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May 26, 2011

**BY FED EX**

Alisa Carrow Bentley, Secretary
Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware 19904

**Re: Delaware PSC Docket No. 10-2**

Dear Ms. Bentley:

Enclosed please find, on behalf of the Retail Energy Supply Association, an original and 15 copies of its Comments in the above-referenced proceeding.

Please contact me should you have any questions regarding this matter.

Sincerely,

Brian R. Greene

BRG/wd

Enclosures

00088073

**BEFORE THE PUBLIC SERVICE COMMISSION**
**OF THE STATE OF DELAWARE**

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| IN THE MATTER OF INTEGRATED RESOURCE PLANNING FOR THE PROVISION OF STANDARD OFFER SERVICE BY DELMARVA POWER & LIGHT COMPANY UNDER 26 *DEL. C.* §1007(c) & (d) (OPENED JANUARY 11, 2011) | * * * * | PSC Docket No. 10-2 |

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## COMMENTS OF
## THE RETAIL ENERGY SUPPLY ASSOCIATION

### I. Introduction

The Retail Energy Supply Association ("RESA"),[1] by counsel, appreciates the opportunity to comment on the 2010 Integrated Resource Plan ("IRP") submitted by Delmarva Power & Light Company ("Delmarva Power"). RESA's comments will address Delmarva Power's recommendation that it continue to procure a series of laddered three-year wholesale contracts for electricity in order to provide standard offer electricity service ("SOS") to Residential and Small Commercial customers, and one-year wholesale contracts to provide SOS to Large Commercial SOS customers.[2] Given that shorter-term SOS contracts and other competitive market improvements can, and have, benefitted customers by advancing competition, RESA requests that the Commission, through this IRP proceeding, open a separate proceeding to (i) re-evaluate and modify the

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[1] RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant Energy Northeast LLC; and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

[2] See Delmarva Power IRP at 21. GS-T customers receive an hourly-priced service as their default service.

current SOS structure for mass market customers as well as for larger customers that receive SOS based on one-year SOS wholesale contracts and (ii) consider other competive market improvements that can enhance competition.

Since the onset of Delaware's current SOS structure in 2005, more and more retail suppliers have entered, and are entering, the competitive retail electricity markets in restructured states. Competition has evolved in numerous states, including Delaware, for mid-size and large non-residential customers, who may now choose from a variety of electricity products and services offered by numerous market competitors. Approximately 75% of Delmarva Power's non-residential usage is provided by retail suppliers.[3]

Delmarva Power's residential customers, however, have not experienced the same shopping success as non-residential customers. As of April 2011, only 2.9% of Delmarva Power's residential customers were purchasing power from retail suppliers.[4] Only four retail suppliers were serving residential load.[5]

Under Delaware's current SOS structure and its three-year contracts, the SOS rate, even though it is adjusted annually and includes summer and non-summer pricing, lags behind current wholesale market pricing. Thus, under Delaware's current SOS structure, there will be times when retail suppliers can make offers to mass market

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[3] See Delmarva Power 2010 IRP at 6. Approximately 23.6% of non-residential customers purchase power from one (or more) of 19 retail suppliers. The 75% of usage represents approximately 66% of peak load obligation. See Delmarva Power Electric Supply Choice Enrolment Information Monthly Report for the Month Ending April 2011, available at: http://depsc.delaware.gov/electric/DPSC%20Choice%20Report.xls. The Monthly Report does not provide shopping statistics of the various sizes or classes of non-residential customers.
[4] Delmarva Power Electric Supply Choice Enrolment Information Monthly Report for the Month Ending April 2011.

[5] Id.

customers that undercut the SOS price, and times when they cannot. Delaware's SOS structure, by allowing for lags in SOS rates vis-à-vis the wholesale market, leads to intermittent "boom or bust" cycles in competitive shopping and not a sustainable competitive market that has evolved in jurisdictions where default service is more closely tied to prevailing market prices. Where competitive supplier offers abound, customers are benefitting in various ways, including lower prices, stability of pricing and/or alternative market solutions (e.g., renewable energy and other value-added products and services). The next step to achieving that goal is to ensure a market-reflective SOS rate and implement other competitive market improvements that allow for sustainable and continuous competition rather than intermittent competition.

While 97% of Delmarva Power's customers were paying SOS rates that exceed what can be obtained in the current market, competition and competitive options in other states have improved for mass market customers. One reason for this improvement is due to the fact that other states that have adopted market-friendly rules and regulations, including purchase of receivables ("POR") programs that require the SOS provider to purchase the retail supplier's receivables, and require the electric distribution companies to provide basic customer information to retail suppliers to make it easier for suppliers to directly communicate with and market to mass market customers. Another reason for the improvement is other jurisdiction's shift to shorter term SOS wholesale contracts. As an example of a service territory that is moving towards competition for mass market customers, in Pennsylvania's PPL service territory, 36.9% of residential customers – more than 451,000 accounts – have switched to a retail supplier in less than two years.[6]

[6] See Pennsylvania Electric Shopping Statistics, available at: http://www.oca.state.pa.us/Industry/Electric/elecstats/ElectricStats.htm.

This sharp spike in switching is, in part, the result of PPL's implementation of SOS retail prices, a portion of which are adjusted on a quarterly basis. PPL has also implemented an effective POR program and also provides useful customer information to retail suppliers. Suffice it to say that shorter-term SOS wholesale contracts combined with well-designed market enhancement programs like POR, customer lists, and customer education programs, remove significant barriers to market entry and promote sustainable competition for mass market customers. The end result is that customers benefit by being able to choose from various products offered by multiple suppliers that best fit the customer's individual needs, desires, and budgets. That has not been the case for Delaware's mass market customers.

## II. Longer-term SOS wholesale contracts can lock customers into high SOS rates for extended periods of time without competitive options.

An SOS structure should be designed such that customers have competitive options from which to choose at all times. Delaware's three-year contracts discourage most suppliers from entering the Delaware market to serve mass market customers and encourage inefficient use of energy because there will be times when the SOS rate does not reflect the current price to obtain energy. While that may sound, on its face, like a good thing for customers because the SOS rate might be lower than wholesale market prices, wholesale market conditions change over time. As has been the case for the past few years, there will be times when the SOS rate is higher than the underlying wholesale market price. Since Delaware's SOS structure and lack of market enabling programs discourage retail supplies from entering the market to serve mass market customers, very few retail suppliers – only four – actively serve residential customers in Delaware. As a result, about 97% of Delaware's residential customers have been paying higher than market prices for their electricity during the past few years and have very few competitive options from which to choose. As the Maryland Commission recognized when it did away with three-year SOS contracts, SOS rates that have a "lag effect" when compared to the underlying wholesale market price thwart the development of retail competition.[7]

The Commission and stakeholders should consider the duration of Delaware's SOS wholesale contracts and implementing programs that will enable competition in order to attract more suppliers to Delaware and allow customers to benefit from restructuring. The decision to enter a new market, and to solicit mass market customers especially, requires a large, up-front investment by a retail supplier. Because of the current regulations in Delaware, retail suppliers have been inclined to invest in markets other than the Delaware mass market. Retail suppliers have flocked to service territories in other states which have shorter-term default service procurement periods and rules and programs that encourage competition.

The Maryland Public Service Commission recognized the important need to reduce the disconnect between SOS pricing and current market pricing on at least two occasions. First, in its Order adopting quarterly pricing for Type II customers, the Commission held as follows:

> … an SOS product that remains unchanged and disconnected from prevailing market prices for undue periods of time can deter market entry and thus deprive customers of the varied retail products that would be available when more retail suppliers enter the market. Entry will only occur when the opportunity to compete against the SOS product is sustained and continuous, not intermittent.[8]

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[7] Maryland Public Service Commission Case No. 9064, Order No. 81102 at 36-37 (Nov. 8, 2006). See also Maryland Public Service Commission Case No. 9056, Order No. 81019 at 17.

[8] Maryland Public Service Commission, Case No. 9056, Order No. 81019 at 15 (Aug. 28, 2006).

Second, in its 2006 Order doing away with three-year SOS contracts for residential and small commercial customers, the Maryland Commission stated as follows:

> Retail competition can suffer if SOS is priced even slightly below current market conditions for extended periods of time. It can be rightly said that is a risk that competitive suppliers must face if they wish to compete in Maryland's electricity marketplace, but if their perception is that the market is not truly competitive the competitors may choose not to participate at all. Additionally, even when SOS prices rise above market levels, suppliers of customers (in particular residential and small commercial customers who are less familiar with shopping for electricity) may not be prepared to jump back into the Maryland market with a meaningful alternative to SOS.[9]

Additionally, Pennsylvania's markets tell a different story from the story that Delaware is currently experiencing. For example, in PPL's service territory as of April 1, 2011, approximately 451,000 residential customers, or 36.9%, were purchasing power from retail suppliers; the number was 0 as of October 1, 2009. In PECO's service territory, approximately 212,000, or 15%, purchase power from retail suppliers as opposed to 0.2% in October 2010.[10] By opening a separate proceeding to re-examine Delaware's SOS structure and other programs that will enable competition, the Commission and stakeholders can assess other markets in Maryland, Pennsylvania, etc., to see what works and what does not work with respect to progressing towards a

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[9] Maryland Public Service Commission, Case No. 9064, Order No. 81102 at 37 (Nov. 8, 2006). The Maryland Commission in Case No. 9064 modified Maryland's SOS structure to include laddered two-year contracts. In doing so, the Commission concluded that "three year contracts have no clear benefit over two year contracts, and further limit flexibility for different power supply arrangements that may be found to be appropriate in the future . . . ." Id. at 38-39. The Commission also employed more frequent bidding (twice per year instead of once per year) to avoid "substantial price corrections as market conditions diverge (either up or down) from the time power was procured under each contract." Id. at 39. While these changes marked an improvement to the Maryland SOS structure, RESA does not view them as the end state in Maryland and has advocated for SOS contracts shorter than two years in duration.

[10] See Electric Shopping Statistics compiled by the Pennsylvania Office of Consumer Advocate, available at: http://www.oca.state.pa.us/Industry/Electric/elecstats/ElectricStats.htm.

competitive market for mass market customers. In sum, shorter-term SOS contracts allow for SOS pricing that more closely reflects underlying wholesale market conditions. Regular adjustments of the SOS price to reflect changes in the wholesale market limit the possibility that the SOS price will become out-of-market. This aspect of the SOS structure, combined with effective and well-designed market enhancement programs, are important to retail suppliers in determining whether to enter a new market.

## III. Shorter-term contracts are less risky and generally less costly than longer-term contracts.

RESA members, all of whom participate in electricity wholesale markets, view three types of risks with respect to SOS contracts, each of which can impact the bid price: price risk, migration risk, and regulatory risk. In each case, the risk is commensurate with the length of the contract, i.e., the longer the contract, the greater each individual risk. The increased risk that accompanies longer-term contracts supports shorter-term SOS pricing, which will drive down SOS rates. In adopting quarterly procurements for Type II (mid-sized commercial) customers, the Maryland Commission recognized that shorter contracts equate to less risk:

> This regime will shorten the time period during which wholesale suppliers will be at risk to customer migration, which should reduce the SOS risk premiums and consequently hold down SOS prices. Furthermore, SOS will now reflect current market conditions more closely than it has in the past and will no longer be disconnected from market prices for extended periods of time. The Commission also finds that this decision strikes an appropriate market balance, benefiting wholesale suppliers by reducing their SOS contract migration risks, benefiting retail suppliers by making the SOS price more responsive to current market prices, and benefiting consumers by reducing SOS contract risks, which should reduce the pricing pressures reflected in those wholesale SOS contracts.[11]

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[11] Maryland Public Service Commission, Case No. 9056, Order No. 81019 at 17 (Aug. 28, 2006). The move to quarterly pricing for Type II customers in Maryland resulted in an immediate bump in shopping. Type II customers are non-residential customers between 25 kW and 600 kW peak load obligation per month. As of the month ending March 2011, retail suppliers were serving

Price risk is the risk to the wholesale bidder that the wholesale market price will increase, causing the SOS contract price to be above the current market. There is a higher degree of clarity in shorter-term contracts than longer-term contracts. In longer-term contracts, liquidity lessens, there is less visibility in terms of where the prices are or could be, and the ability to transact or hedge the price risk lessens. One reason price risk exists in longer contracts is that the components affecting price include, but are not limited to, the pricing of fuels, heat rate and basis, or congestion risk.

Longer-term contracts carry larger migration risks than shorter term contracts. As an example, if a bidder wins a three-year SOS contract and a customer leaves for a retail supplier, the wholesale supplier remains obligated for a purchase obligation for three years. The risk is less for shorter-term contracts by nature of the shorter duration of time that the winning bidders remain on the hook for the obligation. The result is that the risk of migration is greater in a longer-term contract and, therefore, longer-term contracts will include greater risk premiums than shorter-term contracts.

Regulatory uncertainty or risk is a concern that the rules imposed upon suppliers could be changed during the contracting period. Moreover, regulatory risk is created by the possibility of regulatory changes that are not orderly and do not advance the goals of Delaware's restructuring statutes. The shorter the contract term, however, the less likely it is that a regulatory change will occur within the duration of an existing contract.

In essence, shorter SOS contract terms reduce price, migration and regulatory risks and can lead to SOS rates that are lower than what they would be under longer-term

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55.1% of Type II customers representing 70.1% of the Type II peak load obligation. See Maryland Public Service Commission Monthly Electric Choice Enrollment Report for the Month Ending March 2011, available at: http://webapp.psc.state.md.us/intranet/ElectricInfo/enrollmentrpt_new.cfm.

contracts like Delaware's three-year contracts. Finally, shorter term contracts with lower risk premiums, and perhaps increased spot purchases, are even more beneficial in the new credit-constrained financial environment.

## IV. Well-designed market policies encourage competition and enable customers to benefit from competitive offers.

An analysis of other states indicates that programs such as POR, the provision of customer lists, and customer education and referral programs allow retail suppliers to communicate directly with mass market customers and to more effectively market their products and services.

### A. <u>POR Programs</u>

While the success of a program cannot be viewed in a vacuum, it is worth noting that three of Maryland's four investor-owned utilities (including Delmarva Power), implemented POR programs in July 2010. Pepco, a Delmarva Power affiliate, followed in October 2010 with its own POR program. The increases in customer shopping since the initiation of these POR programs – in Maryland and beyond – indicate that these programs result in more suppliers entering the market to offer a variety of products and service to the benefit of customers. In the very least, the Commission and stakeholders should explore whether Delmarva Power should implement a POR program in Delaware.

Using Maryland's investor-owned electric utilities and BGE's natural gas utility as examples, each utility has experienced a significant increase in the number of customers taking advantage of the options available to them and the number of retail suppliers serving customers in their respective territories since the inception of POR:[12]

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[12] See the Maryland Commission's Electric Choice Enrollment Monthly Reports, available on the Commission's website at: http://webapp.psc.state.md.us/intranet/ElectricInfo/enrollmentrpt_new.cfm. The BGE Gas statistics were taken from the Maryland Commission's Gas Choice Enrollment Monthly Reports

| | % of Shopping Residential Customers<br><br>End of June 2010 | % of Shopping Residential Customers<br><br>End of March 2011 | # of Suppliers Serving Enrolled Residential Customers<br><br>End of June 2010 | # of Suppliers Serving Enrolled Residential Customers<br><br>End of March 2011 |
|---|---|---|---|---|
| **Allegheny Power** | 1.7% | 6.5% | 7 | 10 |
| **BGE - Electricity** | 8.2% | 18.7% | 14 | 26 |
| **BGE – Gas** | 9.8% | 13.7% | 8 | 10 |
| **Delmarva Power** | 1.6% | 7.9% | 9 | 14 |
| **Pepco**[13] | 8.9% | 15.2% | 13 | 21 |

The implementation of POR programs played a large role in these increases, and there is no reason to believe that Delmarva Power could not implement similar programs in Delaware.

## B. Other Market Improvements

Other jurisdictions have implemented programs that have successfully aided in the development of competition. Two of those efforts include the provision of customer information to retail suppliers and a statewide website portal that includes current offers by various retail suppliers. In addition, the Commission may want to explore other programs to educate customers as well as Delmarva Power's current rules relating to shopping that could be construed to inhibit competition.

First, many jurisdictions allow or require the utility to release customer information to retail suppliers. The provision of customer lists helps place retail suppliers on equal footing with the utility in terms of being able to efficiently locate, educate, and

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for the quarters ending June 2010 and March 2011, available on the Commission's website at: http://webapp.psc.state.md.us/intranet/gas/gasenrollmentrpt_new.cfm.

[13] Pepco's POR program commenced in October 2010. As of the month ending September 2010, 10.6% of Pepco's residential customers were shopping, served by 14 licensed suppliers. See the Electric Choice Enrollment Monthly Report for the Month Ending September 2010. As can be seen on the chart, these numbers have increased since the inception of POR in Pepco's service territory.

serve customers. The information contained in these lists includes generally the customer's name, service address, 12 months of usage history, and other information useful to retail suppliers as they seek to communicate directly with mass market customers. In any event, an adequate list includes far more information than is provided for currently in Delaware's Rules for Certification and Regulation of Electric Suppliers.[14] At least one state (Pennsylvania) has adopted guidelines that allow utilities to release some information on an opt-out basis and other information to be released on an opt-in basis. The provision of adequate customer information to retail suppliers enables market opportunities for suppliers and benefits customers.

Second, certain jurisdictions have constructed web sites that do more than just explain to customers how restructuring works and that they can purchase their electricity supply from retail suppliers. These websites include retail offers currently available in the market. They allow customers to visit a single portal to find the product or service that is best for them as opposed to viewing various websites or other marketing solicitations one by one to compare offers. Successful websites include www.powertochoose.com (Texas), www.papowerswitch.com (Pennsylvania), and www.newyorkpowertochoose.com (New York). Delaware customers may benefit from a similar website and other customer education efforts that the Commission and stakeholders may wish to consider.

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[14] See Rule 3.7, Rules for Certification and Regulation of Electric Suppliers, which provides as flows:

> An Electric Supplier may request a list from an Electric Distribution Company which contains Retail Electric Customer's name, service address and mailing address. A Retail Electric Customer may elect to opt out of the list.

Finally, there may be other rules that the Commission may want to assess. Examples include the type of information pertaining to customer choice a customer should be given when he or she initially takes service from Delmarva Power. Also, if a shopping customer changes addresses within the Delmarva Power service territory, the customer is converted back to SOS. The Commission may want to consider the type of information Delmarva Power provides to the customer to ensure that he or she is aware of the switch back to SOS and allow the customer and supplier to restore any previously existing relationship with a competitive supplier. These are the types of rules changes that can lead to a competitive market and which RESA requests the Commission to consider in a separate docket.

## V. In a competitive retail market, customers will benefit from lower prices, additional product offerings, and value-added products.

In a properly structured competitive market, as the number of retail suppliers increases, the types of services provided by these suppliers will expand. In addition to a variety of commodity purchasing options such as fixed and variable prices, retail suppliers will seek to provide combined electricity and natural gas supply products, energy equipment repair and warranty service, energy efficiency and conservation services, utility bill review and auditing, and the option to purchase green energy products. Retail suppliers also offer joint products with affinity partners, including discounts at retail stores and airline miles. As the competitive markets continue to grow and expand, competition will drive additional innovation and products through a desire by market participants to remain competitive, as well as in response to consumer demand. Increased competition will also instill downward pressure on the pricing of retail offers in general and should assist Delaware in its drive to reduce energy consumption and demand as required by Delaware's

Energy Conservation and Efficiency Act of 2009.[15] All of these factors impact positively Delaware's customers and are heavily influenced by the SOS structure and associated market enhancement programs which should be designed so as to encourage retail suppliers to enter Delaware and bring the benefits of competition to Delaware's mass market customers.

## V. Conclusion

The current Delaware SOS procurement process, with its three-year contracts for mass market customers and one-year contracts for larger, non-residential customers, and general lack of market enhancement programs, inhibits the development of retail competition to the detriment of the very customers that retail competition was supposed to benefit. For the reasons set forth above, RESA requests that the Commission initiate a proceeding to determine whether shorter SOS contracts and implementation of other market improvements is appropriate.

Respectfully submitted,

RETAIL ENERGY SUPPLY ASSOCIATION

By Counsel

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[15] SOS rates that are market reflective send appropriate price signals to customers. More frequents pricing allows for more individualized demand response and energy efficiency products for, and to the benefit of, even the smallest of customers The connection between market reflective pricing and individualized demand response/efficiency products also supports the provision of customer information to retail suppliers. The more retail suppliers know in terms of the individual customer's load patterns, the better opportunity suppliers have to develop products that meet the customer's unique needs. As a quick example, the load profile of a donut shop generally is not the same as that of a pizza shop, so the more information a supplier has, the more likely the supplier can develop tailored products for each customer.

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*Admitted Pro Hac Vice*

Dated: May 26, 2011

**CERTIFICATE OF SERVICE**

I certify that on May 27, 2011, copies of the foregoing Comments were mailed to each person on the official service list for this docket.

Brian R. Greene

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