing period.

3.2.4 A listing of all the options considered to meet the load forecast, identification of those chosen for further evaluation and possible inclusion in the plan, and a discussion of the rationale for such selections including any key assumptions. This planning information shall include a 10-year planning horizon, starting with the year immediately following the filing year (i.e. filing year of 2010 shall include planning information for years 2011 through 2020).

3.2.5 A description of the Scenario Analysis used to integrate the options into a single resource plan or individual scenario for further review and analysis, to include a listing of the various scenarios considered and any key assumptions.

3.2.6 A description of the process used to develop the proposed IRP, including the assumptions and analysis leading up to the decision and the application of the valuation criteria as specified in section 5.0.

3.2.7 An analysis of the risk and sensitivity of the proposed IRP in comparison to other options also considered.

3.2.8 Action plans for implementation of the IRP, for no less than five (5) years, starting with the year immediately following the filing year.

4.0 Load Forecast

- 4.1 The Company shall consider a range of load growth forecasts that include:
 - 4.1.1 Both historical data and future estimates.
 - 4.1.2 Both winter and summer peak demand for total Delmarva Delaware load and Delmarva Delaware SOS load by customer class.
 - 4.1.3 Weather adjustments, including consideration of climate change potential.
 - 4.1.4 Five (5) year historical loads, current year-end estimate and ten (10) year weather adjusted forecast showing individually and aggregated Delmarva Delaware and Delmarva Delaware SOS load, and both Delmarva Delaware and Delmarva Delaware SOS load disaggregated by customer classes, including both capacity (MW) and energy requirements (MWh).
 - 4.1.5 Analyses of how existing and forecast Conservation, DR, DSM, Customer-Sited Generation, various economic and demographic factors, including the price of electricity, will affect the consumption of electric services, and how customer choice under Retail Competition of utility service may affect future loads.
 - 4.1.6 Description of the process the company used to develop these forecasts. Forecasts shall include the probability of occurrence. Within the forecasting modeling descriptions the Company shall demonstrate how well its model predicted past load data for the prior five (5) years.

5.0 Resource Portfolio Options

- 5.1 The Company shall include a description of the overall process and the analytical techniques it used to identify its proposed options. The Company shall not rely exclusively on any particular resource or purchase procurement process.
- 5.2 The Company shall identify and evaluate all reasonable generation, Supply Contracts, both short- and long-term procurement and demand- side and demand response management strategies, even if a particular strategy is ultimately not recommended by the Company. The IRP must show an investigation of all reasonable opportunities for a more diverse supply at the lowest reasonable cost. Company should provide its hedging guidelines. If there are any changes from the existing hedging policy, Company should so state. Any cost evaluation should state whether real or nominal costs were used. It shall contain a description of each option and an evaluation that considers the economic and environmental value of the following:
 - 5.2.1 Resources that utilize New or Innovative Baseload Technologies;
 - 5.2.2 Resources that provide short or long term Environmental Benefits to the citizens of this State;
 - 5.2.3 Facilities that have existing fuel and transmission infrastructure;
 - 5.2.4 Facilities that utilize existing brownfield or industrial sites;
 - 5.2.5 Resources that promote Fuel Diversity;
 - 5.2.6 Resources or facilities that support or improve Reliability; or
 - 5.2.7 Resources that encourage Price Stability.
- 5.3 The Company shall provide a description of the options recommended for inclusion in the proposed plan, including a description of the mechanism or process used for valuing each option. Such valuation shall also include consideration for the life expectancy of the resource, if the resource provides capacity and/or energy, any improvements to system Reliability, the dispatchability of the source, any lead time requirements, the flexibility of the resource, the Generation Attributes of the resource, the efficiency of the resource, and the opportunities for customers' participation. The valuation shall assess the probability of securing the options according to modeling information used, including any key assumptions. The Company shall provide the estimated energy and capacity impacts for each option and the rationale behind the estimate.
- 5.4 Where Transmission Service is identified as a planning option, the Company shall describe the transmission enhancement, the location, and provide PJM's assessment of the impact of the proposed transmission asset when available. The IRP shall reflect the current projects included in PJM's Regional Transmission Expansion Plan.

- 5.5 At least 30 percent of the resource mix shall be acquired through the regional Wholesale Electricity Market via a bid procurement or auction process held by DP&L. (Docket No. 04-391.)
- 5.6 The Company shall also include discussion of known plans to reduce existing physical, contractual or service related Portfolio resources during the IRP planning period.
- 5.7 The Company shall evaluate all technically feasible and cost effective DR improvements. Where non-Company evaluations of DSM and Conservation are available through the Sustainable Energy Utility ("SEU") (or other organization as requested by the Commission), the Company shall summarize the results and actions taken. The Company may contract with the SEU (whose primary function is to develop end-user markets for energy efficiency services and customer-sited renewable energy, and to facilitate private sector implementation of the SEU's market development plans) to provide services to accomplish the SEU's Demand Side management plans. Any Company proposed DSM program rejected by the SEU may be included in the IRP. Where DR programs are new, the Company shall summarize the anticipated benefits with respect to load reductions and provide supporting material to justify the new program.
- 5.8 The Company shall assess the Resource Portfolio options against the set of Plan Objectives and criteria.

6.0 Plan Development

- 6.1 The Company shall conduct an Integrated Resource Evaluation in formulating its potential plans for supply and demand-side resource scenarios. The Company shall describe the mechanism or process by which the Load Forecast and options have been blended into the various IRP scenarios. In integrating its supply and demand-side resources, the Company shall:
 - 6.1.1 Provide a discussion of how the Company might alter the recommended plan in the future if the key planning assumptions used to develop the recommended plan in the future turn out to be different than what was assumed in preparing the recommended plan.
 - 6.1.2 Evaluate the cost-effectiveness of the options from the perspectives of the utility and the different classes of ratepayers.
 - 6.1.3 Estimate a range of external costs which may be intangible, in order to show how explicit consideration of them might affect selection of options. The utility shall attempt to quantify the magnitude of the externalities, for example, in terms of the amount of emissions released and dollar estimates of the costs of such externalities.
 - 6.1.4 Evaluate the financial, competitive, Reliability, and operational risks associated with the options recommended by the IRP and how these risks may be mitigated over the 10 year planning period. Each candidate plan shall include a discussion of the likelihood of the occurrence of such risks.
 - 6.1.5 For the options included in the proposed plan identified in the IRP, the IRP shall include an analysis of the fuel risk associated with the proposed Resource Portfolio and how such fuel risk will be mitigated when the proposed plan is implemented.
 - 6.1.6 Perform sensitivity analyses on each of the candidate plans to include variations in key assumptions and to assess the likelihood of planned outcomes. The sensitivity analyses should include among other analyses the impact of proposed regulations related to climate change.
- 6.2 The Company shall forward a copy of the IRP to DNREC and seek input into externalities, including but not limited to, health effects.
- 6.3 In developing candidate plans, special attention shall be given to ensuring consistency between the IRP and typical rate-making processes. While the ultimate consumer price associated with the plan is important, the stability of rates and other factors as described in Section 5.2 need to be considered in any candidate plan selection.

7.0 Proposed Plan Selection.

- 7.1 The Company shall select and file the proposed IRP which it believes is the most consistent with the criteria set forth in 26 Del.C. §1007. The Company shall describe the rationale behind its selection, including any modeling or methodology used as the basis for selection of the proposed plan.

7.2 In filing the proposed IRP, the Company shall provide at a minimum a five (5) year forecast of supply rates by customer class that would be anticipated based on the IRP planning assumptions and recommended procurement strategy.

8.0 Implementation Plan

8.1 As part of the IRP, the Company shall file a plan needed to implement the IRP. Such plan shall be a five (5) year action plan outlining the resource decisions intended to implement the IRP. The Implementation plan shall include:

8.1.1 Actions to be taken in the first two (2) years and outline actions anticipated in the last three (3) years.

8.1.2 For IRP's filed on or after December 1, 2010, a status report of the specific actions contained in the previous action plan, including what risk assumptions were made and what actually occurred.

8.1.3 Schedule of key activities related to the plan implementation.

9.0 Review and Comment

9.1 As part of the process commencing in 2009 and continuing on an annual basis, the Company shall submit a report to the Commission, the Governor and the General Assembly detailing their progress in implementing their IRPs.

9.2 The Commission, interested State Agencies, interested parties and the general public shall be provided an opportunity for review and comment on the Company's IRP filings. The Commission shall seek input from DNREC (assuming DNREC has intervened) on the issue of externalities due to emissions, as the result of the proposed IRP.

9.3 Subsequent to the IRP recognition and after input from the public and other parties, the Commission may ratify the filing of the Company's IRP and its compliance with these regulations. Ratification that the IRP complies with the statute shall not guarantee a particular ratemaking treatment of future resource acquisitions. To the extent that the Commission determines that the IRP is not compliant with the statute or is unlikely to meet the goals of the statute, the Company shall revise its IRP to meet these requirements. Rate treatment shall be addressed in rate or other proceedings as filed by the utility or as initiated by the Commission.

9.4 The Integrated Resource Plan may be used as a factor in rate cases to evaluate the performance of the utility. Reports provided under this regulation are subject to annual review and audit by the Commission and interested State Agencies. The Company must maintain sufficient records to permit a review and confirmation of material contained in all required reports.

12 DE Reg. 1293 (04/01/09) (Prop.)