

ORDER NO. 78400

In the Matter of the Commission's *
Inquiry into the Competitive Selection of *
Electricity Supplier/Standard Offer *
Service. *

Case No. 8908

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Before: Catherine I. Riley, Chairman
J. Joseph Curran, III, Commissioner
Gail C. McDonald, Commissioner
Ronald A. Guns, Commissioner
Harold D. Williams, Commissioner

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APPENDICES

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I. INTRODUCTION

The Public Service Commission of Maryland (“Commission” or “PSC”) approves the Settlement Agreement (“Settlement”) filed in this proceeding, which establishes a wholesale competitive procurement methodology to implement utility provided Standard Offer Service (“SOS”)¹ to Maryland’s retail electric customers after their utility-specific restructuring settlements expire.² The Commission is requiring utilities operating in the State to provide these services based on our conclusion that a retail electricity market in Maryland has yet to develop to the point that the Commission can relieve the utilities of this obligation.³ Many diverse parties presented the Settlement to the Commission for its consideration, which sets forth the terms and framework of how the utilities will procure and price the electric supply to be provided. (The Settlement as adopted is Appendix A)

This Order is another in a series of Commission Orders that implements the Electric Customer Choice and Competition Act of 1999 (“Electric Act”)⁴, which restructures the electric industry in this State, and fosters the orderly development of

¹ “Electricity supply purchased from a customer’s electric company is known as standard offer service.” Section 7-510(c)(2).
² The Settlement services will begin for Delmarva Power & Light Company’s non-residential customers at the expiration of its Bridge Settlement. See Case No. 8936. Technical details of the wholesale procurement process will be presented to the Commission in Phase II of this case. The Settlement also provides for default service for certain customers known as Hourly -Priced Non-Residential Service.
³ See § 7-510(c) of the Public Utility Companies Article of the Annotated Code of Maryland (“PUC Law”). All references herein are to the PUC Law, unless otherwise stated.
⁴ See §§ 7-501 through 7-518.

competition in the retail electric supply market for Maryland's citizens. After the passage of the Electric Act, the Commission approved restructuring settlements for each of Maryland's investor-owned utilities and cooperatives.⁵ Those restructuring orders set forth the framework for retail competition in each service territory and included a variety of price protection mechanisms to safeguard customers during the transition period to competitive markets. These safeguards provide utility customers with the availability of SOS at capped or frozen rates. However, under the restructuring settlements, many of these price protections are due to expire soon, and in some cases have already expired, depending on the customer's service class and territory.

In § 7-505(a) of the Electric Act the Commission is directed to: provide an orderly transition to competitive markets; maintain electric system reliability; ensure compliance with Federal and State environmental regulations; be fair to customers, electric companies, their investors and suppliers; and provide economic benefits to all customer classes. As part of our statutory responsibility, the Commission must evaluate the development of the retail market to determine if that market has evolved sufficiently to relieve the utilities of any continued obligation to provide SOS. The record in this proceeding clearly establishes that retail competition has not, in fact, evolved to the point at which the Commission is able to discharge the utilities from this responsibility.

Therefore, after careful review and consideration of the record in this proceeding and for reasons set forth more fully herein, the Commission determines that the Settlement extends those utility service obligations in a manner that comports with the requirements and the goals envisioned in the Electric Act. To ensure the continued orderly transition to competition, the Settlement provides that utility SOS customers will

⁵ See Case No.(s) 8794/8804, 8795, 8796, 8797, 8817 and 8823.

be paying a market price for their electric service and that the utilities will be able to recover their verifiable and prudently incurred costs in procuring electric supply.⁶

Accordingly, the Commission approves the Settlement because it is consistent with the Electric Act and the specific requirements of § 7-510(c). Furthermore, the Commission will continue to utilize its full powers to ensure that this process is implemented in a manner consistent with the public interest.

II. PROCEDURAL HISTORY

On December 18, 2001, the Commission established this case for the purpose of resolving issues regarding the competitive selection of electric supplier/standard offer service.⁷ On May 30, 2002 the Commission issued Order No. 77806, which addressed questions raised by the parties relative to five threshold issues regarding the Electric Act.⁸ Among the Commission's conclusions was the determination that a competitive wholesale procurement process to provide SOS is permissible and consistent with the requirements of § 7-510(c). The Commission also directed the parties to resume their

⁶ See § 7-510(c).

⁷ Motions to Intervene of the following parties have been granted by the Commission in this proceeding: The Potomac Edison Company, d/b/a Allegheny Power ("AP"); Southern Maryland Electric Cooperative, Inc. ("SMECO"); United States Gypsum Company and the Maryland Industrial Group (collectively "MIG"); Washington Gas Light Company ("WGL"); Baltimore Gas and Electric Company ("BGE"); Eastalco Aluminum Company ("Eastalco"); Potomac Electric Power Company ("Pepco"); the Maryland Retailers Association and the Building Owners and Managers Association of Metropolitan Baltimore, Inc. (collectively "MRA/BOMA"); PG&E Energy Trading-Power, L.P. ("PGET"); National Energy Marketers Association ("NEM"); Mid-Atlantic Power Supply Association ("MAPSA"); AES New Energy, Inc. ("AES"); Pepco Energy Services, Inc. ("PES"); Maryland Energy Users Group ("MEUG"); Maryland Energy Administration and the Power Plant Research Program of the Maryland Department of Natural Resources (collectively "MEA"); Mirant Mid-Atlantic, LLC ("Mirant"); Choptank Electric Cooperative, Inc. ("Choptank"); Delmarva Power & Light d/b/a Conectiv Power Delivery ("Delmarva"); Washington Gas Energy Services, Inc. ("WGES"); Conectiv Energy Supply, Inc. ("CESI"); PJM Interconnection, L.L.C. ("PJM"); the Mayor and City Council of Ocean City, Maryland ("Ocean City"); Strategic Energy, LLC ("Strategic Energy"); and Constellation Power Source, Inc. ("Constellation"). The Public Service Commission Staff ("Staff") and the Maryland Office of People's Counsel ("OPC") entered their appearances. See Docket Nos. 2 through 19, 21, 26, 29, 87, 117 and 122.

⁸ Order No. 77806 is Docket No. 59.

discussions on the remaining SOS issues and to file an updated status report by July 19, 2002.

The Commission established August 15, 2002 for a hearing in this case but that date was postponed at the request of the parties in order for the parties to continue negotiations in this matter. Subsequently, the Commission directed the parties to file a settlement proposal by September 10, 2002, or in the alternative to address certain issues. The parties were also directed to submit any further questions requiring Commission guidance. The Commission rescheduled hearings for September 11 and 12, 2002 so that the parties could present their views and the Commission could question individual parties directly. Another request by the parties to postpone hearings in this case until October 2002 was denied by the Commission because of the necessity to complete this case in a timely manner.

The Commission held hearings on the various SOS issues on September 11 and 12, 2002. At the close of the hearings, the Commission directed the parties to continue efforts to achieve a settlement or alternatively the Commission would resolve these issues by January 2003 due to the time sensitive nature of this proceeding. Further, the parties were directed to provide a status update regarding settlement discussions within three weeks. When the parties did not file the required update, the Commission ordered a status conference for October 15, 2002. Following the status conference, the Commission directed the parties to either file any settlement by October 31st or file a proposed schedule for submission of the parties various SOS and Default Service (“DS”) proposals. The proposed schedule was filed on October 31, 2002.

On November 15, 2002, Staff, on behalf of numerous parties, filed a Settlement Agreement which is the subject of this Order. Parties filed direct testimony regarding the Settlement on November 22, 2002 and a few parties filed rebuttal testimony in December, 2002. The Commission held hearings on the Settlement on December 4 and 6, 2002. Parties filed initial briefs on January 3, 2003 and reply briefs on January 17, 2003.

III. SETTLEMENT SUMMARY

On November 15, 2002 twenty parties to this proceeding filed a Settlement with the Commission setting forth their resolution of how Standard Offer Service will be provisioned in Maryland after utility restructuring rate caps expire.⁹ Only one party, WGES, opposes the Settlement. The Settlement sets forth the terms and procedures for the provision of SOS to customers through the competitive selection of wholesale supply for various periods of time.¹⁰ The Settlement also provides for a true Default Service (“DS”) known as Hourly-Priced Non-Residential Service. Further, the Settlement provides for technical details to be determined in a Phase II proceeding.

The Settlement provides for the provision of Residential SOS and three types of Non-Residential SOS, Type I, II and III SOS.¹¹ All customers of AP, BGE, Delmarva and Pepco will be eligible for SOS, except for utility special generation contract customers, Bethlehem Steel, National Railroad Passenger Corporation, Eastalco, and

⁹ The “Settling Parties” are AP, BGE, Delmarva, Pepco, Staff, OPC, Mirant, CESI, MAPSA, Constellation NewEnergy, Inc., PES, MIG, MEUG, MRA/BOMA, MEA (and PPRP), Strategic Energy, SMECO, and Choptank.

¹⁰ Ancillary to this proceeding, Delmarva’s restructuring rate cap period for non-residential customers was extended by its Bridge Settlement in Case No. 8936 to bring this rate cap period in line with other service territories.

¹¹ The Settlement terms for Residential and Type I, II and III SOS are contained in paragraphs 1 through 73. Many of the terms are similar and in some cases identical for all four services. Therefore, the various terms will be summarized together. Differences among service types are also noted.

Westvaco Corporation. Type I SOS, Type II SOS and Type III SOS are each defined based upon usage for Non-Residential (“N-R”) customers.¹² Each utility’s historic rate structure and corresponding rate infrastructure is largely maintained within these categories.¹³ SOS will be available beginning on the dates that the respective utility restructuring rate caps end.¹⁴ Residential and Type I SOS will be available for four years, Type II SOS for two years, and Type III SOS for one year. Finally, certain large usage interval-metered N-R customers are eligible for Hourly-Priced Non-Residential Service (“Hourly-Priced Service” or “HPS”).¹⁵ HPS begins when the Type III SOS periods begin and is available for a minimum of two years.

The Settlement provides that the terms of service and the obligations of the utilities enumerated therein will remain unchanged throughout the various SOS periods. The Settlement also requires each utility to report annually to the Commission on their wholesale electric supply procurement process and results, SOS retail prices produced and enrollment activity.¹⁶

Major policy reviews will be docketed to allow the Commission to analyze and make recommendations to determine whether and how the Residential, Type I and Type II SOS programs will be continued. Staff will initiate the policy reviews. The Settlement states that final Commission orders that result from these policy reviews will apply only

¹² See Settlement paragraphs 19, 37 and 56 for classification details.

¹³ Settlement paragraph 38.

¹⁴ Delmarva’s N-R period for SOS begins with the conclusion of the Case No. 8936 Bridge Settlement period.

¹⁵ Generally, only Type III customers are eligible for HPS. See Settlement paragraph 74.

¹⁶ For Residential and Type I SOS see Settlement paragraphs 3 and 22. For Type II SOS, the report will be filed only after the first year of the program—Settlement paragraph 41. For Type III SOS, the report will follow its single program year—Settlement paragraph 59.

to the provision of SOS following the SOS program periods and such orders may reflect differences among various utility SOS programs.¹⁷

The Settlement provides that SOS is subject to the general terms and conditions of the utilities' tariffs and Commission regulations. Type III customers are subject to switching rules as detailed in paragraph 60. All Type III customers remaining on Type III SOS will be automatically switched to HPS at the end of the Type III SOS periods.¹⁸ For purposes of this Settlement, HPS is considered a true default service. The manner in which supply for HPS is obtained is at the utilities' discretion.

Electric supply for SOS will be obtained using utility specific bid plans that are based upon Model Bid Plans ("MBP"), which utilize a competitive wholesale procurement process.¹⁹ The Settlement provides that there is a presumption that this process will use Requests For Proposals ("RFPs") to solicit supply offers.²⁰ MBPs will be developed in Phase II and submitted to the Commission for approval. In addition, proposed regulations will be submitted to the Commission for approval after Phase II.

Under the MBPs, the utilities will solicit offers for Full Requirements Service.²¹ Contracts for supply will be for one year for Types II and III SOS, for one and two years for Type I SOS and for one, two and three years for Residential SOS. Utilities will solicit seasonally differentiated and, if applicable, time-of-use differentiated prices. The total supply load may be divided into load blocks to promote supply diversity and reliability. The first year of SOS will end May 31 to reset SOS periods to conform to PJM planning

¹⁷ Pursuant to Settlement paragraph 4(d), changes may be adopted by the Settling Parties and ordered by the Commission for Residential SOS in AP's territory

¹⁸ See Settlement paragraph 60(e).

¹⁹ See Settlement paragraphs 6, 7, 25, 26, 44, 45, 62 and 63 for more details on the MBPs. This process does not apply to HPS.

²⁰ See Settlement paragraphs 6, 25, 44 and 62.

²¹ See paragraph 7(a).

periods.²² The MBPs will account for the bidder's price, credit worthiness and financial capability, experience, supply diversity and other similar factors. The MBPs will also have procedures in the event supply bids do not fill all requested load blocks or if offers result in "significant pricing anomalies."²³ Each utility will submit its specific forms of bid request, evaluation plan and standard form contracts ("Utility Bid Plan") to the Commission for review and approval.

The utilities will also submit the final bid results and recommended awards as well as proposed contracts to the Commission for review and approval. Any proposed contract will be deemed in compliance unless the Commission orders otherwise within two business days following the submission. Phase II will address the manner in which the submissions will be released to the Parties and the public. Winning bidders will receive the actual prices that they included in each of their final supply contract bids and will not be permitted to revise prices or other terms and conditions of their supply contracts.

The retail prices for SOS will consist of: (1) the seasonally-differentiated and, if applicable, time-of-use differentiated load weighted average of the supply contracts for each year; (2) FERC-approved transmission charges and any other PJM charges and costs related to SOS; (3) an Administrative Charge; and (4) applicable taxes.

According to the Settlement, the SOS Administrative Charge is composed of a utility return component, an incremental costs component²⁴, uncollectibles, and an

²² PJM is the Pennsylvania-New Jersey-Maryland Interconnection.

²³ See Settlement paragraph 7(h).

²⁴ For example, such actual incremental costs include: actual uncollectibles that are not being recovered in a utility's distribution rates; consultants, procurement processes; incremental system costs; bill inserts for education; transition costs; and cash working capital revenue requirements, subject to limitations as set forth in the Settlement.

Administrative Adjustment component. The Administrative Charge is not applicable to generation supply provided by competitive retail suppliers. The Residential Administrative Charge will be 4 mills (0.4 cents) per kWh of SOS load.²⁵ Of this amount 1.5 mills will be paid to utilities as return.²⁶ This component shall remain fixed except as provided in paragraph 12(d). Pursuant to paragraph 12(d), if the Commission approves a change in a utility's incremental cost recovery, the return may be re-examined and possibly adjusted up to 1.75 mills per kWh or down to 1.25 mills per kWh. The return component shall not be reflected in a utility's distribution rates.

The incremental costs component of the Residential Administrative Charge set forth in the Settlement is 0.5 mills (0.05 cents) per kWh. This incremental cost component shall remain fixed, without reconciliation for the entirety of each utility's Residential SOS period, unless the provisions of paragraph 12(d) are invoked. That paragraph provides that if any utility is required by a change in law, order, or regulation, not initiated by the utility, to incur incremental costs in excess of the 0.5 mills charge that are not reflected in the utility's current distribution rates, then the utility may file with the Commission to collect those excess costs. Conversely, if such a change would reduce incremental costs, OPC may file to reduce the incremental cost component. Upon Commission approval of the filing, any increase in incremental costs would be subtracted from the Administrative Adjustment and any reduction in incremental costs would be added to the Administrative Adjustment. If the Commission approves an increase in incremental cost recovery that is greater than the balance of the revenue associated with

²⁵ See Settlement paragraphs 12, 13 and 14.

²⁶ The Residential SOS cash working capital revenue requirement is deemed to be reflected in full for residential customers through the return component. See Settlement paragraph 12(b).

the Administrative Adjustment after all other deductions, then the remaining costs would be collected on a per-kWh basis from all Residential SOS customers.

The remaining 2 mills of the Residential Administrative Charge will comprise the Administrative Adjustment.²⁷ However, the Administrative Adjustment shall be reduced to reflect uncollectibles. In the Settlement, BGE's Administrative Adjustment will initially be reduced to 0.9 mills, and 1.1 mills will be used to reflect BGE's uncollectible costs currently reflected in its SOS component of rates. In each utility's next base rate case, an allocation of its uncollectibles to the supply component of rates will be made based upon general rate-making principles. The resulting level of uncollectible costs shall be converted to a millage rate and be subtracted from the 2 mills to revise the Administrative Adjustment. The revenues associated with the Administrative Adjustment will be credited to all residential customers in the form of a per kWh credit, which will be revised quarterly.

The Residential Administrative Charge shall remain fixed at 4 mills until 35% of residential capacity peak load contribution has migrated to competitive retail supply, at which time the Administrative Adjustment will be reduced by 50% and the Administrative Charge reduced commensurately. If and when 50% of residential capacity peak load contribution has migrated to competitive retail suppliers, the Administrative Adjustment will be eliminated and the Administrative Charge reduced commensurately. However, in no event shall the Administrative Charge be less than the sum of the return, incremental costs, and uncollectibles, subject to the provisions of

²⁷ The Administrative Adjustment is a mechanism used to adjust the cost of SOS (generation) while holding harmless customers through a commensurate credit. The Administrative Adjustment increases the price to beat for competitive generation suppliers, which the Settling Parties assert will assist the development of a competitive generation market.

paragraphs 12(c) and 12(d). The mechanisms to reduce or eliminate the Administrative Adjustment will be implemented, if triggered, effective with the beginning of the next Residential SOS program year.

In the Settlement the N-R SOS Administrative Charge is handled as follows:²⁸ (1) the Administrative Charge for Type I SOS will be 5.5 mills (0.55 cents) per kWh; (2) for Type II SOS it will be 6.0 mills (0.60 cents) per kWh; and (3) for Type III SOS it will be 6.5 mills (0.65 cents) per kWh. The Administrative Charge applies to SOS throughout the SOS period but it does not apply to supply from a competitive supplier. The return component for Type I and Type II SOS is 2.0 mills per kWh and for Type III SOS it is 3.0 mills per kWh. The return component will not be reflected in distribution rates.

The remainder of the N-R Administrative Charge will be used to pay the utilities for their actual audited incremental costs for providing SOS.²⁹ The utilities shall file annual *estimates* of incremental costs for the upcoming year, which will be audited (except for the first year) and verified by Staff. Following each program year the utilities will file a report detailing the *actual* incremental costs for SOS, which will also be audited and verified by Staff.³⁰ At the conclusion of the Type I, II and III SOS periods incremental costs will be subject to a true-up mechanism, which provides that; any over-collections or under-collections will be reconciled with customers. Once incremental

²⁸ See Settlement paragraphs 31, 50 and 68.

²⁹ The Settlement defines “actual incremental costs” as “reasonable costs prudently incurred by a utility only as a direct result of providing [non-residential...] SOS that are not included in distribution service rates.” See paragraphs 31(b)(1)(E), 50(b)(1)(E) and 68(b)(1)(E). These paragraphs also contain examples of incremental costs. Incremental costs include items such as consultants, procurement costs, and educational bill inserts.

³⁰ See Settlement paragraphs 31(b)(1)(B), 50(b)(1)(B) and 68(b)(1)(B). The Commission finds in this Order that its approval shall also be required.

costs have been determined, the remainder of the Administrative Charge shall be credited dollar for dollar to all Type I, II and III eligible N-R distribution customers respectively.³¹

According to the Settlement, customers eligible for Standard Offer Service will be notified of the retail prices for SOS and the price to compare for the next service year at least two months prior to the beginning of the service year. If it is not practical for the utilities to provide such notice, the utilities will file with the Commission and the parties the reasons for the delay and the expected date for providing customers with the information.³²

Solicitations for non-residential SOS supply are expected to contain provisions to mitigate wholesale suppliers' exposure to volumetric risks associated with customer migration. These provisions will be determined in Phase II.³³ This procurement structure is intended to ensure reliable supply, to allow the free movement between SOS and competitive suppliers, and to ensure that the utilities do not bear the risk of this contract and supply structure. While wholesale suppliers will be required to meet the utilities' SOS load obligations, the SOS wholesale suppliers will not be required to take incremental load that is not specifically identified and priced as incremental load.

The Settlement prohibits customer migration restrictions, except as provided in the utilities' customer enrollment Settlement provision rules and tariffs.³⁴ However, if a

³¹ See Settlement paragraph 31(b)(2), 50(b)(2), and 68(b)(2). The Settlement also provides that the cash working capital revenue requirement will be recovered on a 50/50 basis between the return and incremental cost components, subject to a ceiling of 0.15 mills (0.015 cents) in the incremental cost component.

³² See Settlement paragraphs 15, 32, 51 and 69.

³³ Volumetric risk is the risk wholesale SOS suppliers face when customers move from SOS to competitive supply and vice versa. This risk increases the cost of electric generation supply procurement. In Phase II the parties will consider risk mitigation methods including: bandwidths for load variations, release of suppliers' obligations to supply load at the original contract fixed price that is lost due to customer migration to the retail supply market, the pricing structure for load migrating to SOS, and other appropriate methods. See Settlement paragraphs 33, 52 and 70.

³⁴ See paragraphs 35, 54 and 72.

volumetric risk mitigation provision consistent with the guidelines contained in the Settlement is not adopted in Phase II, then the Settlement provision prohibiting minimum stays, exit fees or penalties is void.³⁵

If more than 25% of the total residential load within a utility territory migrates to competitive retail supply, Staff will initiate a process to determine whether the UBP should be altered prospectively by the Commission to include a volumetric risk provision.³⁶ Such a provision will be designed to ensure reliable volumetric risk to customers and to ensure that the utility does not bear the risk of any such provision. Subject to the utilities' customer enrollment rules and tariffs customers may move between Residential SOS and competitive supply without switching restrictions.³⁷

The Settlement also provides for Hourly-Priced Non-Residential Service ("HPS").³⁸ Many of its features are similar to SOS. The rules for HPS will remain the same for at least two years and may only be changed prospectively by the Commission. HPS is subject to the terms of the utilities' tariffs and Commission regulations. The utilities may determine at their discretion the manner in which supply for HPS is obtained.³⁹ The retail tariff price for HPS will consist of the following components: the appropriate PJM hourly integrated real time locational marginal price for energy; PJM capacity charges; FERC-approved transmission and associated charges; an Administrative Charge; applicable taxes; and any other charges and costs directly related to the provision of HPS that may be identified in Phase II and approved by the

³⁵ See paragraphs 34, 53 and 71.

³⁶ See Settlement paragraph 16.

³⁷ See Settlement paragraph 17.

³⁸ See Settlement paragraphs 74 to 82. The Commission notes that HPS is a true default service.

³⁹ If a utility's procurement plan places price or volume risks on the utility and incurs extraordinary incremental costs, the utility will bear such risks and such costs, and will file a compliance plan with the Commission to demonstrate how such risks will be managed.

Commission. The election provisions of paragraph 60 of the Settlement will also apply to HPS. Except as provided in the Settlement and the utilities' customer enrollment rules and tariffs, there will not be any customer migration restrictions.

The HPS Administrative Charge will function very similarly to the other N-R Administrative Charges and it will be between 2.25 mills and 3.0 mills per kWh. The utilities shall retain as return 2.25 mills per kWh. Up to 0.75 mills of the HPS Administrative Charge will be used to reimburse utilities for their actual incremental costs, which will be subject to true-up.

The Settlement also contains Miscellaneous⁴⁰ provisions and Reservations.⁴¹ The Settlement does not apply to Maryland's electric cooperatives, except as stated in paragraph 83, which merely reaffirms their restructuring settlements and the law. The utilities will obtain and pay for independent consultants as part of their incremental costs, who will monitor the procurement of SOS. According to the Settlement, these consultants will be selected by and will work at the direction of the Commission or its Staff.⁴²

The Settlement shall not be regarded as precedent for any future case. The Settling Parties stipulate not to seek judicial review of a Commission order approving the Settlement without modification. The provisions of the Settlement are not severable. Nothing in the Settlement abrogates any existing or future contract for competitive retail electric supply. If the Commission does not approve the Settlement, without modification, it is deemed withdrawn. Further a list of the issues the Settling Parties have

⁴⁰ See Settlement paragraphs 83 to 89.

⁴¹ See Settlement paragraphs 90-97.

⁴² See Settlement paragraph 84(a).

agreed to consider in Phase II is included in Appendix A. This will include a discussion of renewable energy issues.

IV. POSITIONS OF THE PARTIES

A. COMMISSION STAFF

1. Testimony

The Staff submitted the testimony of Calvin L. Timmerman, Director of the Rate Research and Economics Division in support of the Settlement.⁴³ Staff addresses the status of retail electric competition, public interest standards, customer service eligibility and switching rules. Additionally, Staff discusses generation service characteristics, service periods and policy reviews, procurement approaches, the retail pricing mechanism and miscellaneous issues.

According to Mr. Timmerman, “[t]he current status of electric competition in Maryland shows that competitive markets for electric services have not been achieved.”⁴⁴ Staff notes that the percentage of customers enrolled with a supplier has evolved slowly since electric choice began July 1, 2000 as only 3.4% of distribution customers statewide took service from a supplier in October 2002. Staff also notes that the percentage varies significantly by utility and type of customer. Staff asserts that large usage customers are more likely than mass market customers to choose a supplier in the early years of choice programs.⁴⁵ Staff concludes that electric competition in Maryland is clearly still in a transition toward competition. Staff says that while there is reason for optimism, the success of retail competition is by no means inevitable.⁴⁶

⁴³ Docket No. 129.

⁴⁴ Docket No. 129 at 2.

⁴⁵ See Exhibit CLT-2 for enrollment report data. Docket No. 129.

⁴⁶ Docket No. 129 at 5.

Staff asserts that the Settlement comports with the goals of the Electric Act.⁴⁷ It strikes a balance between the creation of customer choice and competition, and the provision of economic benefits for all customers. Furthermore, in Staff's opinion the Settlement fosters competition, provides for service stability, appropriate utility cost recovery, and appropriate pricing.

Staff states that the Settlement provides important customer benefits. Staff notes that all electric customers are eligible for SOS, except for utility special generation contract customers.⁴⁸ HPS is also available for certain larger N-R customers. SOS is subject to the general terms of utility service, such as deposit and termination rules. Staff notes that all customers of the same utility and in the same distribution service customer class will pay the same price for generation service.

According to Staff, the Settlement also minimizes the restrictions on a customer's freedom to choose a supplier, which is consistent with Maryland's gas choice program.⁴⁹ Mr. Timmerman stated that the freedom to switch to or from SOS and competitive supply offerings "is an important provision for the development of electric competition" and will avoid confusion for customers who participate in the gas choice program.⁵⁰

Staff says that generation service under the Settlement serves all the functions and meets all the requirements listed in § 7-510(c)(2). SOS will be available to eligible customers who: choose to remain on SOS; choose to switch from a supplier to the applicable SOS; are unable to arrange for generation service from a supplier; or desire

⁴⁷ Sections 7-501 through 7-518. *See* particularly §§ 7-504 and 7-505(a).

⁴⁸ Docket No. 129 at 7-8.

⁴⁹ Docket No. 129 at 23-24.

⁵⁰ Docket No. 129 at 23.

SOS because a supplier defaults.⁵¹ The services in the proposed Settlement provide an option for eligible customers as well as a default service for customers who lose their service from a supplier for whatever reason. According to Staff, if the electricity market develops for large N-R customers as hoped for, HPS will likely function as a default service that customers can use for a short period of time while they are between periods of competitive supply service.⁵²

According to Mr. Timmerman, the four year Settlement service periods for Residential and Type I SOS “address the more gradual changes in customer awareness and behavior that is generally seen in mass market choice programs.”⁵³ The one-year service period for Type III service is designed to bridge a narrow gap that might exist between frozen rates and a reasonable number of suppliers making competitive offers to large N-R customers.⁵⁴

Staff notes that the Settlement requires annual reports on all aspects of each Settlement service, which will provide the Commission an opportunity to evaluate the development of competition.⁵⁵ After generation procurement and customer participation experience is obtained, major policy reviews will be docketed in time to implement successor services, if necessary.⁵⁶ Staff also notes that the Settlement does not modify the existing utility restructuring agreements and generally does not effect distribution service ratemaking.

⁵¹ Docket No. 129 at 8.

⁵² *Id.* at 9.

⁵³ Docket No. 129 at 11.

⁵⁴ *Id.* at 11. Staff Exhibit CLT-3 provides a summary of the Settlement service periods.

⁵⁵ See Settlement paragraphs 3, 22, 41 and 59.

⁵⁶ Staff notes that Residential SOS for AP customers has a special review provision because the service will not begin until six years from now, when Residential SOS terminates under the AP restructuring settlement. Changes may be approved based on the experience of other utilities.

Staff notes that the Settlement mandates a competitive wholesale procurement mechanism for SOS subject to Commission review and approval. However, Staff says HPS does not have such a requirement because it is probably unworkable given that its function and pricing is different from other services. Staff supports the supply portfolio guidelines, which require a review of the wholesale suppliers' credit worthiness, financial capability and experience because these guidelines should enhance reliability and protect consumers. Furthermore, in Staff's opinion, the Settlement service periods and the multi-year supply contract portfolios will provide price stability for Residential SOS and smaller N-R customers. Conversely, near-term market pricing is more appropriate for the large N-R customers.

Staff also supports the retail pricing mechanism in the Settlement because it is based upon the principle that customers who use the services in the Settlement should pay their full cost. According to Mr. Timmerman, this "simply means that customers taking generation services from a supplier should not subsidize these [SOS] services through their distribution rates and revenue from these [SOS] services should also not subsidize distribution rates."⁵⁷ Staff notes that most wholesale supply related costs should be easily identifiable and that these costs will be directly assigned. Staff says the Administrative Charge is intended to capture all other costs incurred by the utilities to provide SOS, including a reasonable return.⁵⁸ Staff supports the Administrative Adjustment component of the Administrative Charge as a substitute for fully litigating what utility common costs should be distributed and how those costs should be allocated.⁵⁹ As such, Staff concludes

⁵⁷ Docket No. 129 at 17.

⁵⁸ Docket No. 129 at 17-18.

⁵⁹ Docket No. 129 at 19. Exhibit CLT-4 summarizes the administrative charge components for each service.

that the retail pricing mechanism in the Settlement is fair to all customers. Staff also supports the retail pricing mechanism because it should foster competition by allowing suppliers to compete against a full-cost market-priced service provided by utilities.⁶⁰

Staff produced a list of the estimated pre-tax return margins for Residential, Types I, II, III SOS, and HPS based upon the return specified for each service and the overall current weighted average price of generation of 4.82¢/kWh.⁶¹ These estimates produce margins from 3.11% for Residential SOS to 6.22% for Type III SOS, and Staff compared these profit margins to various industry composites. The composite net profit margin for electric utility companies is 4.16%, which is within the range of the various industry composites. Likewise, Staff says the electric industry return margin is similar to the estimated return margins for most of the services in the Settlement. Accordingly, Staff concludes that because utilities get full cost recovery plus a reasonable return under the Settlement, the Settlement is fair for them.⁶²

Finally, Staff concludes that competitive electric markets have not yet been achieved and are still in a period of transition. Consequently, the Settlement provides for reliable and reasonably priced service alternatives, the reasonable treatment of risks, full cost recovery, and serves to foster a competitive market. Therefore, Staff argues that the Settlement appropriately balances the interests of customers, utilities and suppliers, which is demonstrated by its broad-based support. Further, Staff concludes that the Settlement is in the public interest, comports with the Electric Act, and should be accepted by the Commission.

⁶⁰ Mr. Timmerman asserts that this pricing mechanism does not guarantee the development of a competitive electric market.

⁶¹ Docket No. 129. Exhibit CLT-5.

⁶² Docket No. 129 at 22.

2. Staff's Briefs⁶³

Staff asserts that the appropriate standard of review for a proposed settlement is whether it is in the public interest and is supported by substantial record evidence.⁶⁴ Staff notes that the Commission has in previous cases considered the following factors: (1) whether a settlement represents an agreement between adverse parties; (2) whether it avoids lengthy and expensive litigation; (3) economic evidence; and (4) the effect upon customers. Staff says that numerous parties have signed the Settlement, which demonstrates that it is in the public interest.⁶⁵ Staff says the benefit of reducing litigation is obvious since Commission action is constrained by the expiration dates of the existing utility restructuring settlements.⁶⁶ Further, Staff asserts that the Settlement will foster the orderly development of a competitive electricity market as required by § 7-505.⁶⁷

Staff says that the Commission's obligations regarding the continued provision of SOS are found in §§ 7-510(c)-(e). Staff asserts:

Essentially, these sections give the Commission the authority to determine within certain limitations whether SOS should continue to be provided to customers, which customers should have an SOS option, who will provide SOS if it continues to be offered, and how the service provider will be selected.⁶⁸

Staff concludes that the Settlement comports with these statutory requirements.

⁶³ Staff's Initial Brief is Docket No. 159. Staff's Reply Brief is Docket No. 166.

⁶⁴ Docket No. 159 at 7-9. Staff also notes that the Commission has approved a Stipulation where the rates therein were found to be just and reasonable. *Re Potomac Edison Power Company* 88 Md PSC 243, 244 (1997). *Id.* at 7.

⁶⁵ Only WGES opposes the Settlement.

⁶⁶ Docket No. 159 at 10. Rate caps end when the electric utility restructuring settlements and Delmarva's Bridge Settlement expire.

⁶⁷ *Id.* at 10.

⁶⁸ Docket No. 159 at 2.

Staff rejects the objections of WGES to the Settlement.⁶⁹ While WGES contends that multi-year portfolio pricing poses potential problems for the competitive market, Staff asserts that this procurement methodology provides benefits to wholesale suppliers and customers.⁷⁰ According to Staff:

“[t]he use of longer-term contracts and the proportion of the portfolio that consists of such contracts reflects the [Settling] Parties’ judgment with respect to the need for market pricing balanced against the need for price stability. Generally speaking, greater use of long term contracts will result in a more stable price that is much less likely to reflect spot market prices at any given moment.”⁷¹

Staff says that retail suppliers can protect themselves from any alleged disruptive effect of multi-year portfolio pricing by engaging in their own longer-term supply procurement. According to Staff, any potential detriment is also minimized by the limit on the amount of the total supply portfolio that may be bid out for multi-year terms under the Settlement. Staff argues that WGES has failed to support its claim that multi-year procurement will be detrimental to retail suppliers. Finally, Staff concludes that the Settlement portfolio procurement rules strike a reasonable balance among competing interests, which is further supported by the fact that no other retailer supports WGES’s argument.

In Staff’s opinion, WGES’s assertion that “critical policy issues” have been deferred to Phase II is unfounded. According to Staff, the policy decisions regarding the future provision of SOS have largely been determined in the Settlement and Phase II will resolve details.⁷² Staff says the need to resolve these details in a Phase II proceeding was

⁶⁹ Docket No. 159 at 16-23.

⁷⁰ Docket No. 159 at 18-20.

⁷¹ Docket No. 159, footnote 2 on page 6.

⁷² Docket No. 159 at 20.

largely dictated by practical necessity given the time constraints faced by the Commission and the parties.

Staff asserts that only WGES has chosen to ask the Commission to impose by order what WGES could not obtain by negotiation. Staff believes that it would be a mistake for the Commission to alter the Settlement to favor WGES.⁷³ According to Staff, all three of WGES's alternatives to multi-year supply portfolios have the effect of making SOS more expensive or less palatable to customers. Staff concludes that WGES's Supply Assignment Proposal does not seem practical, may contain some inherent unfairness, and is essentially a free call option. Furthermore, there are likely to be considerable problems administering this proposal. Staff says that WGES's Modified AC Proposal effectively re-imposes the price volatility that multi-year procurement is meant to mitigate. Furthermore, no other party supports any of WGES's proposals.

WGES argues that the Settlement restricts the Commission's freedom of action. Staff acknowledges that under ordinary circumstances the Settlement does restrict somewhat the Commission's freedom of action. However, Staff asserts that the Commission retains the authority to act. Should the Commission conclude that the necessity for such action is in the public interest and outweighs maintaining the integrity of the Settlement, Staff testified that the Commission is required to act in the public interest.⁷⁴ Staff concludes that Commission approval of the Settlement cannot supersede its general statutory obligations, particularly those under § 2-113 or § 7-505.

Staff argues that the Commission will have an extensive role in the SOS process. The Commission will be required to act upon the Settlement and the Phase II process;

⁷³ Docket No. 159 at 20-23.

⁷⁴ Docket No. 159 at 17, citing Tr. at 584-6.

approve regulations; review and approve MBPs and UBPs; review bid process compliance; review utility procurement risks for HPS; verify and audit utility costs for non-residential SOS; and conduct major policy reviews. Consultants will be employed to assist the Commission in this process. Staff asserts that overall the Settlement represents a reasonable balance between effective Commission oversight and excessive intervention.

In rebuttal to WGES, Staff concurs with BGE that the prudent and verifiable costs requirement and the reasonable return requirement of § 7-510(c) are invoked only if the Commission makes a finding that the electricity supply market is not competitive and then *orders* the utilities to continue providing SOS.⁷⁵ Nonetheless, Staff says that the Settlement meets these requirements and provides for the Commission to make its annual findings on the state of competition. According to Staff, the Commission will have ample information to monitor competition and will be able to act if required. Staff states that it would not have signed the Settlement if it did not meet these requirements.

According to Staff, approval of the Settlement would represent the Commission's agreement with the Settling Parties that the Settlement represents the best means for the Commission to fulfill its statutory obligations. The Settlement provides for an orderly review process to plan for the future and make alterations upon completion of the Settlement SOS programs. Staff concludes that the Settlement provides market stability and predictability.

In response to a Commission inquiry, Staff notes that the Settlement requires the parties to submit implementing regulations after Phase II to the Commission for its

⁷⁵ Docket No. 159 at 24.

approval.⁷⁶ These proposed regulations will be subject to Commission revision. Staff asserts that issuing regulations is the most appropriate method for implementing the Settlement.

The Commission also asked the parties to address whether it is appropriate for large N-R customers to have SOS in the absence of a Settlement. Staff concludes that while § 7-510(c) is ambiguous, the logical conclusion is that the Legislature expected some form of SOS would be available to these customers. Staff notes that most market participants agree that a utility-provided SOS is necessary today. Therefore, it is appropriate to extend SOS offers to large customers, including the State of Maryland itself. Staff also argues that the statute does not prohibit utilities from voluntarily providing SOS.

B. OPC

1. Testimony

The Office of People's Counsel submitted the testimony of Jonathan F. Wallach, Vice President of Resource Insight, Inc. in support of the Settlement.⁷⁷ OPC identifies five major benefits of the Settlement for residential customers. First, it extends each utility's obligation to provide SOS to residential customers for four additional years beyond the utility's current restructuring rate cap period. Second, the Settlement establishes a process for Commission review and extension of the Residential SOS periods. Third, the provision for a blended procurement portfolio reduces year to year volatility in the retail price of SOS. Fourth, the Settlement provides for a fixed charge for utility incremental costs and return associated with the provision of Residential SOS.

⁷⁶ See Settlement paragraphs 6, 25, 44 and 62.

⁷⁷ His direct testimony is Docket No. 124 and his rebuttal testimony is Docket No. 140.

Finally, it also provides various measures for reducing potential entry barriers for competitive retail suppliers.

OPC indicates that only 3% of residential customers statewide representing only 4% of residential load, are taking service from a competitive supplier.⁷⁸ OPC concludes that since the residential electric market is not competitive, it is in the public interest to extend SOS and the Commission should so find. According to OPC, only two suppliers are currently marketing to residential consumers. OPC concludes that this is “compelling evidence” for the Commission to extend the provision of SOS.

Further, OPC argues that an extension of SOS provides residential customers with a “measure of certainty” and ensures that SOS protections will not be prematurely eliminated. In addition, these protections will not be eliminated at the end of the Residential SOS Periods without a PSC finding that the residential market is competitive.

Since Residential SOS will be procured using a portfolio of one, two and three-year contracts, OPC believes that these mixed duration contracts will provide a partial hedge against the risk of future price volatility by locking in the price to supply a portion of the SOS requirement in future years.⁷⁹ Also, residential customers may benefit from lower bid prices reflecting the value to suppliers of the reduction in revenue volatility associated with multi-year contracts.⁸⁰ OPC notes that retail suppliers apparently view the percentage targets in the Settlement as reasonable because almost all parties have signed the Settlement.

⁷⁸ These figures were as of the date the testimony was filed.

⁷⁹ See Docket No. 124 at p. 8-9 for an example.

⁸⁰ See Docket No. 124 at p. 10 for an example.

OPC says that residential customers benefit from the proposed treatment of incremental costs and return because the Settlement provides a measure of price certainty while protecting consumers from the risk of unanticipated cost increases.⁸¹ Also, a fixed rate provides a stable price for retailers to compete against, allowing consumers to benefit from a more robust competitive market. Further, OPC notes that the Administrative Adjustment component is designed to assist retail suppliers because it raises the apparent price of SOS, thus making it easier for retailers to compete. In addition, revenues associated with the Administrative Adjustment will be returned to all residential distribution customers, regardless of whether they take SOS or are served by a competitive supplier.⁸²

OPC states that the Settlement provides additional measures to mitigate entry barriers. Residential customers may migrate between SOS and competitive supply without restriction, making competitive options more attractive.⁸³ The Settlement also provides that if more than 25% of residential customers migrate to competitive retail supply, there is a mechanism to address volumetric risk.

2. Rebuttal Testimony of OPC⁸⁴

OPC rejects the objections raised by WGES regarding Residential SOS because they are without merit. Despite WGES's claims to the contrary, OPC states that the Settlement does not preclude the Commission from reviewing and making findings

⁸¹ See Docket No. 124 at p. 15-17 for a discussion of how incremental costs could change pursuant to paragraph 12(d) of the Settlement.

⁸² The Commission notes that the parties in this case have stressed that the Administrative Adjustment is designed to have a neutral impact. Upon customers, regardless of whether they shop for electric supply or choose SOS.

⁸³ OPC notes in its Initial Brief that this allows customers to react to new developments in the retail market without a fear that they will be penalized if they need to return to SOS. Docket No. 151.

⁸⁴ Docket No. 140. The testimony was filed by Mr. Wallach.

annually regarding the retail electric market. Furthermore, the Commission has full discretion to apply such findings. While the Settlement provides for major policy reviews that will be applied after the SOS programs expire, this will not impede the Commission's annual examinations of the market. Similar to the Commission-approved restructuring settlements, OPC concludes that establishing SOS terms in advance for extended periods provides certainty to consumers, utilities and suppliers regarding the role of SOS.

OPC further rejects WGES's claim that the Settlement is deficient because it does not resolve policies regarding minimum stays, volumetric risk, pricing anomalies and rate design. OPC counters that the Settlement clearly establishes the policies but defers the implementation procedures to Phase II. Minimum stays are prohibited, unless it can be demonstrated that undue harm will result from unrestrained movement. Wholesale suppliers will assume all volumetric risks for Residential SOS, unless 25% of residential load migrates to competitive retailers, in which case volumetric risk measures will be considered. The Model Bid Plan will include procedures to determine whether bids create significant pricing anomalies and provide a process to replace such bids. Therefore, bids will be rejected for specified reasons and well in advance of filing the final portfolio with the Commission. OPC says the Settlement also provides that bids will be solicited, and retail prices structured, in a manner that conforms to the rate classes to which those bids and prices will apply.

OPC asserts that portfolio targets in the Settlement represent a balance of diverse interests, including those of consumers for price stability and those of retail suppliers for nearer-term pricing, which is consistent with the Electric Act. Furthermore, OPC says

that price hedging through forward contracting is a sound and prudent practice. OPC suggests that limiting Residential SOS supply to one-year contracts would increase price volatility, possibly raising SOS prices, subsidizing those firms that take a speculative position and leave such risks unhedged. Furthermore, OPC notes that wholesale suppliers face the same form of volumetric risk as retail suppliers. Consequently, wholesale suppliers are likely to price their bids above the forward prices that prevail at the time of the bid, in order to reflect such risks. OPC asserts that the addition of this risk premium to wholesale bid prices reduces the likelihood that blended SOS prices will be below current forward market prices.

OPC rejects WGES's Supply Assignment Proposal because it inappropriately subsidizes retail suppliers by providing them a no-cost option to purchase power at bid prices whenever market prices exceed bid prices. OPC says that this mechanism, which would require consumers to bear the cost of this option, has never been implemented in the electricity market. OPC also rejects WGES's Modified AC Proposal because it would effectively reintroduce the price risk associated with single-year procurement.⁸⁵

2. Briefs of OPC⁸⁶

OPC says the Settlement provides numerous benefits for residential consumers, many of which may not have been achieved through litigation. These benefits include: reasonable initial program durations; continued availability of a safety net; a multi-year supply portfolio; and no minimum stays.⁸⁷

⁸⁵ OPC also refuted WGES's concerns regarding the treatment of SOS-related costs in the Administrative Charge. *See* Docket No. 140 at 9-10.

⁸⁶ OPC's Initial Brief is Docket No. 151. OPC's Reply Brief is Docket No. 168.

⁸⁷ Docket No. 151 at 21, citing BGE witness Harbaugh's testimony at Tr. at 1073-1074.

OPC argues that having the same duration Residential SOS periods in the Settlement for all four utilities is fair for consumers and in the public interest. Due to the staggered nature of the utility restructuring cases, OPC says that customers of one utility would be denied the same protection afforded to other customers if the Settlement SOS periods ended on the same date.⁸⁸ OPC also states that it would have preferred even longer term contracts of five years or more in duration in the SOS portfolio than the contract terms agreed to in the Settlement.⁸⁹

OPC reasserts that WGES's market protection mechanisms are flawed because they will simply raise supply costs for consumers. OPC argues that WGES's concern that the Administrative Charge will not collect all administrative costs is misplaced because the components of the shopping credit are irrelevant; customers will compare the total generation SOS retail price to competitive offers. For these reasons, OPC concludes that the Modified AC Proposal could adversely influence switching decisions by consumers.

OPC says the Settlement is not inconsistent with the requirement that SOS be based upon "market prices." OPC notes that the statute does not define a market price. Further, the phrase can not be interpreted in a vacuum. OPC says that realistically the PSC cannot be expected to maintain continuous real time pricing parity between SOS rates and supply market conditions. While residential incremental costs will be included at a negotiated 0.5 mill/kWh, OPC emphasizes that this represents what people believe

⁸⁸ Docket No. 151 at 23, citing Staff witness Timmerman at Tr. at 700.

⁸⁹ Docket No. 168 at 4. *See* footnote 10.

these costs are for this SOS component.⁹⁰ Consequently the Commission can find that this is a prudent and verifiable quantity because the Settling Parties have asserted this is a reasonable figure based upon negotiation.⁹¹ OPC concludes that the Residential SOS process described in the Settlement results in a market price. Furthermore, the record shows that the residential return component is reasonable, which is uncontroverted.⁹²

OPC opines that the four-year Residential SOS program is consistent with the orderly transition to competition envisioned in the Electric Act and comports with the SOS requirements of § 7-510(c)(3). In order to extend the utilities' SOS obligations, the Commission must find that "the electricity supply market is not competitive" before the obligations cease on July 1, 2003. OPC asserts that the PSC must act before this date to preserve the Commission's option to extend SOS. OPC emphasizes that if SOS continues after adoption of the Settlement, *it will be no more "voluntary" than it has been before the Settlement*. OPC says the utilities' obligations to provide SOS do not cease upon adoption of the Settlement, they cease when the Commission so directs, after finding the market competitive.⁹³

OPC argues that implementation of the order in this case must be through regulations.⁹⁴ OPC says that this case shares characteristics of generic and quasi-judicial

⁹⁰ Docket No. 151 at 29, citing MEA witness Kahal at Tr. at 817. According to OPC, based upon approximately 13 million megawatt hours of residential service, BGE will receive about \$6 million annually, for incremental costs, if no residential customers switch to competitive suppliers.

⁹¹ Docket No. 151 at 30.

⁹² See Staff's Direct Testimony, Docket No. 129, particularly Exhibit CLT-5.

⁹³ Attachment A to OPC's brief outlines the roles and powers of the Commission in relation to the Settlement.

⁹⁴ Docket No. 151 at 41-45. OPC cites *Delmarva Power & Light Co. v. PSC*, 370 Md. 1, 34 (2002) ("Delmarva Case") and other cases, page 41.

proceedings.⁹⁵ Similar to generic cases, this case involves all of the electric utilities and the record contains numerous filed “comments”. OPC says this case is most accurately described as an inquiry into a general matter in furtherance of the Commission’s policy-setting function. On balance, OPC concludes that this is a generic proceeding, which requires implementing regulations. However, OPC supports Staff’s recommendation to issue one set of regulations after Phase II.

OPC concludes the Settlement is in the public interest because: it provides a reasonable framework for the extension of SOS; it is fair to consumers, utilities, and suppliers; and it comports with the PUC Law. OPC requests Commission approval of the Settlement, including a finding that the residential market is not competitive.

C. MEA⁹⁶

1. Testimony

MEA submitted the testimony of Matthew I. Kahal, an independent consultant, in support of the Settlement.⁹⁷ MEA notes that the Commission directed the parties to file a Settlement in this case or to file their own SOS proposals.⁹⁸ MEA says because the Settling Parties have differing perspectives and adverse interests, the Settlement reflects compromises on many issues.⁹⁹

MEA’s concerns in this proceeding include: (1) a role for renewable resources in post-transition SOS; (2) a mechanism to ensure that utilities do not “double recover” SOS

⁹⁵ Applying the standard established in the Delmarva Case, quasi-judicial proceedings may be implemented by an Order. In contrast, orders resulting from quasi-legislative proceedings having generic effect require regulations.

⁹⁶ MIG adopts and co-sponsors in relevant part the pre-filed direct testimony of Mr. Kahal. *See* Docket No. 128.

⁹⁷ Docket No. 125. MEA represents State agencies as consumers of utility services.

⁹⁸ Docket No. 125 at 3.

⁹⁹ *Id.* at 2.

costs from customers; (3) flexibility in the development of wholesale power procurement protocols since future market conditions are unknown; (4) a preference for a limit on the duration of SOS contracts for large customers to help ensure that retail SOS rates do not depart from market prices¹⁰⁰; and (5) a possible ongoing need for utility supplied SOS for larger customers.¹⁰¹ MEA concludes that the Settlement satisfies these concerns.¹⁰²

Mr. Kahal states that the development, of renewable resource program options “will have the beneficial effect of diversifying electricity supply and reducing dependence upon natural gas.”¹⁰³ MEA asserts that research conducted by PPRP indicates renewable resource programs are a relatively cost effective means of reducing air emissions.¹⁰⁴ MEA notes that due to time constraints, renewable resource issues will be discussed in Phase II.

MEA observes that the various customer Administrative Charges are negotiated values, which reflect a range of practical and policy considerations. Retail suppliers want it high enough so that it reasonably reflects their own administrative costs; if it is too low they fear they cannot compete with utility provided SOS. Conversely, some advocate that the Administrative Charge should be bare bones and only include the utility’s true incremental costs. Since a significant portion of the Administrative Charge will be refunded to customers as a distribution credit, MEA concludes that this crediting mechanism addresses most of these competing concerns. It produces a large Administrative Charge and hence shopping credit, which is responsive to the needs of

¹⁰⁰ Type II and Type III SOS will be based on one-year wholesale contracts. Settlement paragraphs 45(a) and 63(a) respectively.

¹⁰¹ Docket No. 125 at 3-4.

¹⁰² *Id.* at 4.

¹⁰³ *Id.* at 14.

¹⁰⁴ *Id.* at 14.

suppliers. Meanwhile, since the credit will be refunded to all customers, it is competitively neutral.¹⁰⁵ MEA also notes that the Administrative Charge avoids a protracted rate investigation to identify and allocate fully distributed costs. Mr. Kahal concludes “[A]bove all, the crediting mechanism (if properly carried out) will ensure no double recovery of costs.”¹⁰⁶

MEA asserts there will always be a need for an assured backstop supply arrangement for customers who do not wish to shop, cannot obtain competitive supply, or lose their supplier due to default. MEA emphasizes that reliability of supply for all retail customers will always be a paramount concern.

2. MEA’s Briefs¹⁰⁷

MEA argues that retail competition in Maryland is developing slowly, and not in every part of the State.¹⁰⁸ Therefore, the issue in this case is the need for an appropriate means of providing SOS after the utility restructuring settlements expire.

MEA says the Settlement is consistent with the Electric Act. SOS will be market-based and will effectively utilize the competitive wholesale market. Because wholesale suppliers will bear the market risks and rewards, MEA believes the Settlement will fully protect the financial integrity of the utilities.¹⁰⁹ MEA says the phasing of the SOS process is indicative of the careful approach adopted by the Settling Parties and allows for considerable Commission supervision.¹¹⁰

¹⁰⁵ Docket No. 125 at 11. *See* page 12 for an example of how the credit works.

¹⁰⁶ *Id.* at 11.

¹⁰⁷ MEA’s Initial Brief is Docket No. 156. MEA’s Reply Brief is Docket No. 171.

¹⁰⁸ Docket No. 156 at 4.

¹⁰⁹ *Id.* at 5-6.

¹¹⁰ *Id.* at 5.

MEA says the Settlement addresses the Commission's oversight authority. It requires annual reporting so that the Commission can timely monitor SOS and retail competition.¹¹¹ After year one, there will be a major policy review, which will be used to help structure future SOS programs.¹¹² Furthermore, all SOS rates will be implemented through utility tariff filings, subject to Commission review and approval.¹¹³ The Commission will supervise the competitive power acquisition process to ensure that it is properly followed.¹¹⁴ This process effectively creates a pre-approval arrangement which MEA says is both a necessary and appropriate part of this framework. MEA concludes that the Settlement provides sufficient certainty to stakeholders, with the necessary flexibility and regulatory oversight by the Commission.

Like the other Settling Parties, MEA rejects WGES's criticism of the four-year terms for Residential and Type I SOS. MEA says that the Settlement required substantial lead time and regulatory resources to develop the SOS framework. Therefore, common sense dictates the use of reasonable program periods. MEA notes that the restructuring settlements last up to eight years and have served Marylanders well.

MEA says that while WGES prefers SOS based upon retail bidding, WGES has not explained why retail bidding is superior to the wholesale bidding process adopted in the Settlement. According to MEA, the record demonstrates that the retail market is largely underdeveloped in Maryland and less than fully competitive.¹¹⁵ MEA concludes "[w]hile retail bidding could produce a market price of some kind, it follows that this

¹¹¹ See Settlement paragraphs 3, 22 and 41.

¹¹² See Settlement paragraphs 4, 23 and 42.

¹¹³ See Settlement paragraph 89.

¹¹⁴ See Settlement paragraph 84.

¹¹⁵ Docket No. 171 at 6.

price would not be one that is reflective of a robust, competitive market.”¹¹⁶ MEA asserts there is no evidence from other retail access states that retail bidding is workable and notes Pennsylvania’s experience has met with failure.¹¹⁷

MEA says that WGES’s objection to multi-year contracts is unreasonable. Promoting competition must be balanced with the need for rate stability for small customers. Additionally, switching by small SOS customers in and out of the retail market will be very gradual. MEA says WGES also fails to acknowledge that the Settlement places substantial weight (minimum 50%) on the use of one-year contracts. Consequently, MEA concludes that blended SOS contracts will not significantly impair the development of retail competition.

MEA also rejects as speculative WGES’s argument that the Administrative Charge will cause a cross-subsidy from shopping customers to SOS customers. MEA notes that excess revenues will be refunded back to *all* customers on a competitively neutral basis. Therefore, MEA concludes that it is SOS customers who will “subsidize” shopping customers. Moreover, any revenue transfers are likely to be moderate. MEA also argues that WGES focuses inappropriately upon the incremental cost component when the only factor of importance to retail suppliers is the total Administrative Charge. In MEA’s opinion, the robust Administrative Charges, when added to wholesale costs, are more than adequate to foster retail competition.¹¹⁸

According to MEA, the Settlement provision for large customer Type III SOS is consistent with the Electric Act, which does not prohibit utilities from volunteering to

¹¹⁶ Docket No. 171 at 6.

¹¹⁷ Docket No. 156 at 11, citing Tr. at 768 and 804-05.

¹¹⁸ Docket No. 156 at 13. *See also* Tr. at 774.

provide SOS through a settlement.¹¹⁹ Moreover, Type III SOS is limited in scope and lasts only one year. Therefore, inclusion of Type III SOS in the Settlement is entirely appropriate. Finally, MEA notes that no party, including WGES, opposes Type III SOS.

MEA concludes that the Settlement establishes an appropriate framework for providing post-restructuring SOS for retail customers in Maryland. Further, the Settlement will promote the policy goals of the Electric Act. MEA believes the Settlement is in the public interest and urges its approval by the Commission.

D. BGE

1. Testimony

BGE submitted the testimony of L. Wayne Harbaugh, Manager of the Pricing and Regulatory Service Department in support of the Settlement.¹²⁰ BGE asserts that the Settlement meets the five goals set forth in the Electric Act, which includes the orderly transition to a competitive market while ensuring a reliable supply of electricity for all customers. Further, the Settlement is fair to all constituencies and comports with environmental regulations. Finally, by ensuring power to all consumers without disrupting the evolution of retail choice in Maryland, the Settlement provides economic benefits to all customer classes.

BGE also commented upon the benefits provided by the Settlement.¹²¹ The procurement and pricing procedures are intended to protect customers from sudden sharp fluctuations in wholesale market power prices. While retail competition is working well for large N-R customers, the parties agreed to an additional (Type III) SOS year to

¹¹⁹ *Id.* at 13.

¹²⁰ Docket No. 135.

¹²¹ Docket No. 135 at 3-9.

protect them from any unexpected reverses in market development. Large customers will have available HPS, which is similar to BGE's existing Default Service tariff. BGE notes it will need to install interval meters for those customers taking service under Schedule GL who do not already have an interval meter. Mr. Harbaugh asserts that "lowering the threshold for interval metering will facilitate competition and demand response opportunities."¹²²

According to BGE, the annual review of competition required by § 7-510(c)(3) only seems to apply if the Commission were going to *require* a utility to provide SOS to residential and small commercial customers after the transition obligations expire. BGE asserts that since the utilities have entered into a voluntary Settlement to provide SOS to customers, the PSC does not have to require the utilities to provide SOS and annual reviews are also not required;¹²³ however, the Commission is still free to conduct any investigation that is appropriate. In fact, BGE says the Settlement facilitates such reviews because the utilities will provide annual reports to the Commission on the services offered under the Settlement.

BGE notes in Order No. 77806 the Commission ruled that SOS supply may be obtained through a competitive process for wholesale contracts, which is the approach adopted in the Settlement. To promote SOS price stability, mixed duration contracts will be used, except for Type II and Type III SOS, which use only one year supply contracts. BGE says targets were established for the portfolio mix to prevent SOS prices from diverging from current market prices, which could disrupt Maryland's retail electric

¹²² Docket No. 135 at 9.

¹²³ BGE asserts that this is consistent with the utility restructuring agreements, which extend beyond the mandatory SOS periods provided by the PUC Law.

market development. Volumetric risk provisions are also included as a precautionary measure to reduce risk premiums contained in bid prices. The parties agree that risks such as bid failures, wholesale price spikes or supplier defaults will *not* be borne by the utilities in order to protect their financial integrity. These safeguards were a critical consideration for the utilities in order to accept the return levels in the Settlement.

The Administrative Charge was a heavily-negotiated issue representing compromises by the various parties, which leads Mr. Harbaugh to conclude that the “overall outcome is clearly in the range of reasonable results.”¹²⁴ Mr. Harbaugh argues that the use of incremental costs in the Administrative Charge “ensures that there is no ‘double recovery’ of costs, and obviates any immediate need to determine whether there is any justification for reallocating costs to SOS that are already in distribution rates.”¹²⁵ Furthermore, BGE says using the incremental cost methodology made it easier to establish caps on Administrative Charge components where desired.

BGE says under the Settlement the utilities have voluntarily agreed to procure the power necessary for SOS. The Settlement SOS commitment represents an obligation extending over four years, that is potentially in the billions of dollars. BGE asserts financial markets will insist that these obligations require the recovery of an appropriate return. BGE concludes the Settlement adopts reasonable returns, even though the utilities initially contemplated higher levels.¹²⁶

According to Mr. Harbaugh, the Administrative Adjustment was the “key to the compromises” that made a settlement possible in this case. The Administrative

¹²⁴ Docket No. 135 at 11. *See* also pages 11-14.

¹²⁵ *Id.* at 11.

¹²⁶ Docket No. 135 at 12.

Adjustment, which provides for the deduction for uncollectibles, N-R incremental costs and other calculations is beneficial because it gives customers a “predictable price” and allows for the “inevitable fluctuation of actual costs.” It also protects the developing retail market by “simulating supplier costs” while keeping overall prices to customers at a reasonable level. Since any balance is returned to all distribution customers, “the Settlement benefits *all* customer classes.”¹²⁷ BGE concludes that the Settlement continues to build upon the step-by-step transition approach that has served Maryland’s electric consumers well.

2. BGE’s Briefs¹²⁸

During the hearings the Commission inquired whether the Settlement must comply with § 7-510(c)(3)(ii). BGE says no. Section 7-510(c)(3) states “any obligation of an electric company to provide standard offer service shall cease on July 1, 2003,” with two exceptions. BGE argues that these exceptions are not triggered by the Settlement because the utilities are *voluntarily* extending SOS. Therefore, the Commission does not need to conduct the annual review required by § 7-510(c)(3), nor does the Commission have to make findings about whether the utilities are allowed to recover all of their verifiable, prudently incurred costs and a reasonable return. However, BGE acknowledges that the Settlement has in no way nullified § 7-510(c)(3).

According to BGE, the Settlement provides protections that exceed the requirements of § 7-510(c)(3). SOS is extended to all customers and the Settlement provides certainty and predictability beyond the one-year period carved out in the statute. The four-year SOS periods for mass market customers will provide an adequate time

¹²⁷ Docket No. 135 at 13-14.

¹²⁸ BGE’s Initial Brief is Docket No. 155. BGE’s Reply Brief is Docket No. 172.

frame to analyze the transition process and avoid the mistakes created by short deadlines in other jurisdictions.¹²⁹ BGE concludes that the Settlement does no more, as a legal matter, than the Commission-approved restructuring settlements have already accomplished.

BGE also asserts that the Settlement facilitates an orderly transition process by detailing the Commission's role in the provision of Settlement services, while avoiding unreasonable burdens upon the Commission.¹³⁰ In BGE's opinion, the Settlement provides four major roles for the Commission: (1) the Commission will ensure that the mechanism used to obtain wholesale power will produce prudent outcomes; (2) the Commission will monitor compliance; (3) the Commission will ensure that incremental costs are verifiable and prudent; and (4) Commission approval is required for any proposed changes to the Settlement. According to BGE, in Phase II of this proceeding the Commission will have the opportunity to review the MBPs and evaluation criteria for each type of Settlement service, and the UBPs and form contracts.¹³¹ Consequently, BGE argues if the process works as envisioned, the Commission will be able to verify that the process will produce prudent power purchases.¹³² Further, BGE claims that because these reviews only need to be completed once, prior to the implementation of the procurement process, "the burdens on the Commission are minimized, and the need to hold bids open for long post-bid review is eliminated."¹³³ BGE opines that this process "should be workable" because the Commission will have the services of an expert

¹²⁹ Docket No. 155, citing Staff testimony at Tr. 574-576, 611-613, 701.

¹³⁰ Docket No. 155 at 8-11. *See also* Settlement paragraphs 9, 28, 47 and 65.

¹³¹ Docket No. 155 at 9.

¹³² *Id.* at 9.

¹³³ *Id.* at 9-10. BGE also asserts that the two-day bid review period in the Settlement is necessary to avoid astronomical bid premiums. *Id.* at 10.

consultant, and “[a]ll the Commission will need to do in those two days, therefore, is act on its consultant’s report.”¹³⁴ BGE concludes that “the Commission will have full approval over the crafting of the power acquisition process, as well as its traditional watchdog role on tariff compliance and cost filings.”¹³⁵

Finally, BGE notes that the Commission’s Staff will be responsible for checking the accuracy of the utilities’ incremental cost filings.¹³⁶ Therefore, BGE says “the Settlement, taken in conjunction with all the other regulatory tools already at the Commission’s disposal, provides [the] means for dealing with...future contingencies.”¹³⁷

Since the Commission will monitor power procurement, BGE notes it can verify compliance with environmental rules. In Phase II the parties will discuss renewable or “green” power alternatives as well as an Experimental Demand Response Service.

BGE emphasizes the Settlement is fair to, and supported by, all constituencies because it provides valuable benefits to each group. Utilities and their shareholders benefit from the certainty of knowing their obligations and will receive a reasonable return. Municipal and cooperative utilities continue to implement their restructuring Settlements but may “opt in” to the system outlined in the Settlement. BGE says Type III SOS is a benefit to large customers, which could only be obtained through the Settlement. BGE emphasizes retail suppliers are “big winners.” They will have a stable period of known market rules and prices to compete against and an absence of switching rules designed to further promote choice. There is a ban on utility promotion of Settlement services. According to BGE, SOS will include “robust” administrative charges that

¹³⁴ Docket No. 155 at 10, citing Tr. at 995-996.

¹³⁵ *Id.* at 17.

¹³⁶ *Id.* at 17.

¹³⁷ Docket No. 155 at 17-18.

approximate retailers' costs, thereby promoting retail competition.¹³⁸ BGE says the Settlement favors retail competition, which is why all but one supplier signed it.

BGE contends that the Commission may adopt the Settlement by issuing an order and that implementing regulations are not required. BGE notes that the Settlement applies only to the service territories of the four investor-owned electric utilities, who have all signed the Settlement. Furthermore, the Commission conducted evidentiary hearings on the Settlement consistent with existing law.¹³⁹

BGE concludes every party who signed the Settlement did so because the package contains something for them. The Settlement, taken in conjunction with the PSC's other regulatory tools provides the Commission a means for dealing with future contingencies. The Settlement is in the public interest and supported by substantial evidence. Accordingly, BGE urges the Commission to approve the Settlement.

E. Pepco/Delmarva

1. Testimony

Pepco and Delmarva (jointly "PHI") sponsored the testimony of J. Mack Wathen, Vice President, Planning, Finance and Regulation for Conectiv Power Delivery ("CPD").¹⁴⁰ PHI states that the Settlement's widespread support from all industry segments indicates that it represents a carefully balanced set of compromises that overall is in the public interest. According to Mr. Wathen, Residential SOS will be available for four years and "[p]rice volatility will be smoothed over this four-year period through the use of a portfolio of one-year, two-year and three-year contracts."¹⁴¹ Price stability is

¹³⁸ Docket No. 155 at 16. MEA characterized the Administrative Charges as "robust". Tr. at 774.

¹³⁹ See the *Delmarva Case*, 370 MD 1, 34 (2002).

¹⁴⁰ Docket No. 134. Pepco and Delmarva are both part of Pepco Holdings, Inc. CPD is an affiliate.

¹⁴¹ Docket No. 134 at 4-5.

also enhanced for Residential SOS by fixing the incremental cost rate component, which is subject to change only under specified and unlikely circumstances. Generally, SOS for N-R customers will follow specific utility rate classifications. However, Delmarva will differentiate SOS among rate classes where appropriate. According to PHI, although prices under HPS may be highly volatile from hour to hour, the service is not necessarily high priced overall because the price during many hours will be very low. PHI concludes that over a longer period customers might benefit from HPS.

PHI states, while the risk of volume volatility will be assumed by wholesale suppliers, the amount of risk assumed is calibrated, is different between residential and N-R customers, and will be more precisely defined in Phase II. PHI argues that retail suppliers benefit under the Settlement because SOS will be offered without restrictions on retailers marketing to SOS customers. Furthermore, SOS prices will be based upon competitive wholesale bids and include an Administrative Charge that should promote competition without harming customers.

PHI supports the Settlement because it allows the company to recover its incremental costs and earn a reasonable return for the services it provides. PHI says that the investment community would be critical if it assumed these responsibilities without adequate compensation. Furthermore, because the level of return was negotiated rather than derived from a mathematical formula, PHI believes that it reflects a fair outcome for each customer group. PHI says the return also bears a relationship to the perceived increase in risk of providing a supply service to larger customers.

PHI notes that the Settlement has established the basic elements of the SOS bidding process. Commercially biddable load blocks will be used to promote diversity of

supply and reliable service. PHI emphasizes that it is critically important for the bidding process to be fully developed and approved by the Commission in advance of the actual bidding, because it will be too late to do so after bids are received. According to Mr. Wathen, the Settlement provides that the Commission will have to act within two business days upon wholesale bids because “any period longer than that would require a significant risk premium to be attached to reflect the potential for market price moves during the lag.”¹⁴² PHI concludes that the adoption of a wholesale bidding process in the Settlement is less difficult than a retail process and is consistent with statutory requirements.

PHI concludes that the Settlement will provide a reliable source of supply based on wholesale market prices, while enhancing customer choice. PHI urges the Commission to approve the Settlement.

2. Briefs of Pepco/Delmarva¹⁴³

PHI states that the Settlement is in the public interest,¹⁴⁴ comports with the restructuring goals of the Electric Act,¹⁴⁵ and complies with the just and reasonable rates standard¹⁴⁶ and the reasonable return standard for utilities.¹⁴⁷ Furthermore, there has not been any testimony that the Settlement will have an adverse impact on the environment and in fact the parties have agreed to discuss renewable resource offerings in Phase II.¹⁴⁸ PHI notes that a settlement drafted by diverse, and often adverse parties is entitled to a

¹⁴² Docket No. 134 at 16.

¹⁴³ Their Initial Brief is Docket No. 150. PHI’s Reply Brief is Docket No. 167.

¹⁴⁴ Docket No. 150 at 2-9. *See* § 2-113.

¹⁴⁵ Section 7-505(a).

¹⁴⁶ Section 4-102(b).

¹⁴⁷ Section 4-101.

¹⁴⁸ Docket No. 150 at 5-6.

presumption of reasonableness.¹⁴⁹ PHI asserts while the Settlement requires ratification without modification, this is a standard settlement provision that is itself designed to encourage settlements.

Like the other Settling Parties, PHI rejects WGES's argument that the Settlement compromises the Commission's annual review obligations. On the contrary, the Commission will be fully involved in monitoring the transition to competition and will be able to verify that SOS costs are prudently incurred pursuant to the Settlement. In fact, the utilities will submit SOS enrollment, price, and other data annually to the Commission in order to assist the PSC in its review.¹⁵⁰ PHI argues the Commission has sufficient evidence presently to make a finding on the status of competition. Additionally, there will also be major policy reviews under the Settlement.¹⁵¹

Furthermore, PHI believes that WGES has misread the law regarding the Commission's review obligations. PHI argues the Commission is not required to modify SOS programs on an annual basis. In fact, in PHI's opinion, such action would be contrary to the statutory requirement for an orderly transition process. Moreover, the experience with SOS in other states demonstrates that frequent program changes are disruptive.¹⁵² Additionally, the Settlement does not preclude the Commission from making annual findings regarding competition. PHI concludes the Commission may make appropriate changes to SOS programs after those service periods expire. PHI also

¹⁴⁹ *Id.* at 6-8.

¹⁵⁰ *Id.* at 12. See Settlement paragraphs 3, 22 and 41.

¹⁵¹ *Id.* at 12. See Settlement paragraphs 4, 23 and 42.

¹⁵² Docket No. 150 at 4, citing Mr. Timmerman's testimony at Tr. 574-75.

notes that pursuant to § 3-113, the Commission may act at any time on its own initiative to modify or vacate a previously issued order.¹⁵³

PHI argues the Commission should reject any WGES contention that equates market prices with one-year contracts.¹⁵⁴ Wholesale electricity will be procured through competitive bidding, which will result in a market price as required by § 7-510(c). PHI states that a competitively bid multi-year contract will be market priced based upon the market for multi-year contracts. PHI argues this is no less market based than a series of one-year contracts or several thousand hour-by-hour spot prices.

PHI says since prices change all the time, using one-year contracts would not necessarily address WGES's concerns. While the Settlement has a pricing policy that would smooth price volatility for Residential and Type I SOS, it balances this goal with the interests of retail suppliers by requiring that at least 50% of the contracts for Residential SOS supply shall be from one-year contracts. PHI concludes: "WGES merely is proposing a different balance point between the current market price and price stability; one that is supported by no one other than WGES."¹⁵⁵

While WGES has stated the Settlement does not provide assurance that the Administrative Charge will be compensatory for related SOS costs, PHI retorts this is inaccurate because non-residential SOS programs in the Settlement require true-ups to actual costs.¹⁵⁶ PHI says the provision of Residential SOS is similar to a base rate case. Future costs are debated and once rates are established there are no subsequent true-ups or reviews of actual costs until the next base rate case. Furthermore, PHI argues if there

¹⁵³ See Section 3-113(a) for statutory requirements.

¹⁵⁴ Docket No. 150 at 15. See generally pages 15-17.

¹⁵⁵ Docket No. 150 at 25.

¹⁵⁶ Docket No. 150 at 20.

is a potential for a subsidy to arise as a result of the Administrative Charge, it will provide incentives for shopping customers, the opposite of WGES's contention.¹⁵⁷

PHI concludes that the Settlement adequately defines the role of the Commission.¹⁵⁸ Bidding rules for supply will be developed in Phase II that limit utility discretion in selecting the wholesale contracts. Consultants will be employed to ensure compliance. Therefore, PHI concludes that the Settlement framework should meet the need for the Commission to appropriately monitor the SOS bidding process while meeting the need of wholesalers to have bids approved or rejected within a few days.¹⁵⁹ PHI asserts the Commission is not constrained by the Settlement and may take any action that is necessary to ensure that customers are being charged appropriately pursuant to the Settlement.

PHI says the Commission may approve the Settlement by order consistent with § 7-510(e). In this case, the Commission is exercising its quasi-judicial powers in a contested-case proceeding in which witnesses have submitted sworn testimony and were subject to cross-examination. Therefore, issuing an order, rather than regulations would still be consistent with the Court of Appeals recent decision in the *Delmarva Case*. Furthermore, according to PHI, while the Settlement provides that proposed regulations will be submitted to the Commission after Phase II, it does not require the Commission to issue regulations to implement the Settlement.

¹⁵⁷ Docket No. 150 at 21.

¹⁵⁸ Docket No. 150 at 25-28.

¹⁵⁹ PHI says that the two day approval period is similar to bid approval time periods in other states.

F. Allegheny Power

1. Testimony

Allegheny Power submitted the testimony of Robert C. Carder, Jr., General Manager, Regulatory Services for Allegheny Energy Service Company (“AESCS”).¹⁶⁰ AP says there are many benefits for customers under the Settlement. First, supply and price stability is maintained through a supply portfolio that includes multi-year contracts for full requirements service. Second, diversity of supply and contracting reliability is promoted through the use of load blocks for supply. Third, residential customers have the longest SOS program, the lowest return component, and incremental costs that are generally limited. Fourth, since AP’s Residential SOS program does not begin until 2009, the Settlement provides that the Commission may review the effectiveness of the other SOS programs prior to implementing a Residential SOS program for AP’s customers. Fifth, the Settlement provides fixed price utility service to Type II and Type III customers who, according to AP, may not be entitled to SOS protections under the Electric Act. AP argues that the utility is the logical candidate to provide this default service to larger N-R customers.

AP says retail suppliers also benefit under the Settlement because the SOS price will include an Administrative Adjustment, which makes SOS more representative of retail supply costs. Consequently, the retailer’s price will be more competitive compared to the utilities’ SOS and HPS prices.¹⁶¹ Since the Administrative Adjustment is competitively neutral from the customer’s perspective, AP concludes that this concept

¹⁶⁰ Docket No. 127 or 136. AP filed its Brief twice due to a clerical omission. AESC is an affiliate of AP.

¹⁶¹ Docket No. 127 at 8.

should greatly stimulate Maryland's retail market and promote competition. Further, since wholesale suppliers will compete to supply SOS load to utilities, and since loads are substantial under the Settlement, these factors should aid the development of an effective wholesale market.

AP notes that consistent with the Electric Act, the utilities are entitled under the Settlement to recover their prudently incurred, verifiable costs of providing services, plus a reasonable return. Therefore, the interests of the utilities are not adversely effected by the Settlement. AP argues that utilities will encounter risks when they enter into the complex contracts with suppliers, many of whom are now in a weakened financial position. Furthermore, in a competitive market risks include the likelihood that retail suppliers will be attracted to the largest and most stable customers, leaving mass market customers and the more complex and costly loads to be served by SOS. AP says that wholesale bids could increase significantly in any given year to reflect increased market prices, possibly causing unexpected reactions from customers, legislators or regulators, resulting in questionable or delayed utility cost recovery. AP concludes that the Settlement return components are reasonable because they reflect these risks. AP also notes the Settlement provides for the recovery of the utilities' incremental costs as the statute requires, although Residential SOS incremental costs are generally subject to a limit of 0.5 mills per kWh.

AP concludes the Settlement provides a fair framework for utility provided SOS. It accomplishes the public policy objectives of promoting the competitive market while assuring customers of an adequate electric supply at market prices that will benefit all

concerned. AP says the Settlement is in the public interest and should be approved by the Commission as filed.

2. Brief of Allegheny Power¹⁶²

AP emphasizes that in its view the Settlement represents a voluntary commitment by the utilities to provide SOS. Consequently, AP says the Settlement technically is not submitted pursuant to § 7-510(c)(3) but is more appropriately considered as a new rate to be reviewed and approved by the Commission pursuant to § 4-203. Nevertheless, AP says the Settlement is not only consistent with the Electric Act but adds increased protection to what is required by § 7-510(c).¹⁶³

AP rejects WGES's criticism that the Settlement SOS periods are too long. AP asserts that since the Commission is not making a finding under § 7-510(c)(3) regarding competition, there is no requirement to re-examine such a finding. However, the Settlement does require each utility to report annually on the entire SOS process and it includes provisions for major policy reviews. AP says requiring SOS program changes any more often than at the end of the their terms would be a totally unworkable administrative burden, which is confirmed by experience in other states.¹⁶⁴ AP concludes that the Settlement provides an appropriate opportunity, along with existing procedures, for the Commission to monitor SOS and the market annually. Furthermore, the Commission can always reconvene the Settling Parties to negotiate appropriate program changes.

¹⁶² Docket No. 152. AP did not file a reply brief; *See* Docket No. 163.

¹⁶³ AP notes that while Residential SOS incremental costs are a fixed negotiated amount, that the utilities have accepted this cost recovery mechanism as reasonable and the Settling Parties agree that this is an appropriate proxy for these costs.

¹⁶⁴ Docket No. 152 at 6, citing, Mr. Timmerman's testimony at Tr. 575.

AP also addressed multi-year portfolio pricing issues. AP says WGES's solutions have administrative and practical problems.

To AP's knowledge the contract assignment mechanism has never been used in the electric utility markets, is of questionable validity under Maryland's Public Service Commission law (Tr. 118), is one-way in that utilities would be required to make available their lower priced blended supply if market prices go up with no provision for some sort of like assignment from the retail suppliers to the utilities in the event that market prices go down (Tr. 991-992, 1005), and the procedure would be administratively burdensome and costly to the utilities who would have to administer it (Tr. 807-808).¹⁶⁵

AP objects to the Modified AC Proposal because it destroys price stability for Residential SOS. AP says WGES could solve its objections by procuring energy in the same manner as proposed under the Settlement. AP concludes that by knowing the Settlement parameters, retailers can adjust their procurement strategy appropriately.

AP says that the PUC Law could be interpreted as empowering the Commission to extend SOS only to residential and small commercial customers, leaving larger customers without a provider of last resort. The Settlement remedies this potential problem, which might otherwise need to be cured by new legislation. While utilities may not be required to do so under the Electric Act, AP argues the utilities can voluntarily agree to provide SOS to large customers, subject to Commission approval. AP concludes this is one key reason why the Settlement is in the public interest.

According to AP the rate setting standards to be adopted in this case appear to fall within the ambit of a regulation. The standards will have general application to all electric utilities, they will have future effect, they will be adopted to carry out the Electric

¹⁶⁵ Docket No. 152 at 7.

Act, they will be in a form of statements and policy, and they do not appear to fall within the exceptions. Further, the PSC could develop regulations now to implement the Settlement. Additional regulations could be implemented following Phase II. AP says this two-step approach would assure that appropriate policies are in place when the earliest remaining rate caps expire on June 30, 2004. Alternatively, the Commission can adopt emergency regulations.

G. Pepco Energy Services¹⁶⁶

1. Testimony

Pepco Energy Services filed the testimony of A. Glenn Simpson, Vice President of PES.¹⁶⁷ PES supports the Settlement because it represents a compromise, which establishes an additional transition period between the current restructuring settlements and the development of a fully competitive market. According to PES, the Residential SOS supply methodology is such a compromise. According to Mr. Simpson this “contractual blend is intended to protect these customers from the price volatility of the market.”¹⁶⁸ However, 50% of supply will be from one-year contracts to ensure that the price of SOS moves in the same direction as the market. PES argues that without the incorporation of market sensitive pricing, SOS could become priced artificially below the current market price, thereby stifling the competitive market.¹⁶⁹

PES says the purpose of SOS is to provide a safety net electric service for customers, however, this need will disappear as competition matures. In addition, the

¹⁶⁶ PES is a licensed retail electric and gas supplier in Maryland. It is also the largest competitive retail electricity supplier within the PJM Interconnection, currently serving over 1600 mW of load within PJM.

¹⁶⁷ Docket No. 126.

¹⁶⁸ Docket No. 126 at 3.

¹⁶⁹ *Id.* at 4.

Administrative Adjustment provision in the Settlement provides a sufficient margin for PES to compete.¹⁷⁰ PES concludes that the Settlement represents an “acceptable compromise” to transition to a fully competitive market in Maryland. However, fostering competition will require the proper resolution of issues in Phase II. PES urges the Commission to adopt the Settlement.

2. Brief of PES¹⁷¹

PES addresses the four issues raised by the Commission during the December 2002 hearings. PES says the wholesale supply, administrative charge and return components for SOS were established in the Settlement to be consistent with the § 7-510(c)(3)(ii) requirement that costs be prudent, reasonable, and verifiable. SOS supply will be procured through a competitive bidding process, consistent with Model Bid Plans. The procurement process will be monitored and verified by consultants or Staff. Non-supply costs will be verified in accordance with the various agreed to methods established for each specific customer class.

PES says that Section 7-510(e) permits the Commission to extend the provision of SOS either through regulations or an order. PES argues that the Commission’s general authority in § 3-113(e) also permits use of either method. Section 2-121 permits the Commission to adopt reasonable regulations, which the parties recommend following Phase II.

PES notes that the Commission has an extensive role under the Settlement. This role includes Commission involvement in the bidding process, enrollment activity, major policy reviews, Model Bid Plan and Utility Bid Plan approvals, and the adoption of

¹⁷⁰ Testimony of Mr. Simpson at Tr. at 1019.

¹⁷¹ Docket No. 160. PES also submitted a Reply Letter, Docket No. 165.

regulations. Furthermore, the Commission can fulfill its annual obligation to monitor the competitive status of the market consistent with the Settlement.

PES says competitive suppliers are ready now to provide Type III customers with service. Therefore, in the absence of a settlement, they should either avail themselves of the competitive market or obtain default service from the local distribution company. PES says default service should be structured similar to BGE's Schedule DS.

H. Mirant Mid-Atlantic, LLC

1. Testimony

Mirant submitted the direct testimony of Harold L. Siegrist, Manager, Commercial Operations in support of the Settlement.¹⁷² Mirant says that Settlement benefits include: volumetric risk provisions, multi-year contracts, no switching or minimum stay requirements; competitive bidding for supply; seasonal pricing and the protection of electric companies from market exposure.¹⁷³ Mirant states that multi-year contracts protect consumers from short-term market volatility while suppliers can effectively hedge their obligations through the market or with their own resources. The competitive bidding requirement assures that customers will receive the best pricing available from the market. Furthermore, seasonal pricing is necessary to reflect the cost of providing service at different times of the year, prevent gaming, and is something customers are already accustomed to in Maryland. Mr. Siegrist concludes that the Settlement addresses the needs of electric companies because they "are held at no risk for

¹⁷² Docket No. 130. PES filed a Motion to Strike part of Mirant's testimony on November 26, 2002 (Docket No. 138). Mirant filed its Response on December 2, 2002. (Docket No. 139). Mirant filed supplemental testimony on December 4, 2002. (Docket No. 142). At the December 4, 2002 hearing, Mirant's supplemental testimony was accepted and PES withdrew its Motion to Strike. Mr. Siegrist's direct testimony, as modified by his supplemental testimony, is summarized herein.

¹⁷³ Docket No. 130 at 9-11.

obtaining supply for residential and Type I, II, and III service.”¹⁷⁴ Mirant notes the utilities are only exposed to risk if they elect to manage the HPS supply portfolio.¹⁷⁵

According to Mirant, the Settlement also puts a reasonable and quantifiable risk on wholesale suppliers.¹⁷⁶ Wholesale suppliers serving SOS need to manage a flexible portfolio to meet variable load levels, seasonal changes in energy costs, and customer volumetric shifts. Mr. Siegrist asserts “[t]his type of flexibility is critical to the provision of SOS service and is the most significant issue for the wholesale supplier.”¹⁷⁷ Although volumetric risk has not been inherent in supplying electricity in the past, customer choice raises this problem. Therefore, Mirant believes that suppliers must include risk premiums in their pricing structures because they have to hedge their demand obligations.

Mirant argues sudden and unexpected shifts in the supply obligation expose suppliers to large risks that are costly to mitigate.¹⁷⁸ According to Mr. Siegrist, “[t]o protect against increases in demand, suppliers may elect to over-procure resources to lock in prices at reasonable levels.”¹⁷⁹ The risk of higher pricing for this generation hedge is greater than for lower pricing, because pricing on the low side is constrained by the marginal cost of generation. Higher pricing factors include: scarcity; types and costs of generation used for peaking service; and short-term system operations that may quickly escalate pricing by requiring the use of fast response units that carry cost premiums. While switching restrictions can mitigate customer volumetric shifts, Mr. Siegrist says that “these mechanisms are counter-productive in establishing viable retail choice

¹⁷⁴ *Id.* at 12.

¹⁷⁵ *See* Settlement paragraph 78.

¹⁷⁶ Docket No. 130 at 3.

¹⁷⁷ *Id.* at 3.

¹⁷⁸ *Id.* at 5.

¹⁷⁹ *Id.* at 5.

services.”¹⁸⁰ Furthermore, switching restrictions can be avoided by providing for reasonable and quantifiable customer volumetric shifts and pricing mechanisms in the SOS program.

Mirant notes the Settlement addresses N-R volumetric risk issues by not requiring wholesale suppliers to take incremental load obligations that are not identified and priced as such. This assures wholesalers that costs and risk premiums associated with this type of service are fully recognized and compensated. Mirant proposes an Increment/Decrement Model to protect suppliers from the risks associated with load shifts, which will be discussed as an option in Phase II.¹⁸¹ Finally, Mirant notes that addressing Residential SOS volumetric issues later, when customer migration is more robust, will reduce costs to residential consumers associated with mitigating volumetric risks.¹⁸²

Mr. Siegrist stated “Mirant supports this Settlement because it appropriately addresses the concerns of each market participant that is necessary for Maryland’s SOS program to succeed.”¹⁸³

2. Mirant Brief¹⁸⁴

Mirant says the best evidence that the Settlement is in the public interest is the significant number of parties with diverse interests that have agreed to support the proposal. “When such parties enter into agreements, a presumption of reasonableness attaches to the product of their labors.”¹⁸⁵ Mirant believes that the Settlement will meet

¹⁸⁰ *Id.* at 5.

¹⁸¹ Docket No. 130 at 6-9 and Docket No. 142 at 6 and 8.

¹⁸² Docket No. 130 at 11.

¹⁸³ *Id.* at 3.

¹⁸⁴ Docket No. 154. Mirant did not submit a reply brief, *See* Docket No. 164.

¹⁸⁵ Docket No. 154 at 2, quoting *Re Potomac Electric Power Company*, 84 MD PSC 330, 331 (1993).

the goals set forth in § 7-505(a) because it will foster competition, provide appropriate pricing and stability, permit the utilities to recover their full costs for SOS, treat all stakeholders fairly, and provide benefits to all customer classes.¹⁸⁶

Mirant notes the Commission's finding in Order No. 77806 that a wholesale competitive procurement process is permissible under § 7-510(c)(4)¹⁸⁷ and states that the Settlement's adoption of this method will ensure that customers receive a competitive price for supply. Furthermore, the Settlement provides for seasonal pricing, which will allow consumers to adjust their consumption when prices are high.¹⁸⁸

Mirant says the use of a statewide uniform competitive selection process, with pre-approved Commission standards for wholesale contracts, will be attractive to wholesale suppliers and help reduce the risk premiums wholesale suppliers will build into their contract prices. According to Mirant, if the bid approval period was for an extended period of time, bids would require a volatility premium to reflect this fact. Mirant notes that electricity is part of the commodity market, that prices change constantly, and that the shorter the bid is held open the lower the price will be.¹⁸⁹ Mirant concludes that because the Commission will have pre-approved bid standards that the Commission will be able to approve the winning contracts within two days as required by the Settlement, because all bidders will essentially have to do is fill in blanks of an RFP.¹⁹⁰

In response to the Commission's inquiry, Mirant says the Settlement does not abrogate the Commission's ability to protect the public interest.¹⁹¹ Pursuant to both

¹⁸⁶ Docket No. 154 at 3.

¹⁸⁷ Order No. 77806 at 7-8.

¹⁸⁸ Settlement paragraphs 7, 26, 45 and 63.

¹⁸⁹ Docket No. 154 at 5, citing Tr. at 997.

¹⁹⁰ Docket No. 154 at 4-5. *See* Settlement paragraphs 9, 28, 47 and 65.

¹⁹¹ *See* § 2-113.

statutory and case law, it is clear that the Commission has the authority and the responsibility of regulating the general over-all operations of public service companies. Mirant agrees with Staff's observation that if circumstances warrant, the Commission is probably mandated by law to act and rectify that circumstance.¹⁹² It is doubtful that the Commission would be restricted from taking appropriate action to avoid a catastrophic event.

Finally, Mirant says the Commission may act by issuing either regulations or an order in this case. Mirant notes that pursuant to the State Administrative Procedure Act ("APA"), an agency may act through the issuance of an order in a contested case proceeding. Reciting the procedural events in this case, Mirant concludes that the Commission instituted an adjudicatory process in Case No. 8908. Specifically, following the filing of the Settlement the parties filed testimony, the Commission held evidentiary hearings where witnesses were subject to cross-examination, and briefs were subsequently filed. Consequently, a complete evidentiary record has been established, all parties have been afforded due process, and a fair adjudicatory proceeding has been conducted. Therefore, the Commission may issue proposed regulations or an order in this case.

Mirant concludes that the Settlement's features establish an SOS program that will provide customers with a reliable default service at a reasonable market-based price. The Settlement will also foster wholesale and retail competition, while meeting statutory requirements and protecting the public interest. Mirant concludes that the Commission should approve the Settlement for the reasons given.

¹⁹² Docket No. 154 at 7, citing Tr. 584-85.

I. Other Supporting Parties

1. Mid-Atlantic Power Supply Association

MAPSA filed a letter in support of the Settlement from its attorney Thomas W. Kinnane.¹⁹³ MAPSA says benefits of the Settlement include: (1) creation of supply diversity; (2) unimpeded customer switching; (3) the SOS portfolio structure; (4) appropriate program durations; (5) BGE's installation of interval meters; (6) the development of renewable energy programs; and (7) the fostering of competition.

MAPSA says that supply diversity serves as insurance against wholesale supplier default by providing multiple suppliers of load on whom a defaulting supplier's obligations might fall. This furthers the development of a competitive market.

MAPSA asserts that unimpeded customer movement not only benefits consumers but is absolutely necessary for the proper development of the competitive market. Consequently, the Settlement provides mechanisms, such as seasonal pricing, to insure that customer migration restrictions are unnecessary.

According to Mr. Kinnane, "Residential and Type I SOS provide for the compilation of generation portfolios intended to produce SOS prices that are responsive to market prices, but without the volatility that sometimes exists in short-term markets."¹⁹⁴ Furthermore, he concludes that the contract allocations in these SOS portfolios "represent important thresholds that reflect a compromise balancing the interests of smaller consumers in stable and affordable prices, with the necessity that SOS prices be reflective of actual market prices and trends."¹⁹⁵ Furthermore, the SOS

¹⁹³ Docket No. 137.

¹⁹⁴ Docket No. 137 at 2.

¹⁹⁵ *Id.* at 2.

program time periods reflect the time needed to significantly advance or complete the transition to competitive markets.

An additional benefit of the Settlement is the condition in paragraph 61 requiring BGE to install interval meters for Type III SOS customers. The availability of interval meter data will assist in the implementation of real time pricing structures in the future, which will increase the benefits to these customers of efficient energy pricing and participation in demand response programs. Consequently, MAPSA supports BGE's agreement to install interval meters for all Type III eligible customers by July 1, 2004.

According to MAPSA, the pricing structures in the Settlement should help foster competition, because SOS prices will include all costs incurred by utilities thereby ensuring that SOS is priced as a retail product against which other retail products can compete. In addition, MAPSA believes that the Settlement has the potential to produce significant environmental benefits.

MAPSA notes its concern with possible cost shifting under the Settlement, which is most likely to occur with uncollectible expenses. It argues that deferred recovery of generation costs results in surcharges that reduce or eliminate the benefits customers might otherwise obtain in the competitive market and also eliminates the incentive to discipline energy usage. Furthermore, cost shifting inappropriately reduces the price against which retail suppliers must compete.

MAPSA argues that determining the precise components and associated costs of full requirements service is complicated by the Settlement's continued use of utilities as the SOS provider. MAPSA continues to support retail SOS. MAPSA attached a list to

its comments of full requirements service components that it believes must be reflected in the SOS price to ensure retail equivalency.

MAPSA concludes that approval of the Settlement will permit Maryland to continue its transition to a fully competitive electric market that ensures customers reliable electric supply. MAPSA requests approval of the Settlement and Commission guidance on: the assurance of supply diversity; the development of renewable energy programs; and the establishment of the components of full requirements service.

2. MRA/BOMA

MRA/BOMA filed a letter from its attorney Thomas C. Gorak in support of the Settlement.¹⁹⁶ MRA/BOMA emphasizes that the Settlement is a “package deal” that strikes a “delicate balance” among a large number of competing interests. Consequently, MRA/BOMA recommends that the Settlement be approved in its entirety and without modification.

3. CESI

Conectiv Energy Supply, Inc. filed a letter from its Vice President, David M. Velazquez urging the Commission to issue an order adopting the terms of the Settlement.¹⁹⁷

4. MIG¹⁹⁸

MIG says that an essential obligation of the Commission is to assure electric reliability. According to MIG, nowhere in the Electric Act is there a bar to providing SOS to large N-R customers. Furthermore, WGES did not address or oppose the

¹⁹⁶ Docket No. 133.

¹⁹⁷ Docket No. 132.

¹⁹⁸ MIG filed a Brief, Docket No. 158. MIG did not present a witness.

provision of Type III service. MIG also notes that the various restructuring case settlements approved by the Commission included provisions for, among other things: acceleration of the statutory phasing in of electric choice; the imposition of price caps not provided for in the Electric Act; and other provisions that exceeded, differed or were not addressed therein. Accordingly, there is ample precedent for the Commission to approve a Settlement that is in the public interest, even if arguably, it differs from the statute.

MIG asserts that under § 7-510(c) SOS is the functional equivalent of a “default service” and should not be confused with standard offer “price freeze service.” A customer is considered to have chosen SOS upon the occurrence of any of the events set forth in § 7-510(c)(2)(i) through (vi).

MIG says that beginning July 1, 2003, subject to an exception, an electric company is no longer obligated to provide SOS with electricity supply that the electric company secures or produces. Instead, the electric supply required for SOS is to be *procured* through a competitive bid process pursuant to procedures adopted by the Commission. Section 7-510(c)(3) provides an exception to this rule, which allows the Commission to extend annually a utility’s SOS obligation for residential and small commercial customers using electricity supply secured by the electric company. The Settlement provides that SOS electricity supply will be *procured* through a competitive bid process. “Thus, there will be no need for the Commission to make any finding pursuant to § 7-510(c)(3)(ii) to extend beyond July 1, 2003 the obligation of an electric company to continue to procure or produce electric supply for standard offer service.”¹⁹⁹

¹⁹⁹ Docket No. 158 at 6.

MIG concludes that the Settlement satisfies the legal standards adopted by the Commission for approving settlements. The Settlement is the result of protracted negotiations by a diverse group of effected parties whose interests are often adverse. The Settlement is supported by substantial evidence and is consistent with the Electric Act. MIG concludes that the record is uncontroverted that the Settlement, including Type III SOS, is in the public interest. Therefore, it should be approved.

5. MEUG²⁰⁰

MEUG addresses the issues raised by the Commission at the December 2002 hearings.²⁰¹ MEUG says the Settlement provides specifically for utility cost recovery, usually with Staff audits to verify those costs. MEUG asserts that the reasonableness of the return components is demonstrated by the utilities' signing the Settlement. MEUG also says the Commission has a "prominent" role in the SOS process. Further, the Commission has the statutory authority to vacate, suspend, modify or supersede any order if extraordinary circumstances require, and the Commission can act absent extraordinary circumstances after an evidentiary hearing.

MEUG emphasizes "the appropriate type of service for Type III customers, absent a settlement, is SOS."²⁰² MEUG asserts the Commission is *required* to extend SOS pursuant to § 7-510(c)(4) to the customers of electric companies listed in § 7-510(c)(2). Since the term "customers" is not defined in § 7-510(c)(2), MEUG argues that the Commission must establish procedures for the competitive selection of electricity suppliers to provide SOS to all customer classes, including large industrial and

²⁰⁰ MEUG is the Maryland Energy Users' Group, which represents larger customers.

²⁰¹ See MEUG's Reply Brief, Docket No. 173. MEUG did not submit an Initial Brief, Docket No. 149.

²⁰² Docket No. 173 at 2.

commercial customers. MEUG says this interpretation is consistent with the goal of providing economic benefits for all customer classes.²⁰³ However, MEUG says that the Commission does not need to address this issue in this case because the utilities have agreed to provide Type III SOS in the Settlement.

J. Washington Gas Energy Services²⁰⁴

1. Testimony

WGES submitted the testimony of its President, Harry A. Warren, Jr.²⁰⁵ WGES participated in the negotiations that produced the Settlement; however, WGES is not a signatory to the Settlement. WGES is the only party to oppose the Settlement.

WGES argues that the Settlement in its present form is not in the public interest and should be rejected. According to WGES: (1) the Settlement would restrict Commission authority to review the retail market and take appropriate action to adjust the provision of SOS for an unreasonably long period of time; (2) it fails to address the potentially adverse impact of multi-year SOS contracts on the development of competitive retail markets; (3) the Settlement defers many critical policy issues to future phases; and (4) it does not fairly balance the interests of consumers, suppliers and utilities.²⁰⁶

WGES strenuously argues the Settlement fails to address the Commission's responsibility to make competitive market findings and to examine such findings at least annually. WGES argues that the Settlement commits Maryland customers to its SOS

²⁰³ Docket No. 173 at 3. See §§ 7-504(4) and 7-505(a).

²⁰⁴ WGES is a retail supplier of electricity.

²⁰⁵ Docket No. 131.

²⁰⁶ Docket No. 131 at 2-3.

terms for as long as a decade.²⁰⁷ WGES notes the Settlement extends SOS programs for residential and Type I N-R customers for an additional four years beyond the utilities' current restructuring settlements.²⁰⁸ Moreover, the Settlement only permits changes to the SOS programs when the programs are over. Modifications deemed necessary in one utility service territory cannot be applied to benefit programs in other service territories. Mr. Warren says that he is "aware of no compelling public policy reason for adopting policies in 2002 that would limit the Commission's ability to make policy corrections for so long into the future."²⁰⁹ WGES concludes the Commission should not compromise its review obligations under the Electric Act and should retain the flexibility to act upon the results of annual examinations of the market.

WGES states that the Settlement is silent on the status of retail competition.²¹⁰ WGES argues that the Commission should establish a process for monitoring and measuring the state of competition. According to WGES, this process should evaluate migration data because it provides useful information about market competitiveness.

WGES notes that the retail markets are in a state of transition. In WGES's opinion, the currently capped rates have likely worked to keep robust competition from developing. Relying on the results of competition to date as a basis for extending SOS is problematic according to WGES. WGES says this is especially so because SOS was not designed to be market responsive under the utilities' restructuring settlements. Therefore, WGES concludes that a transition structure based on market responsive SOS prices and

²⁰⁷ This is true for AP residential customers, but the SOS programs for some other customers end as soon as May 31, 2005. Furthermore, the AP Residential SOS program is subject to change pursuant to Settlement paragraph 4(d).

²⁰⁸ Docket No. 131 at 4.

²⁰⁹ Docket No. 131 at 5.

²¹⁰ Docket No. 131 at 5.

annual Commission reviews of the state of competition would better serve the public interest.²¹¹

WGES opposes the Settlement because it leaves important policy aspects to potentially significant revision in Phase II. WGES says this piecemeal approach makes the Settlement difficult for the Commission to review and approve.²¹²

WGES identifies three significant unresolved SOS issues.²¹³ First, the Settlement leaves issues regarding wholesale supplier volumetric risk mitigation for N-R customers unresolved. The Settlement provisionally provides that there will be no minimum stay requirements, but this provision is void if volumetric risk issues are not satisfactorily resolved in Phase II. WGES says that risk mitigation measures should be specified in the Settlement and customer flexibility to switch should be maintained. Secondly, the structure of Residential SOS could be revisited based upon unspecified “pricing anomalies.” WGES notes that with tight deadlines for the Commission to accept or reject bids, leaving causes for last minute rejection unspecified makes the Settlement incomplete. WGES asserts that these anomalies should be specified, if indeed such a concept is included at all in the Settlement. Finally, WGES says the issue of retail rate structures is not clear in the Settlement, but WGES concludes that the Settlement should maintain the current utility rate structures.

WGES is particularly concerned with the use of multi-year supply contracts for utility provided SOS.²¹⁴ WGES asserts that there must be a level playing field for retail suppliers to compete for customers. According to Mr. Warren:

²¹¹ *Id.* at 6.

²¹² Docket No. 131 at 6-7.

²¹³ *Id.* at 7-8

²¹⁴ Docket No. 131 at 8-13.

Multi-year portfolio pricing of SOS creates the potential for the interruption, and indeed the reversal, of gains in the competitive retail markets if blended SOS prices are below *prevailing* market prices for generation for some period of time.²¹⁵ At such times, the ability of competitive suppliers to attract customers away from SOS will be interrupted, and customers who have previously chosen competitive suppliers will see financial incentives to move back to SOS service.²¹⁶

WGES states that when a supplier solicits a new customer's business the supplier must look to the "prevailing" wholesale market to secure supply. Consequently, price quotes offered to customers will be based on those "prevailing" wholesale prices.²¹⁷ WGES says that if more recent bids come in at prices significantly higher than those received the previous year, then the blended SOS rate would be below the more recent "prevailing" market. WGES concludes that this would harm the development of the competitive market. WGES acknowledges the likelihood of this happening is hard to predict because electricity markets are volatile, but WGES asserts it is necessary to plan for such a possibility.²¹⁸ However, WGES also admits that in markets with declining present electric prices, a blended SOS rate might accelerate customer migration to suppliers.²¹⁹ Mr. Warren strongly believes that SOS rates based upon multi-year portfolios without remedial provisions "present an unacceptable and avoidable risk to the development of competitive residential and small commercial retail markets."²²⁰

WGES asserts that SOS based upon one-year supply contracts provide sufficient SOS market price responsiveness to reasonably assure the proper conduct of the

²¹⁵ WGES defines "prevailing" market prices as "the prices of generation supply at any particular point in time." *Id.* at 9.

²¹⁶ Docket No. 131 at 8-9.

²¹⁷ WGES provides an example of how SOS prices derived from multi-year portfolios could vary from the prevailing wholesale market prices. *Id.* at 9-10.

²¹⁸ *Id.* at 10.

²¹⁹ *Id.* at 10.

²²⁰ Docket No. 131 at 9.

competitive market, while eliminating concerns about spot market or monthly pricing volatility.²²¹ WGES says that a SOS retail price that is known prior to the start of a new SOS year will provide customers price protection, an intended SOS function, and would allow a competitive market to thrive. Mr. Warren states “[i]mportantly, annual SOS bid prices would keep SOS prices fresh and at prevailing market prices.”²²²

WGES proffers alternatives to one-year contracts that they say could compensate for the potentially market damaging consequences of multi-year portfolio pricing.²²³ One alternative is to use a limited SOS supply contract assignment mechanism available to all suppliers with expiring retail contracts.²²⁴ WGES asserts this would allow customers to remain with suppliers, and not be forced to return to the utility to gain access to a blended SOS price, which is below the prevailing market price. WGES says that another method would be to use the one-year bid price instead of the blended price and adjust the Administrative Charge and associated credits to distribution rates.²²⁵ As a result the Administrative Charge would be increased if the load-weighted average of a multi-year portfolio were lower than the prevailing market price, represented by the one-year bid price. Any increase in the Administrative Charge would be returned to customers through the crediting mechanism, which is now part of the Settlement. Mr. Warren says that this “mechanism would protect the conduct of the competitive market by minimizing gaming opportunities for load supplied by competitive suppliers to return to utility

²²¹ Docket No. 131 at 11. *See also* Docket No. 153 at 17-19.

²²² Docket No. 131 at 11.

²²³ *Id.* at 11-13. *See also* Docket No. 153 at 19-21.

²²⁴ This proposal will be referred to herein as the “Supply Assignment Proposal.”

²²⁵ This proposal will be referred to as the “Modified AC Proposal.”

SOS.”²²⁶ WGES recommends any of these alternatives to the multi-year portfolio procedures in the Settlement.

WGES notes its concern with the use of the incremental cost methodology in the Administrative Charge component of SOS. WGES prefers the use of fully distributed costs. WGES asserts that the use of the incremental cost methodology in the Settlement does not assure that the Administrative Charge component of retail SOS prices will in fact be compensatory of related SOS costs.²²⁷ WGES argues if the Administrative Charge is not compensatory, this could cause shopping customers to subsidize those who remain on utility provided SOS, thereby deterring the development of a competitive market.

WGES says another troublesome aspect of the Settlement is that it may prohibit parties from arguing for the removal of SOS costs from *residential* distribution rates if such costs exceed 0.5 mills. WGES says because current frozen distribution rates may contain SOS-related costs, the Commission should clarify that SOS-related costs will eventually be removed from distribution rates and be included in retail SOS prices. WGES argues the need to identify utility SOS costs would be eliminated if the Commission were to establish retail bidding for the provision of SOS.²²⁸

WGES urges the Commission to reject the Settlement. In lieu thereof, WGES urges the Commission to either approve a modification of the Settlement or issue a policy order to provide for SOS.

²²⁶ Docket No. 131 at 12.

²²⁷ Docket No. 131 at 13-15. WGES admits that the negotiated Administrative Charges have procedures for ascertaining actual costs and for true-ups for N-R customers. *Id.* at 13.

²²⁸ In Order No. 77806 the Commission stated that a wholesale SOS bidding process is permitted under § 7-510(c).

2. Rebuttal of WGES²²⁹

WGES argues that extending regulated Residential SOS and Type I SOS for four additional years beyond the current transition periods, without modification, assumes competition will not develop for customers and that regulation will continue to be required to assure economic electric supply.²³⁰ WGES concludes extending SOS without the Commission being able to modify the programs, regardless of what annual reports indicate, seems on its face unreasonable and contrary to the intent of the Legislature.²³¹

Mr. Warren asserts: “I believe the legislature got it right when it enacted legislation that relies on the development of retail competition as the best way to deliver economic electricity to customers.”²³² However, Mr. Warren admits that “I haven’t taken a position on whether the market is currently competitive in my testimony.”²³³ WGES suggests an evaluation by the Commission needs to account for more than just customer migration to date.²³⁴ WGES argues its success in the Pepco territory demonstrates that significant load will migrate in response to small price incentives, and that mass market consumers already recognize offers that save them money compared to utility SOS.²³⁵ WGES says the Commission should institute a separate process based on benchmarks to determine the competitiveness of retail electric markets.²³⁶ WGES concludes an SOS

²²⁹ Docket No. 143. The testimony was filed by Mr. Warren.

²³⁰ Docket No. 143 at 2-3.

²³¹ *Id.* at 4.

²³² *Id.* at 2.

²³³ Docket No. 143 at 4.

²³⁴ *Id.* at 4.

²³⁵ *Id.* at 6 and 3. WGES was responding to OPC’s assertion that WGES’s success is the result of a “market anomaly.”

²³⁶ *Id.* at 4-5.

model that relies solely on wholesale bidding, is a model that will not produce robust retail competition.²³⁷

WGES continues its criticism of the use of blended multi-year SOS contracts.²³⁸ In addition to its previous arguments, Mr. Warren states “[o]ut-of-line retail prices could result beginning in the second year of the four year programs.”²³⁹ Consequently, WGES does not agree that SOS pricing under the Settlement will allow suppliers to compete, stimulate competition, or assure customers of electricity at market prices.²⁴⁰ WGES argues annual bidding would balance price stability with SOS prices that are responsive to market prices.²⁴¹

Further, WGES rejects OPC’s argument that the retail procurement scenarios proffered by WGES do not recognize that retail suppliers also hedge their supply portfolios.²⁴² WGES retorts that procuring retail supply to serve an uncommitted future load is not a “hedge” but is more accurately described as “speculation.”²⁴³ Furthermore, OPC misunderstands WGES’s other proposals. Indeed, WGES’s Supply Assignment Proposal would be limited only to suppliers with expiring retail contracts. Mr. Warrant says “[i]n this way the volumetric risk to wholesale suppliers is no greater than that which they already have if those customers return to utility service.”²⁴⁴ WGES says by increasing the Administrative Charge, its Modified AC Proposal would result in SOS

²³⁷ *Id.* at 2.

²³⁸ Docket No. 143 at 6-11. *See* pages 9 to 10 for WGES’ criticism of OPC’s description of how a multi-year supply portfolio would work. Also, *see* WGES’s Initial Brief, Docket No. 153 at 12-21.

²³⁹ Docket No. 143 at 7.

²⁴⁰ WGES admits that the Settlement contains extensive consumer and utility safeguards and promotes wholesale competition. Docket No. 153 at 12-13.

²⁴¹ *Id.* at 6-7.

²⁴² Docket No. 143 at 7-8.

²⁴³ *Id.* at 8.

²⁴⁴ Docket No. 143 at 8.

prices that would reflect the prevailing market price. Under this WGES proposal the additional revenues collected would be credited back to distribution rates using the Settlement mechanism.²⁴⁵

WGES says Staff's discussion of the volumetric risk adjustment implicitly recognizes WGES's concerns with multi-year portfolio pricing.²⁴⁶ However, the Settling Parties have not made it clear how multi-year portfolios combined with a volumetric risk adjustment mechanism would work in practice. Mr. Warren concludes "[u]ntil the details of the volumetric adjustment are determined, it is not clear that incremental price increases as customers migrate back to SOS could reach 'prevailing market prices.'"²⁴⁷ Furthermore, WGES says linking no switching restriction provisions to a yet-to-be determined volumetric risk mechanism supports WGES's position that the Settlement is incomplete.

WGES notes the Settlement includes complex provisions that provide for post service period cost recovery. WGES argues if those provisions become necessary, it would demonstrate that the Administrative Charges were not compensatory.²⁴⁸ WGES concludes that without a determination of utility SOS costs in a distribution base rate case, it cannot be determined if an Administrative Charge is fully compensatory. Furthermore, if a utility's residential incremental costs included SOS related costs that were not fully compensated by the 0.5 mill SOS component, the Settlement bars the Settling Parties from arguing that distribution rates should be reduced to exclude the excess amount. WGES argues this means that customers who shop for supply with a

²⁴⁵ *Id.* at 8.

²⁴⁶ Docket No. 143 at 9, citing Docket No. 129 at 17.

²⁴⁷ Docket No. 143 at 9.

²⁴⁸ Docket No. 143 at 12-13.

retail supplier would subsidize SOS customers. Consequently, WGES asserts the Administrative Charge will not necessarily assist suppliers in competing against SOS.

3. WGES's Briefs²⁴⁹

WGES says the Settlement unduly restricts Commission authority because: (1) it bars Commission action during SOS program periods; (2) it lacks a "PSC Out" clause; (3) it fails to recognize the Commission's duty to verify prudently incurred retail market costs; and (4) it does not recognize the Commission's statutory duty to make competitive findings. However, WGES concedes the Commission should impose an obligation upon utilities to serve residential and small commercial customers whenever it finds that the retail electricity market is not competitive or when no competitive bids have been received.²⁵⁰

WGES says the Settlement fails to properly address retail electric costs because: (1) it fails to provide for the verification of prudent supply costs and other SOS expenses; (2) it fails to properly address cross-subsidy issues; and (3) it fails to verify that retail SOS market prices are appropriate. The Settlement contemplates a RFP wholesale supply process. WGES says the prudence of supply costs would automatically be established by approval of conforming bid awards, thus insulating utilities from traditional prudence reviews. Because many RFP issues will be resolved in Phase II, WGES concludes that the Commission is being asked to waive its statutory duty to verify prudently incurred SOS costs. WGES asserts that the Settlement would bar retail bidding as a means of establishing retail prices for many years.²⁵¹ WGES says the Settling Parties

²⁴⁹ WGES's initial Brief is Docket No. 153. WGES's Reply Brief is Docket No. 170.

²⁵⁰ Docket No. 153 at 33.

²⁵¹ Docket No. 170 at 15 and 21-22.

have assumed that the Settlement multi-year procurement process will automatically establish a *retail* market price when wholesale supply costs are added to the negotiated administrative changes.²⁵² WGES says this is not correct. According to WGES, the RFP process “will only produce market prices for wholesale supply.”²⁵³ Furthermore, WGES argues “[O]nly a retail bidding process will establish a true retail market price where competitive suppliers vie to supply SOS at retail.”²⁵⁴ WGES says the Commission should retain the flexibility to develop retail bid procedures because retail bidding is efficient, it eliminates the need to fully distribute utility costs between the distribution and generation functions, and it addresses the concern that regulated SOS expenses are not comparable to retail supplier costs.²⁵⁵

WGES notes that Commission Order No. 77806 concludes that a retail bid SOS model and a wholesale bid SOS model can provide a competitive SOS.²⁵⁶ WGES argues § 7-510(c)(4) might be interpreted to permit only retail bidding.²⁵⁷ If so, WGES argues that utilities must exit the merchant function subject only to SOS extensions under § 7-510(c)(3)(ii).²⁵⁸ WGES concludes Type III SOS may be in legal jeopardy.²⁵⁹

WGES makes several additional criticisms of the Settlement. WGES says there is no audit true-up process to verify the incremental or uncollectible expenses collected through the Residential SOS Administrative Charge. Furthermore, there is nothing in the Electric Act suggesting that utilities can volunteer to provide SOS and thereby eliminate

²⁵² Section 7-510(c)(3)(ii) does not contain the word “retail”.

²⁵³ Docket No. 170 at 15.

²⁵⁴ Docket No. 170 at 15.

²⁵⁵ Docket No. 153 at 35-36.

²⁵⁶ Docket No. 153 at 35.

²⁵⁷ Docket No. 170 at 22.

²⁵⁸ Docket No. 170 at 22.

²⁵⁹ Docket No. 170 at 22.

the statutory requirement for the Commission to make annual findings on the state of *retail* competition. WGES also says failure to adopt one of its market safeguards makes the Settlement unfair to suppliers and consumers and potentially disruptive to the orderly development of competitive markets.

WGES asserts the Settlement is incomplete as a basis for establishing policy regulations and leaves more than technical details for decision in Phase II.²⁶⁰ WGES cites the volumetric risk mechanism, the lack of a definition of “pricing anomalies” and utility rate design structures applicable to SOS programs as significant policy issues that are not resolved in the Settlement. Even if only the details remained, WGES argues such a deficiency would still run afoul of § 7-510(e), which requires the adoption of “procedures” to implement § 7-510(c).²⁶¹

WGES argues this proceeding is neither a rulemaking nor an adjudicatory proceeding. WGES concludes an order approving the Settlement would be a statement of policy that would clearly fit the definition of a regulation under the State APA. Furthermore, the Commission may not impose policy standards or rules in this generic proceeding without engaging in rulemaking under the APA or holding utility-specific adjudicatory hearings. The Settlement calls for implementing regulations after Phase II.²⁶² WGES says this is consistent with § 7-510(e).

WGES concludes that despite the numerical support in favor of the Settlement it does not promote the development of competitive retail markets. Consequently, WGES

²⁶⁰ Docket No. 153 at 22.

²⁶¹ *Id.* at 22-23.

²⁶² WGES argues the Settlement attempts to usurp the PSC’s rulemaking authority because it is voided if regulations are adopted that are inconsistent with the Settlement, Phase II issues are resolved inconsistent with the Settlement, or legislation is adopted that is inconsistent with it. WGES says that the Settlement cannot legally limit the PSC’s rulemaking powers as it purports to do.

requests that the Commission: issue an order rejecting the Settlement as filed; identify the flaws it has noted²⁶³ direct the parties to submit proposed regulations or propose regulations itself; and institute a procedural schedule that accommodates the Electric Act and State APA and leads to final regulations for the provision of post-transition SOS in Maryland.

V. COMMISSION DECISION

A. INTRODUCTION

The Commission initiated this proceeding in December 2001 pursuant to § 7-510(c) to examine whether the existing electric supply market in Maryland is competitive and whether SOS should be extended beyond the utilities' current restructuring settlement periods. The Commission further directed the parties to provide a framework and process by which SOS could be made available in a reliable cost-efficient fashion, should the Commission find that competition has not developed sufficiently. The Commission has carefully reviewed the record in this proceeding and finds that Maryland's retail electricity supply market is not competitive for the reasons discussed below. As a result of that finding and consistent with the requirement under § 7-510(c) to extend the utilities' obligation to provide SOS, the Commission finds that the Settlement is an appropriate vehicle for extending SOS. Further, the Commission concludes that the Settlement filed November 15, 2002 should be approved because it is consistent with the

²⁶³ SOS bidding rules that restrict the Commission's ability to review and modify the provision of SOS based upon the state of competition; the absence of a mechanism to protect against potential adverse effects of multi-year wholesale portfolio pricing; and the need for a resolution of all critical policy issues. WGES noted the following flaws with the Settlement. Docket No. 131 at 15.

requirements of § 7-510(c), comports with the goals of the Electric Act and is in the overall public interest.

The Commission notes that the Settlement has broad based support from all electric industry groups, including: electric suppliers, distribution companies, OPC, Staff, other government entities, and a variety of commercial trade groups. Furthermore, the Commission does not find the arguments of the lone objecting party persuasive. Rather, the Commission finds that adoption of the Settlement will provide for the continuing orderly transition from monopoly electric service to customer choice in a way that benefits the public and balances competing interests fairly. Finally, nothing within the Settlement effects the Commission's authority to oversee the evolving process and to act when required in the public interest.

B. STANDARD OF REVIEW

The Commission has been presented with a Settlement that is supported by twenty parties and opposed by only one party in this case. In analyzing a proposed settlement and deciding whether to adopt it, the Commission applies an analysis that it has described as follows:

Inasmuch as the proposed Settlement Agreement is not supported by all parties, the key question is whether the Settlement Agreement is in the public interest and also supported by substantial evidence on the record as a whole. In this respect, we note our agreement with the general reasoning and principles used to evaluate so-called contested settlements in general rate cases that are set forth in numerous court and administrative agency decisions. (citations omitted)...

In assessing a contested settlement we may also consider, in addition to any economic evidence, such factors as: the desirability of avoiding costly and time-consuming rate proceedings; whether the settling parties represent interests that are normally adverse to one or more of the other settling parties;

and, of course, the reasonableness of the effects of the particular settlement upon particular customer classes, considering all of the various aspects of the proposed settlement.²⁶⁴

Since first applying that standard, the Commission has developed and applied more rigorous tests by which to determine whether a proposed settlement meets the just and reasonable standard under Section 4-201 of the Public Utility Companies Article. The Commission is satisfied that those tests are met in this case.²⁶⁵

The Commission finds that the Settlement submitted November 15, 2002 meets these criteria. The Settlement was signed by twenty diverse parties and reflects appropriate compromises to accommodate their often adverse interests. Approval of the Settlement will clearly avoid time-consuming and costly litigation, a fact that is particularly relevant since the rate cap protections for so many customers will expire in 2004. The Commission finds that the Settlement is supported by substantial evidence and is in the public interest.

In addition to agreement by the Settling Parties, the Commission needs to determine that the process set forth in the Settlement is reasonable, workable, and that the Commission retains full authority and responsibility to monitor and evaluate the process and its eventual outcome. Indeed, such a role was envisioned by the Legislature when it enacted the Electric Act. The Commission is convinced that this Settlement achieves these goals, and that with the refinements to be completed in Phase II, a thoughtful, workable outcome is achievable. Furthermore, the Commission notes that the Settlement

²⁶⁴ *Re Potomac Electric Power Company*, 80 MD PSC 61, 64 (1989).

²⁶⁵ *Potomac Electric Power Company*, 83 MD PSC 330, 332-3 (1992); *Washington Gas Light Company*, 91 MD PSC 464, 466-8 (2000) *Association of Maryland Docking Pilots*, 92 MD PSC 438, 443 (2001); *Washington Gas Light Company*, 93 MD PSC ____ (mimeo, Sections III and IV) (2002).

must comply with § 7-510(c), despite the fact that some parties have characterized the Settlement as “voluntary.”

Indeed, this Commission urged the parties to settle, but it was always within the context of fulfilling the overarching goals of the Electric Act. With the conclusion of the Phase II process the Commission will ensure that the goals are accomplished.

C. SOS REQUIREMENT/SECTION 7-510(c)

Under the current utility restructuring settlements, price protections will expire for most customers in 2004.²⁶⁶ Therefore, the Commission must act promptly, consistent with the PUC Law and its Electric Act provisions to: (1) determine the competitiveness of the electricity supply market in Maryland; (2) and, if not competitive, provide for the ongoing availability of SOS in Maryland in order to ensure a stable transition for the residential and small commercial customers; and (3) ensure reliable service for all customers.

Section 7-510(c)(3) states: Any obligation of an electric company to provide standard offer service shall cease on July 1, 2003, except that:

(ii) 1. If the Commission finds that the electricity supply market is not competitive or that no acceptable competitive proposal has been received to supply electricity to those customers described under paragraph (2) of this subsection, the Commission shall extend the obligation to provide standard offer service to residential and small commercial customers at a market price that permits recovery of the verifiable, prudently incurred costs to procure or produce the electricity plus a reasonable return.

2. The Commission shall reexamine the finding made under this subparagraph at least annually.

²⁶⁶ Rate caps for BGE’s Schedule P customers have already expired. Only AP & BGE residential customers have rate cap protections beyond 2004. *See* Section 7-505(d) for capped rate requirements. *See* also restructuring Case Nos. 8794, 8795, 8796 and 8797.

There is substantial evidence in the record for the Commission to find, and the Commission does find, that the retail electricity supply market in Maryland is not competitive as required under § 7-510(c). The record in this case demonstrates that as of October 2002 only 3.4% of electric distribution customers in Maryland took service from a supplier.²⁶⁷ Only 3% of residential customers statewide, representing only 4% of residential load, took service from a supplier. Thus, some competition is evolving slowly, but primarily among larger non-residential customers.²⁶⁸ Furthermore, the record is clear that mass market (residential and small commercial) customers are transitioning to competitive suppliers at a much slower rate. Finally, only two suppliers presently market to residential customers in Maryland.

The record demonstrates and the Commission finds that additional time is required to transition to a competitive electricity market in Maryland. Even WGES, the lone opponent of the Settlement, admits that Maryland's retail electric market is in a state of transition.²⁶⁹ Therefore, given this finding, the Commission concludes that SOS must be extended pursuant to the requirements of § 7-510(c)(3).

Adoption of the Settlement will result in the extension of SOS for all customers and therefore, the Commission finds that it complies with and even exceeds, the statutory requirement in § 7-510(c) to extend SOS in the absence of competition.²⁷⁰ Furthermore, the Commission concludes that Residential and Type I, II and III SOS program periods in

²⁶⁷ See Docket No. 129 at 3.

²⁶⁸ As of March 28, 2003, Commission statistics show that only 3.9% of all customers (3.7% residential and 5.2% non-residential) in Maryland take service from a supplier. This represents 16.0% of the peak load obligation (4.3% residential and 27.2% non-residential).

²⁶⁹ Docket No. 131 at 5.

²⁷⁰ Utility special generation contract customers will continue to receive service according to their contracts.

the Settlement are consistent with the present state of advancement of competition for these various customer classes.

The Commission also finds that the Settlement complies with section 7-510(c)(3) because SOS is extended to customers “at a market price that permits recovery of the verifiable, prudently incurred costs to procure or produce the electricity plus a reasonable return.”²⁷¹ The Settlement provides that electric generation supply for SOS will be obtained pursuant to a competitive wholesale procurement process.²⁷² This will result in a wholesale market price for SOS supply. The Commission finds that this is a prudent method to use to obtain supply.

In addition to wholesale supply costs, the Settlement provides that the retail price for SOS will include FERC-approved transmission charges and any other PJM charges and costs incurred by the utility directly related to SOS load obligations, an Administrative Charge and applicable taxes.²⁷³ The Administrative Charges are designed to recover a negotiated return component, the utility incremental costs for providing SOS and uncollectible expenses currently reflected in SOS rates.²⁷⁴

Actual non-residential incremental costs will be recovered because they are subject to true-up. Residential incremental costs are a negotiated amount established in the Settlement, and the record reflects that the Settling Parties arrived at this figure based upon what they anticipate these costs to actually be during the Residential SOS program.²⁷⁵ Consequently, the Commission finds, based upon the record herein, that the

²⁷¹ Section 7-510(c)(3)(ii).

²⁷² See Settlement paragraphs 6, 25, 44 and 62. See Order No. 77806 finding that wholesale supply procedures comply with § 7-510(c).

²⁷³ Settlement paragraphs 11, 30, 49 and 67.

²⁷⁴ Settlement paragraphs 12, 31, 50 and 68.

²⁷⁵ The record also shows that the utilities expect any possible underrecovery to be small, which they have agreed to absorb.

utilities will recover only prudently incurred costs for Settlement services. Finally, the record is uncontroverted that adverse parties negotiated return components that are fair and reasonable, and the Commission concurs.

The Commission finds that the Settlement provides appropriate opportunities for the Commission to verify SOS costs. As for the supply procurement process, the Commission will be responsible for approving MBPs, individual UBPs and other details. The true-up process for incremental costs will also involve Commission oversight. Final bids for supply are specifically subject to Commission review and approval. Furthermore, the Commission always has the authority to investigate any necessary matter than involves electric utilities in this State. Therefore, the Commission concludes that the Settlement provides, and is consistent with, the Commission's responsibility to verify that SOS costs are prudently incurred.

The Settlement also provides for yearly reports on the wholesale supply procurement process and results, including SOS retail prices and SOS enrollment activity.²⁷⁶ As discussed in greater detail herein, the Commission concludes that the Settlement is consistent with the requirement for annual examinations of the state of electric competition. The Settlement does not interfere with existing Commission authority to examine any of the processes provided for by law.

Based upon the foregoing analysis the Commission concludes that the Settlement complies with § 7-510(c), and even exceeds these requirements.²⁷⁷

²⁷⁶ Settlement paragraphs 3, 22, 41 and 59.

²⁷⁷ See subsection E, Objections of WGES, for further reasons supporting this conclusion.

D. ELECTRIC ACT GOALS²⁷⁸

The Commission finds that the Settlement complies with the goals of the Electric Act in § 7-505(a). First, the Settlement promotes the orderly development of competitive electricity markets because it provides price stability through a utility-supplied generation service option.²⁷⁹ Providing SOS to residential and Type I customers for four years will continue to promote a gradual transition for those customers who are likely to transition more slowly than other customer types to retail suppliers. The Commission agrees with OPC that extending Residential SOS will provide these customers with a “measure of certainty” and will ensure that protections are not prematurely eliminated. Providing SOS to Type I, Type II and Type III customers will also promote an orderly transition for those customers. The Settlement supply portfolio structure, which includes multi-year contracts for Residential SOS and Type I SOS, will level out the volatility of the market and will also promote price stability while ensuring reliability of supply.²⁸⁰ The Commission finds that the Settlement will promote an orderly transition process and will enhance the development of the competitive market.

Second, the Commission finds that the Settlement supply portfolio guidelines promote reliability and protect customers by requiring a review of wholesale suppliers’ credit-worthiness, financial capability, and experience. The Settlement provides that supply may be divided into commercially biddable load blocks, to promote diversity of supply and reliable supply contract performance. This supply diversity should mitigate the impact of any possible wholesale supplier default. Furthermore, the Commission

²⁷⁸ See § 7-505(a).

²⁷⁹ Special generation contract customers will take service under their existing utility contracts.

²⁸⁰ Mirant also noted that suppliers will be able to effectively hedge their obligations under longer term contracts.

finds that the four-year SOS program periods for Residential and Type I SOS promotes reliable electric service for these mass market customers.

Third, the Commission finds the Settlement provides economic benefits to all classes of customers. All customer classes receive an SOS option of various durations. The Settlement is designed to avoid disrupting the evolution of retail choice in Maryland while providing a safety net. Competitive wholesale bidding is an important protection because it assures that customers will receive supply at a market price. Furthermore, the procurement and pricing structure is designed to protect customers from sudden sharp changes in wholesale prices. The resulting retail prices should be fair to all customer classes because the Settlement is also designed to avoid subsidies.

Fourth, the Commission finds that the Settlement also treats other stakeholders fairly. Utilities will recover the wholesale cost of supply, transmission and related charges, an Administrative Charge, and applicable taxes. The Commission concludes that the utilities are thus assured of full cost recovery. While Residential SOS incremental costs are a negotiated amount, the record reflects that the parties constructed a reasonable proxy for the expected actual costs. Furthermore, the utilities have accepted this potential exposure, and the record reflects that any potential underrecovery of Residential SOS incremental costs appears to be small.²⁸¹ Additionally, the incremental cost mechanism is designed to avoid the double recovery of costs by the utilities. The Commission also finds that the various utility return levels bear a reasonable relationship to the perceived risks of providing the particular supply services.²⁸² The utilities state the negotiated return component of the various Administrative Charges provides a reasonable

²⁸¹ See Docket No. 127 at 9.

²⁸² See Docket No. 134 at 11.

return for them. No party disputes this position. The Commission finds the record shows that the estimated returns are reasonable and thus comports with § 7-510(c) and the Electric Act generally.

The record reflects that the Settlement is supported by wholesale suppliers and all but one retail supplier. Wholesale suppliers benefit from the ability to participate in a wholesale supply procurement process. Additionally, they benefit from the Settling Parties' agreement to develop a volumetric risk mechanism. This mechanism will address the levels of volumetric and pricing risk to which the wholesale suppliers will be exposed. This will provide protection and flexibility to wholesale suppliers thus enabling more competitive prices, and, in turn, will benefit consumers. Additionally, SOS prices under the Settlement should be representative of retail suppliers' costs, thereby allowing the retailers' price to be competitive with the utility's SOS prices. The Commission finds that the Administrative Adjustment is designed to have a neutral impact on the customer whether or not they shop for electric supply, which should stimulate Maryland's retail electric market. Thus, the Commission concludes that wholesale and retail suppliers benefit from the Settlement.

Finally, the Commission finds that nothing in the Settlement indicates that it will violate any Federal or State environmental regulations. In fact, several parties indicated their desire to address renewable resource programs in Phase II. The Commission notes that renewable energy programs have the potential to provide environmental benefits and enhance the regional diversity of generation supply, thereby in the long run benefiting all customers. Furthermore, installation of more interval meters, as required in the Settlement will enable customers to benefit from efficient energy pricing and

participation in demand response programs. Accordingly, the Commission finds that the Settlement is not inconsistent with the requirement that the transition to competition must ensure compliance with Federal and State environmental regulations. The Commission reminds the parties in their Phase II negotiations of the necessity to, at a minimum, comply with the renewable energy resource requirement in § 7-516(b).

The Commission finds that parties with adverse interests have thought long and bargained hard for a Settlement that is fair to all constituencies. However, it is left to the Commission to determine that the overall public interest is not lost and that the outcome of the parties' negotiation is reasonable, workable and will further the goals of the Electric Act. The Commission so concludes.

E. OBJECTIONS OF WGES

WGES is the lone party to oppose the Settlement. WGES agrees however, that Maryland does not yet have a competitive electricity market.²⁸³ Therefore, their opposition to the Settlement is not based on whether SOS should be extended, but on the more narrow question of how it should be extended.

WGES opposes the Settlement for the following four reasons:

First, the Settlement would restrict the Commission's ability to review retail market developments and take any appropriate action to adjust the provision of standard offer service (SOS) by utilities in Maryland for unreasonably long periods of time. Second, the Settlement fails to address the potentially adverse effects that multiyear portfolio pricing may have on the development of competitive retail markets. Third, the Settlement defers a number of critical policy issues to further phases of the case. Lastly, WGES does not believe the Settlement fairly balances the interests of consumers, suppliers and utilities.²⁸⁴

²⁸³ WGES has stated that Maryland's retail electricity markets "are in a state of transition." Docket No. 131 at 5.

²⁸⁴ Docket No. 131 at 23. WGES does admit that the Settlement represents "a substantial amount of important work." *Id.* at 2.

1. Annual Market Review

WGES attacks the Settlement because it “would commit Maryland customers to its provisions for as long as a decade.”²⁸⁵ The Commission concludes that this is a distortion of the Settlement. Under the Settlement, Type III SOS will only be provided for one year, ending in 2005, and Type II SOS will be provided for two years, ending in 2006. Type I SOS, is available for four years, ending in 2008. Residential SOS is available for four years, which the Commission finds is consistent with the transition periods in previously approved restructuring settlements. Only BGE and AP residential customers will have SOS available beyond 2008 under the Settlement. The Commission recognizes that this is actually a function of the BGE and AP restructuring settlements, which provide Residential SOS until 2006 and 2008 respectively. Furthermore, the record reflects that due to the staggered nature of the utility restructuring cases, residential customers of one utility would be denied the same Settlement protections afforded to other customers if the Settlement SOS periods ended on the same date.

The Commission finds that the Settlement SOS program periods are reasonable and provide for an orderly and appropriate transition to competitive markets. The various SOS program periods also bear a rational relationship to the developing competitive retail electric markets for the various customer classes, particularly because mass market customers are slower to transition to competitive suppliers. Furthermore, the SOS program periods avoid disrupting the transition to competitive markets, which could result from frequent program changes. Consequently, the Commission finds the

²⁸⁵ Docket No. 131 at 5.

Settlement program periods strike an appropriate balance between promoting competition and price stability.

WGES further argues that the Settlement would restrict the Commission's ability to review retail market developments and take appropriate action. The Settling Parties assert that the Settlement in no way restricts the Commission's statutory obligations. The Commission concurs with the Settling Parties and finds that nothing in the Settlement precludes the Commission from acting according to its statutory mandates to intervene if and when circumstances require.

Upon an initial finding that the electricity supply market is not competitive,²⁸⁶ the Commission is statutorily required to reexamine this finding at least annually.²⁸⁷ The Commission does not agree with WGES's assertion that the Settlement restricts Commission compliance with this obligation. The Settlement provides for annual reports²⁸⁸ and major policy reviews²⁸⁹ regarding the SOS programs. This will be helpful and is consistent with Commission obligations. However, the Commission envisions the annual reviews will involve a more detailed evaluation of the market, and the Commission will manage the transition process in an orderly fashion to ensure reliable service at just and reasonable rates.

WGES's argument is essentially that since the Settlement provides SOS programs will be conducted according to the terms of the Settlement,²⁹⁰ the Commission cannot act during these program periods. It is true the Settlement provides that SOS program terms

²⁸⁶ Section 7-510(c)(3)(ii)(1).

²⁸⁷ Section 7-510(c)(3)(ii)(2).

²⁸⁸ Settlement paragraphs 3, 22, 41 and 59.

²⁸⁹ Settlement paragraphs 4, 23 and 42.

²⁹⁰ Settlement paragraphs 2, 21, 40 and 58.

and conditions are to remain unchanged during the Settlement period. However, no settlement or agreement can ever void the Commission's responsibility under the PUC Law to act as the public interest requires.²⁹¹ If the public interest were to require at some future time that the Settlement must be voided, the Commission will act to protect the public interest.²⁹² This overriding statutory obligation is recognized by the Settling Parties.²⁹³ Therefore, the Commission finds that the Settlement does not conflict with the Commission's statutory requirement to conduct annual market reviews of the state of competition.

2. Multi-year SOS Portfolios

Section 7-510(c)(3)(ii) states that if the Commission extends the obligation to provide SOS that it must do so "at a market price." Nowhere in the statute is the term "market price" defined. There are an infinite number of choices of possible market prices. In adopting the Settlement, the Commission finds the procurement methodologies and each associated portfolio will represent a competitive market price that is appropriate for the various Settlement services which is consistent with statutory requirements.

WGES claims retail SOS prices based upon a supply portfolio that includes multi-year contracts *may* disrupt competitive retail markets if blended SOS prices are below *prevailing* generation market prices for a significant period of time.²⁹⁴ WGES believes a SOS supply portfolio based solely on one-year supply contracts will provide sufficient

²⁹¹ See §§ 2-112 and 2-113.

²⁹² The Commission hopes and anticipates that this will not be required.

²⁹³ Docket No. 159 at 17 and Tr. at 584-586.

²⁹⁴ Docket No. 131 at 8. WGES says the "prevailing" market price is the price of supply at any give point in time. *Id.* at 9.

market price responsiveness to reasonably assure the proper conduct of the competitive market.²⁹⁵

The Commission is not persuaded by WGES's arguments for several reasons. First, WGES acknowledges that it is hard to predict if significant price increases will occur because the electric supply markets are known to be very volatile.²⁹⁶ WGES admits that, in an electricity market with declining prices, not only would blended SOS prices not disrupt the retail market but that customers would see incentives to leave SOS for the competitive market.²⁹⁷ Consequently, the Commission concludes that WGES has not demonstrated that blended SOS wholesale portfolios will disrupt the development of a competitive retail electricity market.

Second, WGES argues that "annual SOS bid prices would keep SOS prices fresh and at prevailing market prices."²⁹⁸ However, the record supports the conclusion that a wholesale competitive bidding process for multi-year contracts should establish the appropriate market price for the multi-year contract. Consequently, the Settlement complies with this statutory requirement. As noted in the record, WGES's proposal to rely exclusively upon one-year supply contracts merely represents a different balancing point between spot market prices and the longer term contracts for SOS that the Settlement adopts for certain services.²⁹⁹ Consequently, the Commission rejects the alternative supply recommendations proffered by WGES.

²⁹⁵ Docket No. 131 at 11.

²⁹⁶ Docket No. 131 at 10.

²⁹⁷ Docket No. 131 at 10.

²⁹⁸ Docket No. 131 at 11.

²⁹⁹ Even WGES does not advocate spot market prices, which have caused market and pricing problems in other jurisdictions.

Finally, the record is uncontroverted that multi-year supply portfolios will level out the volatility of the market and give customers price stability while promoting reliability of supply. Customers may also benefit from the value to suppliers of the reduction in revenue volatility associated with multi-year contracts.³⁰⁰ This comports with the goal for an orderly transition to competitive electricity markets. The multi-year procurement process is appropriate and strikes a proper balance for residential and small commercial customers. The Commission finds that the Settlement procurement process, which promotes stability, especially for smaller customers, represents a sound public policy choice.

3. Deferral of SOS Issues

WGES has criticized the Settlement arguing that it defers many critical policy issues to future phases.³⁰¹ WGES asserts there are three significant unresolved issues: wholesale supplier volumetric risk mitigation; Residential SOS pricing anomalies; and retail rate structures. The Commission finds the record reflects that the *policies* regarding each of these issues are appropriately defined in the Settlement while the *procedures* for implementing some of these policies have been deferred to Phase II. The record demonstrates that minimum stays are prohibited, unless undue harm can be shown; wholesalers will assume all volumetric risks, with a defined exception; and the MBPs will describe procedures for dealing with “pricing anomalies,” limiting any reasons to reject bids. Finally, SOS will be structured to conform to current rate classifications.

³⁰⁰ Mirant concurs that suppliers hedge their obligations, either through the market or with their own resources – Docket No. 130 at 9.

³⁰¹ Docket No. 131 at 6-8.

The Commission emphasizes that Phase II is largely the result of practical necessity caused by the time constraints in this proceeding. The Commission finds that bifurcating this case has been both sensible and necessary. This matter is extremely time sensitive and quite complex. This phase provides the important and necessary framework upon which Phase II will build, which is consistent with the procedures followed in this case to resolve SOS issues through a careful step-by-step approach. The Commission concludes that this process conforms to all statutory requirements, particularly § 7-510(c) and (e). The Commission does note, however, that it expects Phase II issues to be appropriately addressed.³⁰²

4. Balancing Interests

Finally, WGES claims that the Settlement does not fairly balance the interests of consumers, suppliers and utilities. WGES says that a level playing field is only possible if SOS prices are responsive to prevailing market prices that do not undermine the development of the competitive market.³⁰³ WGES's argument focuses upon concerns with the Administrative Charge component of SOS prices, particularly the Residential SOS incremental cost component.³⁰⁴

First, the Commission finds that the Administrative Charge for non-residential SOS programs will clearly be compensatory of related SOS costs because the Settlement requires true-ups to actual costs.³⁰⁵ Consequently, WGES's comments are baseless with respect to N-R customers. As for Residential SOS, the Commission notes that since no

³⁰² A process for responding to pricing anomalies and bid rejections will be resolved in Phase II, which is appropriate.

³⁰³ Docket No. 131 at 3.

³⁰⁴ Docket No. 131 at 13-15.

³⁰⁵ See Settlement paragraphs 31, 50 and 68.

party can state with certainty today what costs will be, the Settling Parties worked to estimate a reasonable amount. Furthermore, the record demonstrates that the residential fixed incremental cost rate reflects what the Settling Parties really believe those costs will be.³⁰⁶ As a result, the utilities bear future risks and rewards caused by deviations in costs. The Commission finds this appropriate.

The Commission also finds that WGES has not convincingly supported its contention that the Administrative Charge will cause shopping customers to subsidize SOS customers. The Commission finds that the crediting mechanism in the Administrative Adjustment is appropriate because all customers are treated equally thereby avoiding cross-subsidies. The negotiated Residential SOS incremental cost figure also promotes price certainty and stability, an important Settlement and market feature for this customer class. Finally, WGES may raise this or any other issue in a distribution rate case.

F. OTHER ISSUES

The Settlement in this proceeding is a very complex document. The Commission has addressed herein the critical components necessary for this to be a workable, reasonable process for the provisioning of SOS. In addition, several other issues including responses to the Commission's four questions deserve the specific attention of the Commission.

1. Consultants

The procurement process for the consultant services will be conducted by the utilities and the Commission will select from among the respondents. Reimbursement to the utilities for consultant services is included as a part of incremental costs in the

³⁰⁶ See testimony of MEA at Tr. 817. AP supported this view, Docket No. 152 at 5.

Administrative Charge. These consultants will work with and report directly to the Commission. The Commission expects they will be employed shortly after the completion of Phase II deliberations and issuance of a Commission Order.

2. Exogenous Changes

The Settlement permits the utilities to petition the Commission for the recovery of additional incremental costs under certain circumstances pursuant to paragraph 12(d). These are usually referred to as exogenous changes. The Commission notes that such recovery is not automatic and the burden falls on any party seeking such recovery to prove any exogenous change complies fully with this Settlement provision.

3. “PSC Out” Clause

The Commission notes that a provision similar to that adopted in Order No. 78148 in Case No. 8936 is unnecessary here as the specific settlement language giving rise to concerns in that case is not found in this case.

4. Prudent and Verifiable Costs

The Commission finds that the process adopted in the Settlement allows for appropriate Commission review and analysis to assure compliance with the provisions of the Electric Act, specifically Section 7-510 (c).

5. Powers of the Commission

The Commission will continue to ensure the orderly transition to a competitive market and affirms that sufficient authority exists for the Commission to appropriately act when it deems necessary and in the public interest.

6. Regulations

The Commission finds that it is appropriate to approve this Settlement in this Order. However, the Settlement provides that regulations will be submitted to the

Commission following Phase II. The Commission will implement appropriate regulations thereafter.

7. Non-Mass Market SOS Customers

The Commission finds that the provision of SOS, for other than the mass market, in the Settlement is appropriate in this case. Consequently, the Commission will defer any decision regarding whether such SOS service is legally mandated by the Electric Act.

8. Settlement Paragraph No. 9

The Settlement provides that the Parties will discuss in Phase II whether final bid results, bid award(s) and proposed contract(s) will be submitted to the Parties, with appropriate confidentiality protections, and when details of the awarded bid(s) will become public. The Commission notes that the confidentiality of the contracting process is imperative for the bidding process to function fairly and appropriately. Consequently, the Commission will scrutinize in Phase II whether bids should be released in any fashion prior to Commission approval of the winning bids. Additionally, the Commission will require an unfettered opportunity to scrutinize all proposed bids and contracts, free of outside interference.

9. Phase II

The Settlement establishes the framework for the extension of SOS from investor-owned electric utilities in Maryland. However, it is subject to the resolution of details in Phase II by the Commission.

IT IS, THEREFORE, this 29th day of April, in the year Two Thousand and Three,
by the Public Service Commission of Maryland,

ORDERED THAT: (1) The electricity supply market in Maryland is not
competitive.

(2) The electric distribution companies are required to
extend their obligation to provide Standard Offer Service.

(3) The proposed Settlement meets the requirements of
the Public Utility Article of the *Annotated Code of Maryland* and its Electric Act
provisions and provides a fair and reasonable means for extending the obligation to
provide Standard Offer Service.

(4) The proposed Settlement is approved without
modification.

(5) The objections to the proposed Settlement raised by
Washington Gas Energy Services are rejected.

COMMISSIONERS

APPENDIX A

APPENDIX A

IN THE COMPETITIVE SELECTION
OF ELECTRICITY
SUPPLIER/STANDARD OFFER
SERVICE.

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 8908

SETTLEMENT AGREEMENT

The Potomac Edison Company d/b/a Allegheny Power (“AP”), Baltimore Gas and Electric Company (“BGE”), Delmarva Power & Light Company (“Delmarva”), Potomac Electric Power Company (“Pepco”), the Staff of the Maryland Public Service Commission (“Staff”), Maryland Office of People’s Counsel (“OPC”), Mirant Mid-Atlantic, LLC, Conectiv Energy Supply, Inc., Mid-Atlantic Power Supply Association, Constellation NewEnergy, Inc., Pepco Energy Services, Inc., Maryland Industrial Group (“MIG”), Maryland Energy Users Group, Maryland Retailers Association (“MRA”), Building Owners and Managers Association of Baltimore, Inc. (“BOMA”), Maryland Energy Administration (“MEA”), Power Plant Research Program of the Department of Natural Resources, Strategic Energy, LLC, Southern Maryland Electric Cooperative, Inc., and Choptank Electric Cooperative, Inc., (individually and collectively referred to as the “Settling Parties”), agree as follows:

WHEREAS, the fixed price power supply service currently provided to residential and non-residential customers of AP, BGE, Delmarva, and Pepco will expire at various

times starting in 2004 pursuant to the terms of the settlements in Cases Nos. 8794/8804, 8795, 8796, 8797, 8890, and 8936; and

WHEREAS, the Commission instituted this proceeding to establish procedures for the competitive selection of electric supply for standard offer service; and

WHEREAS the Settling Parties have agreed upon the terms and procedures, set forth in this Settlement, for the provision of standard offer and default service to customers, through the competitive selection of wholesale supply, for the periods set forth in the Settlement; and

NOW, THEREFORE, the Settling Parties agree to the following stipulation and Settlement Agreement (“Settlement”):

I. Residential Standard Offer Service

1. The obligation arising from this Settlement of the investor-owned electric companies to provide Standard Offer Service (“SOS”) to all residential customers shall be extended for the periods set forth below. Accordingly, AP, BGE, Delmarva, and Pepco (collectively the “Utilities”) agree to provide SOS to residential customers within their respective Maryland franchise territories for the following periods (collectively the “Residential Service Periods”):
 - a) AP will provide SOS to residential customers from January 1, 2009, to December 31, 2012, subject to Paragraph 4(d).
 - b) BGE will provide SOS to residential customers from July 1, 2006, to May 31, 2010.

- c) Delmarva will provide SOS to residential customers from July 1, 2004, to May 31, 2008.
 - d) Pepco will provide SOS to residential customers from July 1, 2004, to May 31, 2008.
2. Rules, terms and conditions in this Settlement for this regulated service will remain the same for the entirety of the Residential Service Periods.
 3. Following each year of its Residential Service Period, each Utility will report to the Commission on its wholesale electric supply procurement process and results, SOS retail prices produced, and enrollment activity for this service (including the number of customers, megawatt peak load, kilowatt hour energy, and switching to and from the service) for the prior year. Copies of this report will be served on all Parties on the Case No. 8908 service list (“Parties”). This requirement is not intended to replace or restrict other reporting requirements that the Commission has or may impose upon utilities or electric suppliers.
 4. The Commission will docket a proceeding for a major policy review of Residential SOS during the second half of the second program year of each Utility’s Residential Service Period when procurement and price results for the second year are known and there is some second year enrollment experience.
 - a) The Commission Staff will initiate the policy review and will provide relevant information, analysis, conclusions and recommendations.
 - b) The final Commission order resulting from each Utility’s policy review will apply only to the provision of SOS in that Utility’s service territory following

- its Residential Service Period. All issues associated with the provision of SOS after the Residential Service Periods are open to review and change.
- c) Results of the policy review may differ for each Utility's Maryland franchise territory.
 - d) AP agrees to provide SOS to residential customers consistent with the terms set forth in this Settlement and with any changes to this Settlement that may have been agreed to by the Settling Parties and ordered by the Commission.
5. All residential customers are eligible for Residential SOS, subject to the general terms and conditions of the Utilities' tariffs and the Commission's regulations, as they may change from time to time subject to Commission approval.
 6. Electric supply for Residential SOS will be obtained by each Utility pursuant to a competitive wholesale procurement process. The specific bidding format, form of bid request, timeline for the bidding and timely bid evaluation process, as well as a model bid evaluation plan and a model power supply contract (collectively referred to as the "Model Bid Plan") will be developed in Phase II of this proceeding. There is a presumption that the wholesale bidding process developed in Phase II of this proceeding will use Requests for Proposals ("RFPs") to solicit supply offers. The Model Bid Plan that results from Phase II will be submitted to the Commission for approval. Proposed regulations will be submitted to the Commission for approval after Phase II.
 7. The Model Bid Plan to be developed in Phase II will include, but not be limited to, the following features:

- a) The Utilities will solicit offers for Full-Requirements Service. Full-Requirements Service includes, but is not limited to, the provision of electric energy, energy losses, generation capacity, ancillary services and any other PJM or FERC-approved services and associated costs related to the Utilities' SOS load obligation, with the exclusion of network integration transmission service. This description of Full-Requirements Service is not intended to be the complete definition of Full-Requirements Service, nor is it intended to cover all of the wholesale suppliers' responsibilities. The final definition of Full-Requirements Service and the complete scope of the wholesale suppliers' responsibilities will be developed in Phase II.
- b) Each Utility will solicit offers for 1, 2 and 3 year terms. Each Utility will compile a portfolio of 1, 2 and 3 year term conforming offers such that 1-year offers comprise at least 50% of each year's requirements, 2-year offers comprise at most 25% of each year's requirements, and 3-year offers comprise at most 25% of each year's requirements. The Utilities will select 1, 2, and 3-year conforming offers to meet these percentage targets in accordance with the Model Bid Plan.
- c) Each Utility will solicit seasonally differentiated and, if applicable, time-of-use differentiated prices. In the case of multi-year-term contracts, prices will, in addition, be annually specified.
- d) Supply contracts with each Utility shall not extend beyond that Utility's Residential Service Period, unless as a result of the major policy review the

Commission provides for further Utility-procured SOS beyond the Residential Service Period.

- e) The total load may be divided into load blocks to promote diversity of supply and reliable supply contract performance. Each load block will be a percentage of the total SOS load and each supplier will be obligated to supply that percentage of the load at all times regardless of the magnitude of the load. The size of the total load and commercial practice will be a guide toward a reasonable number of load blocks.
- f) The first SOS year will end May 31 of the first year in each Utility's Residential Service Period, and the second year will begin June 1 of the same calendar year, in order to reset SOS periods to conform to the PJM planning period. Notwithstanding any other provision of this Settlement, this reset provision may be revisited if PJM changes its planning periods.
- g) The Model Bid Plan will take into account the bidder's price, the bidder's credit worthiness and financial capability, the bidder's experience, supply diversity, and any other similar factors.
- h) The Model Bid Plan will also describe procedures that will be used in the event that conforming bids to provide electricity supply do not fill all requested load blocks or if the conforming offers for a particular term result in significant pricing anomalies as reflected in the blended price of the compiled portfolio. These procedures will only apply to the unfilled blocks or for those blocks that create the pricing anomalies. These procedures also will be designed to ensure

reliable supply to customers and to ensure that the Utilities do not bear the risk of such failure to secure bids or the risk associated with pricing anomalies.

8. Each Utility will submit its specific forms of bid request, evaluation plan, and standard form contracts (collectively the “Utility Bid Plan”) to the Commission for review of compliance with the Commission-approved Model Bid Plan for Residential SOS. Copies of the Utility Bid Plan will be served on the Parties.
9. Each Utility will submit the final bid results, bid award(s) and proposed contracts(s) to the Commission for its review and determination of compliance with the Utility Bid Plan. The Parties will consider in Phase II whether the submission would also be provided to the Parties with appropriate confidentiality protection. The contract(s) will be deemed to be in compliance with the Utility Bid Plan and approved by the Commission unless the Commission orders otherwise within 2 business days following the submission. The Parties will determine in Phase II the period of time between the Commission’s review and when details of the awarded bid(s) become public.
10. Winning bidders will receive the actual prices in their offers for each year of the term of their supply contract. Winning bidders will not be permitted to revise prices or any other terms and conditions of their supply contracts.
11. The retail prices to Residential SOS customers for each Utility will consist of the sum of the following components:

- a) The seasonally-differentiated and, if applicable, time-of-use differentiated load weighted average of all awarded electric supply prices for specific services in each year;
- b) Retail charges designed to recover, on an aggregate basis, FERC-approved transmission charges and any other PJM charges and costs incurred by the Utility directly related to the Utility's Residential SOS load obligation;
- c) An Administrative Charge; and
- d) Applicable taxes.

12. The Administrative Charge will be a 4 mill (0.4 cents) per kWh charge. The

Administrative Charge applies exclusively to kWh of SOS load, and shall not be applicable to kWh load served by competitive retail suppliers.

- a) 1.5 mills (0.15 cents) per kWh of the Administrative Charge will be paid to the Utilities as return, for retention by their shareholders. This return component shall remain fixed for the entirety of each Utility's Residential Service Period except as provided in Paragraph 12(d). The return component of the Administrative Charge shall in no way be reflected for rate-making purposes in the establishment of the Utilities' distribution rates, including the determination of the Utilities' return for providing distribution service.
- b) 0.5 mills (0.05 cents) per kWh of the Administrative Charge will be paid to the Utilities for their incremental costs of supplying Residential SOS (not including Residential SOS uncollectibles). Such incremental costs shall not include Residential SOS cash working capital revenue requirement, which is

deemed to be reflected in full for residential customers through the return component of the Administrative Charge as specified in Paragraph 12(a). This incremental cost component shall remain fixed, without reconciliation, for the entirety of each Utility's Residential Service Period. The Utilities' actual incremental costs of Residential SOS will not be included in the Utilities' distribution cost calculations in the Utilities' subsequent distribution rate cases. No Settling Party will support or propose a change to remove Residential SOS-related costs, in any distribution rate proceeding that will take effect during the Residential Service Period, that would reduce distribution rates by more than the revenue collected by the Utility from residential customers for this 0.5 mill component of the Administrative Charge.

- c) The remaining 2 mills (0.2 cents) per kWh of the Administrative Charge will be collected by the Utilities and applied as follows. For BGE, this 2 mill portion of the Administrative Charge will be reduced by 1.1 mill, which is to reflect its uncollectible costs currently reflected in its SOS component of rates. The remainder of the 2 mill portion after subtracting the uncollectible costs rate is henceforth referred to as the Administrative Adjustment. In the event a subsequent base rate case or base rate review occurs in which a different level of uncollectible costs are assigned to the SOS component of rates, such different level of costs shall be converted to a millage rate and used to change commensurately the Administrative Adjustment applicable to BGE. For the other Utilities, the full 2 mill portion will comprise the Administrative

Adjustment, until their next base rate case or base rate review. In their next base rate case or base rate review, an allocation of those Utilities' uncollectibles to the supply component of rates will be made based on general rate-making principles. However, the foregoing shall not be interpreted as requiring a single-issue distribution rate reduction, and any change in distribution rates shall be based on normal ratemaking reviews of overall costs and revenues allocated to the distribution portion of rates. The resulting level of uncollectible costs shall be converted to a millage rate and be subtracted from this 2 mill portion of the Administrative Charge to derive the Administrative Adjustment.

- d) If, after the execution of this Settlement, any Utility is required by a change in law, order, or regulation, not initiated by the Utility, to incur actual incremental costs, not reflected in the Utility's current distribution rates, that would cause the Utility's total actual incremental costs to exceed 0.5 mills per kWh, then the Utility may file with the Commission to collect those costs that exceed the 0.5 mills per kWh. If, after the execution of this Settlement, any Utility is required by a change in law, order, or regulation, not initiated by the Utility, to incur actual incremental costs, not reflected in the Utility's current distribution rates, that would cause the Utility's total actual incremental costs to be reduced to less than 0.5 mills per kWh, then OPC may file with the Commission to reduce the 0.5 mills per kWh component of the Administrative Charge commensurately. The provisions of this subparagraph do not apply to either

Residential SOS cash working capital revenue requirement which is deemed to be reflected in the return component as provided in Paragraph 12(a) or to Residential SOS-related uncollectibles which are reflected separately as provided in Paragraph 12(c). Upon Commission approval of the filing, any increase in incremental costs would be subtracted from the Administrative Adjustment, and any reduction in incremental costs would be added to the Administrative Adjustment. If the additional incremental costs are greater than the balance of the revenue associated with the Administrative Adjustment after all other deductions, the remaining costs would be collected on a per-kWh basis from all Residential SOS customers. If a Utility's incremental cost recovery is changed pursuant to this Paragraph, any Party may move that the Commission examine whether that Utility's return set in Paragraph 12(a) should also be adjusted (which examination may include consideration of the level of Residential SOS cash working capital revenue requirement), provided however that such adjustment can never cause the return to drop below 1.25 mills per kWh or to increase above 1.75 mills per kWh.

- e) In no event shall the Administrative Charge be less than the sum of the return (subject to Paragraph 12(d)), the incremental costs (subject to Paragraph 12(d)), and the uncollectibles (subject to Paragraph 12(c)).

13. The revenues associated with the Administrative Adjustment will be credited to all residential distribution customers in the form of a per kWh credit, which will be calculated by dividing the available revenues by the total distribution kilowatt-

hours. This credit to all Residential distribution customers will be revised quarterly to reflect changes in the revenues collected for the credit and in the level of distribution service sales used to calculate the credit. Annually, any difference between the amount actually collected to fund the credit and the amount credited to customers will be incorporated in the next year's calculation of the credit.

14. Except as otherwise provided in this Settlement:

- a) The Administrative Charge will remain fixed at 4 mills/kWh during each Utility's Residential Service Period until such time as 35% of residential capacity peak load contribution have migrated to competitive retail supply, as reported in a monthly enrollment report to be specified in Phase II. At that time, the Administrative Adjustment will be reduced by 50% and the Administrative Charge will be reduced commensurately. The Administrative Charge will remain fixed at this reduced level until such time as 50% of residential capacity peak load contribution have migrated to competitive retail supply, as reported in a monthly enrollment report to be specified in Phase II. At that time, the Administrative Adjustment will be eliminated, and the Administrative Charge will be reduced commensurately.
- b) In no event shall the Administrative Charge be less than the sum of the return (subject to Paragraph 12(d)), the incremental costs (subject to Paragraph 12(d)), and the uncollectibles (subject to Paragraph 12(c)).

- c) The mechanisms set forth herein to reduce or eliminate the Administrative Adjustment will be implemented, once triggered, effective with the beginning of the next Residential SOS program year.
15. All customers eligible for Residential SOS will be informed of the retail prices and the price to compare for the service for the next service year at least two (2) months prior to the beginning of that service year. If it is not practicable to provide such notice, the Utilities shall file with the Commission and serve upon the Parties notice of that fact, the reasons for the delay, and the expected date for the provision of such information.
 16. In the event that more than 25% of the total residential load within a Utility territory migrates to competitive retail supply, Staff will initiate a process to determine whether the Utility's Bid Plan should be altered prospectively solely to include a feasible mechanism to address volumetric risk to wholesale SOS suppliers. This mechanism will be designed to ensure reliable supply to customers and to ensure that the Utility does not bear the risk of any such mechanism.
 17. Subject to the Utilities' customer enrollment rules and tariffs, customers may leave and return to Residential SOS at any time without switching restrictions. In the event that a Party can demonstrate there is significant gaming occurring, (e.g., substantial quantities of load swinging back and forth between SOS and competitive retail suppliers as market prices rise above and fall below the SOS price), that Party may propose to the Commission measures to mitigate such activities. Any such

measures shall apply only to the residential class in the affected Utility service territory.

18. Phase II of this proceeding will, among other things, develop procedures to be followed in the event of a default by a wholesale supplier of power for Residential SOS load, which procedures will be designed to ensure reliable supply to customers and to ensure that the Utilities do not bear the risk of such default.

II. Type I Non-Residential Standard Offer Service

19. Customers taking distribution service under the following current rate schedules (or their successors) are eligible for Type I Non-Residential Standard Offer Service (“Type I SOS”):
 - a) **For AP, all customers on Schedules C, C-A, CSH, G, OL, AL, MSL, SL, EMU, MU, and EM of AP’s tariffs.**
 - b) **For BGE, all customers on Schedules G, GS, PL, TN, and SL of BGE’s tariffs.**
 - c) **For Delmarva, all customers on Schedules SGS-S (with less than 60 kw demand), OL, ORL, and separately-metered SH/WH of Delmarva’s tariffs.**
 - d) **For Pepco, all customers on Schedules GS Non-Demand, T, SL, TN, EV and OL of Pepco’s tariffs.**
20. The Utilities agree to provide Type I SOS within their respective Maryland franchise territories for the following periods (collectively the “Type I Service Periods”):

- a) AP will provide Type I SOS from January 1, 2005, to December 31, 2008.
 - b) BGE will provide Type I SOS from July 1, 2004, to May 31, 2008.
 - c) Delmarva will provide Type I SOS from the end of the bridge period in 2004 that was set in Case No. 8936, to May 31, 2008.
 - d) Pepco will provide Type I SOS from July 1, 2004, to May 31, 2008.
21. Rules, terms and conditions in this Settlement for this regulated service will remain the same for the entirety of the Type I Service Periods.
22. Following each year of its Type I Service Period, each Utility will report to the Commission on its wholesale electric supply procurement process and results, SOS retail prices produced, and enrollment activity for this service (including the number of customers, megawatt peak load, kilowatt hour energy, and switching to and from the service) for the prior year. Copies of this report will be served on all Parties. This requirement is not intended to replace or restrict other reporting requirements that the Commission has or may impose upon utilities or electric suppliers.
23. The Commission will docket a proceeding for a major policy review of Type I SOS during the second half of the second program year of each Utility's Type I Service Period when procurement and price results for the second year are known and there is some second year enrollment experience.
- a) The Commission Staff will initiate the policy review and will provide relevant information, analysis, conclusions and recommendations.
 - b) The final Commission order resulting from each Utility's policy review will apply only to the provision of SOS in that Utility's service territory following

- its Type I Service Period. All issues associated with the provision of SOS after Type I Service Periods are open to review and change.
- c) Results of the policy review may differ for each Utility's Maryland franchise territory.
24. All customers eligible for Type I SOS are subject to the general terms and conditions of the Utilities' tariffs and the Commission's regulations, as they may change from time to time subject to Commission approval.
25. Electric supply for Type I SOS will be obtained by each Utility pursuant to a competitive wholesale procurement process. The Model Bid Plan for Type I SOS will be developed in Phase II of this proceeding. There is a presumption that the wholesale bidding process developed in Phase II of this proceeding will use RFPs to solicit supply offers. The Model Bid Plan that results from Phase II will be submitted to the Commission for approval. Proposed regulations will be submitted to the Commission for approval after Phase II.
26. The Model Bid Plan to be developed in Phase II will include, but not be limited to, the following features:
- a) Each Utility will solicit offers for Full-Requirements Service (as described in 7(a)) for some combination of 1 and 2-year terms. At least 50% of the load will be served under contracts of 1-year term and at least 30% of the load will be served under contracts of 2-year terms.

- b) Each Utility will solicit seasonally differentiated and, if applicable, time-of-use differentiated prices. In the case of 2-year-contract terms, prices will, in addition, be annually specified.
- c) Supply contracts with each Utility shall not extend beyond that Utility's Type I Service Period, unless as a result of the major policy review the Commission provides for further Utility-procured SOS beyond the Type I Service Period.
- d) The total load may be divided into load blocks to promote diversity of supply and reliable supply contract performance. Each load block will be a percentage of the total SOS load and each supplier will be obligated to supply that percentage of the load at all times regardless of the magnitude of the load. The size of the total load and commercial practice will be a guide toward a reasonable number of load blocks.
- e) The first SOS year will end May 31 of the first year in each Utility's Type I Service Period, and the second year will begin June 1 of the same calendar year, in order to reset SOS periods to conform to the PJM planning period. Notwithstanding any other provision of this Settlement, this reset provision may be revisited if PJM changes its planning periods.
- f) The Model Bid Plan will take into account the bidder's price, the bidder's credit worthiness and financial capability, the bidder's experience, supply diversity, and any other similar factors.
- g) The Model Bid Plan will also describe procedures that will be used to resolicit, rebid or otherwise secure electric supply in the event that conforming bids to

provide electricity supply do not fill all requested load blocks. These procedures will only apply to the unfilled blocks. These procedures also will be designed to ensure reliable supply to customers and to ensure that the Utilities do not bear the risk of such failure to secure bids. It is presumed that the Paragraph 26(a) portfolio allocation thresholds will be resumed, if modified, as soon as practical.

27. Each Utility will submit its specific Utility Bid Plan to the Commission for review of compliance with the Commission-approved Model Bid Plan for Type I SOS. Copies of the Utility Bid Plan will be served on the Parties.
28. Each Utility will submit the final bid results, bid award(s) and proposed contract(s) to the Commission for its review and determination of compliance with the Utility Bid Plan. The Parties will consider in Phase II whether the submission would also be provided to the Parties with appropriate confidentiality protection. The contract(s) will be deemed to be in compliance with the Utility Bid Plan and approved by the Commission unless the Commission orders otherwise within 2 business days following the submission. The Parties will determine in Phase II the period of time between the Commission's review and when details of the awarded bid(s) become public.
29. Winning bidders will receive the actual prices in their offers for each year of the term of their supply contract. Winning bidders will not be permitted to revise prices or any other terms and conditions of their supply contracts.

30. The retail prices to Type I SOS customers for each Utility will consist of the sum of the following components:
- a) The seasonally-differentiated and, if applicable, time-of-use differentiated load weighted average of all awarded electric supply prices for each service in each year;
 - b) Retail charges designed to recover, on an aggregate basis, FERC-approved transmission charges and any other PJM charges and costs incurred by the Utility directly related to the Utility's Type I SOS load obligation;
 - c) An Administrative Charge; and
 - d) Applicable taxes.
31. The Administrative Charge will be a 5.5 mill (0.55 cents) per kWh charge, fixed for each Utility's Type I Service Period. The Administrative Charge applies exclusively to kWh of SOS load, and shall not be applicable to kWh load served by competitive retail suppliers.
- a) 2.0 mills (0.2 cents) per kWh of the Administrative Charge will be paid to the Utilities as return, for retention by their shareholders. This return component shall remain fixed for the entirety of each Utility's Type I Service Period. The return component of the Administrative Charge shall in no way be reflected for rate-making purposes in the establishment of the Utilities' distribution rates, including the determination of the Utilities' return for providing distribution service.

- b) The remaining 3.5 mills (0.35 cents) per kWh of the Administrative Charge will be collected by the Utilities and allocated in the following order:
- (1) The revenue from the 3.5 mills (0.35 cents) per kWh will first be reduced to reflect the Utilities' actual incremental costs of providing Type I SOS as defined in this Settlement for each year of program operation.
 - (A) Prior to the first year of program operation, and for each year thereafter, the Utilities shall file with the Commission, and provide to Parties, annual estimates of actual incremental costs for the upcoming year on a total cost and mills per kWh basis, with all supporting documentation. The Staff shall audit (except for the first year) and verify these estimates and report the results to the Parties.
 - (B) Following each year of program operation, each Utility shall file with the Commission, and provide the Parties, a report detailing the actual incremental costs of providing Type I SOS as defined in this Settlement for the previous year, with all supporting documentation. The Staff shall audit and verify these actual incremental costs and report the results to the Parties.
 - (C) In Phase II, the Parties will consider whether to implement more frequent true-ups.
 - (D) The actual incremental costs for a given Type I SOS year shall be used to true up the estimated incremental costs for that same year, and any over- or under-collection of costs shall be applied to the estimated incremental costs for the next Type I SOS program year.
 - (E) For purposes of this Settlement, "actual incremental costs" are defined as additional reasonable costs prudently incurred by a Utility only as a direct result of providing Type I SOS that are not included in distribution service rates. For example, such actual incremental costs include: actual uncollectibles that are not being recovered in a Utility's distribution rates; consultants; procurement processes; incremental system costs; bill inserts for education; transactions costs; and cash working capital revenue requirement, subject to the

limitations in subsection (2) below. Such incremental costs shall not include any compensation for the risk of providing Type I SOS.

- (2) The Utility shall calculate the cash working capital revenue requirement associated with Type I SOS. One half of that revenue requirement is recovered as part of the return component of the Administrative Charge. The remaining half is recovered as part of the incremental cost component of the Administrative Charge, subject to a ceiling amount of 0.15 mills per kWh. Each Utility agrees to submit the calculation procedure for the cash working capital revenue requirements for review by the Settling Parties in Phase II. The calculation of cash working capital revenue requirement shall use the Utility's total weighted cost of capital grossed up for income taxes.
- (3) The revenue resulting from the portion of the 3.5 mills (0.35 cents) per kWh remaining following the deduction for Type I SOS incremental costs shall be credited, dollar for dollar, to all distribution customers eligible for Type I SOS. For the first year of program operation, and each year thereafter, the residual balance shall be determined by deducting the estimated incremental costs as determined under this Settlement from the revenue estimate determined by multiplying 3.5 mills (0.35 cents) per kWh by the estimated kWh of Type I SOS for that year. This residual balance will be shared among all non-residential distribution customers eligible for Type I SOS on a per kWh distribution sales service basis, beginning on the first day of the first year of the Type I Service Period.

- (4) In the event that Type I SOS actual incremental costs for a given year are greater than the revenue derived from the 3.5 mills (0.35 cents) per kWh, the per-kWh credit shall be zero and the Settling Parties agree to immediately enter good faith negotiations to resolve issues pertaining to the recovery of such amounts. If the Settling Parties are unable to agree following such negotiations, the matter shall be submitted to the Commission for prompt determination. Parties are free to take any position concerning such costs, including, but not limited to, whether such costs are correct and the manner of recovery, but are not permitted to argue that actual incremental costs as defined in this Settlement are not recoverable.
- (5) At the conclusion of the entirety of each Utility's Type I Service Period, and after actual incremental costs incurred by the Utilities have been determined, the Parties will agree upon a mechanism with respect to actual incremental costs, to return any over-collection to, and to collect any under-collection from, all active customers who would have been eligible for Type I SOS at the conclusion of each Utility's Type I Service Period. If the Parties fail to agree within a reasonable period, the matter will be submitted to the Commission for decision. The Settling Parties retain all rights to take any position concerning these issues, except that no party may argue that actual incremental costs are not recoverable.

32. All customers eligible for Type I SOS will be informed of the retail prices and the prices to compare for the service at least two (2) months prior to the beginning of each service year. If it is not practicable to provide such notice, each Utility shall file with the Commission and serve upon the Parties notice of that fact, the reasons for the delay, and the expected date for the provision of such information.
33. The Settling Parties agree that all solicitations for the wholesale supply of Type I SOS will be required to include provisions to mitigate wholesale suppliers' exposure to the volumetric risk associated with customer migration. In Phase II, the Settling Parties agree to develop a procurement structure to adequately address the customer migration risk to the wholesale suppliers. This structure will be designed to ensure reliable supply and to ensure that the Utilities do not bear the risk of this contract and supply structure. A mechanism will be developed in Phase II that will address the levels of volumetric and pricing risks to which the wholesale suppliers will be exposed, and how such risks will be addressed. The Parties will consider specific methods for risk containment, including but not limited to:
- a) Percentage load variations (bandwidths) for both increases and decreases (currently discussed as 5%);
 - b) The release of the wholesale suppliers' obligation to supply load, at the original contract fixed price, that has been lost due to customers migrating to the retail supply market (based on decreases in actual megawatt load being served);
 - c) **The pricing structure for load migrating to SOS (that will result in a weighted average, single-rate-class pricing structure); and**

- d) Other components that will balance the needs of suppliers and the value to customers.

The mechanism adopted in Phase II will require the SOS wholesale suppliers to fully meet the Utilities' SOS load at all times; however, the SOS wholesale suppliers will not be required to take incremental load obligations that are not specifically identified and priced as incremental load.

- 34. In the event that a Phase II settlement is not achieved that will implement Paragraph 33, and there is litigation regarding such appropriate customer migration risk mitigation measures, and the Commission determines not to implement a customer migration risk mitigation provision that is reasonably consistent with the provisions of Paragraph 33, then the requirements of Paragraph 35 shall be voided. The Parties may thereafter propose alternative customer migration risk mitigation measures. In such circumstance, all Settling Parties reserve the right to take any position with respect to any proposed alternative customer migration risk mitigation measure, including the position that no such measures are appropriate.
- 35. Except as provided in this Settlement and the Utilities' customer enrollment rules and tariffs, and effective during the service periods specified herein, there shall be no minimum stay, exit fees or penalties, or similar provisions or restrictions that may inhibit any Type I SOS customer's ability to switch to or from any electricity supplier or service.
- 36. Phase II of this proceeding will, among other things, develop procedures to be followed in the event of a default by a wholesale supplier of power for Type I SOS

load, which procedures will be designed to ensure reliable supply to customers and to ensure that the Utilities do not bear the risk of such default.

III. Type II Non-Residential Standard Offer Service

37. Distribution customers eligible for Type II Non-Residential Standard Offer Service (“Type II SOS”) consist of all non-residential customers not eligible for Type I SOS whose PJM capacity peak load contribution is less than 600 kW, excluding existing Utility special generation contract customers.
38. If all customers in a particular rate schedule are eligible for this service, the rate schedule will state this eligibility. If some but not all customers taking service under a given distribution rate schedule will be eligible for this service (“mixed service eligibility rate schedule”), the relevant eligibility criteria will be stated in the rate schedule.
 - a) For customers within a mixed service eligibility rate schedule, the customer’s capacity peak load contribution (PLC), as that term or its successor is defined by PJM, will be the basis of qualification of Type II SOS. For AP customers, the qualifying load shall be equal to the customer’s forecasted period peak load (FPPL) as that term or its successor is defined by the PJM West Reliability Assurance Agreement (RAA).
 - b) Customers in mixed service eligibility rate schedules will be categorized as soon as practicable after the Utilities have established customers’ PLCs. Such categorization will apply only to the upcoming service year for Type II SOS.

- c) Bid packages for mixed eligibility rate schedules shall reflect appropriately revised load information (including load profiles and other relevant usage characteristics for the two sub-classes within the rate schedule.)
 - d) The categorization of the customer shall not change within an SOS service year.
 - e) New customers without summer load history will be categorized by the Utility consistent with existing protocols for the development of the PJM capacity peak load contribution or the PJM West FPPL, or its successor for new customers.
 - f)The foregoing eligibility criteria also will be applied to differentiate between Delmarva's SGS-S Type I customers and SGS-S Type II customers.
39. The Utilities agree to provide Type II SOS within their respective Maryland franchise territories for the following periods (collectively the "Type II Service Periods"):
- a) AP will provide Type II SOS from January 1, 2005, to December 31, 2006.
 - b) BGE will provide Type II SOS from July 1, 2004, to May 31, 2006.
 - c) Delmarva will provide Type II SOS from the end of the bridge period in 2004 that was set in Case No. 8936, to May 31, 2006.
 - d) Pepco will provide Type II SOS from July 1, 2004, to May 31, 2006.
40. Rules, terms and conditions in this Settlement for this service will remain the same for the entirety of the Type II Service Periods.

41. Following the first year of its Type II Service Period, each Utility will report to the Commission on its wholesale electric supply procurement process and results, SOS retail prices produced, and enrollment activity for this service (including the number of customers, megawatt peak load, kilowatt hour energy, and switching to and from the service) for the prior year. Copies of this report will be served on all the Parties. This requirement is not intended to replace or restrict other reporting requirements that the Commission has or may impose upon utilities or electric suppliers.
42. The Commission will docket a proceeding for a major policy review of Type II SOS during the second year of each Utility's Type II Service Period when procurement and price results for the second year are known and there is some second-year enrollment experience.
 - a) The Commission Staff will initiate the policy review and will provide relevant information, analysis, conclusions and recommendations.
 - b) The findings in a final Commission order resulting from each Utility's policy review will apply only to the provision of SOS in that Utility's service territory following the Type II Service Periods. All issues associated with the provision of SOS after Type II Service Periods are open to review and change.
 - c) Results of the policy review may differ for each Utility's Maryland franchise territory.
43. All customers eligible for Type II SOS are subject to the general terms and conditions of the Utilities' tariffs and the Commission's regulations, as they may change from time to time subject to Commission approval.

44. Electric supply for Type II SOS Service will be obtained by each Utility pursuant to a competitive wholesale procurement process. The Model Bid Plan for Type II SOS will be developed in Phase II of this proceeding. There is a presumption that the wholesale bidding process developed in Phase II of this proceeding will use RFPs to solicit supply offers. The Model Bid Plan that results from Phase II will be submitted to the Commission for approval. Proposed regulations will be submitted to the Commission for approval after Phase II.
45. The Model Bid Plan to be developed in Phase II will include, but not be limited to, the following features:
- a) Each Utility will solicit offers for Full-Requirements Service (as described in Paragraph 7(a)) for 1-year terms.
 - b) Each Utility will solicit seasonally-differentiated and, if applicable, time-of-use differentiated prices.
 - c) Supply contracts with each Utility shall not extend beyond that Utility's Type II Service Period, unless as a result of the major policy review the Commission provides for further Utility-procured SOS beyond the Type II Service Period.
 - d) The total load may be divided into load blocks to promote diversity of supply and reliable supply contract performance. Each load block will be a percentage of the total SOS load and each supplier will be obligated to supply that percentage of the load at all times regardless of the magnitude of the load. The size of the total load and commercial practice will be a guide toward a reasonable number of load blocks.

- e) The first SOS year will end May 31 of the first year in each Utility's Type II Service Period, and the second year will begin June 1 of the same calendar year, in order to reset SOS periods to conform to the PJM planning period. Notwithstanding any other provision of this Settlement, this reset provision may be revisited if PJM changes its planning periods.
 - f) The Model Bid Plan will take into account the bidder's price, the bidder's credit worthiness and financial capability, the bidder's experience, supply diversity, and any other similar factors.
 - g) The Model Bid Plan will also describe procedures that will be used to resolicit, rebid or otherwise secure electric supply in the event that conforming bids to provide electricity supply do not fill all requested load blocks. These procedures will only apply to the unfilled blocks. These procedures also will be designed to ensure reliable supply to customers and to ensure that the Utilities do not bear the risk of such failure to secure bids.
46. Each Utility will submit its specific Utility Bid Plan to the Commission for review of compliance with the Commission-approved Model Bid Plan for Type II SOS. Copies of the Utility Bid Plan will be served on the Parties.
47. Each Utility will submit the final bid results, bid award(s) and proposed contracts(s) to the Commission for its review and determination of compliance with the Utility Bid Plan. The Parties will consider in Phase II whether the submission would also be provided to the Parties with appropriate confidentiality protection. The contract(s) will be deemed to be in compliance with the Utility Bid Plan and

approved by the Commission unless the Commission orders otherwise within 2 business days following the submission. The Parties will determine in Phase II the period of time between the Commission's review and when details of the awarded bid(s) become public.

48. Winning bidders will receive the actual prices in their offers for each year of the term of their supply contract. Winning bidders will not be permitted to revise prices or any other terms and conditions of their supply contracts.
49. The retail prices to Type II SOS customers for each Utility will consist of the sum of the following components:
 - a) The seasonally-differentiated and, if applicable, time-of-use differentiated load weighted average of all awarded electric supply prices for each service in each year;
 - b) Retail charges designed to recover, on an aggregate basis, FERC-approved transmission charges and any other PJM charges, and costs incurred by the Utility directly related to the Utility's Type II SOS load obligation;
 - c) An Administrative Charge; and
 - d) Applicable taxes.
50. The Administrative Charge will be a 6.0 mill (0.6 cents) per kWh charge, fixed for each Utility's Type II SOS Service Period. The Administrative Charge applies exclusively to kWh of SOS load, and shall not be applicable to kWh load served by competitive retail suppliers.

- a) 2.0 mills (0.2 cents) per kWh of the Administrative Charge will be paid to the Utilities as return, for retention by their shareholders. This return component shall remain fixed for the entirety of each Utility's Type II Service Period. The return component of the Administrative Charge shall in no way be reflected for rate-making purposes in the establishment of the Utilities' distribution rates, including the determination of the Utilities' return for providing distribution service.
- b) The remaining 4.0 mills (0.4 cents) per kWh of the Administrative Charge will be collected by the Utilities and allocated in the following order:
 - (1) The revenue from the 4.0 mills (0.4 cents) per kWh will first be reduced to reflect the Utilities' actual incremental costs of providing Type II SOS as defined in this Settlement for each year of program operation.
 - (A) Prior to the first year and second year of program operation, the Utilities shall file with the Commission, and provide Parties, annual estimates of actual incremental costs for the upcoming year on a total cost and mills per kWh basis, with all supporting documentation. The Staff shall audit (except for the first year) and verify these estimates and report the results to the Parties.
 - (B) Following each year of program operation, each Utility shall file with the Commission, and provide the Parties, a report detailing the actual incremental costs of providing Type II SOS as defined in this Settlement for the previous year, with all supporting documentation.

The Staff shall audit and verify these actual incremental costs and report the results to the Parties.

- (C) In Phase II the Parties will consider whether to implement more frequent true-ups.
- (D) The actual incremental costs for the first Type II SOS year shall be used to true up the estimated incremental costs for that same year, and any over- or under-collection of costs shall be applied to the estimated incremental costs for the second Type II SOS program year.
- (E) For purposes of this Settlement, “actual incremental costs” are defined as additional reasonable costs prudently incurred by a Utility only as a direct result of providing Type II SOS that are not included in distribution service rates. For example, such actual incremental costs include: actual uncollectibles that are not being recovered in a Utility’s distribution rates; consultants; procurement processes; incremental system costs; bill inserts for education; transactions costs; and cash working capital revenue requirement, subject to the limitations in subsection (2) below. Such incremental costs shall not include any compensation for the risk of providing Type II SOS.

- (2) The Utility shall calculate the cash working capital revenue requirement associated with Type II SOS. One half of that revenue requirement is recovered as part of the return component of the Administrative Charge.

The remaining half is recovered as part of the incremental cost component of the Administrative Charge, subject to a ceiling amount of 0.15 mills per kWh. Each Utility agrees to submit the calculation procedure for the cash working capital revenue requirements for review by the Settling Parties in Phase II. The calculation of cash working capital revenue requirement shall use the Utility's total weighted cost of capital grossed up for income taxes.

(3) The revenue resulting from the portion of the 4.0 mills (0.4 cents) per kWh remaining following the deduction for Type II SOS incremental costs shall be credited, dollar for dollar, to all distribution customers eligible for Type II SOS. For both years of program operation, the residual balance shall be determined by deducting the estimated incremental costs as determined under this Settlement from the revenue estimate determined by multiplying the 4.0 mills (0.4 cents) per kWh by the estimated kWh of Type II SOS for that year. This residual balance will be shared among all non-residential distribution customers eligible for Type II SOS on a per kWh distribution sales service basis, beginning on the first day of the first year of the Type II Service Period.

(4) In the event that Type II actual incremental costs for a given year are greater than the revenue derived from the 4.0 mills (0.4 cents) per kWh, the per-kWh credit shall be zero and the Settling Parties agree to immediately enter good faith negotiations to resolve issues pertaining to

the recovery of such amounts. If the Settling Parties are unable to agree following such negotiations, the matter shall be submitted to the Commission for prompt determination. Parties are free to take any position concerning such costs, including, but not limited to, whether such costs are correct and the manner of recovery, but are not permitted to argue that actual incremental costs as defined in this Settlement are not recoverable.

(5) At the conclusion of the entirety of each Utility's Type II Service Period, and after actual incremental costs incurred by the Utilities have been determined, the Parties will agree upon a mechanism with respect to actual incremental costs, to return any over-collection to, and to collect any under-collection from, all active customers who would have been eligible for Type II SOS at the conclusion of each Utility's Type II Service Period. If the Parties fail to agree within a reasonable period, the matter will be submitted to the Commission for decision. The Settling Parties retain all rights to take any position concerning these issues, except that no party may argue that actual incremental costs are not recoverable.

51. All customers eligible for Type II SOS will be informed of the prices for the service at least two (2) months prior to the beginning of each service year. If it is not practicable to provide such notice, each Utility shall file with the Commission and

serve upon the Parties notice of that fact, the reasons for the delay, and the expected date for the provision of such information.

52. The Settling Parties agree that all solicitations for the wholesale supply of Type II SOS will be required to include provisions to mitigate wholesale suppliers' exposure to the volumetric risk associated with customer migration. In Phase II, the Settling Parties agree to develop a procurement structure to adequately address the customer migration risk to the wholesale suppliers. This structure will be designed to ensure reliable supply and to ensure that the Utilities do not bear the risk of this contract and supply structure. A mechanism will be developed in Phase II that will address the levels of volumetric and pricing risks to which the wholesale suppliers will be exposed, and how such risks will be addressed. The Parties will consider specific methods for risk containment, including but not limited to:

- a) Percentage load variations (bandwidths) for both increases and decreases (currently discussed as 5%);
- b) The release of the wholesale suppliers' obligation to supply load, at the original contract fixed price, that has been lost due to customers migrating to the retail supply market (based on decreases in actual megawatt load being served);
- c) **The pricing structure for load migrating to SOS (that will result in a weighted average, single-rate-class pricing structure); and**
- d) Other components that will balance the needs of suppliers and the value to customers.

The mechanism adopted in Phase II will require the SOS wholesale suppliers to fully meet the Utilities' SOS load at all times; however, the SOS wholesale

suppliers will not be required to take incremental load obligations that are not specifically identified and priced as incremental load.

53. In the event that a Phase II settlement is not achieved that will implement Paragraph 52, and there is litigation regarding such appropriate customer migration risk mitigation measures, and the Commission determines not to implement a customer migration risk mitigation provision that is reasonably consistent with the provisions of Paragraph 52, then the requirements of Paragraph 54 shall be voided. The Parties may thereafter propose alternative customer migration risk mitigation measures. In such circumstance, all Parties reserve the right to take any position with respect to any proposed alternative customer migration risk mitigation measure, including the position that no such measures are appropriate.
54. Except as provided in this Settlement and the Utilities' customer enrollment rules and tariffs, and effective during the service periods specified herein, there shall be no minimum stay, exit fees or penalties, or similar provisions or restrictions that may inhibit any Type II SOS customer's ability to switch to or from any electricity supplier or service.
55. Phase II of this proceeding will, among other things, develop procedures to be followed in the event of a default by a wholesale supplier of power for Type II SOS load, which procedures will be designed to ensure reliable supply to customers, and to ensure that the Utilities do not bear the risk of such default.

IV. Type III Large-Customer Service

56. Distribution customers eligible for Type III Large-Customer Service (“Type III Customers”) consist of all non-residential customers not eligible for Type I or Type II SOS, excluding existing special generation contract customers and excluding Bethlehem Steel, National Railroad Passenger Corporation, Eastalco Aluminum Company, and Westvaco Corporation.
57. The Utilities agree to provide Type III Large-Customer Service within their respective Maryland franchise territories for the following periods (collectively the “Type III Service Periods”):
 - a) AP will provide Type III Large-Customer Service from January 1, 2005, to December 31, 2005.
 - b) BGE will provide Type III Large-Customer Service from July 1, 2004, to May 31, 2005.
 - c) Delmarva will provide Type III Large-Customer Service from the end of the bridge period in 2004 that was set in Case No. 8936, to May 31, 2005.
 - d) Pepco will provide Type III Large-Customer Service from July 1, 2004, to May 31, 2005.
58. Rules, terms and conditions in this Settlement for this service will remain the same for the entirety of the Type III Service Periods.
59. Following its Type III Service Period, each Utility will report to the Commission on its wholesale electric supply procurement process and results, retail prices produced, and enrollment activity for this service (including the number of customers, megawatt peak load, kilowatt hour energy, and switching to and from the service)

for the prior year. Copies of this report will be served on all Parties. This requirement is not intended to replace or restrict other reporting requirements that the Commission has or may impose upon utilities or electric suppliers.

60. Type III Customers are eligible for Type III Large-Customer Service, subject to the terms and conditions of the Utilities' tariffs, the Commission's regulations, and the following conditions:
 - a) If a Type III Customer is taking fixed price service from a Utility at the start of that Utility's Type III Service Period, the customer shall receive Type III Large-Customer Service unless the customer informs the Utility, in writing or electronically, of its election to take Hourly-Priced Non-Residential Service at least 30 days prior to the start of the Type III Service Period.
 - b) If a Type III Customer is taking variable price service from a Utility at the start of that Utility's Type III Service Period, the customer shall receive Hourly-Priced Non-Residential Service unless the customer informs the Utility, in writing or electronically, of its election to take Type III Large-Customer Service at least 30 days prior to the start of the Type III Service Period.
 - c) If a Type III Customer is being served by a retail competitive supplier at the start of or during its Utility's Type III Service Period, and then returns to taking electricity supply from the Utility, the Type III Customer may take Type III Large-Customer Service or Hourly-Priced Non-Residential Service, so long as the customer informs the Utility of its election, in writing or electronically, consistent with the Utility's Supplier Coordination Tariff switching rules. If

- the customer who switched to Utility service fails to make an election, the customer will be assigned to the Hourly-Priced Non-Residential Service.
- d) If a Type III Customer is placed on Hourly-Priced Service as a result of supplier non-delivery, the customer may elect at any time to switch to Type III Large-Customer Service or to a competitive retail supplier. The term “supplier non-delivery” is defined as having occurred as a result of the following circumstances: PJM supplier default, supplier bankruptcy or Commission action ending retail supplier authorization.
 - e) No customer may go directly from Type III Large-Customer Service to Hourly-Priced Non-Residential Service, or vice versa, during its Utility’s Type III Service Period. At the end of the Utility’s Type III Service Period, all customers still on Type III Large-Customer Services will automatically be switched to Hourly-Priced Non-Residential Service.
 - f) Except as provided in Paragraphs 60 and 71, customers may leave or return to Type III Large-Customer Service at any time without switching restrictions.
61. By July 1, 2004, BGE will install interval meters for all customers eligible for Type III Large-Customer Service. BGE will install this metering and will recover the costs under the terms of Rider 23 – Advanced Metering Services.
62. Electric supply for Type III Large-Customer Service will be obtained by the Utilities pursuant to a competitive wholesale procurement process. The Model Bid Plan for Type III Large-Customer Service will be developed in Phase II of this proceeding. There is a presumption that the wholesale bidding process developed in

Phase II of this proceeding will use RFPs to solicit supply offers. The Model Bid Plan that results from Phase II will be submitted to the Commission for approval. Proposed regulations will be submitted to the Commission for approval after Phase II.

63. The Model Bid Plan to be developed in Phase II will include, but not be limited to, the following features:
- a) Each Utility will solicit offers for Full-Requirements Service (as described in Paragraph 7(a).
 - b) Each Utility will solicit seasonally-differentiated and, if applicable, time-of-use differentiated prices.
 - c) Supply contracts with each Utility shall not extend beyond that Utility's Type III Service Period.
 - d) The total load may be divided into load blocks to promote diversity of supply and reliable supply contract performance. Each load block will be a percentage of the total Type III Large-Customer Service load and each supplier will be obligated to supply that percentage of the load at all times regardless of the magnitude of the load. The size of the total load and commercial practice will be a guide toward a reasonable number of load blocks.
 - e) The Model Bid Plan will take into account the bidder's price, the bidder's credit worthiness and financial capability, the bidder's experience, supply diversity, and any other similar factors.

- f) The Model Bid Plan will also describe procedures that will be used to resolicit, rebid or otherwise secure electric supply in the event that conforming bids to provide electricity supply do not fill all requested load blocks. These procedures will only apply to the unfilled blocks. These procedures also will be designed to ensure reliable supply to customers and to ensure that the Utilities do not bear the risk of such failure to secure bids.
64. Each Utility will submit its specific Utility Bid Plan to the Commission for review of compliance with the Commission-approved Model Bid Plan for Type III Large-Customer Service. Copies of the Utility Bid Plan will be served on the Parties.
65. Each Utility will submit the final bid results, bid award(s) and proposed contract(s) to the Commission for its review and determination of compliance with the Utility Bid Plan. The Parties will consider in Phase II whether the submission would also be provided to the Parties with appropriate confidentiality protection. The contract(s) will be deemed to be in compliance with the Utility Bid Plan and approved by the Commission unless the Commission orders otherwise within 2 business days following the submission. The Parties will determine in Phase II the period of time between the Commission's review and when details of the awarded bid(s) become public.
66. Winning bidders will receive the actual prices in their offers for the term of their supply contract. Winning bidders will not be permitted to revise prices or any other terms and conditions of their supply contracts.

67. The retail prices for Type III Large-Customer Service for each Utility will consist of the sum of the following components:
- a) The seasonally-differentiated and, if applicable, time-of-use differentiated, load weighted average of all awarded bid prices for Type III Large-Customer Service;
 - b) Retail charges designed to recover, on an aggregate basis, FERC-approved transmission charges and any other PJM charges and costs incurred by the Utility directly related to the Utility's Type III Large-Customer Service load obligation;
 - c) An Administrative Charge; and
 - d) Applicable taxes.
68. The Administrative Charge will be a 6.5 mill (0.65 cents) per kWh charge, fixed for each Utility's Type III Service Period. The Administrative Charge applies exclusively to kWh of Type III Large-Customer Service load, and shall not be applicable to kWh load served by competitive retail suppliers.
- a) 3.0 mills (0.3 cents) per kWh of the Administrative Charge will be paid to the Utilities as return, for retention by their shareholders. This return component shall remain fixed for the entirety of each Utility's Type III Service Period. The return component of the Administrative Charge shall in no way be reflected for rate-making purposes in the establishment of the Utilities' distribution rates, including the determination of the Utilities' return for providing distribution service.

- b) The remaining 3.5 mills (0.35 cents) per kWh of the Administrative Charge will be collected by the Utilities and allocated in the following order:
- (1) The revenues from the 3.5 mills (0.35 cents) per kWh will first be reduced to reflect the Utilities' actual incremental costs of providing Type III Large-Customer Service as defined in this Settlement for the year of program operation.
 - (A) Prior to program operation, each Utility shall file with the Commission, and provide to Parties, an estimate of actual incremental costs for the program period on a total cost and mills per kWh basis, with all supporting documentation. The Staff shall verify these estimates and report the results to Parties.
 - (B) Following each Utility's Type III Service Period, each Utility shall file with the Commission, and provide the Parties, a report detailing the actual incremental costs of providing Type III Large-Customer Service as defined in this Settlement for the program period, with all supporting documentation. The Staff shall audit and verify these actual incremental costs and report the results to the Parties.
 - (C) In Phase II the Parties will consider whether to implement more frequent true-ups.
 - (D) At the conclusion of each Utility's Type III Service Period, and after actual incremental costs incurred by the Utilities have been determined, the Parties will agree upon a mechanism with respect to actual incremental costs, to return any over-collection to, and to collect any under-collection from, all active customers who would have been eligible for Type III Large-Customer Service at the conclusion of each Utility's Type III Service Period. If the Parties fail to agree within a reasonable period, the matter will be submitted to the Commission for decision. The Settling Parties retain all rights to take any position concerning these issues, except that no party may argue that actual incremental costs are not recoverable.
 - (E) For purposes of this Settlement, "actual incremental costs" are defined as additional reasonable costs prudently incurred by a Utility

only as a direct result of providing Type III Large-Customer Service that are not included in distribution service rates. For example, such actual incremental costs include: actual uncollectibles that are not being recovered in a Utility's distribution rates; consultants; procurement processes; incremental system costs; bill inserts for education; transactions costs; and cash working capital revenue requirement, subject to the limitations in subsection (2) below. Such incremental costs shall not include any compensation for the risk of providing Type III Large-Customer Service.

- (2) The Utility shall calculate the cash working capital revenue requirement associated with Type III Large-Customer Service. One half of that revenue requirement is recovered as part of the return component of the Administrative Charge. The remaining half is recovered as part of the incremental cost component of the Administrative Charge, subject to a ceiling amount of 0.15 mills per kWh. Each Utility agrees to submit the calculation procedure for the cash working capital revenue requirements for review by the Settling Parties in Phase II. The calculation of cash working capital revenue requirement shall use the Utility's total weighted cost of capital grossed up for income taxes.
- (3) The revenue resulting from the portion of the 3.5 mills (0.35 cents) per kWh remaining following the deduction for Type III Large-Customer Service actual incremental costs shall be credited, dollar for dollar, to all distribution customers eligible for Type III Large-Customer Service. The residual balance shall be determined by deducting the estimated incremental costs as determined under this Settlement from the revenue estimate determined by multiplying 3.5 mills (0.35 cents) per kWh by the

estimated kWh of Type III Large-Customer Service. This residual balance will be shared among all non-residential distribution customers eligible for Type III Large-Customer Service on a per kWh distribution sales service basis, beginning on the first day of the Type III Service Period.

- (4) In the event that Type III Large-Customer Service actual incremental costs are greater than the revenue derived from the 3.5 mills (0.35 cents) per kWh, the per-kWh credit shall be zero and the Settling Parties agree to immediately enter good faith negotiations to resolve issues pertaining to the recovery of such amounts. If the Settling Parties are unable to agree following such negotiations, the matter shall be submitted to the Commission for prompt determination. Parties are free to take any position concerning such costs, including, but not limited to, whether such costs are correct and the manner of recovery, but are not permitted to argue that actual incremental costs as defined in this Settlement are not recoverable.

69. All customers eligible for Type III Large-Customer Service will be informed of the prices for the service at least two (2) months prior to the beginning of the Type III Service Period. If it is not practicable to provide such notice, each Utility shall serve upon the Parties notice of that fact, the reason for the delay, and the expected date for the provision of such information.

70. The Settling Parties agree that all solicitations for the wholesale supply of Type III Large-Customer Service will be required to include provisions to mitigate wholesale suppliers' exposure to the volumetric risk associated with customer migration. In Phase II, the Settling Parties agree to develop a procurement structure to adequately address the customer migration risk to the wholesale suppliers. This structure will be designed to ensure reliable supply and to ensure that the Utilities do not bear the risk of this contract and supply structure. A mechanism will be developed in Phase II that will address the

levels of volumetric and pricing risks to which the wholesale suppliers will be exposed, and how such risks will be addressed. The Parties will consider specific methods for risk containment, including but not limited to:

- a) Percentage load variations (bandwidths) for both increases and decreases (currently discussed as 5%);
- b) The release of the wholesale suppliers' obligation to supply load, at the original contract fixed price, that has been lost due to customers migrating to the retail supply market (based on decreases in actual megawatt load being served);
- c) The pricing structure for load migrating to Type III Large-Customer Service (that will result in a weighted average, single-rate-class pricing structure); and
- d) Other components that will balance the needs of suppliers and the value to customers.

The mechanism adopted in Phase II will require the wholesale suppliers to fully meet the Utilities' Type III Large-Customer Service load at all times; however, the wholesale suppliers will not be required to take incremental load obligations that are not specifically identified and priced as incremental load.

71. In the event that a Phase II Settlement is not achieved that will implement Paragraph 70, and there is litigation regarding such appropriate customer migration risk mitigation measures, and the Commission determines not to implement a customer migration risk mitigation provision that is reasonably consistent with the provisions of Paragraph 70, then the requirements of Paragraphs 60(f) and 72 shall be voided.

The Parties may thereafter propose alternative customer migration risk mitigation measures. In such circumstance, all Settling Parties reserve the right to take any position with respect to any proposed alternative customer migration risk mitigation measure, including the position that no such measures are appropriate.

72. Except as provided in this Settlement and the Utilities' customer enrollment rules and tariffs, and effective during the service periods specified herein, there shall be no minimum stay, exit fees or penalties, or similar provisions or restrictions that may inhibit any Type III Customer's ability to switch to or from any electricity supplier or service.
73. Phase II of this proceeding will develop procedures to be followed in the event of a default by a wholesale supplier of power for Type III Large-Customer Service load, which procedures will be designed to ensure reliable service to customers and to ensure that the Utilities do not bear the risk of such default.

V. Hourly-Priced Non-Residential Service

74. Distribution customers eligible for Hourly-Priced Non-Residential Service consist of all non-residential customers, excluding existing special generation contract customers, not eligible for Type I or Type II SOS ("Hourly-Priced Customers").
75. The Utilities agree to provide Hourly-Priced Non-Residential Service starting at the beginning of each Utility's Type III Service Period.
76. Rules, terms and conditions in this Settlement for this service will remain the same for at least two years, and thereafter may be changed, prospectively only, by the Commission following a major policy review in which all interested parties may

participate. Any party may request such a review, or the Commission may commence it on its own motion, at any time after the first year of service.

77. All Hourly-Priced Customers are eligible for Hourly-Priced Non-Residential Service, subject to the general terms and conditions of the Utilities' tariffs and the Commission's regulations, as they may change from time to time subject to Commission approval, and the other provisions of this Settlement.
78. The manner in which supply for Hourly-Priced Non-Residential Service is obtained will be at the Utilities' discretion. To the extent that a Utility chooses to procure the power in a manner that places price or volume risks on the Utility, and incurs extraordinary incremental costs, the Utility will bear such risks and such extraordinary incremental costs, and will file a compliance plan with the Commission to demonstrate how such risks will be managed.
79. The retail prices to Hourly-Priced Non-Residential Service customers for each Utility will consist of the sum of the following components:
 - a) The appropriate PJM hourly integrated real time locational marginal price for energy;
 - b) Charges associated with the PJM capacity obligation;
 - c) FERC-approved transmission, ancillary services, administrative, energy losses, and any other FERC-approved or PJM charges and costs directly related to the Utilities' Hourly-Priced Non-Residential Service load obligation;
 - d) An Administrative Charge;
 - e) Applicable taxes; and

- f) Any other price element directly related to the Utilities' Hourly-Priced Non-Residential Service load obligation that may be identified in Phase II and approved by the Commission.
80. The election provisions of Paragraph 60 apply to Hourly-Priced Non-Residential Service.
81. Except as provided in this Settlement and the Utilities' customer enrollment rules and tariffs, and effective during the service periods specified herein, there shall be no minimum stay, exit fees or penalties, or similar provisions or restrictions that may inhibit any Hourly-Priced Non-Residential customer's ability to switch to or from any electricity supplier or service.
82. The Administrative Charge will be between 2.25 mills (0.225 cents) and 3.0 mills (0.3 cents) per kWh. The Administrative Charge applies exclusively to kWh of Hourly-Priced Non-Residential Service load, and shall not be applicable to kWh load served by competitive retail suppliers.
- a) 2.25 mills (0.225 cents) per kWh of the Administrative Charge will be paid to the Utilities, for retention by their shareholders. This return component shall remain fixed for the entirety of the period that each Utility offers Hourly-Priced Non-Residential Service pursuant to this Settlement. The return component of the Administrative Charge shall in no way be reflected for rate-making purposes in the establishment of the Utilities' distribution rates, including the determination of the Utilities' return for providing distribution service.

- b) Up to 0.75 mills (0.075 cents) per kWh of the Administrative Charge will be used to reimburse the Utilities for their actual incremental costs of providing Hourly-Priced Non-Residential Service.
- (1) Prior to the first year and second year of program operation, the Utilities shall file with the Commission, and provide Parties, annual estimates of actual incremental costs for the upcoming year on a total cost and mills per kWh basis, with all supporting documentation. The Staff shall audit (except for the first year) and verify these estimates and report the results to the Parties.
 - (2) Following each year of program operation, each Utility shall file with the Commission, and provide the Parties, a report detailing the actual incremental costs of providing Hourly-Priced Non-Residential Service as defined in this Settlement for the previous year, with all supporting documentation. The Staff shall audit and verify these actual incremental costs and report the results to the Parties.
 - (3) In Phase II the Parties will consider whether to implement more frequent true-ups.
 - (4) The actual incremental costs for the first Hourly-Priced Non-Residential Service year shall be used to true up the estimated incremental costs for that same year, and any over- or under-collection of costs shall be applied to the estimated incremental costs for the second Hourly-Priced Non-Residential Service program year.

- (5) For purposes of this Settlement, “actual incremental costs” are defined as additional reasonable costs prudently incurred by a Utility only as a direct result of providing Hourly-Priced Non-Residential Service that are not included in distribution service rates. For example, such actual incremental costs include: actual uncollectibles that are not being recovered in a Utility’s distribution rates; consultants; procurement processes; incremental system costs; bill inserts for education; transactions costs; and cash working capital revenue requirement, subject to the limitations in subsection (6) below. Such incremental costs shall not include any compensation for the risk of providing Hourly-Priced Non-Residential Service.
- (6) The Utility shall calculate the cash working capital revenue requirement associated with Hourly-Priced Non-Residential Service. One half of that revenue requirement is recovered as part of the return component of the Administrative Charge. The remaining half is recovered as part of the incremental cost component of the Administrative Charge, subject to a ceiling amount of 0.15 mills per kWh. Each Utility agrees to submit the calculation procedure for the cash working capital revenue requirements for review by the Settling Parties in Phase II. The calculation of cash working capital revenue requirement shall use the Utility’s total weighted cost of capital grossed up for income taxes.

- (7) If a Utility's actual incremental costs exceed the revenue derived from the 0.75 mills per kWh for this service, the Utility shall, upon approval of the costs by the Commission, recover the amount of the excess actual incremental costs through a surcharge to distribution service rates of all active customers eligible for Hourly-Priced Non-Residential Service.
- (8) At the conclusion of the entirety of each Utility's Hourly-Priced Non-Residential Service, and after actual incremental costs incurred by the Utilities have been determined, the Parties will agree upon a mechanism with respect to actual incremental costs, to return any over-collection to, and to collect any under-collection from, all active customers who would have been eligible for Hourly-Priced Non-Residential Service at the conclusion of each Utility's Hourly-Priced Non-Residential Service. If the Parties fail to agree within a reasonable period, the matter will be submitted to the Commission for decision. The Settling Parties retain all rights to take any position concerning these issues, except that no party may argue that actual incremental costs are not recoverable.

VI. Miscellaneous

83. Except as set forth in this Paragraph 83, the provisions of this Settlement are not intended to apply to Maryland's electric cooperatives.
 - a) In accordance with Section 7-510(c)(3)(i) of the PUC Article, each electric cooperative may continue to provide standard offer service to its customers,

- unless and until the cooperative elects to cease providing such service after providing the Commission with at least 12 month's notice of such election.
- b) This Settlement does not change the terms of Southern Maryland Electric Cooperative's settlement in Case No. 8817, or of Choptank Electric Cooperative's settlement in Case No. 8823. Nor does this Settlement constitute any precedent for what will transpire after the expiration of those cooperatives' settlements.
 - c) Maryland electric cooperatives may continue to procure power supply for standard offer service in any manner they choose, including, but not limited to, by purchasing wholesale power from third-party suppliers through a competitive process, subject to the Commission's authority to determine the reasonableness of the procurement methods used and the rates that result.
 - d) In the event that an electric cooperative elects to cease providing standard offer service to any of its customers, the Commission may institute a separate proceeding to determine the rules pursuant to which standard offer service or default service could then be made available in that cooperative's service territory.
84. The Utilities will procure and pay for independent consultants who will be responsible for monitoring all aspects of the procurement of the Utility SOS services and the Type III Large-Customer Service described in this Settlement.
- a) These consultants will be selected by, will take their direction from, and will provide their consultation and work products to, the Commission or its Staff.

- b) These consultant costs will be included in the incremental costs that the Utilities will recover through the Administrative Charges described in the Settlement.
 - c) The consultants will provide the Commission with a final report as to each supply procurement and award. Copies of each report with appropriate redactions (as determined in Phase II) will be forwarded to each Party who executes a confidentiality agreement approved by the Commission.
85. Other than such customer information and notification requirements as are ordered by the Commission with respect to the services set forth in this Settlement, the Utilities will in no way promote any of those services or describe any of them as being superior or preferable to services supplied by competitive retail suppliers. Prior to implementation of any of the services described in this Settlement, the Parties will discuss mechanisms for providing customer information and notification.
86. The Settling Parties agree to consider, in Phase II of this proceeding, the development, consistent with the terms set forth in this Settlement, of an Experimental Demand Response Service to be offered, as an optional service, to residential and eligible non-residential customers.
87. The Settling Parties agree to consider, in Phase II of this proceeding, the development of retail product offerings that would include renewable or “green” energy resources. Examples for consideration may include a retail “green” SOS

program, or mechanisms to stimulate customer participation in renewable energy-based products.

88. Several issues referred to in this Settlement have been deferred to Phase II for resolution. A list of the issues the Settling Parties have agreed to consider in Phase II is included as Appendix I to this Settlement. The Settling Parties agree to negotiate in good faith to resolve those specific issues, and to submit a Phase II settlement to the Commission for review and approval. Should the Parties be unable to resolve a Phase II issue, that issue shall be litigated before the Commission, without changing any aspect of the terms agreed to in the Phase I Settlement. The Settling Parties agree to support or not oppose the procedural structure as proposed in Staff's October 31, 2002, letter in this proceeding to the Commission.
89. Any and all tariff revisions proposed by the Utilities that implement this Settlement shall be filed with the Commission and served upon the Settling Parties contemporaneously.

VII. Reservations

90. This Settlement represents a compromise for the purposes of settlement and shall not be regarded as a precedent with respect to any future case. No Settling Party necessarily agrees or disagrees with the treatment of any particular item, any procedure followed, or the resolution of any particular issue in agreeing to this Settlement other than as specified herein, except that the Settling Parties agree that the resolution of the issues herein, taken as a whole, is in the public interest.

91. No Settling Party shall be deemed to have approved, accepted, agreed, or consented to any principle underlying or supposed to underlie any of the matters provided for in this Settlement, nor shall approval of this Settlement constitute in any respect a determination by the Commission as to the merits of any of the contentions or allegations which might be made by any of the Parties in the absence of settlement.
92. Except as otherwise provided in this Settlement, all Settling Parties reserve all rights to take any position concerning any issue addressed in this Settlement in any future proceedings. The Settling Parties and their members (if any) stipulate not to seek judicial review of a Commission order approving the Settlement as filed without modification, and stipulate not to take any action before the Commission or a Court in derogation of the Settlement.
93. The various provisions of this Settlement are not severable. None of the provisions shall become operative unless and until the Commission issues an order approving the Settlement without modification or condition. If any portion of this Settlement is modified, conditioned, or rejected by the Commission, or on appeal from approval by the Commission, the Settlement shall be considered null and void, and each Settling Party individually reserves the right to proceed with the filing of testimony, briefs and evidentiary hearings as contemplated by the Commission's orders in Case No. 8908. If the Settlement is rendered null and void by operation of this Paragraph, the Settling Parties agree to immediately enter into good faith negotiations to reach a new settlement. If any future law or regulation is enacted that any Settling Party believes, in good faith, has a material impact on the rights

and obligations arising under this Settlement, the Settling Parties shall meet to discuss what action, if any, should be taken.

94. The discussions that produced this Settlement have been conducted on the understanding that all offers of settlement and discussions relating thereto are and shall be privileged and confidential, shall be without prejudice to the position of any party or participant presenting any such offer or participating in any such discussions, and are not to be used in any manner in connection with this proceeding or otherwise. If the Commission does not approve this Settlement without modification or condition, the Settlement shall be deemed withdrawn and shall not constitute any part of the record in this proceeding or be used for any other purpose whatsoever.
95. Nothing in the Settlement shall be used to abrogate any existing or future contract for competitive retail electricity supply.
96. The headings, titles and captions of the Settlement and its various sections shall have no legal import or precedential value.
97. This Settlement may be executed in any number of identical counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute but one and the same instrument. Delivery by any party or its respective representatives of telecopied (counterpart) signature pages shall be as binding an execution and delivery of this Settlement by such party as if the other parties had received the actual physical copy of the entire Settlement with an ink signature from such party.

IN WITNESS WHEREOF, the Settling Parties respectfully request that the Commission approve this Settlement without modification or condition, and set forth their respective signatures as of the ____ day of November, 2002.

Appendix I List of Phase II Issues

List of Issues Annotated with Settlement Paragraph Numbers

- Paragraph 6-** Specific bidding format (i.e. Request for Proposals, Auctions, etc.), timeline(s) for bidding and bid evaluation process; model bid evaluation plan, and model power supply contract (Model Bid Plan- for Residential Standard Offer Service).
- Proposed regulations from Phase II will be submitted to the Commission.
- Paragraph 7a-** Development of a complete definition of full-requirements service and the full scope of wholesale suppliers' responsibilities
- Paragraph 9-** Discussions for determining final parameters including timelines as appropriate for submission by the Utilities of their final bid results, bid award(s), and proposed contract(s) and review by the Commission (Model Bid Plan for Residential Customers). Appropriate confidentiality issues to be addressed.
- Paragraph 14(a)-** Determine monthly enrollment report to be used to trigger specified changes in Residential SOS Administrative Charge
- Paragraph 18-** Develop procedures to be followed in the event of default by a wholesale supplier of power for Residential SOS load.
- Paragraph 25-** Model Bid Plan for Type I Non-Residential Standard Offer Service (small C&I customers) will be developed.
- Proposed regulations from Phase II will be submitted to the Commission.
- Paragraph 28-** Discussions for determining final parameters including timelines as appropriate for submission by the Utilities of their final bid results, bid award(s), and proposed contract(s) and review by the Commission (Model Bid Plan for Type I Non-Residential Standard Offer Service). Appropriate confidentiality issues to be addressed.
- Paragraph 31(b)(1)(C)-** Parties to discuss necessity of more frequent true-ups of actual versus estimated incremental costs (e.g. quarterly vs. annual).

Paragraph 31(b)(2)- Additional discussion of calculation procedure(s) to be used in determining cash working capital revenue requirements (by each Utility) for review by the Settling Parties in Phase II (for Type I SOS).

Paragraph 33- The parties agree to develop a procurement structure to adequately address the customer migration risk to the Wholesale Supplier. Mechanism(s) will be developed that will address how to mitigate the level of volumetric and pricing risks to the Wholesale Supplier.

Paragraph 36- Develop procedures to be followed in the event of default by a wholesale supplier of power for Type I SOS load.

Paragraph 44- Specific bidding format (i.e. Request for Proposals, Auctions, etc.), timeline(s) for bidding and bid evaluation process; model bid evaluation plan, and model power supply contract (Model Bid Plan- for Type II Non-Residential Standard Offer Service).

Proposed regulations based on the results of Phase II will be submitted to the Commission.

Paragraph 47- Discussions for determining final parameters including timelines as appropriate for submission by the Utilities of their final bid results, bid award(s), and proposed contract(s) and review by the Commission (Model Bid Plan for Type II SOS). Appropriate confidentiality issues to be addressed.

Paragraph 50(b)(C) Parties to discuss necessity of more frequent true-ups of actual versus estimated incremental costs (e.g. quarterly vs. annual).

Paragraph 50(b)(2) Each Utility agrees to submit the calculation procedure for the cash working capital revenue requirements for review by the Settling Parties in Phase II (for Type II SOS).

Paragraph 52- The parties agree to develop a procurement structure to adequately address the customer migration risk to the Wholesale Supplier. Mechanism(s) will be developed that will address how to mitigate the level of volumetric and pricing risks to the Wholesale Supplier.

Paragraph 55- Develop procedures to be followed in the event of default by a wholesale supplier of power for Type II SOS load.

Paragraph 63- Specific bidding format (i.e. Request for Proposals, Auctions, etc.), timeline(s) for bidding and bid evaluation process; model bid evaluation plan, and model power supply contract (Model Bid Plan- for Type III Large-Customer Service).

Proposed regulations based on the results of Phase II will be submitted to the Commission.

Paragraph 65- Discussions for determining final parameters including timelines as appropriate for submission by the Utilities of their final bid results, bid award(s), and proposed contract(s) and review by the Commission (Model Bid Plan for Type III Large-Customer Service). Appropriate confidentiality issues to be addressed.

Paragraph 68(b)(1)(C) The Parties will consider whether to implement more frequent true-ups of actual versus estimated incremental costs.

Paragraph 68(b)(2) Each Utility agrees to submit the calculation procedure for the cash working capital revenue requirements for review by the Settling Parties in Phase II (for Type III Large-Customer Service).

Paragraph 70- The parties agree to develop a procurement structure to adequately address the customer migration risk to the Wholesale Supplier. Mechanism(s) will be developed that will address how to mitigate the level of volumetric and pricing risks to the Wholesale Supplier.

Paragraph 73- Develop procedures to be followed in the event of default by a wholesale supplier of power for Type III Large-Customer Service load.

Paragraph 79(f)- Will develop any other price element directly related to the Utilities' Hourly-Priced Non-Residential Service load obligation in addition to those elements directly listed in Paragraph 79 for derivation of the retail prices to Hourly-Priced Non-Residential Service customers.

Paragraph 82(b)(6) Each Utility agrees to submit the calculation procedure for the cash working capital revenue requirements for review by the Settling Parties in Phase II (for Hourly-Priced Non-Residential Service).

Paragraph 84(c)- Redactions (if any) of consultant's final report with regard to supply procurement and award will be determined, including appropriate confidentiality issues.

Paragraph 86- Explore the development, consistent with the terms set forth in this Settlement, of an Experimental Demand Response Service to be offered, as an optional service, to residential and eligible non-residential customers.

Paragraph 87-

Consider the development of retail product offerings that would include renewable or “green” energy resources.

APPENDIX B

CASE NO. 8908 PHASE II

ONGOING COMMISSION RESPONSIBILITIES FROM
PROPOSED SETTLEMENT

I. Residential Standard Offer Service

Paragraph 3	Monitor report on wholesale electric supply procurement process and results SOS retail prices produced and enrollment activity.
Paragraph 4(a)	Initiate Commission policy reviews providing relevant information, analysis, conclusions and recommendations.
Paragraph 8	Monitor specific form of bid request, evaluation plan and standard form contracts for compliance with Model Bid Plan.
Paragraph 9	Monitor final bid results, bid award and proposed contract for compliance with Bid Plan.
Paragraph 12(d)	Monitor incremental costs above or below 0.5 mills per kWh.
Paragraph 13	Monitor quarterly revision of Administrative Adjustment credit.
Paragraph 14	Monitor percentage migration of residential capacity peak load to competitive retail supply.
Paragraph 15	Monitor annual residential retail price notification.
Paragraph 16	Monitor residential load migration.

II. Type I Non-Residential Standard Offer Service

Paragraph 22	Monitor report on wholesale electric supply procurement process and results SOS retail prices produced and enrollment activity.
Paragraph 23(a)	Initiate Commission policy reviews providing relevant information, analysis, conclusions and recommendations.
Paragraph 27	Monitor specific Utility Bid Plan for compliance with Model Bid Plan.

Paragraph 28	Monitor final bid results, bid award and proposed contract for compliance with Bid Plan.
Paragraph 31(b)(1)(A)	Audit estimated incremental costs.
Paragraph 31(b)(1)(B)	Audit actual incremental costs.
Paragraph 31(b)(1)(C)	Consider true-up frequency.
Paragraph 31(b)(2)	Review submitted calculation procedures for cash working capital.
Paragraph 31(b)(3-5)	Reconcile actual incremental cost to revenue derived from the kWh charge.

III. Type II Non-Residential Standard Offer Service

Paragraph 41 Monitor report on wholesale electric supply procurement process and results SOS retail prices produced and enrollment activity.

Paragraph 42(a)	Initiate Commission policy reviews providing relevant information, analysis, conclusions and recommendations.
Paragraph 46	Monitor specific Utility Bid Plan for compliance with Model Bid Plan.
Paragraph 47	Monitor final bid results, bid award and proposed contract for compliance with Bid Plan.
Paragraph 50(b)(1)(A)	Audit estimated incremental costs.
Paragraph 50(b)(1)(B)	Audit actual incremental costs.
Paragraph 50(b)(1)(C)	Consider true-up frequency.

Paragraph 50(b)(2) Review submitted calculation procedures for cash working capital.

Paragraph 50(b)(3-5) Reconcile actual incremental cost to revenue derived from the kWh charge.

IV. Type III Large-Customer Service

Paragraph 59 Monitor report on wholesale electric supply procurement process and results SOS retail prices produced and enrollment activity.

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|-----------------------|--|
| Paragraph 64 | Monitor specific Utility Bid Plan for compliance with Model Bid Plan. |
| Paragraph 65 | Monitor final bid results, bid award and proposed contract for compliance with Bid Plan. |
| Paragraph 68(b)(1)(A) | Audit estimated incremental costs. |
| Paragraph 68(b)(1)(B) | Audit actual incremental costs. |
| Paragraph 68(b)(1)(C) | Consider true-up frequency. |

Paragraph 68(b)(1)(E)(2) Review submitted calculation procedures for cash working capital.

Paragraph 68(b)(1)(E)(3-5) Reconcile actual incremental cost to revenue derived from the kWh charge.

V. Hourly-Priced Non-Residential Service

Paragraph 78 Review filed risk management compliance

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|--------------------|------------------------------------|
| Paragraph 82(b)(1) | Audit estimated incremental costs. |
| Paragraph 82(b)(2) | Audit actual incremental costs. |

Paragraph 82(b)(3) Consider true-up frequency.

Paragraph 82(b)(6) Review submitted calculation procedures for cash working capital.

Paragraph 82(b)(7-8) Reconcile actual incremental cost to revenue derived from the kWh charge.

VI. Miscellaneous

Paragraph 84(a) Monitor Consultant's work.

Paragraph 84(c) Review Consultant's final report.