

**ORDER NO. 75890**

IN THE MATTER OF THE COMMISSION'S  
INQUIRY INTO THE PROVISION AND  
REGULATION OF ELECTRIC SERVICE.

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BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND

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CASE NO. 8738

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On October 29, 1999, the Generic Technical Implementation Working Group ("GTIWG") filed a Report with the Commission. Included with the Report were a Model Electricity Supplier Coordination Tariff ("Model Tariff"), a Sample Supplier Coordination Agreement, and a Sample Electronic Data Interchange ("EDI")/Trading Partner Agreement.<sup>1</sup> The Report details the vast majority of areas where consensus has been reached regarding these documents that will define utility-supplier relationships between electric companies and electric suppliers. The GTIWG requests the Commission review and adopt these documents. In requesting Commission adoption of all consensus items in the Model Tariff, the GTIWG recommends that utility-

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<sup>1</sup> The Model Tariff requires an electricity supplier to execute a Supplier Coordination Agreement as a part of the application process for coordination services. The Supplier Coordination Agreement ("SCA") contains legal terms and conditions that bind the supplier and electric company providing supplier coordination services. An EDI/Trading Partner Agreement is optional and may be combined with the SCA.

specific tariffs should comply with the content and structure of the Model Tariff, although modifications may be filed but should be highlighted and explained.

The GTIWG notes that consensus was not reached in three areas, and Commission guidance is therefore requested on these items before the utilities finalize their tariffs and submit compliance filings. Accordingly, parties filed written comments on these contested matters on November 12, 1999, and the Commission heard oral discussion at the Administrative Meeting on November 17, 1999.

The three matters in dispute concern the following issues: (1) the level of Commission oversight of the utility-specific Supplier Coordination and EDI/Trading Partner Agreements; (2) whether only the electric company or both the electric company and electricity supplier should be indemnified for the terms of the tariff; and (3) whether electric companies should accommodate an electricity supplier's request to use more than one scheduling coordinator. These matters will now be discussed.

#### **A. Commission Oversight of Agreements**

A sub-group of the GTIWG have agreed on the general content of the model Supplier Coordinator Agreement and EDI/Trading Partner Agreement, but disagree as to the level of Commission oversight of these documents. Some parties advocate the Commission adopt the form and contents of these agreements, and recommend electric companies file both a tariff and utility-specific "default" service agreements for Commission

approval. Utilities and suppliers could negotiate alternative terms, but the "default" agreements would be available if specific negotiations fail. Changes to the "default" agreements must also be approved by the Commission under this proposal. Parties advocating Commission approval of these default agreements believe such approval is necessary to protect electricity suppliers in their negotiations with utilities.

Parties opposed to Commission oversight of the utility-specific service agreements contend that utility-supplier contractual issues addressed in the Supplier Coordination Agreement are areas that do not warrant regulatory oversight through Commission approval. The opponents, which include the utility companies, note the agreements contain representations and warranties on the part of the supplier that would be enforceable in a court of law. They therefore claim the Commission lacks jurisdiction to order specific performance or payment of damages. These parties advocate filing of utility-specific default agreements for informational purposes only, but do not believe it is necessary for Commission approval as the Commission need not oversee commercial aspects of the utility-supplier relationship.

The Commission believes it is appropriate and will better insure the development of a competitive market if such contracts are submitted to the Commission for review and approval, including such review and approval of deviations from the model agreements. Such a procedure insures fairness to

all parties and avoids problems of potential discriminatory action against entering companies. We believe such Commission approval is beneficial to the restructured electric field as we move from traditional regulation to newly competitive markets, and therefore these agreements, including changes to the default agreements, should be filed for review and approval of the Commission.

## **B. Indemnification by Parties**

The dispute regarding indemnification concerns whether such indemnification language in Supplier Coordination Agreements should be unilaterally applied to Suppliers or should be bilateral and also provide for potential indemnification of costs from utilities to suppliers. The parties favoring unilateral indemnification argue that there is no basis upon which utilities would indemnify electricity suppliers, and indemnification does not have a logical role in the provision of coordination services. The utilities opposed to bilateral indemnification note that limitation of liability tariffs protect customers by not requiring indemnification for damages from interruptions, and they oppose indemnifying suppliers for risk of losses associated with customer losses. Also, the opponents contend that traditionally indemnification has not been addressed and applied to rates for regulated utility services.

The parties arguing for bilateral indemnification (i.e., utilities may have to indemnify suppliers as well as vice versa) consider such bilateral provisions to be the usual scenario in agreements setting forth business relationships. While there is little experience with service offered under the model tariff and potential claims, both parties should be protected through bilateral indemnification, which is commonly provided in wholesale energy transaction agreements, and has been approved by the Federal Energy Regulatory Commission, according to these parties. Furthermore, the advocates of bilateral indemnification note other states, including New Jersey and Delaware, have approved bilateral indemnification.

At this time, the Commission believes bilateral indemnification provisions are appropriate and fair to both parties (i.e., utilities and suppliers), and should therefore be utilized in Supplier Coordination Agreements. We agree that while there may well be little basis in which utilities would ordinarily need to indemnify electricity suppliers, that is insufficient reason to totally eliminate such indemnification protection if legitimate grounds occur. It is therefore equitable to both sides -- utilities and suppliers -- for bilateral indemnification protections, even if it appears to be the rare instance in which utilities would have to pay such compensation. Parties favoring bilateral indemnification note enrollment errors, "slamming," and "cramming" may be areas where liability may result. We also note that our decision favoring

bilateral indemnification is not in any way intended to abrogate tariffs or prior policies regarding utility provision of electric supply, and therefore protective tariffs limiting utility liability are not affected by this decision. Also, it is not our intention to increase risks upon ratepayers. However, at this time we believe bilateral indemnification is the fair and appropriate policy to implement in the Supplier Coordination Agreements, and if practical experience under these agreements indicates potential problems may result, parties may seek review or modification at such time.

### **C. Requests for Multiple Coordinators**

A scheduling coordinator enables the retail supplier to contract with another entity for services associated with wholesale market functions (such as forecasting, scheduling, and accounting for load obligations). Some parties, including utilities and Staff, advocate that suppliers should be allowed only one scheduling coordinator, in which case the suppliers and coordinators could develop their own systems to track load obligations by groups and electric companies need not provide this service. Staff further advocates that electricity suppliers be allowed to negotiate with the electric company for use of multiple coordinators, or procure such services in a competitive service market. The utilities do not oppose the use of multiple scheduling agents by

suppliers, but advocate each supplier have one coordinator that is the contact point with the utilities.

Other parties believe multiple scheduling coordinators will be necessary in situations where a scheduling coordinator is providing full requirements service to a supplier up to a certain load or number of customers. In such situations, an additional coordinator for the supplier will be needed when the limit is reached if the supplier is to add new customers. Also, these parties believe it is advantageous to have relationships with more than one wholesale supplier to obtain competitive prices and minimize risks to both suppliers and consumers. These parties further contend that dealing with multiple supply coordinators will be no more difficult for utilities than dealing with additional suppliers.

Upon consideration of this issue, the Commission believes that multiple coordinators should be allowed, although we recognize there may be some technical obstacles in implementing multiple coordinators at the onset of competition. As the parties move toward electric restructuring, we expect that utilities will work smoothly with the coordinators and suppliers, and it will not be burdensome or unwieldy to work with more than one coordinator per supplier in instances where additional coordinators are employed as the competitive market becomes more established. However, we recognize that implementation of multiple coordinators may be difficult for a July 1, 2000



target, and we request the GTIWG to further consider this issue and to report back by April 1, 2000 regarding the timing for implementation of multiple coordinators.

Having resolved the three issues in dispute presented before us, the parties are authorized to file Model Tariffs and Agreements in conformance with this decision. The Commission also wishes to express its appreciation to the members of the GTIWG for their cooperation in resolving and reaching consensus on the vast majority of issues before them, which cooperation has also aided the Commission in resolving this matter.

IT IS, THEREFORE, this 12th day of January, in the year Two Thousand, by the Public Service Commission of Maryland,

ORDERED: (1) That the consensus recommendations filed in the Generic Technical Implementation Working Group Report of October 29, 1999, including the Model Tariff, Sample Supplier Coordination Agreement, and Sample EDI/Trading Partner Agreement, are hereby adopted as modified by the decisions in this Order.

(2) That parties may file Model Tariffs and Agreements in conformance with this Order.

By Direction of the  
Commission,

Felecia L. Greer  
Executive Secretary