

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE, THE DELAWARE DEPARTMENT OF NATURAL  
RESOURCES AND ENVIRONMENTAL CONTROL (ENERGY DELAWARE OFFICE),  
THE OFFICE OF MANAGEMENT AND BUDGET, AND THE CONTROLLER  
GENERAL'S OFFICE**

IN THE MATTER OF THE INVESTIGATION    )  
INTO THE ADOPTION OF PROPOSED RULES    )  
AND REGULATIONS TO ACCOMPLISH         ) PSC REGULATION DOCKET NO. 60  
INTEGRATED RESOURCE PLANNING....       )

**RESPONSE OF ALAN MULLER AND GREEN DELAWARE TO JEREMY  
FIRESTONES PETITION FOR REHEARING AND RECONSIDERATION**

**AND**

**DELAWARE PUBLIC SERVICE COMMISSION STAFF ANSWER TO JEREMY  
FIRESTONE'S PETITION ....**

The Commission took up the proposed Rules on December 2, 2008. At that time the Commission heard testimony for and against adoption of the Findings of the Hearing Examiner.

I testified as to the inadequacy of the proposed regulations to accomplish meaningful Integrated Resource Planning and raised various specific concerns, concluding that the proposed Rules were not ready for adoption.

The Commission declined to adopt the Findings and referred the draft regulations to the staff and other parties for further work.

*MR. GOODMAN:[attorney for Delmarva Power]*

*I think the best thing to do, in my mind, is to let Staff put together ... the corrections that need to be done, and circulate them amongst the intervenors and see if we can come to agreement.*

*We'll take that agreement before the hearing examiner, ...*

*And then, when we come before you, we could either come before you with a settlement ... or come before you with a dispute ....*

COMMISSIONER WINSLOW:

*"Well, I would adopt what he just said as the last part of my motion."*

COMMISSIONER CONAWAY:

*"I'll second the motion."*

The motion was adopted unanimously.

On this basis I waited to receive a proposal from Staff but never received one.

Subsequently Order 7518, without any prior consultation with or notice to myself, or, according to his Petition, Mr. Firestone, was presented to the Commission and adopted on January 6, 2009.

Order 7518 remands the docket to a new Hearing Examiner for further proceedings on some identified issues. I have no objection, although this is not the approach agreed upon on December 2, 2008, and is more burdensome.

But (at paragraph 15) the Order is dispositive of the question of the incorporation of "Health Costs," as a "specific externality," one of the key matters on which the parties expected further negotiations.

Thus, the Order as adopted is in some respects contrary to the decision of the Commission on December 2, 2008.

It is difficult to envision how this could have occurred in good faith, since Staff, Rate Counsel, and Delmarva Power's representative were present and are well aware of the importance Green Delaware and other parties attach to this matter.

It is also difficult to read the Staff response, signed by Mr. Geddes, without anger.

For example, at paragraph 2, Staff (or Mr. Geddes) states "...the Commission remanded the matter and instructed Staff to consider certain additional issues in redrafting the proposed Rules." This statement misrepresents the plain intention, per Commissioner Winslow's motion, that the parties consult before returning the matter to the Commission. See transcript above. Mr. Geddes then dares to write, in paragraph 10, that there is no need for Staff to be directed to "circulate the draft changes to the proposed Rules ..." because Staff's normal course of practice is to circulate all changes ...."

It appears to me that, in effect, some persons colluded to decide the "health externality" issue in favor of Delmarva Power's position by including it in an Order, prior to any redrafting of the Rules themselves. This is bad faith.

The objectionable aspects of Order 7518 are contained primarily in paragraph 15.

Delmarva Power, in a Response just received, agrees with Staff's position. It would be remarkable if this were not the case.

WHEREFORE, Green Delaware respectfully requests that the Commission Modify Order 7518 by

1. Deleting paragraph 15 and adding to the remand directive items a,b,c, and d from Mr. Firestone's Petition.
2. As an alternative, grant Mr. Firestone's Petition and requested Findings.
3. Remove Mr. Geddes as counsel in this docket.

Respectfully submitted,

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Dated: February 12, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that the within

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**Dated February 12, 2009**

**Has been served on the email service lists of the subject docket.**

**[signed]**

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**Alan Muller**