SPONSOR: Rep. Roy
& Sen. McDowell; Reps. Capano
Carey Stone; Sens. Adams Vaughn
Venables Still

HOUSE OF REPRESENTATIVES

140th GENERAL ASSEMBLY

HOUSE BILL NO.

AN ACT AMENDING THE PROVISIONS OF TITLE 26 OF THE DELAWARE CODE RELATING TO THE RESTRUCTURING AND REGULATION OF PUBLIC UTILITIES SUPPLYING ELECTRICITY TO RETAIL CUSTOMERS IN THE STATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. This Act shall be known and referred to as the "Electric Utility Restructuring Act of 1999."

Section 2. Declaration of Policy.

It is the policy of this State that a competitive market for the supply of electricity and the availability of customer choice among electric suppliers shall be encouraged and that the generation, supply and sale of electricity shall be deregulated.

Section 3. Amend Title 26 of the Delaware Code by adding a new Chapter 10 as follows:

" Chapter 10. Electric Utility Restructuring.

§1001. Definitions.

As used in this chapter, unless the context otherwise requires:

"Ancillary Services" means services that are necessary for the transmission and distribution of electricity from supply sources to loads and for maintaining reliable operation of the transmission and distribution system.

"Broker" means a person or entity that acts as an agent or intermediary in the sale or purchase of, but that does not take title to, electricity for sale to Retail Electric Customers.

"Commission" means the Delaware Public Service Commission.

"DEC" means the Delaware Electric Cooperative and its successors.

"Direct Access" means the right of Electric Suppliers and their Customers to use an Electric Distribution Company's transmission and distribution system on a nondiscriminatory basis at rates, terms and conditions of service comparable to the Electric Distribution Company's own use of the system to transmit or distribute electricity from any Electric Supplier to any Customer.

"Distribution Facilities" means electric facilities located in Delaware that are owned by a public utility that operate at voltages of 34,500 volts or below and that are used to deliver electricity to Customers, up through and including the point of physical connection with electric facilities owned by the Customer.

"Distribution Services" means those services, including metering, relating to the delivery of electricity to a Customer through Distribution Facilities.

"DP&L" means Delmarva Power & Light Company and its successors.

"Electric Distribution Company" means a public utility owning and/or operating Transmission and/or Distribution Facilities in this State.

"Electric Supplier" means a person or entity certified by the Commission, including municipal corporations which choose to provide electricity outside their municipal limits (except to the extent provided prior to February 1, 1999), Broker, Marketer or other entity (including public utilities and their affiliates), that sells electricity to Retail Electric Customers, utilizing the Transmission and/or Distribution Facilities of an Electric Distribution Company.

"Electric Supply Service" means the provision of electricity and related services to Customers.

"Marketer" means a person or entity that purchases and takes title to electricity for sale to Customers in this State.

"Retail Competition" means the right of a Customer to purchase electricity from an Electric Supplier.

"Retail Electric Customer" or "Customer" means a purchaser of electricity for ultimate consumption and not for resale in this State, including the owner/operator of any building or facility, but not the occupants thereof, that purchases and supplies electricity to the occupants of such building or facility.

"Standard Offer Service" means the provision of Electric Supply Service after the Transition Period by a Standard Offer Service Supplier to Customers who do not otherwise receive Electric Supply Service from an Electric Supplier.

"Standard Offer Service Supplier" means an Electric Supplier that provides Standard Offer Service to Customers within an Electric Distribution Company's service territory after the Transition Period.

"Transition Period" means the period of time beginning with the implementation of Retail Competition and ending on the dates specified in §1004 of this chapter.

"Transmission Facilities" means electric facilities located in Delaware and owned by a public utility that operate at voltages above 34,500 volts and that are used to transmit and deliver electricity to Customers (including any Customers taking electric service under interruptible rate schedules as of December 31, 1998) up through and including the point of physical connection with electric facilities owned by the Customer.

"Transmission Services" means the delivery of electricity from supply sources through Transmission Facilities.

§1002. Standards for Electric Utility Restructuring.

(a) The General Assembly declares that the following interdependent standards shall govern the Commission's review and approval of each public utility's restructuring plan, oversight of the transition process and regulation of the restructured electric utility industry pursuant to this chapter.

(1) The reliability of electric service to all Customers in this State shall be maintained.

(2) On and after the implementation dates set forth in §1003 of this chapter, Customers shall have the right to choose among Electric Suppliers.

(3) Nothing contained herein shall have the effect of abrogating or amending contracts between public utilities and any of their Customers in place on February 1, 1999.

§ 1003. Retail Competition.

(a) General Rule. Except as otherwise expressly provided for in this chapter, on and after October 1, 1999 for DP&L and April 1, 2000 for DEC, the generation, supply and sale of electricity, including all related facilities and assets, shall no longer be regulated by the Commission as a public utility service or function. Customers of Electric Distribution Companies in this State shall have the opportunity, but not the obligation, to purchase electricity from their choice of Electric Suppliers in accordance with the implementation dates set forth in subsection (b).

(b) Implementation dates.

(1) For Customers of DP&L, the implementation dates shall be as follows: October 1, 1999, for Customers with a peak monthly load of 1,000 kW or more; January 15, 2000, for Customers with a peak monthly load of 300 kW or more; and 18 months after enactment of this chapter for all other Customers.

(2) For Customers of DEC, the implementation dates shall be as follows: April 1, 2000, for Customers with a peak monthly load of 1,000 kW or more; July 1, 2000, for Customers with a peak monthly load of 300 kW or more; and 24 months after enactment of this chapter for all other Customers.

(c) The Commission may delay any of the above implementation dates for not more than six months for good cause shown and upon a finding that any such delay is in the public interest.

(d) For purposes of this section, peak monthly load shall be measured by the Electric Distribution Company's separate Customer account, not by facility or service location or by customer, in the aggregate or otherwise.

§1004. Transition Period.

(a) The Transition Period for DP&L shall begin on October 1, 1999 and shall end on September 30, 2002 for non-residential Customers and shall begin on October 1, 1999 and end on September 30, 2003 for residential Customers.

(b) The Transition Period for DEC shall begin on April 1, 2000 and shall end on March 31, 2005 for all Customers.

§1005. Restructuring Plan.

(a) Restructuring Plan for DP&L.

(1) Filing and contents of plan. On or before April 15, 1999, DP&L shall file with the Commission a detailed plan for implementing Retail Competition in DP&L's Commission-designated service territory. Such plan shall include: (i) separate prices or rates for Electric Supply, Transmission, Distribution and other Services (which may later be combined for billing purposes); (ii) procedures for providing Direct Access for all Electric Suppliers; (iii) revised tariffs and rate schedules; (iv) an optional residential time of use rate with three daily time of use periods to be available for any residential Customer who elects such a rate structure; and (v) standards for reliability sufficient to measure variations in service reliability after the implementation of Retail Competition.

(2) Commission review of plan. The Commission shall review DP&L's restructuring plan and, after an evidentiary proceeding, issue an order by August 31, 1999, adopting the plan as filed or modifying the plan as appropriate.

(b) Restructuring Plan for DEC.

(1) Filing and contents of plan. On or before September 15, 1999, DEC shall file with the Commission a detailed plan for implementing Retail Competition in DEC's Commission-designated service territory. Such plan shall include: (i) separate prices or rates for Electric Supply, Transmission, Distribution and other Services (which may later be combined for billing purposes); (ii) procedures for providing Direct Access for all Electric Suppliers; (iii) revised tariffs and rate schedules; (iv) DEC's proposed Competitive Transition Charge, including the proposed method, recovery plan and determination of DEC's Stranded and Transition Costs, as such terms are defined in §1007 of this chapter; and (v) standards for reliability sufficient to measure variations in service reliability after implementation of Retail Competition.

(2) Commission review of plan. The Commission shall review DEC's restructuring plan and, after an evidentiary proceeding, issue an order by February 28, 2000, adopting the plan as filed or modifying the plan as appropriate.

§1006. Rates for Customers.

(a) Rates for Customers within DP&L's Service Territory.

(1) Rates in effect during the Transition Period.

For the Transition Period identified in §1004(a) of this chapter, the following Delaware retail rate levels shall be determined by the Commission (without conducting a base rate case) as part of its decision on DP&L's restructuring plan filed pursuant to §1005(a) of this chapter and shall thereafter remain in effect as provided below:

(i) The retail market price for Electric Supply Service (including losses to the Customer's delivery point) shall be estimated and applied separately for each Customer rate class for each year of the Transition Period. Such prices shall be based upon and/or representative of regional wholesale electric market prices, plus a reasonable allowance for retail margin to be determined by the Commission. Once established, such prices shall not thereafter be changed by the Commission during the Transition Period, except as the result of an appeal of the Commission's decision.

(ii) For each Customer rate class, the total of the actual base rates (excluding fuel costs) in effect on, and the fuel rates based upon the actual fuel costs for the 12 months ending, September 30, 1999 shall remain in effect for the Transition Period, less: (a) a base rate decrease of 7.5% percent of the total of those base and fuel revenues for each residential rate class; and (b) the above-specified retail market price in each respective year. However, upon application by DP&L, the Commission may change rates in the Transition Period for the recovery of any extraordinary costs as the Commission may, in its discretion, determine.

(iii) For each Customer rate class, the total of the rates established pursuant to subparagraphs (i) and (ii) of this subsection (a)(1) shall be separated (on a revenue-neutral basis) into rates for Electric Supply, Transmission, Ancillary, Distribution, nuclear decommissioning and other Services and may be combined for billing purposes.

(iv) Customers who obtain Transmission and/or Ancillary Services directly from the PJM Independent System Operator or from their Electric Supplier shall receive a credit against DP&L's retail delivery rates equal to the then-applicable Federal Energy Regulatory Commission equivalent retail Transmission and/or Ancillary Services rates paid by that Customer or its Electric Supplier.

(v) For Customers who do not choose an alternate Electric Supplier or have returned to obtaining their electric supply from DP&L, the above-specified retail market price shall be the rate paid for Electric Supply Service for the Transition Period, subject to such regulations as the Commission may adopt pursuant to §1010(c) of this chapter for returning Customers.

(vi) For Customers who do choose an alternate Electric Supplier, the above-specified retail market price shall not be applicable for such Customer's Electric Supply Service.

(vii) In addition to the above-specified rates and charges, and notwithstanding subparagraph (ii), a deferred fuel true up credit or charge shall be in effect for all Customers for up to 12 months following September 30, 1999, pursuant to §303(c) of this title.

(2) Rates in effect after the Transition Period.

(i) At the end of the Transition Period set forth in §1004(a) of this chapter, the retail market price under subparagraph (a)(1)(i) of this section shall become the Standard Offer Service price.

(ii) Such Standard Offer Service price shall be the applicable retail market price for Electric Supply Service for any Customers who have not chosen an alternate Electric Supplier or have returned to obtaining their Electric Supply Service from the Standard Offer Service Supplier, subject to such regulations as the Commission may adopt pursuant to §1010(c) of this chapter for returning Customers.

(iii) If DP&L is a Standard Offer Service Supplier, the Standard Offer Service price shall be revised by DP&L from time to time for each Customer rate class to be representative of the regional wholesale electric market price, plus a reasonable allowance for retail margin to be determined by the Commission for providing such Electric Supply Service. The Standard Offer Service price may be reviewed from time to time by the Commission to determine whether it represents the regional wholesale electric market price, plus a reasonable allowance for retail margin. If the Commission has elected another Electric Supplier to be the Standard Offer Service Supplier as the result of the bidding process in §1010(a)(2) of this chapter, the Standard Offer Service price shall be the bid price.

(iv) For Customers who have chosen an Electric Supplier, in addition to the Standard Offer Service price or the alternative Electric Supplier's supply price, each Customer shall pay the separate applicable rates for Transmission, Ancillary, Distribution, nuclear decommissioning and other Services. Such rates shall not include any generation or electric supply costs. By March 1, 2002, DP&L shall file a rate case quality cost of service study (consistent with the Minimum Filing Requirements in effect on February 1, 1999) and a proposal to reset its regulated rates to be applicable at the end of the Transition Periods. The Commission shall review these filings to determine the appropriate rates DP&L may charge its Customers for regulated services.

(v) Customers who obtain Transmission and/or Ancillary Services directly from the PJM Independent System Operator or from their Electric Supplier shall receive a credit against DP&L's retail delivery rates equal to the then-applicable Federal Energy Regulatory Commission equivalent retail Transmission and/or Ancillary Services rates paid by that Customer or its Electric Supplier.

(vi) To the extent that any nuclear generating unit partially owned by DP&L has been sold, or otherwise disposed of, the nuclear decommissioning costs associated with such unit shall not be recovered from Customers after the Transition Period.

(b) Rates for Customers within DEC's Service Territory.

(1) Rates in effect during the Transition Period.

For the Transition Period identified in §1004(b) of this chapter, the following Delaware retail rate levels shall be determined by the Commission (without conducting a base rate case) as part of its decision on DEC's restructuring plan filed pursuant to §1005(b) of this chapter and shall thereafter remain in effect as provided below:

(i) The retail market price for Electric Supply Service (including losses to the Customer's delivery point) shall be estimated and applied separately for each Customer rate class for each year of the Transition Period. Such prices shall be based upon and/or representative of regional wholesale electric market prices, plus a reasonable allowance for retail margin to be determined by the Commission. Once established, such prices shall not thereafter be changed by the Commission, except as the result of an appeal of the Commission's decision.

(ii) For each Customer rate class, the total of the actual base rates (excluding Purchase Power Costs) and the Purchase Power rates based upon the actual Purchase Power Costs for the 12 months ending March 31, 2000 shall remain in effect for the Transition Period less: (a) the above-specified retail market price in each respective year; and (b) the below-specified Competitive Transition Charge in each respective year. However, upon application by DEC, the Commission may change rates in the Transition Period for the recovery of any extraordinary costs as the Commission may, in its discretion, determine.

(iii) A Competitive Transition Charge shall be established by the Commission to recover Stranded Costs and Transition Costs, if any, pursuant to §1007 of this chapter. The Competitive Transition Charge shall be set as a separate charge at a level that will permit DEC to recover its allowed Stranded Costs and Transition Costs over the Transition Period.

(iv) For each Customer rate class, the total of the rates established pursuant to subparagraphs (i), (ii) and (iii) of this subsection (b)(1) shall be separated (on a revenue-neutral basis) into rates for Electric Supply, Transmission, Ancillary, Distribution nuclear decommissioning, Competitive Transition Charge and other Services and may be combined for billing purposes.

(v) Customers who obtain Transmission and/or Ancillary Services directly from the PJM Independent System Operator or from their Electric Supplier shall receive a credit against DEC's retail delivery rates equal to the then-applicable Federal Energy Regulatory Commission equivalent retail Transmission and/or Ancillary Services rates paid by that Customer or its Electric Supplier.

(vi) For Customers who do not choose an alternate Electric Supplier or have returned to obtaining their electric supply from DEC, the above-specified retail market price shall be the rate paid for Electric Supply Service for the Transition Period, subject to such regulations as the Commission may adopt pursuant to §1010(c) of this chapter for returning Customers.

(vii) For Customers who do choose an alternate Electric Supplier, the above-specified retail market price shall not be applicable for such Customer's Electric Supply Service.

(viii) In addition to the above-specified rates and charges, and notwithstanding subparagraph (ii), a deferred fuel true up credit or charge shall be in effect for all Customers for up to 12 months following March 31, 2000, pursuant to §303(c) of this Title.

(2) Rates in effect after the Transition Period.

(i) At the end of the Transition Period set forth in §1004(b) of this chapter, the retail market price under §1006(b)(1)(i) of this chapter shall become a Standard Offer Service price.

(ii) Such Standard Offer Service price shall be the applicable retail market price for Electric Supply Service for any Customers who have not chosen an alternate Electric Supplier or have returned to obtaining their Electric Supply Service from the Standard Offer Service Supplier, subject to such regulations as the Commission may adopt pursuant to §1010(c) of this chapter for returning Customers.

(iii) If DEC is a Standard Offer Service Supplier, the Standard Offer Service price shall be revised by DEC from time to time for each Customer rate class to be representative of the regional wholesale market price, plus a reasonable allowance for retail margin to be determined by the Commission for providing such Electric Supply Service. The Standard Offer Service price may be reviewed from time to time by the Commission to determine whether it represents the regional wholesale electric market price, plus a reasonable allowance for retail margin. If the Commission has elected another Electric Supplier to be the Standard Offer Service Supplier as the result of the bidding process in §1010(b)(2) of this chapter, the Standard Offer Service price shall be the bid price.

(iv) For Customers who have chosen an Electric Supplier, in addition to the Standard Offer Service price or the alternative Electric Supplier's supply price, each Customer shall pay the separate applicable rates for Transmission, Ancillary, Distribution, nuclear decommissioning and other Services. Such rates shall not include any generation or electric supply costs. By September 1, 2004, DEC shall file a rate case quality cost of service study (consistent with the Minimum Filing Requirements in effect on February 1, 1999) and a proposal to reset its regulated rates to be applicable at the end of the Transition Period. The Commission shall review these filings to determine the appropriate rates DEC may charges its Customers for regulated services.

(v) Customers who obtain Transmission and/or Ancillary Services directly from the PJM Independent System Operator or from their Electric Supplier shall receive a credit against DEC's retail delivery rates equal to the then-applicable Federal Energy Regulatory Commission equivalent retail Transmission and/or Ancillary Services rates paid by that Customer or its Electric Supplier.

§1007. Stranded and Transition Costs for DEC.

For purposes of this Section, the terms listed below shall be defined as follows:

(a) "Competitive Transition Charge" means the wires charge applied to the bill of every Customer receiving electric supply through the Distribution or Transmission Facilities of DEC, to allow DEC to recover its Stranded Costs and Transition Costs as determined by the Commission pursuant to this section.

(b) "Stranded Costs" means DEC's electric generation related costs, including purchased power contract costs, incurred in meeting its public service obligations, that would be recovered under traditional cost of service regulation but which may not be recoverable in a competitive electric supply market, including, but not limited to: net generation plant investment costs, generation plant retirement costs, including nuclear plant decommissioning costs, spent nuclear fuel disposal costs, purchase power contract costs, and any similar or related costs.

(c) "Transition Costs" means the costs DEC incurs during the course of the transition to a competitive electric supply market that would be recovered under traditional cost of service regulation but which may not be recoverable in a competitive electric supply market, including, but not limited to: the costs of implementing a genuinely competitive retail market, personnel costs, the costs of purchasing, replacing or modifying systems, software, and other equipment; the costs of any physical plan rendered no longer used or useful; and any other similar or related costs attributable to the transition to a competitive electric supply market.

(d) DEC shall be permitted to recover all reasonably incurred, non-mitigable Stranded and Transition Costs. The amount and method of determining DEC's Stranded and Transition Costs shall be decided by the Commission. The costs to be recovered shall be allocated in a manner that avoids, to the extent possible, inter-class or intra-class cross-subsidization.

(e) The Commission shall establish procedures for periodic review of the costs recovered through the Competitive Transition Charge.

§1008. Duties of Electric Distribution Companies.

Each Electric Distribution Company shall maintain the reliability of its Distribution Services and shall implement procedures to require all Electric Suppliers to deliver energy to the Electric Distribution Company at locations and in amounts which are adequate to meet each Electric Supplier's obligations to its Customers.

§1009. Reciprocity.

Notwithstanding any other provision of this chapter, unless an electric utility, including a municipally-owned electric utility or a municipal electric company, has implemented a restructuring plan that provides for Retail Competition in its Delaware service territory, such electric utility may not use the Transmission or Distribution Facilities of a nonaffiliated electric utility to make sales to Customers in such nonaffiliated electric utility's Delaware service territory; nor shall such electric utility own or receive, directly or indirectly, any economic interest in any entity which uses the Transmission or Distribution Facilities of a nonaffiliated electric utility to make sales to Customers in such nonaffiliated electric utility's Delaware service territory.

§1010. Electric Distribution Companies' Obligation to Serve Customers.

(a) DP&L's obligation to serve.

(1) During the Transition Period, DP&L shall continue to have the obligation to serve all Customers in its Commission-designated service territory, including the connection of Customers, the delivery of electricity and the generation or acquisition of Electric Supply Service for Customers.

(2) Prior to the end of the Transition Period set forth in §1004(a) of this chapter, the Commission shall determine who the Standard Offer Service Supplier in DP&L's service territory will be following the Transition Period, based on various factors including but not limited to price, reliability and overall quality of the Electric Supply Service offered. In determining the Standard Offer Service Supplier for DP&L's service territory, the Commission may use an auction bidding process. The Commission shall promulgate rules and regulations for the bidding process and may: (i) negotiate directly with bidders; (ii) aggregate various distribution areas to attract more bidders; or (iii) choose more than one Standard Offer Service Supplier to provide Standard Offer Service. Nothing in the Commission's rules or regulations shall prohibit DP&L or its affiliates from participating in the bidding process for post-transition Standard Offer Service. The Commission may also require DP&L to continue to be the Standard Offer Service Supplier or to supply a portion of the Standard Offer Service after the Transition Period. Any Standard Offer Service Supplier arrangement shall be periodically reviewed by the Commission to insure that those who use Standard Offer Service are provided Electric Supply Service that is safe and reliable.

(b) DEC's obligation to serve.

(1) During the Transition Period, DEC, or affiliates thereof, shall have the obligation to serve all Customers in its Commission-designated service territory, including the connection of Customers, the delivery of electricity and the generation or acquisition of Electric Supply Service for Customers.

(2) After the Transition Period, in addition to Transmission and Distribution Service, DEC shall supply Standard Offer Service, as determined in accordance with §1006(b)(2)(iii) of this chapter, to Customers who: (i) have no choice regarding Electric Suppliers, (ii) do not choose another Electric Supplier, or (iii) have contracted for Electric Supply Service that is not delivered. The Commission may choose another Electric Supplier to provide Standard Offer Service to DEC's Customers, through a Commission-supervised competitive bidding process or otherwise, similar to §1010(a)(2) above, only if DEC is unable to provide Standard Offer Service in its service territory or if it is established, after notice and hearing, that the Standard Offer Service rendered by DEC is inadequate to meet the requirements of the public necessity and convenience.

(c) The Commission shall promulgate rules and regulations governing the amount of notice that a Customer who desires to return to the Standard Offer Service Supplier must provide, the minimum amount of time that a Customer must take service from a Standard Offer Service Supplier, and the amount of charges that may be assessed against a Customer who leaves the Standard Offer Service Supplier and later returns to the Standard Offer Service Supplier, including the appropriate retail market price, which may be higher than the Standard Offer Service price.

§1011. Metering and Billing.

(a) The following provisions shall govern metering and billing for Customers in DP&L's service territory:

(1) Each Customer shall have the right to choose to receive separate bills from DP&L and from its Electric Supplier, or to receive a combined bill from either DP&L or its Electric Supplier, for Electric Supply, Transmission, Distribution, Ancillary and other Services, consistent with the regulations of the Commission.

(2) If the Customer does not elect a billing option, DP&L shall be responsible for billing Customers for all Electric Supply, Transmission, Distribution, Ancillary and other Services, regardless of the identity of the provider of Electric Supply Service.

(3) Customer bills shall contain sufficient detail to enable the Customer to determine the basis for all charges.

(4) During the Transition Period, DP&L shall continue to own all meters and perform all meter-reading functions. After the Transition Period, or earlier if requested by DP&L, the Commission may permit others to provide some or all of such metering functions on a competitive basis.

(b) The following provisions shall govern metering and billing for Customers in DEC's service territory:

(1) DEC shall continue to bill each Customer for: (1) that Customer's Electric Supply Service, regardless of the Electric Supplier, and (2) Transmission, Distribution, Ancillary and other Services.

(2) All Customers in DEC's service territory shall continue to be members of DEC and the revenues for DEC's services shall continue to be treated as member revenue to DEC.

(3) DEC shall continue to own and operate meters and perform meter reading functions in its Commission-designated service territory.

§1012. Certification of Electric Suppliers.

(a) Certification Requirements. Prior to doing business in Delaware, every Electric Supplier seeking to provide Electric Supply Service to Customers shall obtain a certificate from the Commission. The Commission shall promulgate rules and regulations governing the information that Electric Suppliers shall be required to provide and requirements to be satisfied in order to obtain such certificate. The failure by any Electric Supplier to comply with any of the requirements promulgated by the Commission may result in penalties, including monetary assessments, suspension or revocation of the Electric Supplier's certificate, or other sanctions.

(b) Rules and Regulations. The Commission may promulgate rules and regulations with respect to Electric Suppliers and Electric Supply Service to protect Customers after the implementation of Retail Competition, including those related to billing, service terms and conditions, dispute procedures, changing suppliers and standards for suppliers who offer environmentally-advantageous "Green Power" options, such as electricity generated from renewable resources, biomass, hydroelectric and other such generating sources. All Electric Suppliers shall consent to the jurisdiction of the Delaware courts for acts or omissions arising from their activities in the State.

(c) Fees and Assessments.

(1) Electric Suppliers required to obtain a certificate to provide retail Electric Supply Service shall pay an application fee of $750.00.

(2) For purposes of §§ 114 (Charges and Fees; Costs and Expenses of Proceedings), 115 (Public Safety; Regulatory Assessment; Definition of Revenue; Returns; Collection of Assessment), and 116 (Delaware Public Service Commission Revolving Fund; Deposit of Moneys Collected) of this title, an Electric Supplier shall be deemed to be a "Public Utility" as defined in §102(2) of this title.

§1013. Market Power Remediation.

(a) On or after October 1, 1999, upon complaint or upon its own motion, for good cause shown, the Commission may conduct an investigation of the retail Electric Supply Service market and whether the function of that market is being adversely affected by market power arising from the ownership or control of facilities and equipment used to provide Electric Supply Service.

(b) If, as a result of an investigation conducted under this section, the Commission has reason to believe that market power in the relevant market under the Commission's jurisdiction is preventing Retail Electric Customers in the State from obtaining the benefits of ~~a~~ Retail Competition, the Commission may take remedial actions to mitigate the impact of such activities, including ordering divestiture. However, in the case of divestiture, the Commission may only order divestiture of generating asset(s) of a public utility and only in an extreme situation and as a last resort measure.

§1014. Public Purpose Programs and Consumer Education.

(a) In separating the rates or prices for DP&L's services under §1005(a) of this chapter, the Commission shall reassign to the separate Transmission and Distribution rates of each rate class from the total base rates

$0.000095 per kilowatt-hour to be deposited each month by DP&L into an environmental incentive fund effective on October 1, 1999. Such fund shall be established and administered by the Delaware Economic Development Office, in consultation with the Division of the Public Advocate, and shall be used to fund environmental incentive programs for conservation and energy efficiency within DP&L's service territory.

(b) The Commission shall further reassign to the separate Transmission and Distribution rates of each rate class from the total base rates $0.000095 per kilowatt-hour to be deposited each month by DP&L into a low-income program fund effective on October 1, 1999. Such funds shall be administered by the Department of Health and Social Services, Division of State Service Centers and shall be used to fund low-income fuel assistance and weatherization programs within DP&L's service territory.

(c) The Commission shall establish a working group by June 1, 1999 comprised of representatives of the Commission, electric utilities, Electric Suppliers, the Division of the Public Advocate, and other interested parties to design and implement a consumer education program, including "Green Power" options, to prepare the citizens of Delaware for Retail Competition. The Commission may direct the payment of up to a total of $250,000 from DP&L and DEC (apportioned on the 1998 kWh Delaware retail sales of each entity) for the purpose of providing customer education materials to citizens of Delaware in connection with Retail Competition.

§ 1015. Procedures to Govern Commission Proceedings

(a) The Commission is authorized to enter such orders and adopt such regulations as may be needed to implement Retail Competition in accordance with this chapter. In order to allow the Commission to implement Retail Competition on the implementation dates set forth in §1003(b) of this chapter, the Commission may waive procedures required by 29 Del.C. §§1131-1136 and 29 Del.C. §§10111-10128 with respect to proceedings or rulemakings authorized by this chapter which must be completed prior to the implementation dates. In case of such waiver, the Commission shall provide notice in such a manner to allow all interested and affected persons an opportunity to comment upon and participate in the proposed action or rulemaking and shall conduct such proceedings or rulemakings in accordance with the principles of due process and fundamental fairness. All regulations shall be published in the Delaware Register of Regulations. Such orders and regulations shall become effective on a date designated by the Commission consistent with the requirements of this chapter. Judicial review of such final orders or regulations shall remain available under 29 Del.C. §10141 and §10142.

(b) Matters relating to either DP&L's or DEC's restructuring plans may also be resolved by stipulation and settlement pursuant to §512 of this title.

§1016. Change of Control.

The Commission's regulatory authority over DP&L and DEC shall not be affected by a subsequent change in stock ownership of either utility. In approving any proposed merger, mortgage, transfer, issue, assumption or acquisition, the Commission shall, in addition to considering the factors set forth in §215 of Title 26, take such steps or condition any transfer in such a manner as to insure that any successor will continue safe and reliable Transmission and Distribution Services. Any proceeding reviewing a change of control or transfer shall conclude within 120 days from the date of filing, unless agreed to by the Commission and the applicant.

§1017. Filing Information with Public Advocate.

Nothing in this Act shall be construed to limit or constrain in any way the right of the Division of the Public Advocate to receive information pursuant to 29 Del.C. §8808(5)."

Section 4. Amend §102 of Title 26 of the Delaware Code by deleting subsection (2) in its entirety and replacing it with the following:

> "(2) 'Public utility' includes every individual, partnership, association, corporation joint stock company, agency or department of the State or any association of individuals engaged in the prosecution in common of a productive enterprise (commonly called a 'cooperative'), their lessees, trustees, or receivers appointed by any court whatsoever, that now operates or hereafter may operate for public use within this state, any natural gas, electric (excluding Electric Suppliers as defined in §1001 of this title), water, telephone (excluding telephone services provided by cellular technology or by domestic public land mobile radio service) service, system, plant or equipment."

Section 5. Amend §102 of Title 26 of the Delaware Code by adding a new subsection (9) as follows:

> "(9) The terms "Ancillary Services," "Distribution Facilities," "Distribution Services," "Electric Distribution Company," "Electric Supplier," "Retail Competition," "Retail Electric Customer," "Transmission Facilities," and "Transmission Services," as used in Chapters 1, 2 and 3 of this title, shall have the same definitions as set forth in §1001 of this title."

Section 6. Amend §202 of Title 26 of the Delaware Code by adding a new subsection 202(f) providing as follows:

"(f) Except insofar as may be necessary to implement Chapter 10 of this title regarding the establishment of Retail Competition, the Commission shall have no supervision or regulation over any Electric Supplier."

Section 7. Amend §203A of Title 26 of the Delaware Code by deleting subsection (a)(1) in its entirety and replacing it with the following:

"(a) (1) Subject to the provisions of subsection (b) of this section and §§102, 201, 202 and Chapter 10 of this title, and excluding Electric Suppliers, no individual, co-partnership, association, corporation, joint stock company, agency or department of the State, cooperative, or the lessees, trustees or receivers thereof, shall begin the business of a public utility nor shall any public utility begin any extension of its regulated public utility business or operations without having first obtained from the Commission a certificate that the present or future public convenience and necessity requires or will require the operation of such regulated public utility business or extension."

Section 8. Amend §203A of Title 26 of the Delaware Code by deleting subsection (c)(1) in its entirety and replacing it with the following:

"(c) (1) Subject to the provisions of Chapter 10 and §706(d) of this title and excluding Electric Suppliers, no public utility shall abandon or discontinue, in whole or in part, any regulated public utility business, operations or services provided under a certificate of public convenience and necessity or otherwise which are subject to jurisdiction of the Commission without first having received Commission approval for such abandonment or discontinuance."

Section 9. Amend §203A of Title 26 of the Delaware Code by adding a new subsection (d) as follows:

"(d) As of the implementation dates specified in §1003(b)(1) and (2) of this title, nothing contained in this section shall be construed to require application for approval of the abandonment or discontinuance of service by an Electric Supplier."

Section 10. Amend §203B of Title 26 of the Delaware Code by deleting subsections (g) and (h) in their entirety and replacing them with the following and inserting a new subsection (i) as follows:

"(g) The exclusive retail electric service territories heretofore established by the Commission pursuant to this section shall continue as exclusive service territories for the transmission and distribution of electricity. Except as otherwise provided herein, each Electric Distribution Company shall have the exclusive right to furnish Transmission and Distribution Services to all electricity-consuming facilities located within its service territory and shall not furnish, make available, render or extend its Transmission and Distribution Services to a consumer located within the service territory of another Electric Distribution Company; provided that any Electric Distribution Company may extend or construct its facilities in or through the service territory of another Electric Distribution Company, if such extension or construction is necessary for such company to connect any of its facilities or to serve its customers within its own service territory. As of the implementation dates as set forth in §1003(b)(1) and (2) of this title, there shall be no exclusive service territories for the supply of electricity, except as otherwise herein provided.

(h) Notwithstanding any other provision of Title 26:

(1) A Retail Electric Customer has the right to lease or own (satisfied by partial ownership) facilities on its own property to transmit or distribute electricity to itself.

(2) Where a Retail Electric Customer owned transmission and/or distribution facilities that, at any time prior to February 1, 1999, were located on property owned by such Customer, and were used to transmit or distribute electricity to buildings, facilities, or equipment on such property, and that Retail Electric Customer sold or leased a portion of such property and/or buildings, facilities or equipment thereon to third parties, then that Customer shall have the right to continue to own such facilities and to transmit or distribute electricity to both itself and to any such third parties, with separate metering for each third party. Furthermore, if such Customer desires to expand such facilities to serve additional buildings, facilities or equipment or additions thereto on such property used by such third party, then that Customer and the Electric Distribution Company shall jointly determine the terms and conditions of the ownership, installation, operation, and maintenance of the expanded facilities. Any disagreement in this regard shall be presented to the Commission for resolution. If the Customer utilizes its own facilities to transmit or deliver electricity to any such third party, the Customer shall not charge the third party any amount that exceeds its actual costs of providing such services.

(3) Any person shall have the right to lease or own transmission and/or distribution facilities to transmit or deliver electricity from an electric generation facility, which qualifies under the Public Utilities Regulatory Policy Act of 1978 or its successor, to its host Customer on the same or on any immediately adjacent property. Should such person desire to have electricity transmitted or delivered to not more than five other nearby Customers who are new Customers or who have been receiving electricity through the then-existing facilities of an Electric Distribution Company, such person must first contact the Electric Distribution Company to jointly determine how such service shall be provided. Should agreement not be jointly reached, the matter shall be presented to Commission for resolution. The options that may be considered including the following:

(i) The Electric Distribution Company may continue to provide such service over its then-existing facilities at Commission-approved rates; or

(ii) New facilities may be installed by the Electric Distribution Company to provide such service, in which case the Customers shall reimburse the Electric Distribution Company for the depreciated book value, plus removal costs less salvage value, of any then-existing facilities that will no longer be used by the Electric Distribution Company. In this case, the regular Commission-approved rates shall not be applicable for such new facilities. Instead, a separate facilities charge rate will be developed and billed monthly to such Customers, based upon the actual installed cost of such new facilities, including normal levels of operating expenses, taxes and return.

(i) For purposes of this section only, effective on the implementation dates set forth in §1003(b)(1) and (2) of this title, the term 'retail electric service' shall be construed to be synonymous with the term 'electric transmission and distribution' and shall not include the generation, supply or sale of electricity itself."

Section 11. Amend §301 of Title 26 of the Delaware Code by deleting the section in its entirety and replacing it with the following:

"§301. Rate schedule and rate classifications.

(a) The Commission may require every public utility to file with the Commission complete schedules of every classification employed and of every individual or joint rate, fare, or charge made, charged or executed by the public utility for any regulated product or service supplied or rendered within this State. Every application for a certificate of public convenience and necessity shall include a proposed tariff for approval by the Commission. A copy of all regulated tariffs then in effect shall be available for inspection by customers at each public office of the utility where applications for service are received.

(b) This section shall not apply to charges made for Electric Supply Service for Transmission or Ancillary Services on and after October 1, 1999 for Delmarva Power & Light Company and April 1, 2000 for Delaware Electric Cooperative.

Section 12. Amend §303 of Title 26 of the Delaware Code by deleting subsection (b) in its entirety and replacing it with the following:

"(b) The Commission shall require all utilities operating within its jurisdiction to produce evidence at a public hearing of the need for a change in the fuel adjustment as a part of the rate-making procedure. Notwithstanding any other provisions of this chapter, such fuel adjustment may include a separate component to adjust for or correct for any difference between actual allowable fuel costs incurred by the utility and fuel costs recovered through base rates and the fuel adjustment. Notice of such hearing shall be advertised in at least 1 newspaper in each of the 3 counties. As in other applications before the Commission, the burden of proof that the fuel adjustment change is required shall be upon the utility. No change in the fuel adjustment shall be authorized by the Commission except by affirmative vote of the majority of all members appointed to the Commission. The Commission shall consider the evidence for and against the proposed change as it would all evidence in any other rate-making procedure. Consistent with the introduction of customer choice in the supply of electricity pursuant to Chapter 10 of this title, and subject to subsection (c) below, this section shall have no application to rates in effect on and after October 1, 1999 for Delmarva Power & Light Company and April 1, 2000 for Delaware Electric Cooperative."

Section 13. Amend §303 of Title 26 of the Delaware Code by redesignating subsection (c) as (d) and inserting a new subsection (c) as follows:

"(c) Notwithstanding subsection (b) above, the Commission shall determine the actual over-recovered or under-recovered deferred fuel balance for each Electric Distribution Company as of September 30, 1999 for Delmarva Power & Light Company and March 31, 2000 for Delaware Electric Cooperative. Such over-recovery or under-recovery shall be either returned to or collected from that Electric Distribution Company's Retail Electric Customers by a mechanism that is designed to provide a full credit or charge of the actual deferred fuel balance and that the Commission shall adopt and order to be effective no later than 90 days after such dates. The Commission shall adopt either a single bill credit or charge mechanism or an alternative per kilowatt-hour credit or charge mechanism to be in effect for up to a period of twelve months, depending upon the relative size of the actual amount to be credited or charged to Retail Electric Customers. No further adjustments of such amounts shall be required."

Section 14. Report to General Assembly.

Beginning on or after January 2000 and continuing through January 2003, unless the General Assembly shall otherwise provide, the Commission shall report to such committees, as the General Assembly may designate and with such frequency and in such manner as the General Assembly shall direct, on Retail Competition.

Section 15. This Act shall become effective upon its enactment into law.

Section 16. The provisions of this Act are severable. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or application of this Act which shall be given effect without the invalid provision or application.

SYNOPSIS

This comprehensive legislation restructures and deregulates the supplying of electricity to all industrial, commercial and residential customers within the service territories of Delmarva Power & Light Company and Delaware Electric Cooperative, by eliminating the exclusive franchise for the supply of electricity which each enjoys within its service territory, beginning with customer choice on October 1, 1999 for Delmarva's large industrial users, and on April 1, 2000 for DEC's large industrial users. The Act provides for a 7.5% cut in electric rates for Delmarva's residential customers, and, by replacing electric supply monopoly with free market competition, presages lower prices for all DP&L and DEC customers.