ORDER NO. 76110

IN THE MATTER OF THE COMMISSION'S INQUIRY INTO THE PROVISION AND REGULATION OF ELECTRIC SERVICE. (Consumer Protection – Requests for Rehearing or Clarification)	* * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND CASE NO. 8738

I. BACKGROUND

This order responds to a number of Petitions for reconsideration or rehearing (collectively, "Petitions") filed as a result of Commission Order No. 75949, issued on February 8, 2000. That Order addressed numerous consumer protection issues unresolved by the Commission's Electric Restructuring Roundtable, which met from April 1998 until April 1999.

The following entities filed Petitions in March 2000: Baltimore Gas and Electric Company ("BGE"), The Potomac Edison Company d/b/a Allegheny Power ("Allegheny"), and Delmarva Power & Light Company d/b/a Conectiv Power Delivery ("Conectiv") (collectively, the "Joint Utilities") filed a Joint Petition for Reconsideration. In addition, Conectiv Power Delivery filed a separate Motion for Reconsideration. Other entities filing Petitions were Potomac Electric Power Company ("Pepco"); Washington Gas Energy Services ("WGES"); the Consumer Protection Division of the Office of the Attorney

General ("OAG"); and the Maryland Office of People's Counsel ("OPC"). On February 18, 2000, prior to the filing of these Petitions, BGE, Allegheny Power, Conectiv and Southern Maryland Electric Cooperative, Inc. filed a letter seeking review of one specific matter.

On March 30, 2000, the Office of People's Counsel filed a "Response of the Office of People's Counsel to Request for Rehearing and/or Clarification of the Commission's Order No. 75947 (Consumer Protection)."

Because the parties sought clarification or rehearing of many issues, and because Order No. 75949 contains an extensive discussion of the background and rationale for the consumer protections here under review, the Commission will not summarize the parties' positions in a separate section of this Order. The Commission has, however, reviewed the parties' positions carefully, and has based its decision on consideration of their arguments and counter-arguments.

II. DISCUSSION AND FINDINGS

A. Geographic Location

In Order No. 75949, the Commission held that it is impermissible for a supplier to discriminate against customers on the basis of race or any other illegally discriminatory reason. However, the Commission stated that suppliers may refuse to provide service on the basis of an individual's credit history. The Commission affirms these positions. Several parties now ask whether permissible discrimination extends to allowing suppliers to select customers on the basis of geographic location. Specifically, suppliers want to know if marketing to part of a utility's service territory will require suppliers to market to all of it.

Having considered this request, the Commission sees no legitimate reason why a supplier should be forced to serve an entire service territory if it only wishes to serve a portion of that specific territory. The Commission will therefore permit marketing on a geographic basis, thereby allowing suppliers to serve part of a utility's former service territory, without serving all of it. However, the Commission will not permit discrimination against a geographic area or community based on the perceived economic character of that area. The Commission will not allow illegal practices amounting to "redlining" of any kind in the Maryland electricity market.

As the Commission stated in Order No. 75949, suppliers may refuse to serve individuals based on credit history, but only if suppliers base their refusal upon fair, impartial and uniform standards applicable to customers within the same customer class. To secure these ends, the Commission adopts the following standards as proposed by the Office of People's Counsel:

> An electricity supplier shall not refuse to provide service to a customer based upon the economic character of a geographic area or any part of it, or the collective credit reputation of the area in which the customer lives.
>
> An electricity supplier shall employ uniform income, security deposit and credit standards for purposes of making decisions whether to offer service to customers within the same customer class and shall apply these standards in a uniform manner.

B. Customer Lists

MAPSA, WGES, and People's Counsel seek clarification regarding under what circumstances, if any, customer lists, or lists containing customer-specific information, may be disseminated. The Commission notes that

§ 7-505(b)(6) of the Electric Customer Choice and Competition Act of 1999 ("the 1999 Act") requires the Commission to issue orders or regulations preventing disclosure of "customers' billing, payment and credit information without the retail electric customer's consent, except as allowed by the Commission for bill collection and credit rating reporting purposes." The Commission's Order No. 75949 so required.

The parties now raise the question whether utilities may sell customers' names, addresses, and telephone listings. WGES points out that in some cases such information may show that an individual customer is served by a master meter and that suppliers should not expend resources to solicit that customer. Delmarva points out that the Commission, in Case No. 8747, permitted the sale of customer lists both to affiliates and non-affiliates of a utility. On reconsideration, the Commission will permit the sale of customer lists that consist of the names, addresses, and telephone numbers of customers. Such sale is consistent with the need for information in a competitive environment. The sales must be consistent with Commission requirements in Order No. 74038 in Case No. 8747.[1] There, the Commission stated that:

> Customer lists are an asset of a utility which can be marketed to outside entities. If mailing lists are made available by a utility to its affiliate(s), either core or non-core, then, upon request, such lists shall also be made available to non-affiliates under the same terms and conditions.

Order No. 74038 at 70.

However, the Commission requires utilities, as soon as practicable, to clearly and conspicuously disclose to their customers that the utilities intend to release

[1] This issue is one of many under consideration by the Commission in Case No. 8820.

customer lists. The utilities must further advise customers that they can prevent disclosure of their identifying information upon request.

C. Advertising Issues

MAPSA and WGES request that the Commission no longer require the various disclosures applicable to marketing advertisements in Order No. 75949. They claim these disclosures are burdensome and unnecessary and that the distinction between image and marketing advertisements is unclear. Having considered these requests, the Commission denies them. The Commission's language in Order No. 75949 clearly states that advertisements that compare one supplier of electricity to another are marketing rather than image advertisements. Furthermore, as required by the 1999 Act, these disclosures are necessary to insure that customers will be provided with "adequate and accurate" information about the electric supply and services being offered to them. Accordingly, the Commission affirms its Order pertaining to these disclosure requirements.

Pepco, however, requests that we exempt larger commercial and industrial customers from otherwise required disclosures in marketing and solicitation advertisements. Certain of the disclosures, Pepco asserts, are not relevant to the manner in which larger customers use energy. Pepco further argues that larger customers are sophisticated enough to safeguard their own interest in electricity negotiations, and would benefit little from the disclosures required in marketing and solicitation advertisements.

Pepco's arguments are convincing. Commercial and industrial customers understand and purchase electric service in ways significantly different from residential customers. Therefore, the marketing and solicitation disclosures required in Order No. 75949 shall apply to residential customers only.[2]

Marketers will still be prohibited from engaging in any false, misleading or deceptive advertising and marketing, whether their target audience is residential, commercial or industrial customers. Additionally, if suppliers market to commercial and industrial customers in the general media, *e.g.*, newspapers, general magazines, radio and television, the advertisements must clearly state that the offer is only for commercial and industrial customers.

Furthermore, this Order should not be understood to exempt commercial and industrial customers from Commission dispute and complaint resolution procedures.

[2] Residential customers are those metered by residential rates only.

D. General Contracting

1. Content of "Send-Backs" or Coupons

People's Counsel expressed concern regarding the contents of newspaper coupons or the tear-off portions of solicitations that customers will employ to form contracts with suppliers. Specifically, People's Counsel seeks to ensure that customers contracting via mailings will be able to retain complete copies of the terms and conditions to which they have agreed, rather than have to return those terms and conditions on the coupon or other "send back."

The Commission has consistently designed consumer protection rules in light of its concern that customers be fully aware of and informed about the terms by which they will be bound. The Commission therefore requires that the retained portion (that portion not returned to the supplier by the customer) of the solicitation must include all terms and conditions of the offered contract. Thus, customers signing contracts in this manner will always be able to retain a copy of the contract terms to which they have agreed.

2. Contracting Via Internet

People's Counsel seeks clarification regarding the appropriate procedure for contracting over the Internet. Specifically, OPC urges that the Commission require that the text of all mandated contract disclosures and contracting information be fully included in the actual text of contracts offered to customers via the Internet. Otherwise, People's Counsel is concerned that Internet customers may not be able to print out and retain significant contract provisions. The Commission shares this concern, and desires that contracting via the Internet provide residential customers with accurate, easily accessible information.

Therefore, the Commission orders that any Commission-required contract disclosures be included in the text of any contract available to residential customers on the Internet. In short, the entire contract should appear on the customer's screen, and be completely readable simply by scrolling. The contract also must be in a form immediately printable without resort to another website or to additional software.

Even though no specific advertising and marketing disclosures are required in advertisements aimed at commercial and industrial customers, such advertisements must, of course, not be misleading or false. Additionally, like residential contracts, Internet contracts for commercial and industrial customers must be in a form immediately printable without resort to another website or to additional software.

3. Billing Issues

WGES notes that Order No. 75949 contains a requirement that contracts with customers contain a notice that "generation as opposed to transmission is being offered." WGES points out that electricity suppliers are in fact responsible for reserving transmission from electric companies (or local distribution companies) and billing customers for that transmission. WGES asks that the Commission's instruction in Order No. 75949 be clarified.

The Commission's intent in requiring the referenced disclosure was to ensure that customers understood that the electric service provided by a supplier was not the complete or sole electric service necessary to serve them, and that customers would be billed for LDC services as well. The Commission desires that customers be very clearly informed either that they will receive more than one bill or statement for electric service, or if the supplier's and LDC's services are billed on one statement, that the supplier and LDC have charged separately for their services.

Nevertheless, the Commission recognizes WGES' concern with the disclosure as it is currently written, and accordingly, the Commission modifies Order No. 75949 as follows:

> Page 12, item 2, page 13, item 3, and page 17, item 3, will now read:
>
> > Notice that a customer's total electric bill will consist of charges from both the customer's electricity supplier and the LDC.

E. Telephone Contracts

Several parties requested clarification of the telephone solicitation requirements in Order No. 75949. People's Counsel notes the Commission's statement that § 14-2202 of the Commercial Law Article of the *Annotated Code of Maryland* will apply to telephone solicitations. The referenced section requires a "wet" or actual signature on customer contracts unless a statutory exception applies. People's Counsel notes that the statutory "wet" signature requirement may conflict with the Commission's ruling that "wet" signatures will not be required in the context of telephone solicitations.

The Commission noted in its previous Order that Maryland's Telephone Solicitations Act will apply to telephone solicitations for electric supply contracts. The Commission concludes, however, that § 14-2202(5) of the Telephone Solicitation Act may exempt many telephone transactions from the "wet" signature contracting requirement. The relevant part of § 14-2202(5) reads as follows:

> The provisions of this subtitle (§ 14-2202) do not apply to a transaction:
>
> (5) In which the consumer purchases goods or services pursuant to an examination of a television, radio, or print advertisement or a sample, brochure, catalogue, or other mailing material of the merchant that contains:
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> (i) The name, address, and telephone number of the merchant;

(ii) A description of the goods or services being sold; and

(iii) Any limitations or restrictions that apply to the offer;

The Commission has already required disclosure of the information contained in § 14-2202(5)(i), (ii), and (iii) in all except image advertisements. Given these exceptions in the Telephone Solicitation Act, the Commission anticipates that in most instances, a "wet" signature will not be required to effect a contract over the telephone.

Along these lines, Washington Gas Energy Services has requested clarification of telephone contracting methodology wherein suppliers have mailed contracts to consumers <u>prior</u> to contacting them by telephone. Having considered WGES' request, the Commission determines that, if complete contracts, containing all Commission-required terms, conditions, and information, are mailed prior to telephone calls, such contracts may be formed over the telephone if the following conditions are met: the supplier must obtain a verbal response from the customer confirming that the contract was received; the customer still possesses a copy of the contract; and confirmation that any customer questions relating to the contract were answered. In any case, the Commission does not waive any of its required contract terms and conditions as set out in Order No. 75949.

People's Counsel has asked the Commission to clarify the type and extent of information to be recorded and preserved when contracts are formed by telephone. In addition to the requirement for taped third-party verification, the Commission requires that the entire conversation between the customer and the offeror of electric service be taped and dated. This is necessary, among other reasons, to ensure that customers have actually received written information prior to the call, have access to all terms and conditions, and have had their questions answered. The recorded information may not be sold or transferred for commercial purposes.

MAPSA urges that the Commission change the information it requires telemarketers to disclose in conversations with potential customers. MAPSA claims that some of this information is difficult to convey orally. After review of MAPSA's request, the Commission agrees that certain changes in telephone disclosure requirements are appropriate. Referring to the disclosure requirements on pages 16 and 17 of Order No. 75949, the Commission will continue to require that items 1 through 6 plus item 8 be disclosed in their entirety to potential customers over the telephone. Disclosure of payment due date, as contained in item number 7 on page 17 will also be required. The other disclosure requirement in item number 7, "mailing address for payments," may be communicated more effectively in follow-up correspondence than by telephone. The Commission finds that this information should be disclosed in the customers' rights packet, and, therefore, the Commission will not require that it be communicated over the telephone. Similarly, items 9, 10, and 11 on page 17 of Order No. 75949 need not be communicated over the telephone but should be communicated to customers in the customers' rights packet.

MAPSA also urges the Commission to modify the telephone solicitation provisions of Order No. 75949 by adopting the telephone enrollment procedures included in a "Coalition for Uniform Business Rules" ("CUBR") report. The Commission declines to adopt the CUBR rules. They were introduced only in the appeal phase of this proceeding, and they were not discussed by the CPWG as a whole. The Commission will instead rely on its understanding of issues and proposals as refined throughout the roundtable process.

F. Evergreen Contracts

The Joint Petitioners and WGES have asked the Commission to eliminate the requirement in Order No. 75949 that suppliers provide both a 60-day and a 30-day expiration notice to customers subject to evergreen contracts. The parties argue that a two notice requirement is unnecessary, expensive, and unhelpful to consumers, who may simply discard the first notice.

Evergreen contracts automatically renew unless one party takes positive steps to prevent renewal. Therefore, customers unaware that their evergreen contracts are about to renew may be inadvertently bound to new contracts for significant periods of time. The requirement of two notices is calculated to provide a fair opportunity to those customers desiring to change electric suppliers to do so. One notice of the pending automatic renewal of a contract that may extend for a year or more essentially gives customers only one opportunity to switch suppliers, and is not a satisfactory safeguard. The two notice requirement is therefore affirmed.

However, MAPSA points out that some evergreen contracts are renewable on a month-to-month basis, therefore making it possible to apply a 60-day notice requirement to them. The Commission agrees, and accordingly, the two notice requirement will not apply when a contract is month-to-month. Termination procedures, on such contracts, however, must be set forth in the contract, and a reminder notice of such termination procedures must be sent to customers annually. Further, any forthcoming changes to the material terms of an evergreen month-to-month contract must be highlighted and clearly stated in the notice of termination procedures sent to the customer.

Finally, Order No. 75949 required that suppliers provide customers with lists of alternative suppliers in their 60- and 30-day notices. The Joint Petitioners object to this requirement as inconsistent with a competitive marketplace. They also point out that it is unclear whether suppliers or the Commission would provide the list. They argue that suppliers producing as well as distributing the list could face significant liability if competitors were inadvertently omitted.

The Commission is persuaded by these arguments and therefore will not require suppliers to send customers a list of competitors in evergreen contract renewal notices. In addition to the reasons put forward by the Joint Petitioners, overturning this requirement is justified by the availability of supplier information on the Commission's and the Attorney General's websites. We therefore require suppliers to provide the Commission's and Attorney General's Internet addresses and toll-free telephone numbers in their 60- and 30-day notice sent to the customer.

G. "Price to Compare" and Related Issues

Several parties have asked for clarification or rehearing of the Commission's ruling on "price to compare," and the relationship among "price to compare," uniform pricing, price per kWh, unit price, and other price-related terms. The parties seeking reconsideration essentially argued that the meaning and origin of "price to compare" were unclear, and the variety of price terms mentioned in Order No. 75949 would confuse rather than assist customers in choosing alternative suppliers of electricity. The Commission will hereby clarify several issues relating to price disclosure.

The Commission does not require uniform pricing by suppliers. Suppliers may price their service as they choose, using bundled prices, flat rates, or other creative strategies. If, however, suppliers choose to compare their price to the standard offer price of a utility, that comparison must be accurate and verifiable.

To effect the goals of accuracy and verifiability, the Commission will rely on Staff's concept of "price to compare." Staff's "price to compare" is the price per kWh for an average heating or an average non-heating customer in a specific service territory. Each utility's average heating and average non-heating customer will differ from such customers in other service territories. Therefore, each service territory will have a different "price to compare."

The official "price to compare" will be developed by the utility and reviewed for accuracy by Staff.[3] The "price to compare" will include the price for the generation, transmission, ancillary services, and line losses that the supplier is obligated to provide, consistent with the various settlements reached with each utility. The "price to compare" 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 use the official "price to compare" as a benchmark on an annual basis.[4]

In addition, the Commission hereby clarifies several other rulings in Order No. 75949:

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[3] Utilities will publish the formula for deriving their standard offer service rate.

Pages 13 and 16, item 2, now read:

2. The price for their services, including all fixed and variable components;

Page 13, item 6, page 14, item 6, and page 17, item 8, now read:

> All fees and charges other than price, and under what circumstances customers will incur them;

H. Recision

1. Recision Notification

On February 18, 2000, various utilities filed a letter with the Commission pointing out an apparent conflict between Order No. 75949 and a prior Commission action. Specifically, the utilities noted that, in Order No. 75949, the Commission required suppliers to notify customers of a required 10-day period in which to rescind agreements with the supplier. This requirement, the utilities argue, conflicts with operating assumptions that utilities, not suppliers, will notify customers of the contract recision period. The utilities state that they have based their planning assumptions on the utility (as opposed to supplier) notification procedure; they further note that the Commission had accepted utility notification in its February 8, 2000, acceptance of the report of the Generic Technical Implementation Working

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[4] The foregoing discussion will replace the last two paragraphs on page 20 of Order

Group ("GTIWG") concerning Recommended Customer Enrollment Transaction Processes. The utilities request that the Commission clarify: (1) that it is the utilities', not the suppliers', responsibility to send customers notice of applicable recision periods; and (2) that the 10-day recision period will begin on the date the utility receives an electronic notification from the supplier that a customer has switched to that supplier.

Having reviewed this matter, the Commission will accept the existing GTIWG protocol without change. Therefore, customers will have a 10-calendar-day period from the date the utility receives notice of their enrollment to rescind their contract without penalty. Notices of the recision period will be sent by utilities (LDCs). The Commission therefore also changes certain language in Order No. 75949. On page 18, requirement number 4, now reads:

> Further, we impose a 10-calendar-day period from the date the LDC receives notice of customer enrollment during which customers may rescind contracts.

On page 18, the first complete sentence, now reads:

> 4. The consumer will have 10 calendar days after the LDC receives notice of customer enrollment in which to rescind the contract without penalty.

No. 75949 and the first paragraph on page 21 of that Order.

Finally, on Page 14 of Order No. 75949, the Commission set forth five required disclosures to be made by the supplier to a customer who has signed up for electric service as the result of a solicitation. In light of the changes made in the present Order, the Commission modifies these requirements. The LDC will now send the first and fifth notice to the customer, as follows:

1. Notice of enrollment;

5. Notice that the customer has 10 calendar days from the date the LDC receives notice of customer enrollment in which to rescind the contract without penalty.

Suppliers will continue to be responsible for sending items two, three, and four, as follows:

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).

2. Consumers' Rights Pamphlet

The Commission will continue to require that customers receive a customers' rights mailing after they finalize their contracts with a supplier. While WGES has indicated this requirement may result in duplication of material already required to be in the contract, it will be useful for customers entering a newly competitive arena to have a concise, readily available statement of complaint procedures, remedies, and information on contacting a supplier provided to them under separate cover. In addition, as noted under the prior Order, supplier address, termination details, and dispute process information, at a minimum, are appropriately included in a mailing following a customer's telephonic agreement to receive service from a particular supplier. That information, as required in items 7, and 9 through 11 on page 17 of Order No. 75949, should appear in a customers' rights pamphlet or other mailing.

I. Termination Fees

The Joint Petitioners urge the Commission to permit markets to determine the reasonableness of termination fees and deposits, rather than having the Commission impose a requirement that termination fees be reasonable and deposit requirements be not inconsistent with the deposit provisions of the Code of Maryland Regulations.

The Joint Petitioners' request is denied. Abuse of termination fees not only raises the possibility of unjust enrichment of those imposing them, but could also discourage customers from leaving one supplier for another, thereby inhibiting competition. Therefore, the Joint Petitioners' argument that customers will simply leave suppliers who impose unreasonable fees is questionable on its face. At least until competition is more robust, termination fees and deposit requirements must be subject to Commission review and remedy, as necessary.

The Commission also denies the request of WGES to permit termination fees prior to July 1, 2000. WGES argues that customers who obtain an early pricing commitment from a supplier who cannot impose a penalty for early withdrawal have in effect received "an expensive financial option." Nonetheless, the Commission's Order No. 75949 and the consumer protection requirements now being developed are intended to establish procedures for the electricity market after that date, rather than before. If, as WGES suggests, suppliers will wait until close to July 1, 2000 to sign up customers, rather than take an economic risk, that result is acceptable.

J. Disconnection

The Joint Utilities questioned whether Order No. 75949 preserved their authority to disconnect customers for failure to pay LDC charges at all times, or only when the customer was receiving standard offer service. The Commission affirms the LDC's authority to disconnect customers for nonpayment of LDC charges. This authority is not predicated on provision of standard offer service. At this time, only LDCs have the authority to disconnect consumers of electricity.

K. Conectiv's Request for a Minimum Stay

Conectiv asks on appeal that the Commission impose a minimum stay on those of its residential customers who leave Conectiv's service and then return. The Commission declines to do so. The settlement in Case No. 8795 did not impose such a minimum stay, even though similar settlements involving other utilities did so. There was no evidence that seasonal gaming will exist for Conectiv's residential customers, so as to warrant a minimum stay requirement.

IT IS, THEREFORE, this 25th day of April, in the year Two Thousand, by the Public Service Commission of Maryland,

ORDERED: (1) That Order No. 75949 is affirmed, except as modified herein.

(2) That all other motions not granted herein are denied.

/s/ GLENN F. IVEY

/s/ CLAUDE M. LIGON

/s/ SUSANNE BROGAN

/s/ CATHERINE I. RILEY

/s/ J. JOSEPH CURRAN, III

Commissioners