

**ORDER NO. 75949**

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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(Consumer Protection)  
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## I. OVERVIEW

In Order No. 73834, issued on December 3, 1997 in the above-captioned proceeding,<sup>1</sup> the Commission decided that competition in the supply of electricity would be beneficial to retail consumers and established a framework to achieve that end. Recognizing the complexity of moving from a system of monopoly suppliers with designated service territories to a choice of suppliers within service territories, several venues were established to implement that framework and accomplish the changes.

Some electric restructuring topics were potentially amenable to resolution in a formal negotiation process involving groups and individuals with an interest in the industry. Accordingly, a Statewide Roundtable was formed and charged with, among other matters, investigating and proposing recommendations concerning consumer protection issues. *Id.* at 262. The Commission stated that, in the restructured environment, numerous existing consumer protection programs should continue or be expanded, and that some new programs might need to be created.

During the same period of time that the Commission studied electric industry restructuring, issued Order No. 73834, and initiated the Roundtable process, the General Assembly was establishing a Task Force to

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<sup>1</sup> See, *In the Matter of the Commission's Inquiry Into the Provision and Regulation of Electric Service*, 88 Md. PSC 249 (1997). Additionally, on September 10, 1998, in response to rehearing requests, the Commission issued Order No. 74561. In Order No. 74561, 89 Md. PSC 172 (1998), the Commission affirmed most of the decisions contained in Order No. 73834, but modified several others.

study electric restructuring. As a result of this work, the General Assembly passed legislation (The Electric Customer Choice and Competition Act of 1999, referred to herein as the "1999 Act") that the Governor signed into law on April 8, 1999.

The 1999 Act establishes certain parameters governing consumer protection. See § 7-507(e). The Act requires the Commission to protect against, among other things, lack of information, unreasonable telemarketing, and inadequate procedures for contracting, billing, and termination of service. The Commission recognizes the 1999 Act's consumer protection provisions and implements them through the adoption of this Order.

## **II. PROCEDURAL HISTORY**

The Electric Restructuring Roundtable began meeting in April 1998. The Roundtable established a Consumer Protection Working Group ("CPWG" or "Working Group") to address consumer protection issues. The CPWG included representatives from most Maryland utilities, the Maryland Retailers Association, industrial consumers of electricity, various alternative supplier groups, the Maryland Attorney General's Office, consumer and local government organizations, and the Commission Staff.

The Working Group held 24 meetings, many of them lasting a full day, over the following 12 months. The Working Group issued Interim Reports on November 2, 1998 and March 12, 1999, and a Final Report on May 3, 1999.

The CPWG addressed a wide range of issues pertaining to the rights of Maryland electricity consumers. The Working Group focused primarily on the rights of residential consumers, covering the entire range of the consumer-provider relationship.

The group reached general consensus on a number of points, but failed to agree on a larger number of issues. In light of this absence of consensus, the CPWG requested in its Final Report that the Commission institute a process to decide outstanding issues. Consequently, pursuant to a Commission directive issued on June 1, 1999, the CPWG members filed initial comments on July 2, 1999 and reply comments on July 30, 1999. Allegheny Power ("AP"), Baltimore Gas and Electric Company ("BGE"), Conectiv Power Delivery ("Conectiv," formerly Delmarva Power & Light Company ("Delmarva")), Potomac Electric Power Company ("PEPCO"), Southern Maryland Electric Cooperative, Inc. ("SMECO"), and Choptank Electric Cooperative, Inc. ("Choptank") -- collectively, "the utilities" -- filed comments jointly. The Mid-Atlantic Power Supply Association ("MAPSA") filed comments, as did Washington Gas Light Company ("Washington Gas"). The Office of People's Counsel ("OPC"), Office of the Attorney General, Consumer Protection Division ("OAG"), and Maryland Energy Administration ("MEA") -- collectively, "the



Agencies" -- also filed jointly. A legislative hearing on the parties' filings was held on August 24, 1999.

### **III. DISCUSSION AND FINDINGS**

#### **A. General Summary**

While the Consumer Protection Working Group was unable to reach agreement in many areas, it did achieve consensus on some issues, as summarized below:

1. The Working Group recommended that the Generic Technical Implementation Working Group ("GTIWG") develop a one-step process for phase-in enrollment, with no list of customers being provided to suppliers. They recommended a three-year phase-in, customer class pro-rationing rules, and a process for prioritizing the posting of partial payments on consolidated bills.<sup>2</sup>
2. Advertising must not be false or misleading.
3. During the period when local distribution companies ("LDCs") provide standard offer service, only LDCs

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<sup>2</sup> In Order No. 75680, issued on October 8, 1999 in *Re Delmarva Power & Light Company*, Case No. 8795, the Commission accepted a settlement providing that all customers would have a choice of electricity suppliers effective July 1, 2000. The Delmarva settlement moots phase-in and pro-ration issues in that service territory. Additionally, settlements containing the same provision were filed in transition cost proceedings involving Baltimore Gas and Electric Company, Potomac Electric Power Company, and The Potomac Edison Company. These settlements have all been accepted as of December 31, 1999. These settlements have also mooted the issue of a one-step process for phased-in enrollment. By Order No. 75722, issued on October 29, 1999, the Commission adopted a billing payment posting system proposed by MAPSA: LDC arrears first, then supplier arrears, LDC current charges, supplier current charges, and value-added charges. Order No. 75722 resolves issues arising from the Roundtable's Competitive Billing Working Group, which also examined the payment priority question.

will have authority to disconnect customers from the distribution system for nonpayment (of LDC charges only).

4. Current COMAR provisions are an appropriate basis for Commission handling of consumer complaints. "Pattern and practice" violations involving unfair and deceptive trade practices should be handled by OAG.

The Commission addresses these consensus recommendations later in this Order. The subjects on which the parties disagreed ranged over the entire course of the relationship between providers of electricity and their customers. Among other topics, the CPWG was unable to decide the following: the appropriate content of advertising; the need for or substance of mandatory contract provisions; and the methods by which customers will finalize agreements with suppliers.

In resolving disputed issues, the Commission has adhered to its basic position that consumer protections must not be compromised by the development of a competitive electricity supply market. The Commission's approach to consumer protection issues is based upon the need for a

transparent and verifiable contracting process, including fair, easy-to-understand protocols for service, complaint processing, payment, and termination of the customer-supplier relationship. Above all, procedures governing the relationship of customer, suppliers and LDCs must be clear, understandable and fair to all parties.

## **B. Advertisements and Contracts**

### **1. General Contract Provisions**

The dissemination of information about electric competition will be necessary to the growth of a competitive electricity marketplace. Potential customers must learn about available competitive electricity options before entering into informed contracts with suppliers. Advertisements of various kinds will likely be the chief way in which information about electric supply options is disseminated. Because of the close relationship between advertising and contracting, we address both advertisement and contract requirements at this point. We address certain general contracting issues first.

#### **a. Negative Option Contracts**

Negative option contracts, in their simplest form, are contracts which are created if the customer takes no action. Typical of negative option contracts are "book-of-the-month club" contracts. The customer receives the

selection of the month unless the customer actually notifies the sender that the offer is rejected.

Most parties oppose negative option contracts. They recognize, however, that evergreen contracts, which are contracts that automatically renew an existing relationship, are appropriate in some circumstances. BGE and the utilities favor no ban on negative option contracts as far as existing customers are concerned.

The Commission finds that it is not in the public interest to initiate contracts through a negative option process -- one in which the consumer may (often inadvertently) create a contract by simply refraining from action. The chance that some Maryland retail consumers of electricity will "choose" a supplier through inaction is overwhelming, and the resulting confusion and disruption would harm electric competition in Maryland. Because of public interest concerns, suppliers therefore may not use the negative option process to enroll a customer.

**b. Discrimination Issues**

Among other general contracting issues, the Commission observes that §7-507(h) of the Act requires that electric suppliers not discriminate against any consumer wholly or partly on the basis of race, color, creed, national origin or sex. The Commission adopts these prohibitions herewith.

The issue of how suppliers may determine to whom to offer their services depends in part on whether suppliers may choose not to serve consumers because of a poor credit history. Some parties would forbid refusal to serve due to poor credit just as they would preclude discrimination on racial or other clearly impermissible grounds. Suppliers argue that businesses normally choose not to serve consumers on the basis of credit history, and that they should be able to do so here. Suppliers also wish to be able to select customers on the basis of geographic location, at least to the extent of not having to offer service to the entire State in order to serve a specific part of it.

Additionally, the Commission notes that § 7-507(h) of the Act provides that electric suppliers may not discriminate for any “arbitrary, capricious, or unfairly discriminatory reason.” In determining what practices might comply with the general provision, however, §7-507(h)(2) specifically allows suppliers to refuse to provide service to customers through the application of standards “that are reasonably related to the electricity supplier’s economic and business purposes.” This language appears to encompass refusals to serve customers with poor credit records. Therefore, the Commission agrees that a supplier may refuse to provide service to a consumer based on the consumer's poor credit history.

**c. Sale of Customer Lists**

Regarding whether utilities should be required to provide lists of their customers to suppliers, Staff has proposed two alternatives: that utilities not provide customer lists to any party, including their own affiliates; or that such lists be provided at essentially the price consistent with that in the Commission's Orders setting forth standards of conduct for electric utilities and their affiliates.<sup>3</sup> Staff would limit the information on the lists to the names and addresses of customers.<sup>4</sup>

The Act at §7-505(b)(6) provides that "[t]he Commission shall issue orders or regulations preventing an electric company or supplier from disclosing a retail electric customer's billing, payment and credit information without the retail customer's consent, except that the Commission may allow such disclosure for bill collection and credit rating reporting purposes." The Commission adopts the Act's general prohibition, including its exceptions that electric companies and suppliers may disclose billing, payment and credit information for bill collection and credit reporting purposes. The Commission will not permit transfer of customer lists -- by sale or otherwise -- from utilities to suppliers. These lists are available by other means.

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<sup>3</sup> Order No. 74038, in Case No. 8747, *In the Matter of the Commission's Inquiry Into the Provision and Regulation of Electric Service*, 89 Md. PSC (1999).

<sup>4</sup> Staff's proposal did not acknowledge that the Consumer Protection Working Group had apparently reached consensus against utilities providing customer lists to suppliers.

## **2. Specific Advertising and Contract Issues**

Because some parties have proposed that electricity advertisements contain many of the same details as customer-supplier contracts, and because we have in one instance (as explained below) permitted advertisements to serve as contracts, we here discuss specific advertising and contracting requirements in relation to each other.

### **a. Parties' Positions**

To ensure that all consumers contracting with an alternative supplier are as fully informed as possible, OPC and the other Agencies advocate that numerous detailed provisions be included in electricity advertisements. Therefore, OPC, *et al.*, recommend that ads specifically state contract duration and price terms and conditions, and the supplier's license number. Advertisements by suppliers not yet licensed by the Commission should state that fact. In addition, OPC, *et al.*, urge that unlicensed suppliers not be empowered to finalize electric supply contracts with consumers prior to licensure, and that all environmental claims in ads be supportable by competent evidence.

The Mid-Atlantic Power Supply Association opposed any restriction on advertising beyond the requirement that it not be false or misleading. MAPSA Initial Comments at 4. MAPSA strongly urged that advertising copy should not be required to list all the terms and conditions of an offer. *Id.* at 6.

MAPSA agreed with OPC, however, that specific claims as to power sources and emission characteristics had to be substantiated by the supplier. BGE and the other utilities also agreed that advertising must not be false or misleading, and rejected requirements for other specific disclosures in ads. The utilities also claimed that the more specific details required in advertising the more burdensome, expensive and impractical such ads would become. The utilities favored letting the competitive marketplace determine the content of advertising. Utility Initial Comments at 5. The utilities also urged, *inter alia*, that unlicensed suppliers -- or suppliers whose licenses have not yet been granted -- should be allowed to advertise. *Id.* at 11.

Staff concluded that advertising by suppliers prior to the beginning of the Commission's Consumer Education Program should not be restricted. Staff would, however, prohibit signing of contracts prior to the official customer enrollment period. Staff Initial Comments at 3-6. Staff would also permit suppliers to advertise before they are licensed. *Id.*

Except for the Maryland Emergency Assistance Program, which would require all advertising to be written at a level easily understood by low-income customers, the remaining parties took no position on advertising issues.

As to the provisions of contracts between consumers -- especially residential consumers -- and suppliers, there are also broad disagreements. OPC proposes that an extensive list of items be required in all consumer-



supplier contracts. Among other things, OPC asks that all contracts be in writing, itemize the services and prices offered, and state the applicable contract duration, available billing options, deposit requirements, and late fees. Further, OPC would have contracts specify the preconditions for and effect of early termination by either the supplier or customer, and would prohibit early termination fees altogether. OPC asks that specific customer rights information be given to customers upon contracting.

People's Counsel and others would have all contracts between consumers and suppliers be in writing with a "wet" or actual signature by the consumer. All other parties who commented on the contract issue opposed use of a "wet signature." They noted, for instance, that mandating "wet signatures" would foreclose the option of telephone and Internet contracting. They also argued that requiring "wet signatures" would make contracting with suppliers more difficult, cumbersome, and time consuming -- in short, less likely.

**b. Commission Decision**

**(1) Advertising and Solicitation**

The Commission notes that the advertising and contracting requirements proposed by OPC and others aim to ensure that consumers understand the nature of the contracting process and the requirements of the contracts they sign. In resolving the interrelated issues of advertising and

contracting disclosures, the Commission reiterates its commitment to a fair and open transition to a competitive electricity market in which clear and pertinent information is readily available to consumers. The Commission will address advertising requirements first, as consumers will most likely encounter advertising before finalizing contracts.

As a beginning point, all advertisements must, of course, be neither false nor misleading, and must comply with all State and federal laws. For example, any advertisement that contains any environmental claims, including claims relating to emissions and emissions standards, or reliability claims, must be supportable by competent evidence. In particular, the Commission expects that advertising will strictly comply with standards of conduct for electric utilities and their affiliates.<sup>5</sup> Beyond that, however, different kinds of advertisements will be governed by different rules.

Advertisements by all electricity suppliers logically fall into three categories: image advertisements; marketing advertisements; and solicitations. The different types of advertisements may occur in any medium, e.g., print, Internet or telephonic, television, or radio. Different factual disclosures are appropriate for each of the three categories of advertisement.

Image advertisements merely make consumers aware that a company will offer electric service in Maryland. Image advertisements may

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<sup>5</sup> See Order No. 74038, issued on February 23, 1998 in Case No. 8747, the proceeding in Case No. 8820, and the specific provisions of the various restructuring settlements.

also attempt to create a favorable impression of a company. However, any statement, claim, comparison, or assertion regarding rates, specific contract provisions, or similar service details that could reasonably be understood as an attempt to persuade consumers that any component of one company's offering is better than the comparable component of another company's offering will cause image

advertisements to become marketing advertisements. Because of Commission concerns that advertising offer accurate and complete information, the burden will be on the sponsor of an advertisement to show that it is an image rather than a marketing advertisement. The Commission will not impose any additional content or disclosure requirement on purely image advertisements.

Marketing advertisements attempt to persuade consumers, by whatever means, to subscribe to specific services offered by a supplier or LDC. Because the Commission requires that the information conveyed in marketing advertisements be clear, accurate, and not misleading, the Commission requires that marketing advertisements include the following:

1. The precise rate for service offered;
2. A disclosure that the rate stated in number one above is for generation only, and that the total rate for electric service will be higher;
3. Any offer that compares a supplier's price to the rate the customer will pay for standard offer service after July 1, 2000 must be based on the official "price to compare;"
4. The time of day the advertised rate will be in effect. If the advertised rate is for 24-hour service, seven days a week, the advertisement must so state. If the rate is for a more limited period, the advertisement must state that period and state that rates different than the advertised rates may be in effect outside of the advertised period;
5. Any minimum contract duration necessary to obtain an advertised rate. For example, if an

advertised rate is only available to customers who sign up for six months' or 12 months' service, the advertisement must state that condition;

6. Any fees and charges, other than for electric generation, which will automatically be charged to consumers who contract for the advertised service; and
7. The offeror's Maryland license number, as granted by this Commission, or a statement that a license application has been filed with the Commission.

The information set out above must be clearly and conspicuously presented, and written in plain and readily understandable language.

Marketing advertisements do not contain an opportunity by which consumers may actually execute a contract for electric service with the advertiser. Marketing advertisements may, of course, contain a "send back" in which the consumer simply asks the supplier for more information. Sending in such a request is not execution of a contract.

Advertisements that provide consumers an opportunity to sign up with a supplier are solicitations. When advertisements do contain such a contracting opportunity, all of the disclosure requirements applicable to marketing advertisements will apply to them. In addition, solicitations must disclose all material terms and conditions to which the contract between customer and supplier will be subject, including but not limited to the following:

1. Itemization or description of the service offered, including minimum use requirements;

2. Unit price (if not a flat rate, has to be on a cents per kWh basis);
3. Notice that generation as opposed to transmission or distribution is being offered;
4. Duration of the agreement (including initial time period, rollover provisions with a mandatory 60-day notice, and early cancellation penalties);
5. Notice that there may be a deposit required, including the amount of the deposit, return procedures, use of and protection for such deposits;
6. All applicable fees and charges and under what circumstances the customers will incur them;
7. Notice concerning circumstances under which early termination by the supplier could occur, and the options open to the customer if termination does occur; and
8. Notice concerning early termination by the customer and the options open to the customer if termination occurs.
9. Notice that customers will have a 10-day rescission period for all contracts after July 1, 2000.

If the supplier approves the consumer for service, the supplier must then send to the consumer who signs up through a solicitation, within the shortest period possible, the following information:

1. Notice of enrollment;
2. A description of the agreed-upon billing option;

3. Due date for payments and mailing address for payments;
4. Customer Service Information (including toll-free telephone number, mailing address, and dispute process information); and
5. Notice that the customer has 10 calendar days from the receipt of this information to rescind any agreement with the supplier.

We note that telephone solicitations have their own set of rules, which are addressed later herein.

## **(2) Contracting Methods and "Wet" Signatures**

In keeping with the Commission's concern that no consumers contract for electricity supply inadvertently, or without a real opportunity to be fully informed of the terms of any proposed contract, certain basic contracting procedures need to be established. A supplier must be licensed by this Commission in order to finalize an electric supply contract.

Other contracting procedures are "wet signature" requirements and the issues of Internet and telephone contracting. The "wet signature" issue is closely connected with other questions about contract format -- such as whether Internet and telephone contracting will be in the public interest. The more numerous the ways of finalizing a contract, of course, the greater the number of contracts that may be executed, and the sooner a competitive electric marketplace will exist.



The Commission will therefore permit a contract between a supplier and a customer to occur in three ways: by actual signed contract, by Internet sign-up, and by telephone. The first way will require an actual or "wet" signature by the customer. An actual signature is required when consumers contract with a supplier via a written solicitation, such as a mailing, a newspaper form, or documents submitted upon personal contract (such as door-to-door solicitation). The Commission permits contracting by return of a newspaper coupon because print allows full disclosure of contract terms and conditions. The Commission's requirement for actual signatures on mailed, newspaper and door-to-door contracts will provide consumers an extra protection against unauthorized enrollment or "slamming."

The Commission will allow Internet contracting because Internet publication offers consumers the opportunity to review contract provisions, and because in recent years the growth of commerce over the Internet has been significant. There is no reason to preclude consumers who make other important purchases via the Internet from buying electricity through that medium as well. The Commission requires, however, that suppliers who implement Internet contracting employ mechanisms not only to confirm that contracts are made by the persons claiming to make them, but to safeguard consumer privacy. Additionally, an Internet solicitation must comply with the required provisions set forth for solicitations.

While telephone solicitation in general may be problematic for some consumers, full disclosure of terms and conditions, with follow-up documentation, will render telephone contracting acceptable. Therefore, the Commission allows telephone solicitation of consumers, and the Commission allows contracts to be finalized over the telephone. This Order will later address the specific requirements of telephone solicitation and contracting.

### **(3) Specific Contract Provisions**

All contracts or agreements for service, in whatever form and in any medium, must contain all material terms and conditions, including but not limited to the following:

1. Itemization of services provided, including minimum use requirements;
2. Unit price (if not a flat rate, has to be on a cents per kWh basis);
3. Notice that generation as opposed to transmission or distribution is being offered;
4. Description of agreed-upon billing option;
5. Duration of the agreement (including initial time period, rollover provisions with a mandatory 60-day notice, and early cancellation penalties);
6. Notice that there may be a deposit required, including amount of the deposit, return procedures, use of and protection for such deposits;

7. Payment due date and mailing address for payments;
8. All fees and charges and under what circumstances the customers will incur them;
9. Notice concerning early termination by the supplier and the options open to the customer if termination occurs;
10. Notice concerning early termination by the customer and the options open to the customer if termination occurs; and
11. Customer service information (including toll-free telephone number, mailing address, and dispute process information);

In addition, information about consumer rights, including complaint procedures and remedies available to consumers, shall be provided to contracting customers within 30 calendar days of the date the contract becomes final. The consumers' rights pamphlet may be included in an initial mailing or "welcoming package" sent by the supplier to the customer. It must be presented in clear and understandable language and format. We stress that no contract can occur until suppliers have made available to the customer all the material terms and conditions of the proposed contract, and the consumer has given clear and explicit assent thereto. Further, we impose a 10-calendar-day period during which customers may rescind contracts.

#### **(4) Telephone Solicitation and Contracting**

**Telephone contracting presents unique problems.** Telephone solicitation and contracting in general may be unwelcome to some consumers, but full disclosure of terms and conditions, with follow-up documentation, will render telephone contracting acceptable. Therefore, the Commission allows telephone solicitation of electricity consumers, and the Commission allows contracts to be finalized over the telephone.

However, telephone contracting will be permitted only under the following conditions:

1. All material contract terms and conditions, as stated in this Order, must be disclosed to the consumer over the telephone;
2. The consumer's agreement to contract must be verified by an independent third party and the tape of the verification maintained by the supplier;
3. A complete written contract must be mailed or otherwise transmitted (e.g., via E-mail) to the consumer within two business days from the day the consumer agreed to contract with the supplier telephonically; and
4. The consumer will have 10 calendar days after receipt of the written contract in which to rescind the contract without penalty.

In case a consumer challenges the existence of a telephone contract, the burden shall be on the alternative supplier to prove the existence of the contract.

Further, § 14-2203 of the Commercial Law Article of the *Annotated Code of Maryland* and applicable federal consumer protection statutes will govern telephone contracting for electric service in Maryland. For example, telephone solicitation shall not be initiated to a residential telephone subscriber before the hours of 8:00 a.m. or after 9:00 p.m. (local time at the called party's location). Moreover, telephone solicitors must maintain a do-not-call list if a telephone solicitor receives a request from a residential telephone subscriber not to receive calls from that solicitor.

#### **(5) Evergreen Contracts**

Evergreen contracts, as distinct from pure negative option contracts discussed earlier, are existing contracts that are capable of automatic renewal without any action by customers. Evergreen contracts carry a potential for abuse if customers are not carefully alerted to the possibility of automatic renewal.

While we permit evergreen contracts, we require the supplier to provide customers with notice of the pending renewal of the evergreen contract 60 days before that renewal is scheduled to occur, and another notice 30 days before the customer's automatic renewal date.

If there are any changes in the material terms and conditions of the agreement, the supplier must provide notice of these changes in the 60-day and 30-day notices. The notification of renewal or of any change must be highlighted and clearly stated.

Both the 60-day and 30-day notices must inform the customer how to terminate the contract without penalty. Both notices must also inform the customer that terminating the evergreen contract without selecting another supplier will return the customer to standard offer service. The supplier must also, in the 60- and 30-day notices, provide the customer with an updated list of alternate suppliers.

### **3. Other Advertising, Contract-Related and Consumer Protection Issues**

#### **a. Uniform Pricing of Electricity**

##### **(1) Parties' Positions**

OPC favored uniform pricing for the benefit of consumers having to make choices among different suppliers. SMECO and Choptank joined OPC in its position. SMECO and Choptank suggested a cents per kWh average cost formula as the pricing standard to be used.

MAPSA opposed any uniform pricing requirement as potentially eliminating creative pricing options, thereby reducing competition. MAPSA Reply Comments at 3. BGE, Pepco, and other Maryland electric utilities also opposed uniform pricing as stifling new services and products. Staff also does

not favor uniform pricing, but does favor a "price to compare" option to facilitate choice among supplier prices. Staff Reply Comments at 2.

Staff's "price to compare" is the price per kWh for a typical heating and a typical non-heating customer in an individual utility's service territory. The typical customer in the heating or non-heating class will, in most cases, be the same as the median customer in each class.

Each utility's median heating and non-heating customer will differ from such a customer in other service territories. Therefore, each service territory will have a different "price to compare."

## **(2) Commission Decision**

The Commission favors Staff's concept of a "price to compare" in each service territory, as discussed in the preceding section. The "price to compare," as developed by Staff, will provide a benchmark against which the specific characteristics of different service territories and customer classes may be compared. Therefore, any offer that compares a supplier's price to the rate the customer will pay for standard offer service after July 1, 2000 must be based on the official "price to compare."

**b. First-In/Last-In Choice of Supplier**

**(1) Parties' Positions**

The parties differed over whether a consumer's first or last choice of supplier should constitute a final choice for any billing period.

A switch from one supplier to another or from an LDC to a supplier must always be communicated to the relevant LDC by a date certain. Failure to communicate the change in time will mean that the consumer must stay with the existing supplier for the next billing period. Suppose that for changes to appear on December 2000 bills, LDCs must be notified of changes of supplier between November 15 and November 23, 2000. Under the first-in protocol, LDCs would accept a change notice they received on November 16, 2000, and ignore any subsequent contradictory change notices received, e.g., on November 22, 2000. Under a last-in protocol, LDCs would presumably wait until the November 15 through November 23 notification period had ended and then act upon the last change notice received from a particular consumer. Only Pepco favors the first-in approach as being consistent with standard business and contract procedure, as minimizing timing manipulation, resulting in less uncertainty regarding which contract was actually submitted to the supplier last. Pepco Supplemental Comments at 1-4.

Parties favoring the last-in approach claim that it will better meet consumer expectations and that it does not entail any greater cost to utilities



than the first-in method. They also argue that the last-in approach allows consumers a chance to change their minds if they receive a more advantageous offer before the submission deadline.

## **(2) Commission Decision**

We hereby approve the last-in approach to customers' choice of supplier. This method allows customers to take advantage of better offers as the market develops, as opposed to making no selection in anticipation of a later, better offer. We conclude that the last-in protocol will be consistent with the expectation of customers who send in change of supplier forms, and that "last-in" offers a *de facto* rescission period under some circumstances. This is in its favor, as we attempt throughout this Order to provide opportunities for customers to avoid being bound by contracts with which they are unhappy. We further require that before July 1, 2000, there shall be no termination fees imposed on customers who change suppliers. After July 1, 2000, there will be a 10-day rescission period applicable to all contracts, beginning on the date the customer receives the material provisions of the contract. No termination fee shall be assessed against consumers during this 10-day rescission period.

### **c. Partial Payments**

As it did in the Competitive Billing Working Group, the allocation of partial bill payments caused considerable controversy among the parties.

However, as previously noted above, the Commission resolved this issue in Order No. 75722.<sup>6</sup> Therein the Commission ruled that "LDC arrearages should be paid first, followed in order by supplier arrearages, then LDC current charges, supplier current charges, and then charges for value added services." *Id.* at 13. We make no change to that ruling here.

**d. Accounts Receivable**

**(1) Parties' Positions**

Suppliers may rely on LDCs for billing services, and *vice versa*. Non-billing parties will not receive payment on a particular account if the biller does not bill that account. Two approaches have been suggested to overcome failure by the party charged with billing to perform its duties. The first would require billers to buy all the accounts receivable of suppliers. The second, favored by the utilities here, would require purchase by the billing party of only those accounts receivable it failed to bill.

**(2) Commission Decision**

As noted in Order No. 75722, requiring the biller to purchase all of the non-biller's receivables is an unnecessarily broad remedy for a narrowly focused problem. The Commission has concluded that the biller must purchase only those receivables that they do not bill in a timely fashion. The

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<sup>6</sup> Order No. 75722, Case No. 8738, *In the Matter of the Commission's Inquiry Into the Provision*

Commission leaves it to the utilities and suppliers to develop the details of how the receivables purchases will be carried out.

**e. "Seasonal Gaming"**

**(1) Parties' Positions**

When a customer is no longer served by a particular supplier, that customer must be served by another supplier of choice or by the supplier of last resort. Presently, the supplier of last resort is the LDC. Several issues then arise: if a customer was served by alternative supplier A, then transferred to alternative supplier B, but ceased the relationship with B (for whatever reason), does the customer return to alternative supplier A or to SOS, which provides a safety net to ensure that every customer has access to at least one supplier of electricity. The utilities are concerned that consumers will switch back and forth between competitive suppliers and SOS too often, attempting to take advantage of the best seasonal rates. This practice is referred to as "seasonal gaming." The utilities therefore propose that customers who return to SOS be required to remain an SOS customer for at least one year. MAPSA opposes this position. Staff suggests, as an alternative, that the customer pay a deposit to the SOS provider to protect the provider against the cost of too frequent switching.

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*and Regulation of Electric Service (Competitive Billing Issues).* \_\_\_ Md. PSC \_\_\_ (1999).

## **(2) Commission Decision**

If the customer's relationship with the supplier is terminated without the customer having selected an alternative supplier, the customer will return to SOS.

The Commission has adopted minimum stays to avoid "seasonal gaming" in its Orders accepting the electric restructuring settlement proposals of AP, BGE, and PEPCO. The Commission will adhere to the terms of these orders for residential, as well as commercial and industrial ("C & I"), consumers.<sup>7</sup> With regard to customers in Delmarva's service territory, we decline to impose minimum stay requirements at this time.

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<sup>7</sup> BGE will have two versions of Standard Offer Service: Price Freeze Service ("PFS"); and Default Service ("DS"). Customers already on PFS may leave and return, subject to a minimum stay of either one year or the remaining term on BGE's price freeze schedule or option, whichever is less. If an alternative supplier defaults, residential customers will return to PFS and may choose an alternative supplier at any time. BGE will provide default service at formula prices to non-residential customers whose alternative electric supply or supplier fails or is otherwise not available. Order No. 75757, in Case No. 8794, *In the Matter of the Baltimore Gas and Electric Company's Proposed: (a) Stranded Cost Quantification Mechanism; (b) Price Protection Mechanism; and (c) Unbundled Rates*. \_\_\_ Md. PSC at \_\_\_ (1999).

In Order No. 75851, in Case No. 8797C, *In the Matter of The Potomac Edison Company's Proposed: (a) Stranded Cost Quantification Mechanism; (b) Price Protection Mechanism; and (c) Unbundled Rates*, \_\_\_ Md. PSC at \_\_\_ (1999), the Commission accepted a settlement permitting residential customers to leave or return to Potomac Edison's SOS at any time on a scheduled meter reading date. Residential customers of PE will not be constrained by a minimum stay requirement. Non-residential customers returning to PE's SOS will be required to remain for a minimum term of one year or through the end of the transition period to full competition, whichever is shorter.

In Order No. 75850, in Case No. 8796, Phases I and II, *In the Matter of the Potomac Electric Power Company's Proposed: (a) Stranded Cost Quantification Mechanism; (b) Price Protection Mechanism; and (c) Unbundled Rates*, \_\_\_ Md. PSC at \_\_\_ (1999), the Commission accepted the parties' agreement that non-residential customers who switch from an alternative supplier must remain on SOS for the lesser of one year or the time remaining until PEPCO stops offering SOS. If the switch to SOS is made because of a default by an alternative supplier, non-residential customers have a grace period of three full billing cycles during which the customers may switch to an alternative supplier or elect to receive service from PEPCO at market prices.

When SOS is no longer required to be provided by utilities under the terms of the Settlements, the Commission will revisit this issue as it relates to whoever becomes the provider of last resort.

**f. Disconnection**

Early in this Order, the Commission noted a consensus recommendation from the Consumer Protection Working Group that only LDCs have the authority to disconnect customers from the distribution system for non-payment (of LDC charges only) during the period when LDCs are providing standard offer service. The Commission hereby accepts that recommendation. Again, we note that when SOS is no longer required to be provided by LDCs, the Commission will revisit this issue as it relates to whoever becomes the provider of last resort.

**g. Termination Fees and Deposits**

OPC recommended that the Commission adopt a prohibition on termination fees. The Commission agrees that there shall be no termination fees during the requisite 10-day recision period and for the period prior to July 1, 2000. However, after July 1, 2000, any termination fees shall be reasonable. Furthermore, any deposit requirements shall also be reasonable and not inconsistent with the deposit provisions of COMAR.

## **C. Small Commercial Customers and Aggregation Issues**

### **1. Parties' Positions**

The Maryland Retailers Association would have small commercial customers treated exactly as residential consumers for consumer protection purposes. The CPWG discussed at length the appropriate definition of small commercial customers, but reached no conclusion, apparently determining the proper load profile to distinguish small commercial from other commercial or industrial customers to be too daunting. Staff noted that the need to define small commercial customers still exists, and Staff favored giving such customers however defined, the same protections as residential customers.

Aggregation questions center around the proper treatment of businesses and communities that join forces to purchase electricity at a rate collectively lower than they could obtain separately. Aggregation issues were not discussed in depth in the Consumer Protection Working Group. The CPWG did, however, discuss the likelihood that residential consumers as well as commercial and small commercial customers would aggregate. The CPWG did not reach any decisions relating to aggregators or aggregation. Staff recommends that no decisions be made at this time, but that the issue of aggregation be studied by a separate committee.

## **2. Commission Decision**

The Commission first notes that the consumer protections outlined in this Order apply to all consumers of electricity in Maryland. Large commercial and industrial customers<sup>8</sup> may affirmatively waive specific contract provisions or requirements, unless such waiver would be prohibited by applicable State or federal law. Special contracts to large commercial and industrial customers may be made that do not comply with all marketing advertisement requirements. Offerors of electric service may not permit residential customers to waive any or all of the protections of this Order, or assume that residential consumers have waived any or all of the protections of this Order.

As to aggregation, the record is not sufficiently developed for the Commission to make a fully informed decision. The Commission therefore delegates discussion of and recommendations on all aspects of these issues to the CPWG. The Commission instructs the CPWG to consider all issues related to these topics, including issues of definition, and the effect of specific courses of action on discrete customer classes and on electric competition generally. The Commission directs the CPWG to report back to us with its findings no later than 45 days from the date this Order is issued.

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<sup>8</sup> While the Commission recognizes the difficulty in establishing a "bright line" definition of large commercial and industrial customers at this time, the Commission concludes that the first three customer categories set out in the matrix attached to the Commission's recent Universal Service Order, Order No. 75935, provide a reasonable designation of small commercial customers.

## **D. Complaint Procedures**

### **1. Parties' Positions**

The parties agree that the Commission has wide jurisdiction to resolve consumer complaints. They also recognize that the Commission will have concurrent jurisdiction with the Maryland Attorney General's Office, and they recommend that in jointly resolving disputes the Commission should follow the procedures of other enforcement agencies who also share jurisdiction with the Attorney General. Washington Gas Light suggests that consumers should be instructed to first settle complaints with their supplier. If no resolution occurs, the Maryland Retailers Association urges that the Commission be the entity to screen all complaints, referring certain ones to the Attorney General. BGE and the utilities urge that "pattern and practice" complaints, alleging a pattern of illegal dealing, be the complaints referred to the Attorney General.

### **2. Commission Decision**

As the Maryland electric industry enters a restructured environment, the Commission considers development of an expeditious and responsive complaint resolution procedure to be among its highest priorities. The Commission's complaint resolution process shall be available to all customers, local distribution companies, suppliers and other interested



parties. The Commission anticipates that complaints will fall into numerous categories, e.g., billing or service complaints; complaints of anti-competitive behavior; complaints involving multiple parties, small or large amounts of money, and issues of contract or advertising misrepresentations. Clearly, one complaint resolution format may not be appropriate for resolving all complaints. The Commission notes that models for resolving complaints may be found in Staff's proposals in Case No. 8820, or in the complaint processes developed in other jurisdictions. In addition, the Code of Maryland Regulations must be examined to determine any current requirements for the complaint process, and to further determine if any existing regulations need to be changed or eliminated, or any new regulations proposed.

As required by § 7-507(e)(7) of the Act, the Commission shall establish procedures for dispute resolution. To ensure that the Commission marshals its resources most efficiently, the Commission hereby establishes the Complaint Procedure Design Group ("CPDG"). The CPDG shall consist of representatives from the Commission's General Counsel, External Relations, Staff Counsel and Hearing Examiner Divisions as well as any other necessary Commission unit. The Commission also invites representatives of the Office of People's Counsel, the Office of the Attorney General and other interested parties to participate in the CPDG. The Commission's General Counsel Division shall coordinate the CPDG efforts.

The CPDG shall establish procedures that, among other things, will provide a mechanism to channel complaints from one agency to another, resolve complaints in the quickest manner feasible, and provide for expeditious review procedures. In addressing how best to resolve complaints, the CPDG shall consider innovative procedures, such as mediation requirements, the involvement of Commission Technical Staff in complaint resolution at an early stage, and dedication of specific personnel to complaint resolution. The Commission does not, however, require a specific complaint resolution format or procedure at this time.

Because time is of the essence, we require the CPDG to report to the Commission no later than 45 days from the date of this Order. Until the complaint resolution process is developed, the Commission will expedite resolution of any advertising complaints or complaints between suppliers or local distribution companies. While the Commission will resolve issues that the CPDG cannot resolve, the Commission requires the CPDG, whose members will possess significant expertise of their own, to make every effort to design a workable and fair complaint resolution process.

IT IS, THEREFORE, this 8th day of February, in the year Two Thousand, by the Public Service Commission of Maryland,

ORDERED: (1) That local electric distribution companies and alternative suppliers shall adhere to the requirements of this Order and shall implement the directives set forth by the Commission herein.

(2) That all motions not granted in this Order are hereby denied.

\_\_\_\_\_  
/s/ Glenn F. Ivey

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/s/ Claude M. Ligon

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/s/ Susanne Brogan

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/s/ Catherine I. Riley

\_\_\_\_\_  
/s/ J. Joseph Curran, III  
Commissioners