

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE PROVISION OF)
STANDARD OFFER SUPPLY TO RETAIL)
CONSUMERS IN THE SERVICE TERRITORY) PSC DOCKET NO. 04-391
OF DELMARVA POWER & LIGHT COMPANY)
AFTER MAY 1, 2006)
(OPENED OCTOBER 19, 2004))

ORDER NO. 6490

This 19th day of October, 2004, the Commission determines and Orders the following:

1. Under the Electric Utility Restructuring Act of 1999 (26 Del. C. ch. 10), after the end of the applicable "transition period," retail consumers in an electric distribution company' service territory who do not otherwise receive electric supply service from an electric supplier are provided "standard offer service" ("SOS") by the "standard offer service supplier."¹

2. The transition period, for all customer classes, ended in the service territory of Delmarva Power & Light Company ("DP&L") in September 2003. As part of the resolution of DP&L's merger into the Pepco Holdings, Inc. family, the Commission accepted DP&L's offer to serve as the standard offer service supplier for its service territory until May 1, 2006.² Under such merger condition, DP&L agreed to price

¹See 26 Del. C. §§ 1001(15), (16); 1006(a)(2)a.-c., 1006(b)(2)a.-c. (2002 Supp.).

²See PSC Order No. 5941, Hearing Exam. Report, App. A (Settlement) at ¶ D.1 (DP&L to be the standard offer service supplier until May 2006) (Apr. 16, 2002), aff'd sub nom. Constellation New Energy, Inc. v. Public Service Commission, 825 A.2d 872 (Del. Super. 2003). See also 26 Del. C.

its "standard offer service" to the various customer classes, just slightly above the retail market prices prevailing during the earlier transition period. Subject to a few escapes, such SOS prices would prevail until May 1, 2006.³ The SOS prices would then be reviewed in conjunction with a process intended to result in the selection of a standard offer service supplier on or after May 1, 2006.⁴

3. The May 2006 date is still eighteen months away. But, the Commission also knows that in other jurisdictions, the recent lapse of similar "frozen" or "standstill" supply rate regimes generally has resulted in the introduction of significantly higher SOS or default supply rates. In light of that, and to ensure a seamless transition in SOS service after April 2006, the Commission will now open this docket to explore issues related to the selection of an SOS supplier for DP&L's service territory and the appropriate prices to be charged for SOS after that date.⁵

§§ 1010(a)(2) (2003 Supp.) (Commission may require DP&L to continue to be standard offer service supplier.

³See Order No. 5941, Hearing Exam. Report, App. A (Settlement) at ¶¶ B & C.

⁴See Order No. 5941, Hearing Exam. Report, App. A (Settlement) at ¶ D.1-2.

⁵The Commission surely has the authority to conduct such review of the SOS prices. See 26 Del. C. § 1006(a)(2)c. (2002 Supp.) (SOS price may be reviewed "from time to time by the Commission"). In several places, the Act does speak in terms of the Commission determining "prior to the end of the transition period" who will be the SOS supplier "following the transition period." See 26 Del. C. § 1010(a)(2) (2003 Supp.). The Commission does not believe that these references mean selection of an SOS supplier (in DP&L's service territory) was meant to be a "one and (forever) done" process. The Act (in its original language) allowed the Commission to periodically review any standard offer service supplier arrangement to insure that such supplier provides safe and reliable SOS. See 26 Del. C. § 1010(a)(2) (2002 Supp. now reworded). Moreover, the merger conditions approved by PSC Order No. 5941 appointed DP&L only for a fixed term and expressly contemplated another later

4. Staff has recommended that the Commission conduct this proceeding in three stages. As Staff paints it, the first stage would be for a period for exploration and resolution of the potential "mega" or "fundamental" issues in choosing a supplier and setting SOS prices. That would be followed by a period for the crafting of the necessary rules or directives to implement the answers emanating from the first stage process. And finally, in the last stage, these selection and pricing mechanisms would be implemented to determine the post-May 2006 SOS supplier and the post-May 2006 SOS prices.

5. At this time, the Commission will accept Staff's three-step procedural proposal. This Order will open the first stage - the exploration and resolution of the "mega-issues." The Commission will not (and probably cannot) now list all those "mega" or "fundamental" issues. Indeed, part of the focus of the first stage of the process will be to identify them. However, two questions are surely already on that list: (a) by what means should the Commission choose the SOS supplier? and (b) how should the Commission determine the price for SOS consistent with the statutory pricing standard?⁶ The Act offers several alternative answers to the first question. The Commission can require DP&L to "continue" to be the SOS supplier.⁷ Or it can appoint

selection process contemporaneous with the May 2006 expiration date. See Order No. 5941, Hearing Exam. Report, App. A (Settlement) at ¶ D.1-3.

⁶See 26 Del. C. § 1006(a)(2)c. (2002 Supp.).

⁷See 26 Del. C. § 1010(a)(2) (2003 Supp.).

another entity to perform that duty.⁸ Or, alternatively, the Commission can determine an SOS supplier and the SOS prices contemporaneously by conducting an auction bidding process for the SOS supplier, with the winning bidder becoming the SOS supplier offering SOS at its bid prices.⁹ As to SOS prices, the Act provides the standard, but provides no explicit direction about how such SOS rates should be determined and then monitored.

6. The Commission will not set the precise mechanics for this first stage process. Staff can determine the details of how it shall proceed.¹⁰ The Commission has described the focus of at least some of the inquiries and it will now set a deadline for the completion of this first stage - February 28, 2005. If the participants in this matter can come to a consensus on the "mega-issues," the Commission would expect those resolutions be presented promptly to it for review,

⁸Id. In choosing DP&L or another entity, the Commission is directed to consider price, reliability, and overall quality of the supply service offered by the potential supplier.

⁹See 26 Del. C. §§ 1006(a)(2)c., 1010(a)(2) (2002 & 2003 Supps.). The Commission is also aware that in other jurisdictions, a similar - but somewhat different - auction process has been used in the SOS procedure. Under this wholesale auction variation, the incumbent utility remains (or is chosen as) the SOS supplier. But that utility then acquires its SOS load by means of a bid auction process conducted either by the utility or the state regulatory commission. The successful auction price of supply is passed through to SOS end-users, with the incumbent utility tacking on an additional administrative fee to recover its costs in being the front-line, consumer-contact point for SOS service. Under such a regime, the auction process is seen, not as a process to select the SOS supplier, but as a mechanism to ensure that SOS prices reflect (as required by the relevant statute) market prices for supply. The Commission notes that while the provisions of § 1010 speak in terms of an auction bid process to select an SOS supplier, the language also allows the Commission to require DP&L "to supply a portion of the standard offer price after the end of the transition period." See 26 Del. C. § 1010(a)(2) (2003 Supp.).

¹⁰Workshops, followed by a Staff "straw" proposal, and then a round of exceptions or comments might be one approach.

so that the Commission can accept, reject, or modify those agreed-upon resolutions by the above deadline. If consensus cannot be reached, the Commission will then make a decision on the contested issues prior to February 28, 2005. In such latter case, it is Staff's obligation to construct a process that will frame-up the disputed issues, provide each party the opportunity to voice its views in writing, and then leave time for the Commission to decide the questions by the end of February 2005.

7. While the Commission delegates to Staff the authority to determine the structure of the process for this first "mega-issue" stage, the Commission also believes that this endeavor, like most others, also requires an umpire/procedural monitor to ensure that the process does indeed move forward. Thus, the Commission appoints a Hearing Examiner to superintend this stage. The Hearing Examiner's job is not to make substantive decisions, nor to decide the form of the process, but to ensure that the process keeps moving. He can grant interventions, enforce deadlines, and preside over workshops or other informal proceedings. More importantly, the Commission would expect that if he sees instances where his intervention, as either a moderator or mediator, would significantly help frame (or narrow) the issues for eventual resolution, he should undertake those tasks.

8. Finally, the Commission acknowledges some competing pulls in undertaking these SOS tasks. The 1999 Restructuring Act envisioned the existence of a robust competitive marketplace after the completion of the transition period, with multiple competitive electric suppliers hawking their commodity to consumers across all customer classes. In

such a picture, SOS is a true default service, available to those few unwilling to find good prices elsewhere. The still-life picture in 2004 is much different. No suppliers are now soliciting residential consumers and competitive entreaties to larger commercial and industrial consumers are far from universal. Thus, particularly on the residential side, standard offer service is not a "default" service, but the "only" service available. In such a situation, the regulatory tug is the historical one - to ensure that the prices paid by such captive customers are as low as reasonable. Yet, as noted above, the statutory commands in the Act were premised on a different vision. In the absence of statutory changes, the Commission's difficult task will be to ensure that its resolution of SOS issues speaks to real-world circumstances while remaining consistent with the Act's directives.

Now, therefore, **IT IS ORDERED:**

1. That, pursuant to 26 Del. C. §§ 1006(a)(2) and 1010 (2002 & 2003 Supps.), this docket is initiated to investigate and determine: (a) which entity shall act as the standard offer service supplier in the service territory of Delmarva Power & Light Company after May 1, 2006; and (b) what prices shall be charged for standard offer service in the service territory of Delmarva Power & Light Company after May 1, 2006.

2. That, as described in the body of this Order, the Commission delegates to the Staff the authority to construct a "Stage 1" process to allow the Commission to determine by February 28, 2005 the fundamental issues related to the selection of a standard offer service supplier and the appropriate method to set, and monitor,

standard offer service prices. The process developed by Staff shall ensure that the Commission will be able to consider and decide those issues prior to March 1, 2005.

3. That Senior Hearing Examiner William F. O'Brien is hereby appointed to superintend and monitor the "Stage 1" process developed by Staff under Ordering paragraph 2. Hearing Examiner O'Brien is expressly delegated the authority, under Rule 21 of the *Commission's Rules of Practice and Procedure*, to grant or deny requests to intervene. He is also delegated the authority to decide, under 26 Del. C. § 102A, whether any further public notice might be appropriate in this matter, and the manner and content of such notice.

4. That, on or before October 26, 2004, the Commission's Secretary shall publish the notice attached hereto as Exhibit "A" in The News Journal and Delaware State News newspapers in two-column format, outlined in black. In addition, the Secretary shall send a copy of such notice by first-class United States mail to: (a) Delmarva Power & Light Company; (b) the Public Advocate; (c) all entities now holding Certificates to act as electric suppliers in this State; and (d) counsel for the Delaware Electric Users' Group. Finally, the Secretary shall immediately post a copy of the notice and this Order under an appropriate heading on the Commission's Internet website.

5. That Delmarva Power & Light Company, other electric public utilities and electric suppliers who provide, or are authorized to provide, electric supply in the service territory of Delmarva Power & Light Company are hereby notified that they will be charged the costs of this proceeding under 26 Del. C. § 114(b).

6. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joshua M. Twilley
Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

E X H I B I T "A"

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PUBLIC NOTICE OF PROCEEDING TO DECIDE STANDARD OFFER
SERVICES FOR CONSUMERS IN THE TERRITORY OF
DELMARVA POWER & LIGHT COMPANY

TO: RETAIL ELECTRIC CONSUMERS, ELECTRIC SUPPLIERS, ELECTRIC UTILITIES, AND OTHER INTERESTED PERSONS LIVING OR OPERATING WITHIN THE ELECTRIC SERVICE TERRITORY OF DELMARVA POWER & LIGHT COMPANY (d/b/a CONECTIV POWER DELIVERY)

On October 19, 2004, the Public Service Commission initiated this proceeding to determine who will act as the "Standard Offer Service Supplier" for the service territory of Delmarva Power & Light Company after May 1, 2006. The selected "Standard Offer Service Supplier" will, after that date, be responsible for providing "Standard Offer Service" to retail consumers (residential, commercial, and industrial) who have not contracted for electric supply from another supplier. "Standard Offer Service" is the "default" for electric supply so that if you do not have an individual contract for electric supply after May 1, 2006, the selected "Standard Offer Service Supplier" will provide and charge you for "Standard Offer Service."

The proceeding begun by PSC Order No. 6490 (Oct. 19, 2004) will eventually select not only the "Standard Offer Service Supplier" but also determine the prices for "Standard Offer Service." In the first stage of such proceeding, the Commission - under a procedure developed by its Staff, will investigate the major fundamental issues relating to choosing a "Standard Offer Service Supplier" and setting "Standard Offer Service" prices. One process that will be investigated is an auction bidding process to select a "Standard Offer Service Supplier," or to purchase load requirements for such supplier.

If you are interested in participating in this proceeding, you should review PSC Order No. 6490 (Oct. 19, 2004). It is available at the Commission's office in Dover at the address below. It is also available on the Commission's website at www.state.de.us/delpsc. If you wish to become a party, you must file a petition to intervene under Rule 21 of the *Commission's Rules of Practice and Procedure*. You must file such petition with the Commission by November 19, 2004. The Commission's address is:

Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building
Suite 100
Dover, Delaware 19904
Attn: PSC Dckt. No. 04-391

If you have any questions, you can contact the Commission at 1-800-282-8574 (toll-free, Delaware only) or at 302-739-4247. You can also send inquiries by Internet e-mail addressed to "janis.dillard@state.de.us."

If you are disabled, you can contact the Commission to arrange for any assistance or aids that you might need to participate in this

matter or to review the relevant materials. The Commission can be contacted by text telephone at 302-739-4333.