

ORDER NO. 80342

In the Matter of Default Service for Type *
II Standard Offer Service Customers *
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Case No. 9037

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On September 20, 2005, the Public Service Commission (“Commission”) issued Order No. 80272 in this matter. In that order the Commission accepted a non-unanimous Type II Settlement, with two modifications. First, the Commission determined that it was not appropriate to move smaller Type II Standard Offer Service (“SOS”) customers to Type I-like service. Additionally, the Commission decided that the Type II Settlement should be implemented for only one year rather than two years. In all other respects, the Commission accepted the Type II Settlement. Finally, the Commission requested that each of the four utilities respond within 10 days whether they agreed to be the Type II SOS provider in their respective service territories according to the provisions of Order No. 80272.

A Joint Utility Response to Order No. 80272 (“Utility Response”) was filed on September 30, 2005, by The Potomac Edison Company d/b/a Allegheny Power (“AP”), Baltimore Gas and Electric Company (“BGE”), Delmarva Power & Light Company (“Delmarva”) and Potomac Electric Power Company (“Pepco”), (collectively “Joint Utilities”).¹ They state:

The Joint Utilities have reviewed Order No. 80272 and agree to provide the service (with the requested modification for AP and Delmarva) as ordered by the Commission, provided that the

¹ The Commission issued a letter order that day granting all parties an opportunity to file comments regarding the Utility Response by October 6, 2005.

Commission issue an order setting forth the terms and conditions of providing that service . . . and addressing any additional risks imposed on the utilities by the procedural outcome reflected in the Order.²

The Joint Utilities note that the Type II Settlement incorporated important provisions of the Case No. 8908 Settlements related to cost recovery, bidder failure, supplier credit requirements, supplier default and other protections.³ Additionally, they emphasize that implementation costs will be incurred in reliance on Order No. 80272 and therefore request that the Commission affirm that they will be permitted full cost recovery even if that order is later reversed on appeal or otherwise modified.⁴ Finally, the Joint Utilities state that the Commission should make “only those changes that are necessary to implement its Order,” and that all other terms of the Type II Settlement should be incorporated into the Commission’s order.⁵

The Joint Utilities also request an exemption for Delmarva and AP from Order No. 80272. They request a waiver from the requirement to separately bid load for customers with a Peak Load Contribution (“PLC”) below 100 kW. Delmarva notes that this customer segment represents only 22 megawatts (“MW”) of eligible load while AP notes that it has only 40 MW of eligible load in this market segment. Due to customer choice, Delmarva would be seeking bids for only 18 MW of load and AP for only 32 MW of load, at this time. Accordingly, they “are very concerned that if they bid those loads separately, their customers could face undue price increases due to the small size of the bid block.”⁶ They also note other concerns.⁷

² Utility Response at 2.

³ *Id.* at 2.

⁴ *Id.* at 3.

⁵ *Id.* at 2.

⁶ *Id.* at 3. The standard bid block in the PJM market is 50 mw. *Id.* at 4.

⁷ *Id.* at 4-5.

The waivers requested by Delmarva and AP would affect Type II-B customers. Delmarva recommends that these smaller Type II customers have their load bid with either the Type I customers or with the remainder of Type II load. AP recommends that its smallest Type II load be bid with the remainder of its Type II load because of the different timing of its SOS bids.⁸ AP also requests that it be put “back on cycle” for Type II accounts, and therefore requests that its obligation to provide SOS to Type II customers cease on May 31, 2007.⁹

By letter dated September 30, 2005, the Commission provided other parties the opportunity to comment on the Utility Response. The Public Service Commission Staff (“Staff”), Maryland Energy Administration (“MEA”), Reliant Energy, Inc. (“Reliant”), Washington Gas Energy Services, Inc. (“WGES”) and the Retail Energy Supply Association (“RESA”)¹⁰ filed comments on October 6, 2005. They support or do not oppose the Joint Utilities’ request for clarification. Staff notes that the Type II Settlement incorporated numerous conditions of service, procurement and cost recovery from the Case No. 8908 Settlements. Staff says the Commission must order these same provisions through new language or by reference to the Settlements. MEA supports this position noting that these conditions are essential to the effective provision of SOS. MEA says these provisions should be specifically incorporated by Commission order. WGES states that it does not oppose this cautious approach, however, it notes that Order No. 80272 already provides this protection. Finally, Staff concurs that except for changes necessary

⁸ Utility Response at 5-6.

⁹ *Id.* at 6.

¹⁰ RESA was formerly the Mid-Atlantic Power Supply Association.

to implement Order No. 80272, the Commission should order all terms included in the Type II Settlement.

Staff notes that there is some risk of the utilities incurring costs to implement Order No. 80272 as a result of an appeal of the order. However, Staff says there was also some appeal risk with the Type II Settlement itself, but that the Type II Settlement contains no explicit cost recovery provision as requested by the Joint Utilities. RESA says that utilities are allowed to recover costs incurred in the provision of service (only) after appropriate review by the Commission.

Staff, MEA, Reliant, WGES and RESA all support the Joint Utility request to permit AP and Delmarva to provide SOS to Type II customers as a single class based upon twice-yearly bids. Staff notes that implementation of Order No. 80272 could produce problematic Type II-B bidding results for AP and Delmarva in terms of bid price or competitiveness of the bidding process. In addition, Staff notes that this Joint Utility proposal is consistent with the Commission's concern that the proposed Type I-A procurement and pricing in the Type II Settlement was "a step away from market-based rates."¹¹ Reliant concurred with this aspect of the Commission's order and therefore supports the Joint Utility proposal to combine the smaller Type II customers with Type II-A. WGES states that combining Type II loads in twice a year procurements is a step that will improve the market responsiveness for Type II SOS, which is consistent with Order No. 80272. MEA notes that small bid blocks also exacerbate fixed administrative costs, which would be spread over a small number of customers.

¹¹ Staff comments at 3 quoting Order No. 80272 at 2.

MEA says AP has not made it clear why it would be appropriate to reduce its Type II SOS period, but does not specifically oppose the request. Staff, RESA and WGES support AP's request to terminate its Type II SOS obligation on May 31, 2007, rather than December 31, 2007, so that the end of AP's obligation coincides with the other three utilities. RESA says this modification "will benefit suppliers through the development of an administratively more efficient and consistent marketplace."¹² WGES agrees. Staff concurs, noting that there is a benefit to the retail and wholesale markets if all Maryland utilities follow the same service and procurement cycles for SOS.

The Commission accepts the agreement of the utilities (AP, BGE, Delmarva, and Pepco) to provide Type II SOS in their respective service territories according to the terms of Order No. 80272, with the requested modifications for AP and Delmarva. The Commission reiterates that Type II SOS shall be provided according to all the terms of the non-unanimous Type II Settlement, except as specifically modified by Order No. 80272 and this Order. This includes the provisions of cost recovery, bidder failure, supplier credit requirements, supplier default and other provisions specified in the Type II Settlement.¹³ BGE and Pepco shall provide Type II SOS to Type II-A and Type II-B accounts as provided in Order No. 80272. AP and Delmarva shall provide service to all of their Type II customers as a single class according to the waiver requested by AP and the second scenario recommended by Delmarva, which is identical to AP's recommendation. In other words, all AP and Delmarva Type II customers will have their

¹² RESA comments at 2.

¹³ As for implementation costs incurred in reliance on Order No. 80272, and this order, the Commission notes its historical practice of authorizing prudently incurred costs consistent with Commission requirements.

load bid twice per year. Finally, AP's request to put it "back on cycle" is accepted; therefore, its Type II SOS obligation will end May 31, 2007.

The Commission finds that the modifications to Order No. 80272 requested by Delmarva and AP are in the public interest because they minimize alterations necessary to accommodate these small amounts of load as part of a coherent bidding process. The Commission acknowledges that these modifications create a distinction between Type II SOS for Delmarva and AP customers compared to BGE and Pepco customers. Therefore, in the working group the parties should consider measures to standardize all Type II SOS once again.¹⁴ Finally, the Commission reiterates that the work groups established by Order No.80272 should consider all feasible program designs for SOS, including multiple procurements of generation per year by the utilities, potential indexing methods for pricing SOS, which would result in more market-responsive rates, and the potential provision of SOS through a retail bidding regime. The Commission expects that the parties will develop a program design that encourages the orderly development of competitive retail electricity markets, as required by the Electric Customer Choice and Competition Act of 1999.

IT IS THEREFORE, this 12th day of October, in the year Two Thousand Five, by the Public Service Commission of Maryland,

ORDERED: (1) The Type II Settlement is adopted by the Commission in its entirety, except as provided in Order No. 80272 and this Order;

(2) Except as modified in Ordered Paragraphs (3) and (4) below, Order No. 80272 is affirmed;

¹⁴ Any party that does not believe standardization of SOS on a Statewide basis is appropriate should be prepared to persuade the Commission as to the reasonableness of its position.

(3) Delmarva Power & Light Company shall provide Standard Offer Service to Type II customers as a single class, with twice yearly bidding, as proposed in the Joint Utility Response;

(4) The Potomac Edison Company d/b/a Allegheny Power shall provide Standard Offer Service to Type II customers as a single class, with twice yearly bidding, as proposed in the Joint Utility Response and its Type II SOS obligation shall terminate May 31, 2007.

/s/ Kenneth D. Schisler

/s/ Harold D. Williams

/s/ Allen M. Freifeld

/s/ Karen A. Smith

/s/ Charles R. Boutin

Commissioners