

**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, 2005)
(OPENED OCTOBER 19, 2004))

FINDINGS, OPINION AND ORDER NO. 7053 OF THE COMMISSION

BEFORE: ARNETTA McRAE, Chair
JAYMES B. LESTER, Commissioner
JOANN T. CONAWAY, Commissioner
J. DALLAS WINSLOW, Commissioner
JEFFREY J. CLARK, Commissioner

APPEARANCES:

For the Staff of the Delaware Public Service Commission
("Staff"):

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Rate Counsel

GARY A. MYERS, ESQUIRE
Deputy Attorney General
Commission Staff Counsel

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For the Division of the Public Advocate ("DPA"):

JOHN CITROLO

For PEPCO Energy Services, Inc. ("PEPCO"):

CARLA G. PETTUS, ESQUIRE

For Delmarva Power & Light Company ("Delmarva") and Conectiv Energy Supply, Inc. ("CESI"):

MINDY L. HERMAN, ESQUIRE
WILLIAM R. MOORE, JR.

For Direct Energy Services, Inc. ("DES") and the Retail Energy Supply Association ("RESA"):

GEORGE J. DANNEMAN, ESQUIRE
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For Constellation Energy Commodities Group, Inc. ("Constellation"):

LISA M. DECKER, ESQUIRE
Constellation Energy Group, Inc.

For Coral Power, L.L.C. ("Coral"):

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For Washington Gas Energy Services, Inc. ("WGES"):

KIMBERLY J. AUGUST, ESQUIRE

I. BACKGROUND

1. In PSC Order No. 6746, dated October 11, 2005, the Delaware Public Service Commission ("Commission") established a Request for Proposal ("RFP") procurement process pursuant to which Delmarva Power & Light Company ("Delmarva") would acquire the wholesale electric supply necessary for it to provide retail electric service to its Delaware Standard Offer Supply ("SOS") customers. In December 2005 and January 2006, Delmarva followed the approved RFP process to obtain supply for its post-May 1, 2006 fixed-price SOS service. Many of the contracts awarded as part of that process, representing approximately 310 MW of load (or six blocks), expire on June 1, 2007. Thus,

beginning in late November 2006 Delmarva will conduct another solicitation process to procure a portion of supply for its post-May 2006 SOS load.

2. On April 6, 2006, the Delaware General Assembly enacted the Electric Utility Retail Customer Supply Act of 2006 (the "Retail Supply Act" or "Act"). The Retail Supply Act was passed in response to the substantial increase in electric rates that Delaware SOS customers would experience after price caps were removed and market based rates became effective. The Act made clear that electric distribution companies would be subject to Commission oversight: it required Delmarva (among others) to engage in integrated resource planning and to submit an Integrated Resource Plan to the Commission every other year; to engage in competitive bidding to satisfy its obligation to provide SOS to its Delaware customers; to require Delmarva to develop and implement demand-side management programs designed to reduce overall consumption and reduce usage during peak periods; and to explore advanced metering technologies. (See Exhibit C to DES Exceptions.)

3. In Order No. 6943 in this docket, dated June 20, 2006, the Commission directed Staff to explore and determine what changes, if any, should be made to the procurement process that we had previously approved. We identified the types of changes that should be considered as: "(a) those that may be necessitated by the statutory changes made by the 'Electric Utility Retail Customer Supply Act of 2006' (75 Del. Laws ch. 242 (2006)); (b) those that might improve the procurement process, either in its efficiency or its benefits for SOS customers;

or (c) those that would make the procurement process more transparent." (Order No. 6943 at Ordering ¶ 1). We directed Staff to conduct public workshops to obtain input from interested parties on potential changes that would assist Staff in making recommendations, and to submit a report to us regarding "consensus" or uncontested issues by September 15, 2006. We designated Senior Hearing Examiner William F. O'Brien as the Hearing Examiner and instructed him to submit a report and recommendations regarding the "non-consensus" or disputed recommendations by September 15, 2006.

4. Staff conducted a public workshop on July 17, 2006. On July 25, 2006, it circulated an initial "straw" proposal, on which it accepted written comments on August 4 and 10, 2006. On August 14, 2006, Staff conducted a second workshop,¹ after which it circulated a summary statement of its recommendations on August 18, 2006. On August 25, 2006, Staff, the DPA, Delmarva, CESI, WGES, Constellation, DES and PEPCO submitted initial comments on Staff's most recent recommendations. On September 1, 2006, Staff, the DPA, Delmarva, CESI, WGES, Constellation, DES and Morgan Stanley Capital Group, Inc. ("MSCG") submitted reply comments. RESA adopted DES's initial and reply comments as its own.

¹At this workshop, the participating parties agreed to forego evidentiary hearings because of time limitations and because resolution of the disputed issues primarily depended on policy considerations rather than factual findings. In lieu of the evidentiary hearings, the participating parties agreed to submit affidavits with their written comments to support factual statements therein that the other parties did not universally accept.

5. On September 15, 2006, Staff submitted its report on the Consensus Issues and the Hearing Examiner submitted his Report and Recommendations on the Non-Consensus Issues (the "HER").

6. On September 27, 2006, Staff, DES/RESA, Constellation, Coral, WGES and Constellation submitted exceptions to the HER. Neither the DPA nor Delmarva excepted to the HER.

7. On October 3, 2006, the Commission met at its regularly-scheduled meeting to hear oral argument from the parties regarding their positions and to deliberate in open session on the issues presented in the HER and the exceptions. All parties that appeared presented their positions to the Commission, regardless of whether they had submitted exceptions to the HER. This is the Commission's Findings, Opinion and Order addressing the issues raised as a result of our promulgation of Order No. 6943.

II. THE NON-CONSENSUS ISSUES

8. In its August 18 and 25, 2006 submissions, Staff identified and provided its positions on four disputed issues: (a) Indicative Bids and Consulting Services; (b) Contract Length and Flexibility; (c) Transparency of Process; and (d) Purchase of Receivables.² In its reply comments, Staff summarized the parties' positions, replied to the other parties' comments, and made certain revisions to its proposal. The Hearing Examiner relied on Staff's reply comments for

²In its initial comments, Staff addressed Constellation's proposal to make optional Section 12.3(b) of the Full Requirements Service Agreement ("FSA"), relating to accounting treatment of the SOS contract. In its reply comments, Staff observed that Delmarva did not object to Constellation's proposal, and that Staff would therefore include this issue in its report on the consensus issues. (Staff Reply Comments at 5-6).

much of his summary of the non-consensus issues, and we will do likewise.

A. Indicative Bids and Consulting Services

9. In its initial proposal, Staff recommended that bidders be required to submit confidential "indicative one- and three-year bids" 10 business days before the scheduled date for submission of firm bids, as a means of preparing the Commission for the bid prices it could expect. (Staff reply comments at 3.) Staff also recommended that the Commission obtain consulting services from one or more experts to assist it in making decisions and exercising whatever flexibility it built into the process. (*Id.* at 7.)

10. Staff explained that the purpose of indicative bids was to assist the Commission in deciding how to manage or modify the bidding process. For example, evaluating the indicative bids could help the Commission determine whether to proceed with the proposed procurement and whether to request one-year proposals, three-year proposals, or both. (Staff initial comments at 3.)

11. Several of the parties objected to the proposal for indicative bids. PEPCO and Constellation contended that the 10-business-day period may overlap with other procurements in the region and therefore place a burden on potential bidders. The DPA, Delmarva and MSCG argued that such data would be of little use because the indicative bids were non-binding and the market could change during that period. The DPA and CESI claimed that the additional burden of developing indicative bids could discourage suppliers from participating in the bidding process. Finally, WGES feared that the

Commission might use the data "in an ill-advised attempt to time the market." (HER at 4.)

12. Upon reviewing these objections, Staff withdrew its proposal to require indicative bids.

13. As for the consultant proposal, Staff envisioned that the consultant(s) would advise the Commission on the state of the electricity and fuel markets and any other factors that might be likely to affect the outcome of each procurement cycle, and would provide any other advice and analysis that the Commission deemed relevant. As an example, Staff observed that the Commission might ask the consultant to prepare estimates of full service requirements for the relevant customer classes. (Staff reply comments at 2.)

14. None of the parties disagreed with the concept of the Commission retaining a consultant, but they did disagree regarding the amount of flexibility the Commission should retain or exercise based on market conditions existing at the time of the procurement.

15. The DPA noted that the consultant would presumably advise the Commission as to whether the procurement should actually proceed, or whether market conditions warranted delaying the bidding process. Although the DPA supported the idea of a consultant, it cautioned that the Commission should only authorize a delay in the bidding process if "extraordinary conditions" (such as a hurricane immediately preceding the bid deadline that severely curtailed gas supplies and resulted in temporarily driving prices up to unstable and abnormal levels) exist. In the DPA's view, it would be inappropriate to delay the bidding process simply because market prices are higher than the Commission

would like or than it originally anticipated. (DPA initial comments at 3.)

16. The Hearing Examiner observed that:

The usefulness and role of a market consultant, of course, depends largely on the amount of flexibility the Commission provides itself regarding modification of the RFP process as the process unfolds. If the Commission intends to adhere to the established timeframe and RFP terms, irrespective of market conditions leading up to the bidding (and the bid prices received), then the consultant would be of little use. However, if the Commission remains open to adjusting the RFP timing or the contract terms during the process, then of course a market consultant's services would hold significant value to the Commission.

(HER at 5.)

17. The Hearing Examiner agreed with the DPA's observation that the important question was the amount of flexibility the Commission would retain, which would affect the role of the consultant. Thus, the Hearing Examiner recommended that the Commission decide whether or not to engage a market consultant (and if it did, the scope of that engagement) only after it decided how much flexibility, if any, it would build into the bidding and approval process. (HER at 6.)

18. **Exceptions.** *Staff.* Although Staff did not formally except to the Hearing Examiner's recommendation, it sought to correct the Hearing Examiner's mistaken belief that Staff had relied on WGES's concern that the Commission might try to "time the market" by requiring indicative bids. Staff set forth its position in its reply comments, which did not mention any concern that the Commission might try to time the market. (Staff Exceptions at 5, citing Staff reply comments at 7.)

19. WGES. WGES excepted to the Hearing Examiner's recommendation that the Commission not require indicative bids. It noted that in its initial comments it had proposed that a better policy would be to structure SOS procurements so that the resulting prices sent accurate market signals to customers and encouraged them to seek the stable solutions that competitive suppliers could offer. (WGES Exceptions at 1.) It contended that efforts to render decisions based on market timing "would probably not improve market responsiveness of SOS supply procurements but that a monthly or an annual SOS bid structure would best improve the market responsiveness of SOS." (*Id.* at 1-2.)

20. **Commission Discussion and Findings.** We are not entirely sure what WGES's exception to the Hearing Examiner's recommendation on this issue is, as it is unclear from its exceptions and no one representing WGES appeared at oral argument to explain the position. In any event, we agree with and approve the Hearing Examiner's discussion and findings on this issue for the reasons set forth in his report at pages 4-6. (Unanimous.)

B. Flexibility of Bid Timing and Contract Length

21. Staff recommended that the Commission modify the RFP process to afford the Commission greater flexibility regarding the length of contracts it approves for the power procured for small customers. (Staff reply comments at 7). Staff suggested two options:

Option One - By noon on the fifth business day prior to the date when price proposals with Binding Bid Agreements are due from bidders, the Commission would announce whether, in its discretion, the RFP should seek one-year bids,

three-year bids, or both. In addition, if the Commission provides for solicitation of both one- and three-year bids, it will state (1) its target amounts of one-year and three-year supply, selected in its discretion, (2) direct that the lowest one-year bids be accepted until the one-year target is met, (3) direct that the lowest three-year bids be accepted until the three-year target is met, and (4) direct that if either target is not met, the lowest bids for the other contract length be accepted until the total procurement amount is met, if possible.

Option Two - By noon on the fifth business day prior to the date when price proposals and Binding Bid Agreements are due from bidders, the Commission would announce, in its discretion, whether the RFP should seek one-year bids, three-year bids, or both. If the Commission determines that the RFP should seek both types of bids, it would provide that immediately after bids are received and data summarized, Delmarva Power shall provide a list of the bids, including the term length (one-year or three-year), bidders names, and bid price for each bid to the Commission, Staff and Commission consultants. The Commission would then determine, in its discretion, its target mix of one-year and three-year contracts, which may be a mix of all one length or the other, and communicate that decision to Delmarva Power. Delmarva Power would then proceed to award other bids.

(Staff initial comments at 4.) Thus, Option One would set forth the mix of one- and three-year contracts that would be procured *before* bidders submitted their bids, whereas Option Two would give the Commission the flexibility to make the determination of the mix of one- and three-year contracts *after* the bids had been submitted.

(Staff reply comments at 7.) Staff preferred Option Two as providing the greatest flexibility for the Commission. Moreover, the most important flexibility provision, in Staff's view, was the Commission's ability to delay or defer the procurement process in the event of an extraordinary circumstance affecting the power markets. (*Id.*).

22. Coral opposed a requirement for, or any presumption in favor of, three-year bids, recommending that bidders be required to submit only one-year bids. Coral further objected to Staff's proposed Option Two as "'changing the rules in mid-stream.'" Coral supported Staff's proposal to defer the bid procurement process only in extreme circumstances. (HER at 8.)

23. DES/RESA opposed both one- and three-year contracts, contending that monthly procurement and pricing are necessary for entry into the market by retail suppliers. They argued that long-term contracting, including a three-year ladder, makes it imprudent for a retail supplier to make substantial investments in a market. They claimed that ladders, long-term contracts, and annual procurements create volatility rather than moderate it. They further asserted that current retail tariff provisions such as seasonal rates and time-of-use rates create volatility to which customers should not be subjected. (HER at 8.)

24. Pepco supported the current three-year ladder procurement process. However, if the Commission should provide for contract length flexibility, then SOS bidders and consumers should be notified of the Commission's intentions for purchasing SOS supply in advance of bid submission. The Hearing Examiner concluded that Pepco preferred Staff's Option One over Option Two. (HER at 8-9.)

25. Constellation supported the current three-year ladder procurement process and opposed both of the options proffered by Staff. It objected to Option Two on the ground that it would create significant uncertainty for bidders and would remove the current

assurances that bids would be selected only on the basis of price and that the lowest bids would be accepted. Although it also opposed any option that would permit the Commission to defer the procurement procedure, Constellation supported Staff's proposal that any such deferral be exercised only in extraordinary circumstances. (HER at 9.)

26. The DPA supported flexibility in contract length, but assumed that such flexibility was meant to apply only to classes now being served under the three-year ladder. It recognized that in some cases it may be more advantageous for the Commission, in the long run, to choose rate stability over the lowest absolute cost. The DPA placed a "very high priority" on rate stability and, as a matter of policy, supported rolling three-year contracts. The DPA expressed several concerns regarding Staff's proffered options, however. First, the DPA feared that it may result in substantial uncertainty for suppliers and customers (who will have to be re-educated with each procurement as to the Commission's rationale for the time period selected). Second, the DPA was concerned that it may lead the Commission to take a short-term view of procurement. Third, the DPA worried that either option would place "tremendous responsibility" on the Commission to evaluate the competitive generation market and accurately predict the optimal timing of bids and the optimal contract length. Fourth, the DPA contended that the options lacked specific criteria upon which the Commission would rely in determining whether to proceed on the scheduled bid day and what the optimal mix of contracts should be. Finally, the DPA warned that the options could

adversely affect rates in the following year if only one-year contracts were chosen in a particular year. Thus, the DPA recommended that bidding be deferred only under extraordinary circumstances (such as a hurricane immediately preceding the bid date that severely disrupted the gas market and drove prices up temporarily); that the Commission exercise such flexibility with "great caution;" that the Commission not attempt to "second-guess" the market as a matter of course or simply because market prices are higher than expected; and that the Commission evaluate alternatives for smaller customers and select a process that is in the public interest. (HER at 9-10.)

27. Delmarva observed that using one-year contracts assumed that prices were relatively high and would be lower in the next year; however, it pointed out that there was no way to know at a particular time whether prices were relatively high or relatively low. It recommended that the Commission retain the 100% three-year bid option as the default assumption absent compelling reasons to change to one-year bids or some combination of one- and three-year bids. Delmarva noted that the amount of load to be bid in this procurement cycle was only approximately 310 MW, and recommended placing a priority on maintaining the three-year rolling solicitation process. Finally, Delmarva recommended that the process and mechanics for making the decision be provided in as much detail as possible prior to the bid deadline in order to make sure that suppliers were aware of the Commission's desires. (HER at 10.)

28. CESI opposed one-year contracts for any part of providing SOS due to the small size of the Delaware load. It contended that the

three-year laddering process remained appropriate; however, if the Commission opted for flexibility in contract length, CESI preferred Option One because suppliers would know in advance what products to bid. It argued that bidders submitting three-year bids would be subject to unreasonable uncertainty in the event that the Commission chose to select only one-year bids after all bids had been submitted. CESI recommended that if the Commission selected Option Two, bidders should not be identified by name so as to avoid concerns that the Commission preferred one bidder over another. Finally, CESI recommended that any Commission decision to defer the bidding procedure or accept one-year contracts in place of some or all of the three-year contracts be based upon clearly defined, quantifiable standards, and that if there was insufficient time to develop such standards before the succeeding solicitation, then they be developed before the next one. CESI also disagreed with Coral's assertions that suppliers added an "uncertainty premium" to three-year bids that they did not add to one-year bids. (HER at 10-11.)

29. WGES supported Coral's recommendation to reject three-year bids and select only one-year bids, but argued that monthly procurements were optimal. It opposed any effort to create flexibility in the bidding process through contract length or deferral of procurement. In its view, neither action was likely to improve the market responsiveness of SOS supply procurements. (HER at 11.)

30. MSCG objected to both options. It contended that suppliers would face uncertainty if they did not know the mix of one- and three-year contracts in sufficient time before submitting their bids, and

that this would cause them to place a risk premium on their bids and preclude potential bidders from participating in the bid process. Furthermore, if the Commission could choose between different products, bidders would lack clarity regarding the criteria to be used in selecting the winning bids, since price would no longer be the sole factor to be considered. Finally, if the exercise of flexibility prolonged the decision-making process, additional risk premiums would be necessary to account for the chance that the market would move before the final awards are made. MSCG did support Staff's recommendation that the procurement process be conducted on the scheduled date, absent exceptional circumstances. (HER at 11.)

31. **The Hearing Examiner's Discussion and Recommendation.** The Hearing Examiner observed that neither the Retail Supply Act nor Order No. 6943 expressly directed the Commission or Staff to consider adding flexibility to the Commission's SOS procurement process, but that in light of the public reaction to the SOS rates derived from the first procurement and questions regarding the Commission's ability to modify the process if bids seemed unreasonably high, Staff's proposals were warranted. Indeed, Staff had referred to the public perception against placing the Commission in a position where it was unable to alter the RFP process regardless of how clearly current market information might indicate that it should. The Hearing Examiner recognized that the Commission may decide that it was necessary to incorporate flexibility regarding RFP timing and contract length into the procurement process; nevertheless, the Hearing Examiner declined to consider the public perception because it was not significantly

discussed in the parties' comments and because the Commission was well-situated to assess its importance without outside input. He commented only that the Commission may want to consider the possibility that its consultant may guess wrong on the direction of the market and it turns out that the RFP process and contract lengths would have been preferable to the modified terms. (HER at 12-13.)

32. The Hearing Examiner recommended that the Commission reject both of Staff's proffered options. Stating that the Commission already had the authority to alter the RFP process at any time under its statutory bid-approval authority, he recommended that the Commission establish a policy that it would "refrain from exercising such authority unless an exceptional, market-altering event (such as a hurricane) directly precedes the procurement date." (HER at 13.) First, he observed that if the Commission were to add steps to the process to allow for flexibility to change the RFP terms as the process unfolds, then bidders will have to consider the increased uncertainty when deciding whether to participate and in formulating their bids. That additional uncertainty will be reflected in an increase in the risk premium and therefore an increase in bid prices. (*Id.*, citing Pepco initial comments at 3 and DES initial comments at 4.)

33. Second, the Hearing Examiner believed that the burden on the Commission to accurately predict future markets would be considerable, especially in the absence of specific criteria for making changes to the process. (*Id.*, citing DPA initial comments at 4 and CESI initial comments at 3.)

34. Third, the Hearing Examiner found that the current procurement process already limited market volatility for small SOS customers because only 1/3 of the load was bid each year due to the rolling three-year contract approach approved in the last SOS proceeding. Future procurements simply would not carry the same amount of risk inherent in the first system-wide procurement. He noted that the first SOS procurement was "unusual" in that all contracts had to be bid at the same time in order to get the rolling approach started, and the resulting prices therefore highlighted the volatility that may occur when a large portion of load is procured at once. (*Id.* at 14, citing Delmarva initial comments at 3.)

35. The Hearing Examiner concluded that the Commission could ultimately reject bids regardless of the circumstances, but that "[w]ithout adhering to established parameters, ... the Commission risks losing the confidence of wholesale suppliers for future RFPs, which could adversely affect the number and quality of bids." *Id.* Thus, for the foregoing reasons, he recommended that the Commission establish a policy that it would not alter the procurement process unless an exceptional, market-altering event occurs directly prior to the bid deadline (a provision that the Hearing Examiner noted was unopposed). (*Id.* at 14-15.)

36. With respect to some parties' advocacy of monthly contracts, the Hearing Examiner recommended that the Commission reject those proposals. First, he found that those proposals were outside the scope of this proceeding. He stated that Order No. 6943 "clearly" limited the scope of this case to "those potential changes raised by

Staff." (*Id.* at 15.) Staff did not raise the possibility of changing the underlying Commission-approved three-year rolling contract approach, and the Hearing Examiner did not read Staff's proposals of one-year contracts in certain situations as expanding the scope of the proceeding. (*Id.*)

37. Second, the Hearing Examiner found that monthly contracts added an unacceptable level of price volatility for small SOS customers. He was persuaded by DPA's argument (based on a 2005 PJM "State of the Market Report") that monthly pricing results in significant price variations and, because prices are highest in the summer when usage is greatest, residential customers would face a "double whammy" in the summer under monthly pricing. (*Id.* at 16, citing DPA reply comments at 3.) Furthermore, according to Delmarva, longer-term laddered contracts in the District of Columbia and New Jersey produced more stable rates than system-wide procurements in Maryland and Delaware. (*Id.*, citing Delmarva reply comments at 4.) Delmarva also pointed out that DES did not provide monthly pricing to its retail customers, suggesting that DES itself recognized that customers prefer the stability of long-term contracts. Finally, the Hearing Examiner observed that the Retail Supply Act emphasized the promotion of price stability, which would be compromised by shorter-term contracts. (*Id.*, citing Staff reply comments at 8.)

38. **Exceptions.** *Staff.* Staff argued that the Hearing Examiner's recommendation that both options be rejected appeared to have been based on his understanding that the Commission had the authority to modify the RFP process at any time under its bid-approval

authority, and that this was a faulty premise. (Staff Exceptions at 3-4.) Staff acknowledged that the Commission could reject bids that it believed did not reflect the retail electric market, but absent advanced notice, it was Staff's position that the Commission could not materially change its regulations regarding the bid process. (*Id.* at 4.) In proposing the two options, Staff stated that the priority should be to maintain steadily rolling three-year contracts selected through competitive bidding, and that the solicitation of one-year bids or a mix of one- and three-year bids should *only* be considered when the Commission has determined that it would be in the public interest to do so. Staff believed that giving the Commission the flexibility to permit shorter-term contracts was important to avoid situations where there was a clear reason to depart from a process designed months or years in advance when current information indicated that such a departure would be beneficial to retail customers. (*Id.*). Staff argued that public perception, although it should not drive the Commission's decision, could *not* be ignored, and that by giving the Commission the additional flexibility contemplated by either option did not mean that the Commission would exercise that flexibility so as to modify its preference for long-term contracts. (*Id.* at 4-5.)

39. *Coral.* Coral argued that the Commission should adopt a process providing for a mix of one- and three-year contracts on equal terms to provide more competitive and efficient auction results. (Coral Exceptions at 3, citing Coral initial comments at 4.) It contended that "it cannot be disputed" that short-term forecasts are more accurate than long-term forecasts, and therefore, one-year bids

would protect consumers from the uncertainties and volatility associated with a long-term market. Furthermore, one-year bids would provide suppliers with flexibility, which would result in a more robust competitive market, which in turn would also benefit customers. (*Id.* at 3-4.) Coral asserted that, contrary to the Hearing Examiner's position, there *is* much uncertainty surrounding market design issues, and that significant changes have occurred as competitive markets evolve. It pointed to the "major" redesign of PJM's capacity markets currently pending before the Federal Energy Regulatory Commission as an example. Coral contended that requiring bidders to submit three-year contracts would result in less efficient prices than a mix of one- and three-year contracts because suppliers will add premiums to three-year bids to address long-term market uncertainty - premiums that are not required for one-year contracts due to their shorter term. (*Id.*, at 4.)

41. *DES/RESA.* DES and RESA (hereby referred to singularly as "DES") excepted to the Hearing Examiner's recommendation to reject the proposal for monthly procurement. DES argued that in this proceeding, "the Commission is revisiting the SOS procedures regarding the provision of electric supply service to residential customers and is thus to do so with an eye on furthering the aforementioned policies of this State to foster competition, customer choice, and achieve the lowest cost for consumers." (DES Exceptions at 5.) DES accused the Hearing Examiner of "missing the mark" by focusing on volatility rather than on fostering competition or lower prices for consumers, and contended that there was no record evidence to support the Hearing

Examiner's conclusion that long-term contracts result in more stable pricing than short-term contracts. Nor did DES find any record support for a position that long-term contracts offer the lowest cost and prices to customers. (*Id.*). DES also disagreed with the Hearing Examiner's conclusion that the Commission was barred from considering the issue of monthly procurement because Staff did not propose to change the bid length. (*Id.* at 5-6.)

42. First, DES contended that the Hearing Examiner's finding that the monthly procurement issue exceeded the scope of the proceeding essentially gave Staff "the authority to dictate what the Commission can consider" (*Id.* at 7.) DES argued that there was "little or no support" for this finding in Order No. 6943, the record of the proceedings, or the Commission's enabling legislation. Order No. 6943 made clear that while Staff had some proposed changes, the views of other parties as to what changes might be necessary or desirable were also sought. Furthermore, in that Order the Commission contemplated adjusting contract length by asking whether it should "'alter the length of the procurement contracts set by Order 6746 to better capture market conditions?'" (*Id.* at 7-8, quoting PSC Order No. 6943 dated June 20, 2006.) In addition, DES argued that Staff's own submissions supported consideration of this issue on its merits, noting that the transmittal letter with its initial proposal stated that the proposal was being generated to further develop comment on possible changes to the SOS process. (*Id.* at 8.) In DES'S view, this language "implie[d] a broad review to develop 'possible changes to the SOS process,' with no language of limitation included." (*Id.* at 8-9.)

Staff's accompanying proposal likewise stated that the Commission desired to reexamine its procurement process, especially in considering ways to allow greater flexibility when market prices would result in rates that would create a hardship for Delaware ratepayers, and that the first section of the Strawman Proposal was titled "Length of Contracts." (*Id.* at 9.) DES argued that monthly procurement would provide for greater flexibility, which would result in Delaware ratepayers reaping the benefits of "true competition" and which would avoid "market timing efforts gone wrong." (*Id.*). Finally, DES asserted that the Hearing Examiner's conclusion that the Commission had no authority to consider this issue was unsupported by Delaware law. The Public Utilities Act gave the Commission exclusive original supervision and regulation of all public utilities and their rates, which would give the Commission statutory authority to consider the length of the SOS contracts. (*Id.* at 9-10.)

43. Next, DES argued that the Hearing Examiner's conclusion that monthly contracts would create greater volatility was incorrect and that in fact longer-term contracts create greater volatility. (*Id.* at 10.) As an example, DES pointed to the rate shock currently being experienced as a result of the increased rates resulting from the initial SOS procurement. Assuming some inflation, DES contended that "it must be the case that long-term contracts will have bigger jumps at the end of the contract term than shorter-term contracts. Thus, the leveling of prices followed by spikes creates significant volatility." (*Id.*). DES further contended that long-term contracts are detrimental to the market because they do not permit customers to

adjust their usage in response to changing market conditions and prices. (*Id.*). Also, long-term contracts have deterred retail suppliers from entering Delaware. Therefore, DES concluded, not only do long-term contracts create volatility, but they also thwart competition and leave consumers with no viable alternatives in a volatile market. (*Id.*). DES claimed that retailers will not enter the Delaware market unless the Commission adopts short-term procurement periods so that SOS costs more closely reflect true market costs; they will not take the chance that their investments will become valueless, and so they will not make the investment in the Delaware residential market. (*Id.* at 11.)

44. According to DES, it was not possible to overstate the importance of this issue; it was a "critical crossroad for this Commission and the State as it relates to the residential market." DES observed that all of the retail suppliers were united on this issue, and while acknowledging respect for the Hearing Examiner's and Staff's views, pointed out that they are not in the business. (*Id.*). DES further observed that the Maryland Commission, when faced with the same issue for mid-sized commercial customers, issued an order finding that long-term contracts thwart competition and do not promote stability, and ordered a quarterly-bid default service effective June 1, 2007. The Maryland Commission stated that SOS rates would now reflect current market conditions more closely than they had in the past, and would not be disconnected from market prices for extended time periods. The Commission also concluded that its decision struck 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 and enhancing entry into the market by retailers. (*Id.* at 11-14.) DES urged the Commission to follow the lead of the Maryland Commission with respect to its findings on volatility and stability, and to approve shorter-term contracts, (*Id.* at 14.)

45. *WGES.* WGES argued that it was better policy to structure SOS procurements so that the resulting prices send accurate market signals to customers. In WGES's view, a monthly or annual SOS bid structure would best improve the market responsiveness of SOS. (WGES Exceptions at 1-2.) It acknowledged that the development of a competitive market in Delaware was still relatively new, but that there was no evidence supporting the belief that three-year contracts will "prove invaluable" to the development of a robust competitive market. (*Id.* at 2.)

46. **The Commission's Discussion and Findings.** We will address the monthly procurement issue first. Like the Hearing Examiner, we believe that monthly procurement would create more volatility and reduce rate stability. We acknowledge the Maryland Commission's recent determination to approve quarterly bidding SOS as the default for certain commercial customers, but we also observe that the customers most at risk in Delaware are residential customers. Therefore, we are not persuaded that the arguments that swayed the Maryland Commission to adopt quarterly bidding SOS for those certain

commercial customers are equally applicable here, where most of the affected customers are residential.

47. We also note that the 2005 PJM "State of the Market Report" finds that monthly pricing results in "significant price variations and, because prices are highest in the summer when usage is the highest, residential customers would face a 'double whammy' in the summer, under monthly pricing." (HER at 16, citing DPA reply comments at 3.) We understand DES's contention that all of the retail suppliers in this proceeding are united on this issue and that they are in the business, but the retail suppliers have a direct financial interest in which procurement process is ultimately approved. PJM is also "in the business," but it has no such direct financial interest in the approval of a particular bidding process. Thus, we are persuaded, as was the Hearing Examiner that at least at the current time monthly pricing will result in greater volatility and less stability for Delaware's residential customers than will longer-term contracts. Based on the foregoing, as well as the reasons articulated by the Hearing Examiner, we reject DES's and WGES's proposal for monthly procurement. (Unanimous.)³

48. We turn next to the question of whether we should adopt one of the two options regarding the RFP procedure that Staff suggested. We believe that giving discretion to the Commission to exercise flexibility in the SOS procurement process to require one-year contracts, three-year contracts or a mix of both, and/or to defer the

³ We note that the Hearing Examiner initially determined that this issue was outside the scope of the proceeding. We do not address that conclusion,

procurement process, in the event of extraordinary circumstances is desirable, and we determine that we should have that flexibility. We want to impress upon the parties that it will not be our policy to exercise this discretion merely because market rates are higher than we would like. Rather, we emphasize that we will *only* exercise this discretion in very unusual circumstances that create aberrant conditions affecting energy markets (such as a hurricane, terrorist event, or pipeline capacity restriction) occurring shortly before a bid deadline.

49. We agree with Staff that although we have the authority to reject bids under certain circumstances, absent those circumstances we should approve the bids resulting from the procurement process. Adopting one of Staff's options gives us additional flexibility to act (i.e., request shorter supply contracts) when we deem that extraordinary circumstances warrant such action.

50. Nearly all of the participants that appeared at oral argument expressed a desire that if the Commission adopted one of the Staff's Options, it should adopt Option One because that would provide more certainty to the process. This is the option in which the Commission would specify whether bidders should submit all one-year bids or a specified mix of one- and three-year bids. We are sympathetic to the suppliers' concerns and believe that such certainty is important in order for Delaware's customers to benefit the most from the SOS procurement process.

but merely note that we have addressed the merits of the monthly procurement proposal.

51. For the foregoing reasons, we reject the Hearing Examiner's recommendation on this issue, and approve Staff's Option One, which will allow the Commission, *only* in the event of extraordinary circumstances, to defer the scheduled bidding to a later date or to modify the terms of the bidding (upon five business' days notice) to require all one-year bids or a percentage of one-year bids vis-à-vis three-year bids. (4-1, Commissioner Winslow voting nay.)

C. Transparency of Process

52. One of the criticisms leveled at the RFP procurement process was that sufficient information regarding the winning bidders was not made available to the public, nor was the information provided available in a timely manner. To improve the transparency of the procurement process, Staff recommended reducing the time period between the Commission's selection of the winning bidders for the final tranche and the Commission's public announcement of those winning bidders from 30 calendar days (over one month) to 21 calendar days so as to be released simultaneously with information on the resulting retail rates. Although the Hearing Examiner found that there was no disagreement on the recommendation to reduce the number of days between selection and announcement, he noted that there was disagreement on the information to be released.

53. Staff recommended releasing the following information:

- Aggregate information about bids received and winning bids;
- The names of the winning bidders for each customer class;

- The percentage of load won by each winning bidder (by name) for each customer class; and
- Retail rates for the upcoming contract period beginning June 1, 2007.

Staff recommended that specific dollar bid amounts for any bidders *not* be released, which no party opposed. (Staff initial comments at 7.)

54. Constellation opposed releasing information on the percentage of load won by bidder's name on the ground that it would potentially harm bidders' competitive positions. It claimed that release of that information would compromise the winning bidders' ability to negotiate and transact in the wholesale markets, because their competitors would have access to the winning bidders' competitively sensitive information. According to Constellation, the more a competitor understands about the requirements and load supply obligations of a winning bidder, the more leverage those competitors have in negotiations with the winning bidder for transactions that may be used to meet the winning bidders' SOS supply obligations (such as hedging). (Constellation initial comments at 7.)

55. Staff was not persuaded by Constellation's argument regarding the potential harm to the competitive process. (Staff reply comments at 6.) It disagreed that the release of information after 21 calendar days would jeopardize bidders' ability to trade or cover their positions. (Staff initial comments at 7.) Staff emphasized the importance of assuring the public of the integrity of the bidding process. Staff stated that it and its consultant had investigated the issue and found no competitive disadvantage after 21 days.

56. **The Hearing Examiner's Discussion and Recommendation.** The Hearing Examiner was persuaded by Staff's arguments regarding why the reduction from 30 calendar days to 21 calendar days for the release of the information set forth in its proposal was necessary. He relied primarily on Staff's and its consultant's investigation of the issue, which concluded that there was no competitive disadvantage to the release of the information after 21 calendar days. (HER at 18.) He also noted that no supplier other than Constellation had objected to the proposal. (*Id.*). Finally, assuring the public of the integrity of the bid process was an important factor. (*Id.* at 17-18.) Therefore, the Hearing Examiner recommended that Staff's proposal be approved in its entirety. (*Id.* at 18.)

57. **Exceptions.** Constellation was the only party to except to the Hearing Examiner's recommendation. First, it noted that the Hearing Examiner had erred in stating that Constellation was the sole party to object to Staff's proposal, because MSCG had argued in its reply comments that disclosure of bidders' names 21 days after procurement would harm those bidders' ability "to participate effectively and competitively in the wholesale markets" and that the Commission should wait at least 90 days after the close of the procurement to release the winning bidders' names. (Constellation Exceptions at 2-3, citing MSCG reply comments at 5-6.) Constellation further disputed the Hearing Examiner's statement that no party had opposed the release of bidders' information 21 days after bids had been awarded for the last tranche in each year's procurement; rather, it pointed out that it had contended that maintaining confidentiality

of bidders' identities as long as reasonably possible would improve the success and viability of the SOS procurement process because winning bidders rely on their ability to hedge in the wholesale market for months after bids are awarded, and the ability to hedge provides potential bidders with the ability to bid and achieve the most competitive process for SOS customers over the course of the supply period. (Constellation Exceptions at 3, citing Constellation initial comments at 6-7.) Constellation observed that other jurisdictions with SOS procurements similar to Delaware's (e.g., the District of Columbia) had approved a longer confidentiality period prior to the release of winning bidders for that very reason; indeed, the District of Columbia Commission had approved a 90-day confidentiality period in recognition of the need to protect "the delicate balance between promoting transparency in the SOS process and protecting sensitive information." (Constellation Exceptions at 3, quoting *In the Matter of the Development and Design of Standard Offer Service in the District of Columbia*, DC PSC Formal Case No. 1017, Order No. 14065 (issued Sept. 21, 2006) at ¶26.)

58. Constellation also objected to the Hearing Examiner's reasoning that Staff's and its consultant's investigation had revealed no competitive disadvantage when information was released after 21 calendar days, and because no party other than Constellation had objected. (Constellation Exceptions at 4.) Again, Constellation noted that MSCG had sided with Constellation on the transparency issues. (*Id.*, citing MSCG reply comments at 5-6.) Furthermore, Constellation rejected the notion that no competitive disadvantage

exists after 21 days. It cited MSCG's reply comments (similar to Constellation's initial comments) that wholesale suppliers are disadvantaged because competitors will obtain knowledge of the specific nature of winning bidders' Delaware SOS requirements and will use that knowledge to their benefit in negotiating wholesale market transactions. (*Id.*, citing MSCG reply comments at 5-6.) Constellation argued that the District of Columbia Commission had reached the same conclusion: "The [DC PSC] is not persuaded that there are substantial benefits to the release of additional information, beyond the names of winning bidders that would outweigh the bidders' need for confidential treatment of competitively sensitive information." (*Id.*, quoting Order No. 14065 at ¶ 27.)

59. **The Commission's Discussion and Findings.** While we understand and appreciate Constellation's contentions, we are not persuaded that the competitive disadvantage that it cites really does exist after 21 calendar days (which we note is nearly a month's time). Although Constellation disputes the conclusion of Staff and its consultant, reached after their independent investigation, that no such competitive disadvantage exists, Constellation does not provide us with any evidence of such competitive disadvantage; rather, it relies on argument only. We realize that the District of Columbia Commission approved a longer confidentiality period, but we do not know what evidence was presented to them; Constellation did not attach a copy of the District of Columbia Commission's order to its

exceptions.⁴ We are persuaded, as was the Hearing Examiner, by the findings of Staff and its consultant that any competitive disadvantage no longer exists after 21 calendar days. Moreover, we differ with the District of Columbia Commission in that we believe that transparency of the process to the public is very important to preserve the integrity of the process. We apparently place a greater weight on transparency than does the District of Columbia Commission. That is not to say that the District of Columbia Commission is incorrect; rather, it is merely that this is a policy issue and different commissions can reach different decisions on the appropriate policy that should govern their SOS processes. Thus, for these reasons and for the reasons set forth by the Hearing Examiner, we approve the Hearing Examiner's recommendation. (Unanimous.)

D. Purchase of Receivables

60. The final non-consensus issue is whether the Commission should require Delmarva to purchase the receivables of retail suppliers that use Delmarva's billing services to serve mass market customers. DES and WGES recommend creation of a Purchase of Receivables ("POR") program to eliminate what they perceive as a barrier to competition: the favoring of Delmarva's SOS bad debt collection over retail suppliers' bad debt collection. (WGES reply comments at 2.. WGES contended that Delmarva should be required to purchase retail suppliers' receivables at a discount rate equal to Delmarva's uncollectible allowance. It stated that several states

⁴We also note that this order was issued after the Hearing Examiner submitted his report, and so the Hearing Examiner was never presented with a chance to address that Commission's conclusions.

have implemented POR programs that have helped attract retail competitors. (WGES initial comments at 3.) DES argued that Delmarva alone has access to customer billing and payment information (because of consolidated billing) and can use service disconnection as a way to collect overdue bills, and this ability provides an unfair advantage to it over retail suppliers.

61. Staff, DPA, and Delmarva recommend no change to the current approach. Delmarva questioned whether the Commission had the authority to force Delmarva to purchase receivables from a non-regulated entity. (Delmarva reply comments at 7.) Delmarva further pointed out that the states that have implemented POR programs have recognized their lack of authority in this area by making the programs strictly voluntary. Staff and the DPA observed that retail suppliers already may sell their receivables to Delmarva (or other entities) under commercially negotiated terms. As long as SOS and distribution customers are insulated from the effects of such transactions (i.e., that the transactions are "below-the-line" for ratemaking purposes and that regulated disconnection authority is not applied to customers for the purpose of collecting arrearages for unregulated retail services), then Delmarva is free to purchase retailers' receivables under negotiated terms. (Staff initial comments at 8; DPA reply comments at 9.) Next, Staff contended that it was not clear whether the current approach really did amount to a barrier to competition. It noted that SOS rates contain a retail adder that provides some room over cost for retailers to price their services, and the adder includes an allowance for SOS uncollectible debt. (Staff reply comments at 9.) Finally,

the DPA argued that under a mandatory POR program, Delmarva would recover uncollectible costs from all ratepayers, resulting in all ratepayers subsidizing the retail suppliers' bad debt expense. (DPA reply comments at 6-7.)

62. **The Hearing Examiner's Discussion and Recommendation.** The Hearing Examiner recommended that the Commission not implement a formal POR program. (HER at 18.) First, the Hearing Examiner agreed that the Commission may not have the authority to impose such a program on Delmarva. (*Id.* at 19.) He agreed with Delmarva, Staff, and the DPA that Delmarva could voluntarily engage in such transactions with the retail suppliers as long as those transactions were accounted for below the line. (*Id.*). He also agreed with the observation that SOS rates include a retail adder that includes some allowance for bad debt expense, and therefore concluded that retailers could price an allowance for bad debt into their own bids without being competitively disadvantaged. (*Id.*). Furthermore, while acknowledging that Delmarva benefits from its ability to disconnect delinquent accounts (after meeting all conditions precedent thereto), the Hearing Examiner observed that Delmarva is also required to serve all customers regardless of credit history, whereas retail suppliers can choose not to serve high-risk customers and can send customers back to SOS (after meeting certain requirements). Thus, the Hearing Examiner was not convinced that Delmarva had a net competitive edge over retail suppliers. (*Id.* at 19-20.) Next, the Hearing Examiner was persuaded by the DPA's contention that forcing Delmarva to purchase retail suppliers' receivables would result in all of

Delmarva's ratepayers subsidizing the retail suppliers' bad debt. (*Id.* at 20.) Finally, the Hearing Examiner found that the parties' reliance on POR programs in Pennsylvania, New Jersey, and New York was not helpful because those states had yet to experience significant competition. (*Id.*, citing DPA reply comments at 9; Delmarva reply comments at 10.) Therefore, the Hearing Examiner recommended that the Commission not establish a formal POR program at this time.

63. **Exceptions.** *Staff.* Staff did not take exception to the Hearing Examiner's decision, but wrote simply to point out that the Hearing Examiner may have had a misconception regarding Delmarva's disconnection authority. Contrary to the Hearing Examiner's suggestion that the regulated disconnection authority is not applied to customers of unregulated retail services, Staff stated that its understanding was that a customer purchasing energy from an unregulated entity could indeed be disconnected for failure to pay its regulated distribution charges. (Staff Exceptions at 6.)

64. *DES.* DES argued that the Commission does have the authority to create a POR program. It contended that Delmarva did not cite any specific legal authority for its position that the Commission lacked the ability to mandate a POR program, nor had any other party set forth any such legal authority. DES pointed out that Delmarva had "conceded" in its reply comments that the Commission has general regulatory authority over the utility, and pointed to Section 201(a) of the Public Utilities Act, which provides that the Commission has exclusive original supervision and regulation of all public utilities and their rates. (DES Exceptions at 15.) DES also observed that the

Public Utilities Act contains sections relating to billing and makes clear that the Commission's authority over the utility is not affected by a change in stock ownership or other merger. Thus, DES contended that the Commission's broad authority and the lack of any specific statutory prohibitions showed that the Commission probably did have the authority to consider and implement a POR program. (*Id.*).

65. DES next argued that it was not the Hearing Examiner's place to make this determination; rather, such a decision should be made "only in careful consultation with the Commission's counsel, perhaps with the benefit of briefing from the parties." (*Id.* at 16.) Even if the Commission's counsel concluded that the Commission lacked such authority, however, DES next contended that the Commission could recommend legislation granting it such authority if it believed such a program would be beneficial. DES argued that such a program would indeed be beneficial because more retailers would be willing to enter a market that had such a program in place. (*Id.*).

66. DES contended that a POR program would not affect the SOS rate because an adder is already built into the SOS rate and the utility has more options to enforce collection than a retail supplier has. (*Id.*). As for the Hearing Examiner's reasoning that retail suppliers can avoid high-risk customers, DES suggests that such an approach provides competition benefits only to low risk customers -- leaving high risk customers on SOS. (*Id.*). DES agreed that a POR program alone would not produce a "vibrant competitive market" in Delaware, but contended that the issue was an important one that must

be addressed to encourage more retail suppliers to enter the Delaware market. (*Id.* at 16-17.)

67. *WGES.* WGES also excepted to the Hearing Examiner's recommendation. It noted that in New York, the purchase of supplier receivables is deemed a "best practice." It improved the competitiveness of the residential market because it simplified retail suppliers' operations and reduced their overheads. (*WGES Exceptions* at 2-3.) WGES observed that Maryland was promulgating a rule requiring utilities to either purchase a suppliers' receivables or move to a pro rata payment posting rule. WGES noted that customer choice is "on the rise" in each of those states. (*Id.* at 3.)

68. **The Commission's Discussion and Findings.** We approve the Hearing Examiner's recommendation with respect to the establishment of a POR program for the reasons set forth in the Hearing Examiner's report, and decline to require the Company to purchase retail suppliers' receivables at this time. As for our authority to require Delmarva to implement such a program, we recognize that this issue was perhaps not addressed in as much detail as we would like; however, at oral argument Rate Counsel expressed grave misgivings about whether we had the authority to force Delmarva to, essentially, contract with third parties. We are mindful of the Delaware Supreme Court's statements that "the statutory powers conferred by our General Assembly upon the ... Commission do not include the authority to 'invade the province of the Boards of Directors of those utility corporations coming within its jurisdiction.'" *Delmarva Power & Light Co. v. Public Service Commission*, 508 A.2d 849, 859 (Del. 1986) (quoting

Application of Diamond State Tel. Co., Del. Super., 103 A.2d 304, 319 (1954), *aff'd. in part and reversed in part on other grounds*, Del. Supr., 107 A.2d 786 (1954), *on reargument*, Del. Supr., 113 A.2d 437 (1955). We understand that the POR programs that have been implemented in other states are voluntary programs that arose out of settlements, which provide little guidance to us since we do not know what authority those states' commissions would have had to mandate implementation of such a program. At the very least, this issue would require greater scrutiny than it apparently was given during the proceedings, and for that reason we are loath to require Delmarva to enter into such agreements. We are assured that our Staff will continue to examine this issue, so our decision at this time should not be taken as our final word on the subject. And, of course, Delmarva may voluntarily enter into such agreements if it so chooses. (Unanimous.)

III. CONSENSUS ISSUES

69. On September 15, 2006, Staff submitted to the Commission a report identifying and describing the issues on which all participating parties had reached consensus. Those issues and their resolutions are:

(a) ***Pass-through of Ancillaries***

Resolution: PJM charges for Reliability Must Run ("RMR") costs will continue to be passed through to SOS customers (via Delmarva) and billing formats will be clarified to show this. Delmarva will include as a line item in Exhibit D (Sample PJM invoice) of the FSA to show that payment of the RMR charges are the responsibility of the Buyer (Delmarva).

(b) ***Release of Bid Prices Between Rounds***

Resolution: This issue is relevant only if the RFP process becomes a descending clock auction. Participants saw no reason why winning offer prices could not be revealed to qualified bidders for each round in addition to the final blended price, if a descending clock auction process is adopted.

(c) ***Descending Clock Auction***

Resolution: There should be no change at this time, but it may be appropriate to consider implementing a descending clock auction a later date.

(d) ***Improved Bid Data***

Resolution: (1) As part of the package of materials posted on its website, Delmarva will provide historic customer migration data (in the aggregate) on a capacity PLC basis and number of customer accounts basis for each Service Type and each customer class or partial customer class within each Service Type.

(2) Delmarva will provide wholesale suppliers who have contracted to serve load with the estimated 7-day Capacity PLC look-ahead, per Section 3.3 of the FSA, commencing at contract execution rather than at power flow.

(3) Delmarva will provide the daily energy and capacity information with respect to suppliers' loads to PJM, as required by Section 3.1 of the FSA, disaggregated by SOS Type, Transaction, customer tariff class and Voltage Level.

(4) Delmarva has offered to make a good faith effort to provide the latest available summer load data as part of item 7 e. and 7 f. in Section 7 of the RFP prior to the first tranche of bidding. Staff proposed that the good faith effort be replaced with a mandatory requirement. There were no objections received to Staff's proposal.

(5) No action should be taken with respect to opposition to release of individual customer data without the customer's consent.

(6) Regarding provision of bid data to retail suppliers, Delmarva stated that its understanding was that the additional data that retail suppliers are seeking and that wholesale suppliers already receive are PLCs and hourly loads. Delmarva expects that it can provide these data with minor IT work if retail suppliers are willing to pay the incremental costs of providing such data. Delmarva does not have a fee structure or the manner in which the data will be made available, but is willing to work with retail suppliers and others to establish a reasonable framework.

(e) ***Limit migration back to SOS***

Resolution: There should be no action with respect to limiting migration back to SOS.

(f) ***Timing of Procurement***

Resolution: Delmarva proposed changing the timing of bidding as follows: Tranche 1 procurement would be in November; Tranche 2 procurement would be in January (plus February 1-2); and Tranche 3 (if needed) would be in February.

(g) ***Change to Section 12.3(b) of the FSA***

Resolution: FSA Subsection 12.3(b) will be moved to a new FSA Appendix [X]. The new Subsection 12.3(b) will provided as follows:

Seller may, in its sole discretion, add subsection 12.3(b) included in Appendix [X] by checking this box. If Seller does not check this box, subsection 12.3(b) will not be included as part of the Parties' Agreement.

70. As all parties have agreed on these issues, we approve the parties' agreement as being in the public interest. (Unanimous.)

IV. ORDER

AND NOW, this 17th day of October, 2006, **IT IS HEREBY ORDERED:**

1. That the Commission accepts Staff's withdrawal of its proposal to require "indicative bids."

2. That the Commission approves Staff's Option One proposal to give the Commission the flexibility, in extraordinary circumstances, to defer the bidding date and/or to alter the mix of contracts to be solicited in the RFP from solely three-year contracts to a mix of one-year and three-year contracts or all one-year contracts, upon providing five business days' notice. The Commission's prior Orders regarding the SOS procurement process are so amended and that Delmarva shall modify its RFP materials and processes accordingly and shall be prepared to accommodate three-year contracts, one-year contracts, or a Commission-ordered target percentage of each, as the Commission shall later direct Delmarva.

3. That the Commission rejects the proposals for monthly procurement.

4. That the Commission approves the Hearing Examiner's recommendation with respect to the transparency of the process.

5. That the Commission approves the Hearing Examiner's recommendation with respect to establishment of a formal POR program at this time.

6. That the parties' agreement on the Consensus Issues, as reflected in Staff's report dated September 15, 2006, are approved.

7. That the Commission reserves the jurisdiction and authority to enter such further Orders in this docket as may be deemed necessary or appropriate.

BY ORDER OF THE COMMISSION:

U/s/ Arnetta McRae
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jeffrey J. Clark
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary