

**COMMENTS OF THE DELAWARE DIVISION OF THE PUBLIC ADVOCATE ON  
PROPOSED RULES TO IMPLEMENT 29 DEL. C. §8059(h) PROMULGATED BY THE  
DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL  
CONTROL**

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The Delaware Division of the Public Advocate (“DPA”) hereby submits the following comments (“Comments”) regarding the Department of Natural Resources and Environmental Control’s (“DNREC”) proposed rules published August 1, 2016 titled “Evaluation, Measurement and Verification Procedures and Standards” (“Proposed Regulations”).

**Introduction**

In 2014, the 147<sup>th</sup> General Assembly amended Section 8059 of the Delaware Energy Act (29 Del. C. §§8051 *et seq.*) to add a new subsection (h) directing affected energy providers “to implement energy efficiency, energy conservation, and peak demand reduction programs that are cost-effective, reliable, and feasible as determined through regulations promulgated pursuant to §8059(h)(3) of this title and delivered collaboration with the Sustainable Energy Utility ... .” 29 Del. C. §8059(h). Section 8059(h)(3)(a) delegated the responsibility for promulgating such regulations to the Department of Natural Resources and Environmental Control (“DNREC”).

- a. Not later than June 30, 2015, the Secretary of the Department of Natural Resources and Environmental Control, with the cooperation of affected energy providers, shall, by regulation, establish the requirements of this subsection, including, but not limited to:
  1. Evaluation, measurement and verification procedures and standards, including impact evaluation, environmental outcomes, process evaluation, market effects, and cost-effectiveness evaluation;
  2. Requirements under which affected energy providers shall demonstrate, document, and report compliance with the energy savings targets established under §1502(a) of Title 26; and
  3. Procedures and standards for defining and measuring electricity savings and natural gas savings that can be counted towards the energy savings targets established under § 1502(a) and (b) of Title 26.

DNREC issued draft regulations establishing evaluation, measurement and verification procedures and standards, and held public workshops to discuss them. The DPA attended the public workshops held in Dover and Wilmington, and discussed with DNREC its concerns with the draft regulations.

After receiving comments on the draft regulations from the DPA and others, DNREC published the Proposed Regulations. Comments on the Proposed Regulations are due on August 31, 2016.

The DPA wants to express its gratitude to Rob Underwood, Ed Synoski, and Emily St. Cloud for their consideration of the DPA’s comments in revising the draft regulations. Although

the DPA has some comments on the Proposed Regulations, the collaborative process was very productive and substantially reduced the number of comments that the DPA has on the Proposed Regulations.

### **Section 3.0: “Definition of ‘Deemed Savings’”**

The DPA understands that deemed savings may be utilized for certain measures. However, the definition seems to create some confusion as to the EEAC’s role, particularly the following language: “Deemed savings values are agreed upon by the EEAC in advance of program implementation.” As we understand it, the Delaware TRM or the Mid-Atlantic TRM are the sources for “deemed savings,” not the EEAC. The definition as written seems to allow the EEAC to agree to something other than what is contained in the TRM.

The DPA sees a similar problem with the penultimate sentence in the definition: “If evaluation results indicate a need to change a deemed savings value, the new value will only be applied prospectively to measures not yet installed.” Again, this seems to give the EEAC the ability to determine deemed savings outside of the TRM update process, which we do not understand to be the case.

The final sentence - “Individual parameters or calculation methods can also be deemed” - likewise appears to grant the EEAC the ability to select some individual parameter or calculation method to determine deemed savings, rather than the TRM.

The DPA recommends the last three sentences of the definition be stricken. We do not believe that they add any value to the understanding of what “deemed savings” means, and only serve to introduce confusion about the role of the EEAC.

### **Section 5.3.1: “DNREC may hire an EEAC Consultant to represent the EEAC... .”**

The DPA does not believe that a consultant can represent the EEAC. Certainly, DNREC may hire any consultant it believes is necessary, but the DPA does not believe it is necessary to write a consultant’s role into a regulation. This section should be revised to relate solely to DNREC’s responsibilities.

### **Section 6.2.1: “Energy Efficiency portfolios in Delaware must meet the benefit-cost requirements outlined in these regulations.”**

Section 8059 contains the following provisions:

“... each affected energy provider shall implement energy efficiency, energy conservation, and peak demand reduction *programs* that are cost-effective, reliable, and feasible as determined through regulations ...” 29 *Del. C.* §8059(h) (emphasis added).

“Unless otherwise provided, affected energy providers shall prepare and submit to the advisory council 3-year program plans, schedules, and budgets designed to reflect the

recommended program portfolios, including the defined energy savings targets. On a 3-year cycle, the advisory council shall review *energy efficiency, peak demand reduction, and fuel switching program plans* for each affected energy provider and recommend them for approval by the appropriate regulatory authority, *if it finds them to be cost-effective through a net-cost-benefit analysis that quantifies expected cost savings when considered in their entirety* pursuant to regulations required by paragraph (h)(3) of this section. Such programs must reduce overall utility bills.” 29 Del. C. §8059(h)(1)c (emphasis added).

Section 8059(h)(1)(1)d. specifically states that the Commission will review the *programs* and portfolios ... including evaluating the projected net-cost savings, in determining whether to approve such *programs* for implementation ... .

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The Commission shall approve cost recovery for cost-effective energy savings resulting from *cost effective programs* and portfolios of commission-regulated affected energy providers that are verified through procedures ... and determined not to increase overall utility bills.” 29 Del. C. §8059(h)(1)d (emphasis added).

The General Assembly made it clear that the *programs* approved must be cost-effective. This was intended to prevent programs that are *not* cost-effective from being approved. The General Assembly recognized that DNREC has an interest in approving all energy efficiency programs, and balanced that interest against the ratepayers’ interest in ensuring that any such programs be cost-effective.

The DPA appreciates that this language has been changed from what was initially proposed. Nevertheless, we continue to believe that the language continues to be in conflict with the legislation. Individual programs must be cost effective. A portfolio program may contain one or more programs that fail the cost effectiveness test but also contain programs with a sufficiently high score that the entire portfolio passes. We do not believe this is what the General Assembly intended. That said, Delmarva may run any program it chooses, but it can only recover from ratepayers the costs of programs that pass the TRC test.

### **Section 6.2.3.2: “Discount Rates”**

The proposed regulation states that “[t]he discount rate used in energy efficiency and demand reduction cost effectiveness tests shall be 4.0% on a real basis.” This very low discount rate appears to reflect the discount rate typically used in the Societal Cost Test, and does not meet the recommendations of the US EPA regarding the appropriate discount rate for a selected cost-effectiveness test.<sup>1</sup> The DPA recommends the “4.0%” be replaced with the following language: “the utility’s Weighted Average Cost of Capital (WACC) as determined by the Public Service Commission at the time the program is proposed.” This also comports with the decision of the Maryland Public Service Commission: “We decline to adopt the societal discount rate as

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<sup>1</sup><https://www.epa.gov/sites/production/files/2015-08/documents/cost-effectiveness.pdf>

the assumed input for all cost-effectiveness screening methodologies utilized in the EmPOWER process given our earlier stated preference to retain the integrity of the TRC test for comparison purposes. Instead, we find that the individual WACC of the Utilities should continue as the assumed discount rate for purposes of the TRC assessment.”<sup>2</sup>

### **Sections 6.2.5 and 6.2.6: EEAC and DNREC Responsibilities for Benefit-Cost Analysis**

These sections establish the relative responsibilities of the EEAC and DNREC with respect to benefit-cost analysis. Proposed Regulation 6.2.6.1 states that DNREC will “[c]oordinate with the PSC and Public Advocate to provide advice on benefit-cost metrics, metric values, and calculation approaches.”

The DPA is somewhat confused by these two sections of the Proposed Regulations. Section 8059(h)(1)(b) of the Delaware Energy Act states that the EEAC, not DNREC, shall collaborate with the PSC and the DPA to “recommend candidate energy efficiency, and reduction, and emission-reducing fuel-switching program elements that are cost-effective, reliable and feasible, including financing mechanisms.” The DPA is not sure whether these sections are intended to implement that provision of the Act. If so, then Section 6.2.6.1 does not reflect the General Assembly’s intent as reflected in Section 8059(h)(1)(b). If not, then the DPA does not know what DNREC is seeking to accomplish in this Proposed Regulation.

### **Section 7.2.4: “Field measurement and verification efforts should focus on the components of the portfolio that have the greatest risk of lowering the reliability of the total impact estimates.”**

If the term “components” is meant to refer to individual programs that comprise a portfolio, it should be changed to “programs.” Otherwise, the term “components” should be defined.

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<sup>2</sup>Order No. 87082, p. 17, found at <http://www.psc.state.md.us/wp-content/uploads/Order-No.-87082-Case-Nos.-9153-9157-9362-EmPOWER-MD-Energy-Efficiency-Goal-Allocating-and-Cost-Effectiveness.pdf>