ORDER NO. 77987

IN THE MATTER OF THE INVESTIGATION INTO THE CONTINUATION OF THE RETAIL SALE OF NATURAL GAS.	* * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND CASE NO. 8933

On August 24, 2001, the Commission issued a Notice of Retail Gas Market Conference to be held on September 25, 2001. It indicated that a discussion on preparations for the upcoming winter was to be followed by a broad-ranging discussion on the future of the retail gas market in Maryland. This Order will provide the Commission's thinking regarding its authority to order public service companies to discontinue providing tariffed retail gas sales service as well as direction to the public service companies regarding their service agreements for interstate transportation and storage of natural gas.

Eight retail gas suppliers and a supplier association spoke or provided filings on retail gas issues at the Conference as well as the three major public service companies providing natural gas service in Maryland, the Office of People's Counsel ("OPC") and the Commission's staff ("Staff"). Specific issues were raised regarding operations on the distribution systems of each of the three major companies.[1] The Commission appreciates being informed

[1] Thirteen specific issues raised at the conference are listed on the attached Appendix A.

about specific issues such as operational flow orders on Columbia Gas of Maryland's ("CGM") system but resolution of specific issues is usually better achieved in more focused forums. The utility-specific roundtables are meeting again and provide an efficient forum for some or all of the specific issues raised.

Each utility-specific roundtable is directed to address the issues listed on Appendix A that are applicable to that utility. In addition, all three roundtables are instructed to address issue numbers six, nine, eleven, twelve and thirteen. Finally each roundtable is directed to discuss ways to facilitate the provision of a fixed-price commodity service by licensed suppliers to low-income customers. Included in this discussion should be an identification of the barriers to the provision of a fixed-price service as well as a discussion of a means to provide a commodity service with reduced volatility in the price of the commodity to low-income customers. By December 6, 2002, each roundtable is directed to file a report with the Commission in this case, which report may contain majority and minority views. The document is for the purpose of reporting on the results of the discussions on the designated issues, including the fixed-price (or alternatively a reduced volatility in the price) commodity sales option, together with a discussion of any additional issues under consideration by that roundtable. The report should include recommendations on the specified issues as well as any other recommendations that the roundtable may wish to make.

If the roundtables are not able to satisfactorily achieve resolution on the issues listed on Appendix A for whatever reason, alternatives are available, such as filing a formal complaint pursuant to Section 3-102 of the Public Utility Companies Article and COMAR 20.07.03, or a discussion mediated by a Hearing Examiner. The Commission has employed both recently, some on an expedited basis. Expedited tracks will continue to be available when necessary. Finally, if necessary to accommodate issues that are not being successfully addressed in the roundtables and which are not appropriate for mediation or specific complaint proceedings, the Commission will establish this fall, if requested, a proceeding in which to address issues regarding current customer choice programs.

There was also a discussion of market structure issues, which echoed some themes of a Staff report dated January 2001 and entitled "Gas Choice: Provider of Last Resort Service, Fostering Competition and Retail Market Power." Staff's report is a thoughtful discussion of issues, actual and potential, facing those interested in natural gas service in Maryland.

I. ARGUMENTS ON THE AUTHORITY OF THE COMMISSION

During the Conference it became clear to the Commission that there was a divergence in views on the issue of whether public service companies providing tariffed gas sales service should continue to do so into the future. The discussion focused on the

Commission's authority in this area and the Commission requested briefs. Initial briefs were filed in November and reply briefs in December.

The New Power Company ("New Power") appears to argue that the Commission's authority is confined to acting on a gas utility's application to abandon its franchise. As a means to create the environment in which a utility would decide to file an application to abandon its franchise (to the extent that it would exit the merchant function), New Power suggests that the Commission create a Competitive Default Supplier Program similar to programs in Philadelphia and Georgia. Total Gas & Electric, Inc. ("Total") argues that the Commission has the statutory authority, based on a public interest finding, to alter the gas franchises held by the public service companies and order the discontinuance of utility-provided retail natural gas service.

Energy America, LLC ("Energy America") points out that partial unbundling of gas delivery and gas sales service occurred in Maryland in 1987.[2] As such, Energy America wonders whether the duty to serve should continue to be viewed as encompassing the provision of commodity service by the transporting utility. If a conventional abandonment analysis is applied, however, Energy America appears to argue that, under the public convenience and

[2] Energy America cites Commission Order No. 67583 issued in Case No. 7962, *Re Interstate Sale and Transportation of Gas*, on December 23, 1986 (80 P.U.R. 4th, 87 Md. PSC 531 (1986). In that Order the Commission laid the foundation for today's delivery service by directing the major gas utilities to file tariffs providing for firm and interruptible transportation service for customer-owned gas on the distribution systems in Maryland.

necessity standard, the Commission has broad authority to authorize an abandonment of commodity gas service. Given a sufficient record and articulation of the facts, Energy America further argues that a Commission order directing the gas utilities to exit the commodity business would be sustained even in the absence of specific legislation confirming the Commission's authority. Energy America suggests that Order No. 67583 furnishes a model for a Commission order ousting gas companies from the commodity business.

Washington Gas Light Company ("WGL") argues that the Commission may lawfully authorize the discontinuance of regulated retail gas service by a gas company. WGL also notes the partial unbundling in 1987 under Order No. 67583. Further, WGL argues that the provision of transportation services that promote the economically efficient provision of gas was also the basis for the Commission's decision, in Order No. 71703, to docket Case No. 8683. This case ultimately led to the adoption of transportation offerings to smaller volume commercial and residential customers.[3]

CGM argues that the Commission does not have the authority to require gas utilities to discontinue providing tariffed sales service and that there is no record in this proceeding upon which the Commission could require the gas utilities to exit the merchant function. Baltimore Gas and Electric Company ("BGE") argues that the existing gas utilities have a statutory obligation

[3] *See also*, the discussion in the *Report of the Public Service Commission* for the year ending December 31, 1995. 86 Md. PSC xii.

to provide a gas sales service, that these utilities may request authorization from the Commission to discontinue that service but that, absent action by the General Assembly, the Commission cannot order the gas utilities to exit the merchant function.

OPC argues that the Commission lacks the authority under existing law to permit or order investor-owned gas utilities to discontinue or abandon tariffed gas sales service in Maryland. If, however, the Commission has such authority, then OPC argues that gas utilities cannot unilaterally discontinue tariffed gas sales service but need to seek approval of such discontinuance from the Commission.

Staff argues that the Commission has the discretion to authorize the discontinuation of the provision of a service or the exercise of a franchise.

II. A REVIEW OF THE STATE OF RETAIL GAS CHOICE IN MARYLAND

As of June 1, 2002, there are, according to the Commission's records, 33 entities licensed to provide retail gas services in Maryland. On the three major gas distribution systems in the State, according to reports filed with the Commission, the number of entities providing service to the large, medium and small (including residential) customers in Maryland has remained relatively constant from December 2000 through March 2002.[4] As of March 2002, the number of licensed marketers actually providing service to customers on the three major distribution systems are:

	Baltimore Gas and Electric Company	Columbia Gas of Maryland	Washington Gas Light Company
Small Customers	9	8	9
Medium Customers	16	3	17
Large Customers	18	3	7

The number of customers served during the period December 2000 through March 2002 is also relatively constant and, as of March 2002, is:

	Baltimore Gas and Electric Company	Columbia Gas of Maryland	Washington Gas Light Company
Small Customers	79,040[5]	1,868	86,259
Medium Customers	9,154	299	11,621
Large Customers	367	70	274

[4] The initial numbers reported in January 2000 are reported in a slightly different manner:

	BGE	CGM	WGL
Small Customer	14	4	13
Medium Customer	29		
Large Customer	26	<6	<26

[5] The exception to the overall characterization of stability in customer participation levels is in residential customer participation on BGE. The number of participating residential customers has dropped by approximately 20,000 since December 2000 from 18 percent of the potential to 14 percent.

As a percentage of the eligible customers served by retail service providers, the share as of March 2002 is:

	Baltimore Gas and Electric Company	Columbia Gas of Maryland	Washington Gas Light Company
Small Customers	14%	7%	24%
Medium Customers	22%	10%	40%
Large Customers	92%	23%	100%

The degree of customer acceptance varies depending on whether the customer is a large, medium or small consumer of natural gas services but, within each of the three classifications, the various levels of participation have plateaued. For the large and medium customer groups the participation levels are significant. Only on WGL's system, however, does the level of participation by small customers approach a quarter of that system's potential.

The existing levels of participation are also significant when viewed as volumes of gas rather than numbers of customers. As of March 2002, 55 percent of the total annual gas throughput on BGE's gas distribution system is gas purchased by customers from gas suppliers. For CGM the amount is 40 percent, and for WGL it is 51 percent.

III. DISCUSSION

As just noted, the quantity of gas necessary to serve customers of licensed sales service providers is significant in relation to the total throughput of each of the three utility distribution systems. However, the quantity of flowing gas necessary to serve customers of the utilities' tariffed sales service is also significant in relation to their respective total throughputs. For both customer-owned and utility-owned gas to flow on the distribution systems as needed, substantial interstate transportation and storage capacities with appropriate delivery point priorities are required.

The gas utilities subject to the Commission's regulatory oversight are responsible for acquiring and maintaining the necessary capacities, including priorities at the interconnections between the interstate transmission systems and the local distribution systems, necessary to meet their respective obligations to serve. Gas utilities are not responsible for ensuring that customer-owned gas arrives at the city-gate and therefore are not required to maintain interstate assets for this purpose. As a practical matter, however, the gas utilities may resume responsibility for equivalent volumes to the extent transportation customers may return to tariffed retail gas sales service.

As to WGL, for interruptible customers on its system, and BGE, for customers taking service under Schedules IS and AIS, the Commission has authorized discontinuance of tariffed gas sales service.[6] To the extent these authorizations function to protect regulated services on the three distribution systems from the sudden return of customers desiring to exercise a right to tariffed sales service, they are useful. However, both systems, as well as Columbia's, may experience significant returning demand for regulated services in the event customers who voluntarily discontinued regulated sales or commodity service, and for whom authority to discontinue sales service was not granted, elect to return to tariffed sales service.

The quantity of tariffed sales service that each utility is potentially required to serve, *i.e.*, those customer classes for whom the distribution companies have not received authorization to discontinue gas sales service, could increase with very little notice. This is true since each gas utility has an obligation to provide service under Sections 5-201, 5-202 and 5-403 of the Public Utility Companies Article and the individual service tariffs of the gas companies. Once service has commenced, unless authorization to discontinue or abandon service is obtained from the Commission, each regulated gas company must meet its legal mandate. This forces each company to be prepared to provide supply and to incur the costs of ensuring such. The full consequences of the company's

[6] *See*, Commission Letter to WGL dated August 3, 1995, ML# 48667; Commission Letter to WGL dated April 15, 1998, ML#'s 61256 and 61445; and Commission Letter to BGE dated March 31, 1999, ML# 65576. Under these letters the Commission accepted several tariffs for filing. In light of the decision in this Order and the current tariffs governing service to the residential, commercial, apartment, etc., classes on BGE's, CGM's and WGL's systems, there is no need to further address the so-called supplier of last resort issues.

obligation of a customer returning to tariffed service after voluntarily leaving are not fully developed at this time.[7]

Further, the above statistics show that the vast majority of small customers remain on tariffed sales service. Even on WGL's system, 75 percent of small customers are still on tariffed sales service. Whether these statistics reflect customer inertia, an affirmative decision to remain a sales customer of the utility, structural advantages and disadvantages in the market or some other reason is not clear. What is significant and important to note is the fact that the three distribution companies remain under an obligation to serve large numbers of customers at the same time there is the potential for significant returning demand for regulated supply services.

The three gas utilities each file with the Commission their respective descriptions of their plans for providing gas supply service and maintaining pipeline capacity. Fundamental to those plans are the respective interstate gas transportation and gas storage assets. These assets are held by each utility under service agreements, most of which are on file with and regulated by the Federal Energy Regulatory Commission. Each gas plan indicates that the term for service agreements covering significant portions

[7] *Id.* 87 Md. PSC 540. The Commission noted that the record in that proceeding was not adequate for determining uniform or complete guidelines or principles that would apply whenever an interruptible or firm transportation customer desired to switch back to interruptible or firm sales service. The Commission did, however, make an initial determination that all identifiable costs associated with returning customers should be paid by the returning customer and, if shown by the utility to be necessary, a reasonable notice period may be enforced by the utility.

of these assets will expire in the near future. Therefore, each gas utility must soon decide whether, or under what conditions, they will renew service agreements for some or all of the gas transportation and gas storage capacity currently held.

OPC and Columbia argue that even if the Commission has the authority to order gas utilities to cease providing tariffed gas sales service, it should not exercise that authority without approval from the General Assembly. OPC argues that permitting or requiring gas utilities to discontinue tariffed sales service involves significant public policies that are best addressed by the legislature. Columbia asserts that requiring gas companies to exit the merchant function constitutes a dramatic restructuring of the industry and that such power requires specific statutory authority, particularly in light of the General Assembly's recent restructuring of the electric industry in Maryland.

IV. DECISION

The Commission supports continuation of both the regulated gas services as well as the competitive commodity market as it exists today. The Commission is also open to continuing development of the competitive commodity market. Voluntary movement by small and medium gas customers to licensed sales services has plateaued. While licensed suppliers are not signing up new customers in significant numbers, neither do they appear to be losing them. Based on the record before it, the Commission is not convinced it is an appropriate decision to force gas customers to make the move to licensed sales service by removing the possibility of tariffed sales service. However, the Commission notes that advertising and promoting retail services is a route that has been and continues to be available to licensed suppliers in order to convince consumers to change their supplier. A fixed price offering represents at least one product that licensed suppliers may successfully promote to increase their share of the natural gas retail sales market. The incremental and consumer driven change that competing promotional campaigns might engender in the retail gas market is, in the Commission's judgment, preferred to a sea-change directive removing the gas public service companies from retail commodity service.

While a new contract cycle and fluctuating retail prices may cause the number of gas customers on licensed versus tariffed sales service to shift in the future, and while other compelling activities may also occur, there is no reason for the Commission to force gas companies out of the merchant business at this time. Therefore, the Commission is not required to reach a determination on whether or not it has the power to order such an action. However, as OPC noted in its initial brief, "given the broad public policy implications of any decision to permit gas utilities to abandon gas sales service and exit the market, public input and debate should be part of the decision-making process."

Concurrent with the Commission's decision to reject the proposals to prohibit the gas utilities from providing tariffed sales service, the Commission concludes that the three major gas public service companies should proceed to make such plans for interstate gas transmission and storage as they believe necessary to meet their service obligations in Maryland. Of course, any related contracts and decisions will continue to be subject to regulatory review.

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

ORDERED: (1) That Baltimore Gas and Electric Company, Columbia Gas of Maryland, Inc. and Washington Gas Light Company continue to provide retail gas sales service as provided in their respective gas service tariffs.

(2) That the three utility-specific gas roundtables discuss, to the extent they have not done so over the last several months, the issues specified in the body of this Order and file their respective reports on or before December 6, 2002.

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Commissioners

APPENDIX A

1. Operational Flow Orders on Columbia (Tr. 10);
2. Gas Curtailment Plans on BGE, CGM and WGL (Tr. 10);
3. WGL's assignment of a portion of gas inventory (Tr. 19);
4. Delays in processing enrollments on WGL's system (Tr. 21);
5. The procedure on WGL's system for notification that a customer is switching suppliers (Tr. 22-23);
6. Adoption of Electronic Data Interchange ("EDI") protocols to improve efficiency of transactions (Tr. 23);
7. Maintaining parameters of inventory requirements on WGL (Tr. 23);
8. Standardization of distribution company bonding requirements on BGE (Tr. 24-25);
9. Improved and expanded customer education (Tr. 26);
10. BGE's proposal for licensed suppliers to secure a substitute supplier when it exits the market (Tr. 26);
11. Payment processing and treatment of receivables (Tr. 45);
12. Changes to utility systems to allow rapid switching of customers (Tr. 45); and
13. Mandate purchasing of supplier's receivables by the utility (Tr. 47).

Note: Transcript cites are to the Transcript of Conference of September 25, 2001.