

**ORDER NO. 79489**

IN THE MATTER OF THE COMMISSION'S  
INQUIRY INTO THE COMPETITIVE SELECTION  
OF ELECTRICITY SUPPLIERS/STANDARD OFFER  
SERVICE.

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BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND

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CASE NO. 8908

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**I. Background**

On August 6, 2004 the Staff of the Public Service Commission ("Staff") filed its Report on the Procurement Improvement Process for 2004-2005 ("Staff Report"), which contains consensus Standard Offer Service ("SOS") procurement improvement recommendations. Parties filed four non-consensus proposals on August 16, 2004. Comments on these proposals were filed August 30, 2004 and a hearing on the procurement issues was held September 8, 2004. On September 13, 2004, the Commission issued Order No. 79452 addressing the policy issues regarding participation by Chapter 11 bankrupt entities in the SOS process. This Order finalizes that issue, addresses the three remaining non-consensus issues, and approves the consensus issues.

**II. Consensus Issues**

The Staff Report proposes improvements to the Request for Proposals ("RFP"), Utility Bid Plans, the Full Requirements Service Agreement ("FSA") and related documents of the Phase II Settlement previously approved by the Commission. All changes would take effect prospectively. Many changes represent non-substantive clarifications or corrections. Among the substantive changes, references to Type III service were deleted as well as demand rate elements in the RFP and utility bid plans.

The proposed new RFP Section 6 amends the bidding schedule to reflect differences between the second SOS year and the first SOS year. The Staff Report provides that additional load information will be provided to bidders. According to the Staff Report, the “RFP Appendix 4 Bid Assurance Letter of Credit and FSA Exhibit C Performance Assurance Letter of Credit and Exhibit F Form of Guaranty have been modified to reflect first year experience, input from the Parties and current best practices.”<sup>1</sup> Additionally, FSA Exhibit B, referenced in FSA 4.4, has been modified to reflect the new renewable portfolio standards that become effective January 1, 2006. The new FSA 8.3 includes a standard tax treatment disclosure. Finally, the FSA includes new provisions 12.3(b) and 15.2 that permit suppliers to treat the FSA as a derivative for mark to market accounting purposes and confirms that accrual accounting may be elected by the utility (and suppliers). All of the parties who agreed to the Settlement in the Phase II proceedings of this case either support or do not oppose the proposed procurement improvements contained in the Staff Report.

Based upon the record, the Commission finds that the recommendations in the Staff Report are in the public interest. The proposals represent a consensus designed to improve the SOS procurement process based upon stakeholder experience during the past year. Therefore, the proposals in the Staff Report are approved.

### **III. Non-Consensus Issues**

#### **A. Release of Supplier Names**

Potomac Electric Power Company (Pepco) and Delmarva Power & Light Company d/b/a Conectiv Power Delivery (CPD), (jointly Pepco Holdings, Inc., “PHI”),

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<sup>1</sup> Staff Report at 4. Non-consensus recommendations were also made regarding the Form of Guaranty. The Staff Report was not challenged in any other respect.

propose modifying the Confidentiality Agreement “to permit the release of the names of wholesale suppliers providing supply to a utility for standard offer service for the service year.”<sup>2</sup> PHI recommends that the release occur on or after the first day of the service year.<sup>3</sup> PHI says consumer and stakeholder confidence in the SOS process is harmed by the lack of general information about SOS.<sup>4</sup> Staff, the Maryland Office of People’s Counsel (“OPC”) and The Potomac Edison Company d/b/a Allegheny Power (“AP”) concur.<sup>5</sup> These parties also agree that PHI’s Proposal allows sufficient time for suppliers to hedge their obligations and obtain supply sources before their identities become known.<sup>6</sup> Furthermore, PHI asserts that its proposal does not impact current FSA’s, will not harm supplier interests, and is not inconsistent with the Phase I or II Settlements.<sup>7</sup> Finally, PHI says suppliers have already released award information.<sup>8</sup>

Constellation Power Source, Inc. (“CPS”) opposes PHI’s Proposal, arguing that supplier interests will be harmed.<sup>9</sup> CPS asserts that supplier hedging activities depend on many factors and would be impeded by the early release of names.<sup>10</sup> If a counter-party knows that a SOS supplier has a fixed price obligation, this knowledge might compromise the supplier’s ability to secure supply on favorable terms, ultimately resulting in higher prices.<sup>11</sup> Although CPS opposes the PHI Proposal and any release of

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<sup>2</sup> PHI Request for Procurement Improvement, (“PHI Proposal”), Docket No. 355 at 1. The proposal modifies Appendix 2 to the RFP.

<sup>3</sup> PHI Proposal at 1.

<sup>4</sup> *Id.* at 4.

<sup>5</sup> Staff Letter at 1. Docket No. 366; OPC Comments at 7; Docket No. 364; AP Comments at 2, Docket No. 373.

<sup>6</sup> PHI Proposal at 3, AP Comments at 1, OPC Comments at 6, Staff Letter at 1.

<sup>7</sup> PHI Proposal at 3-4, OPC concurs, OPC Comments at 6-7.

<sup>8</sup> *Id.* at 4.

<sup>9</sup> CPS Comments at 1. Docket No. 372. The Mid-Atlantic Power Supply Association (“MAPSA”) also opposes the proposal but did not provide any argument. MAPSA Comments at 3, Docket No. 365.

<sup>10</sup> CPS Comments at 2-3.

<sup>11</sup> CPS Comments at 2-4.

supplier names generally, it has suggested an alternative that would permit the release of all winning bidders names without regard to service type or utility service territory.<sup>12</sup>

The Commission will adopt the CPS alternative suggestion. Consumers' ability to obtain the names of suppliers serving SOS load may increase public confidence in the SOS procurement process. At the same time, the generic release of all supplier identities will not compromise any commercially sensitive information. Accordingly, the Commission approves a modification to the Confidentiality Agreement that supplier names may be released on a general Statewide basis, on or after the first day of the SOS year, provided that no supplier's name is to be associated with a particular utility or utility's SOS load.<sup>13</sup>

#### **B. Opt-Out Aggregation Legislation<sup>14</sup>**

CPS, Constellation New Energy, Inc., Baltimore Gas and Electric Company, and Consolidated Edison, Energy, Inc., (jointly "Filing Group") submitted a proposal they assert will reduce the costs and risks associated with the possibility that municipal opt-out aggregation legislation may be adopted.<sup>15</sup> The proposal adds a new Section 4.12 to the FSA, which provides that a SOS supplier may charge the costs it incurs resulting from implementation of any opt-out aggregation program by a municipality.<sup>16</sup> Costs would be recoverable only upon a Commission finding that they are reasonable, are due solely to

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<sup>12</sup> CPS Comments at 7. CPS also says the Commission should clarify that this modification will only become effective with the next procurement cycle and that no names will be released from the initial bid process.

<sup>13</sup> This modification will only become effective with the next procurement cycle and no names shall be released from the initial bid process. The parties shall submit a compliance filing within 10 days that modifies Appendix 2 of the Request for Proposals for Commission approval.

<sup>14</sup> Under an opt-out aggregation program all customers within a municipality would be required to take their (electric) service pursuant to the program, unless they affirmatively choose not to participate. *See* Filing Group Proposal at 4.

the implementation of a municipal opt-out aggregation program, and only to the extent a utility may recover such costs from SOS customers.<sup>17</sup> The Filing Group concludes that their proposal is consistent with the Phase I and II Settlements and will ensure that higher costs caused by municipal aggregation are avoided unless and until it is implemented.<sup>18</sup>

Staff, OPC, the Mid-Atlantic Power Supply Association (“MAPSA”), Washington Gas Energy Services, Inc. (“WGES”), Pepco Energy Services, Inc. (“PES”), PHI, and AP (collectively “Opponents”) all oppose the Filing Group’s Proposal.<sup>19</sup> They state that the proposal is premature, violates Paragraph 12 of the Phase II Settlement, is anti-competitive and unfair to retail suppliers, and is vague. The Opponents also emphasize that the issue of municipal opt-out aggregation should be left to the legislature.<sup>20</sup> They argue that last year’s wholesale supply bids must have included this risk, however winning bids were not unreasonable.<sup>21</sup>

The Commission concurs with the arguments of the Opponents that the Filing Group Proposal is premature. Furthermore, the Commission believes it would be inappropriate for it to intrude upon a legislative prerogative. If and when the General Assembly considers opt-out aggregation as a legislative proposal in the future, it should have the ability to consider the full policy implications of the proposal.

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<sup>15</sup> Municipal Opt-Out Aggregation Proposal from Filing Group for Standard Offer Service Procurement Improvements, (“Filing Group Proposal”). Docket No. 356 (original filing), Docket No. 360 (revised filing).

<sup>16</sup> Filing Group Proposal at 7.

<sup>17</sup> *Id.* Suppliers also agree to be bound by any Commission decision, subject to normal appeal procedures.

<sup>18</sup> Filing Group Proposal at 8.

<sup>19</sup> No other party supported the Filing Group Proposal

<sup>20</sup> WGES Comments at 2; PES Comments at 6.

<sup>21</sup> PHI Comments at 4, OPC Comments at 5.

### **C. Form of Guaranty**

J. Aron and Company (“J. Aron”) submitted a non-consensus proposal to modify the Form of Guaranty, Exhibit F to the FSA, in addition to the consensus improvements filed with the Staff Report.<sup>22</sup> J. Aron said its proposal would permit greater use of the Form of Guaranty by potential bidders, thereby increasing participation. Additionally, J. Aron said the proposed Form of Guaranty is “more in line with industry standards”, reducing the likelihood of risk premiums.<sup>23</sup> On September 1, 2004, J. Aron, PSEG Energy Resources & Trade LLC, and Consolidated Edison Energy, Inc. (“Joint Commenters”), filed a revised Form of Guaranty.<sup>24</sup>

During the September 8, 2004, hearing it became evident to the Commission that the parties might be able to reach a consensus on the appropriate Form of Guaranty if given a little more time. Therefore, the Commission directed Staff to meet with the parties, to see if this could be achieved. On September 15, 2004, Staff, on behalf of the parties submitted a revised consensus Form of Guaranty attachment to the FSA. Staff states that all parties were given an opportunity to object to the revisions and to the best of its knowledge no party objects.

The Commission has reviewed the revised filing and finds the consensus Form of Guaranty to be an appropriate procurement improvement. Therefore, based upon the record the Commission finds that the revised consensus Form of Guaranty contained in Staff’s Supplemental Report is in the public interest and it is therefore approved.<sup>25</sup>

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<sup>22</sup> Non-Consensus Procurement Improvement Proposal Regarding the Form of Guaranty (“J. Aron Proposal”), Docket No. 358. J. Aron requested that the Commission accept the filing one day late, which the Commission accepts.

<sup>23</sup> J. Aron Proposal at 2.

<sup>24</sup> Joint Comments Regarding the Form of Guaranty as Procurement Improvement, Docket No. 374.

<sup>25</sup> The J. Aron Proposal and the proposal filed by the Joint Commenters is rejected.

#### **D. Chapter 11 Entity Participation**

On September 13, 2004, the Commission issued Order No. 79452, which addressed Chapter 11 entity participation in the SOS bidding process. In conformance with that Order the Parties submitted modifications to the FSA on September 17, 2004, which add a new paragraph 12.9 and modify the existing paragraph 15.1(e). The Commission finds that these revisions to the FSA are consistent with Order No. 79452. No party objects to the revised FSA. The revised FSA is approved.

**IT IS THEREFORE**, this 24<sup>th</sup> day of September, in the year Two Thousand and Four, by the Public Service Commission of Maryland,

**ORDERED**: (1) Staff's Report is approved, as modified by paragraphs (2) and (3).

(2) Staff's Supplemental Report, which contains the revised consensus Form of Guaranty, is approved.

(3) The revised FSA, which contains the modifications required by Order No. 79452, is approved;

(4) The PHI Proposal to release supplier names is modified as discussed in Section III.A and the parties shall submit the required compliance filing;

(5) The Filing Group Proposal regarding potential municipal opt-out aggregation is rejected.

(6) All motions not specifically granted are denied.

/s/ Kenneth D. Schisler

/s/ J. Joseph Curran, III

/s/ Ronald A. Guns

/s/ Harold D. Williams

/s/ Allen M. Freifeld  
Commissioners