

IN THE COMPETITIVE SELECTION OF
ELECTRICITY SUPPLIER/STANDARD
OFFER SERVICE.

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 8908

Phase II Settlement Agreement

The Potomac Edison Company d/b/a Allegheny Power (“AP”), Baltimore Gas and Electric Company (“BGE”), Delmarva Power & Light Company (“Delmarva”), Potomac Electric Power Company (“Pepco”), the Staff of the Maryland Public Service Commission (“Staff”), Maryland Office of People’s Counsel (“OPC”), Conectiv Energy Supply, Inc., Mid-Atlantic Power Supply Association, Constellation NewEnergy, Inc., Pepco Energy Services, Inc., Maryland Energy Users Group, Maryland Energy Administration (“MEA”), Power Plant Research Program of the Department of Natural Resources, Strategic Energy, LLC, Reliant Resources, Inc., and Constellation Power Source, Inc. (individually and collectively referred to as the “Settling Parties”), agree as follows:

WHEREAS, the fixed price power supply service currently provided to residential and non-residential customers of AP, BGE, Delmarva, and Pepco will expire at various times starting in 2004 pursuant to the terms of the settlements in Case Nos. 8794/8804, 8795, 8796, 8797, 8890, and 8936; and

WHEREAS, the Commission instituted this proceeding to establish procedures for the competitive selection of electric supply for standard offer service; and

WHEREAS, the Commission approved, in Order No. 78400 issued on April 29, 2003, a set of terms and procedures for the provision of standard offer and default service to customers, through the competitive selection of wholesale supply, for specified periods (“Phase I Settlement”); and

WHEREAS the Settling Parties have agreed upon the terms and procedures, set forth in this Phase II Settlement, for implementation of the Phase I Settlement; and

NOW, THEREFORE, the Settling Parties agree to the following Stipulation and Settlement Agreement (“Phase II Settlement”):

I. Wholesale Power Supply Procurement

1. All capitalized terms used in this Phase II Settlement, to the extent that they are not separately defined in this agreement, will have the meaning set forth in the Phase I Settlement. However, the term Parties shall mean all parties on the service list of Case No. 8908 and any subsequently docketed case dealing with the subject matter of this Phase II Settlement.
2. Attachment A to this Phase II Settlement consists of the Model Request for Proposals (“RFP”), which includes the bid request process, the bid evaluation methodology, the timeline for the RFP process, and the following six appendices:
 - a) Expression of Interest Form;
 - b) Confidentiality Agreement;
 - c) Credit Application;
 - d) Bid Form Spreadsheets;
 - e) Residential Price Anomaly Procedure, and
 - f) Binding Bid Agreement.

3. Attachment B to this Phase II Settlement is the Model Full Requirements Service Agreement (“Model FSA”), including the volumetric risk mechanism. The Model RFP and Model FSA are collectively referred to as the “Model Bid Plan.”
4. Attachments C-1, C-2, C-3 and C-4 to this Phase II Settlement are the Utility-specific portions of the Utility Bid Plans required by Paragraphs 8, 27, 46, and 64 of the Phase I Settlement. The full Utility Bid Plan for each Utility will consist of the Model RFP with that Utility’s respective Attachment inserted, plus the Model FSA.
5. Notwithstanding any other provision of this Phase II Settlement, a Utility may at any time request Commission approval to make changes in its tariffs. However, to the extent that those tariff changes would require conforming changes to the Utility’s Bid plan:
 - a) the Utility will serve notice of the tariff changes, and copies of the proposed conforming changes to the Utility Bid Plan, on all Parties;
 - b) no such tariff changes may alter the rights and obligations of any wholesale supplier with respect to any FSA for which an RFP has already been issued, unless the supplier consents to have its rights or obligations changed;
 - c) any such tariff changes must be consistent with the Phase I Settlement, this Phase II Settlement, and all other settlements, regulations, orders or other obligations to which the Utility is subject; and
 - d) no Party waives its right to take any position it deems appropriate with respect to the merits of any tariff change that is proposed.
6. If, after conducting the bid procedures set forth in its Utility Bid Plan, a Utility still has SOS or Type III load that has not been awarded to a supplier, then:

- a) the Utility will initially supply the unserved load by purchasing energy and all other necessary services through the PJM-administered markets, including but not limited to the PJM energy, capacity, and ancillary services markets, and any other service required by PJM to serve such unserved load, and will pass all the costs of such purchases on to customers in the retail rates charged for the service for which the purchases are made, in the same manner as all other charges pursuant to Paragraphs 11, 30, 49, and 67 of the Phase I Settlement; and
 - b) within 5 business days of it being determined by the Utility that the load is unserved, Staff will convene a meeting of all Parties to discuss alternative ways to fill the unserved load, such as a rebid or a bilateral contract. The meeting will conclude within 10 business days of the load being determined to be unserved, and within 20 calendar days of it being determined that the load is unserved, the Utility will file with the Commission, and serve upon the Parties, any proposal it has for serving the load in lieu of the procedure set forth in sub-paragraph (a) above. The Commission will resolve the Utility's filing on an expedited basis. Any alternative means that the Commission approves will expressly provide that all Utility costs for filling the load will be recovered in retail rates in the same manner as all other charges pursuant to Paragraphs 11, 30, 49, and 67 of the Phase I Settlement. Until the Commission approves an alternate means of filling the load, sub-paragraph (a) above will continue to apply.
7. If any load is left unserved after a supplier defaults and the load has been offered to other suppliers in accordance with the FSA and Utility Bid Plan, then:

- a) the Utility will initially supply the defaulted load by purchasing energy and all other necessary services through the PJM-administered markets, including but not limited to the PJM energy, capacity, and ancillary services markets, and any other service required by PJM to serve such defaulted load, and will pass all the costs of such purchases, net of any and all offsetting recovery from the defaulting wholesale supplier, on to customers in the retail rates charged for the service for which the purchases are made, in the same manner as all other charges pursuant to Paragraphs 11, 30, 49, and 67 of the Phase I Settlement; and
- b) as soon as practicable after it is determined by the Utility that the load is unserved, the Utility will auction the remaining term of the defaulted FSA, for the same terms and conditions (including prices) as in the FSA. Within 5 business days of it being determined by the Utility that the load is unserved, the Staff will convene a meeting of all Parties to discuss the Utility's auction of the remaining term of the defaulted FSA by means of a competitive solicitation. The meeting will conclude within 10 business days of the load being determined to be unserved, and within 20 calendar days of it being determined that the load is unserved, the Utility will file with the Commission, and serve upon the Parties, its proposal with respect to the auction of the contract. The Commission will determine on an expedited basis whether to approve the Utility's filing. All Utility costs for filling the defaulted load, net of any and all offsetting recovery from the defaulting wholesale supplier (including any recoveries through litigation net of litigation costs), will be recovered in retail rates in the same manner as all other charges pursuant to Paragraphs 11, 30, 49, and 67 of the Phase I Settlement. Until the Commission approves the results of the auction of the

defaulted FSA, sub-paragraph (a) above will continue to apply. The Commission will determine on an expedited basis whether to approve the results of the auction.

8. Attachment D to this Phase II Settlement is the Consultant RFP to be used to hire the Consultant(s) specified in Paragraph 84 of the Phase I Settlement. The Commission and its Staff will determine the qualifications of and reasonably evaluate all candidates for Consultant. The Commission and its Staff will further direct the Utilities, in writing, as to which candidate(s) to hire, and under what terms and conditions such candidate(s) are to be hired. The Utilities will complete the hiring of the Consultant(s) by no later than four (4) weeks prior to the date of the initial pre-bid conference. Each Utility will only be required to pay for work that the Consultant does in reviewing the Utility's compliance with Paragraphs 9, 28, 47, and 65 of the Phase I Settlement; any other work that the Staff or the Commission asks the Consultant to perform shall not be the responsibility of any of the Utilities.
9. Attachment E to this Phase II Settlement is the OPC Confidentiality Agreement relating to supply procurement information shared with OPC, along with any confidential information contained in the reports required under Paragraphs 3, 22, 41 and 59 of the Phase I Settlement. Attachment F hereto is the MEA Confidentiality Agreement governing access by MEA to confidential information.
10. Access to confidential information relating to the Utilities' procurement of power supply pursuant to this Phase II Settlement Agreement will be governed by the OPC Confidentiality Agreement, the MEA Confidentiality Agreement, the Consultant's Confidentiality Agreement contained in the Consultant RFP, and the Confidentiality

Agreement contained in the Model Bid Plan (collectively the “Phase II Confidentiality Agreements”).

11. The handling of confidential information relating to the supply procurement process by the Utilities, bidders, Consultant(s), MEA, and OPC will be governed by the Phase II Confidentiality Agreements. In addition, pursuant to Paragraphs 9, 28, 47, and 65 of the Phase I Settlement, information concerning the outcome of the supply procurement may be released by OPC, Staff, and the Commission in the following manner:
 - a) In Staff’s annual report concerning each year’s supply procurement, not to be released until after the completion of bidding for the last tranche of the next year’s procurement cycle for all the Utilities, the Staff will list all the wholesale suppliers who were awarded supply contracts under each Utility Bid Plan in each Utility’s respective franchise service territory. This list of winning wholesale suppliers will then be public information for all purposes.
 - b) Before the Staff’s annual report concerning each year’s supply procurement is released, if the Maryland Governor or a committee of the General Assembly requests that the Commission, Staff, or OPC release the names of the individual wholesale bidders that will be providing SOS or Type III Large Customer Service, that information shall be provided with notice that the information is confidential pursuant to this Phase II Settlement, provided however that no winning individual wholesale bidder’s name will be released until at least one month after the final tranche is awarded and the Commission has approved the awards for that tranche.
 - c) In its annual report, the Staff will list, separate from all supplier-identifying information, the winning bid prices (expressed in dollars per MWh for the contract

year) for each type of service offered under each Utility Bid Plan in each Utility's respective franchise service territory. This list of winning bid prices will then be public information for all purposes.

- d) If the Commission so orders, after notice and a hearing at which parties opposing release will be allowed to state the reasons for their opposition, a list which matches winning wholesale suppliers' names with their winning bid prices may be made public.
- e) Any information about the supply procurement results that does not identify individual wholesale bidders, provide supplier-specific information, or disclose any individual bid prices may be made public, after all tranches of bidding for that year of SOS service are completed, by the Staff, the Commission, or OPC at their discretion. Examples of such information that can be released include, but are not limited to, the total number of bids submitted, or the range in price between the lowest and the highest bids submitted.
- f) In the event that a FSA with a wholesale supplier is terminated pursuant to Article 12 of the Model FSA, the Staff, OPC, and/or the Commission may opt to disclose any confidential information previously provided by that supplier with respect to the terminated FSA. Any information so disclosed will no longer be treated as confidential pursuant to any of the Phase II Confidentiality Agreements.

12. Any Party may, at any time, propose that an improvement be made ("Procurement Improvement") in the Model Bid Plan, the Utility Bid Plans, the Consultant RFP, and the Phase II Confidentiality Agreements (collectively the "Procurement Procedures") with respect to the conduct of future bidding. At a minimum, the Staff will convene a meeting

of all Parties at least annually, prior to preparation of the annual reports required pursuant to Paragraphs 3, 22, 41, and 59 of the Phase I Settlement, to consider possible Procurement Improvements. Any proposed Procurement Improvement will be submitted to the Commission for review and approval. In no event will any Procurement Improvement be approved that would (1) have any effect with respect to any FSA that has already been executed, (2) harm any Settling Party's interests, or (3) be inconsistent with any provision of the Phase I Settlement or with any provision of the Phase II Settlement other than the Procurement Procedures. In addition, in no event shall any revision to the volumetric risk mechanism be approved that a Settling Party demonstrates is detrimental to the development of the retail electric market in Maryland.

13. Staff will automatically convene a meeting of the Parties, after the completion of bidding for the first year of SOS service, for purposes of reviewing the impact of the credit and collateral provisions of the FSA on market participation and supplier reliability.

II. Reporting and Monitoring Procedures

14. Each Utility will file the reports required by Paragraphs 3, 22, 41, and 59 of the Phase I Settlement no later than ninety (90) days after the end of each service year of the Utility's Service Period. A working group comprised of representatives of the Settling Parties (the "Monitoring Workgroup") will be established after Commission approval of this Phase II Settlement, and will meet to determine what data will be included in the reports.
 - a) In no event will the reports be required to include information that is confidential pursuant to the Phase II Confidentiality Agreements and the further confidentiality provisions referenced or set forth in Paragraphs 9 and 10 above, unless such

information is placed in a separate confidential annex to the report provided only to the Commission, Staff, MEA, and OPC.

- b) With respect to all data requiring programming or systems work by the Utilities, the Monitoring Workgroup will specify all required report elements by the later of July 1, 2003, or thirty (30) days after Commission approval of this Phase II Settlement.
15. The Monitoring Workgroup will continue to meet to discuss when each Utility will make its compliance filing setting the initial estimated Administrative Adjustment pursuant to Paragraph 13 of the Phase I Settlement. The Monitoring Workgroup will determine the filing date by the latter of July 1, 2003, or thirty (30) days after Commission approval of this Phase II Settlement.
 16. For purposes of monitoring the migration of residential load to competitive retail supply in implementing Paragraph 14 of the Phase I Settlement, four months prior to initiation of Residential SOS in each Utility's service territory and every six months thereafter, Staff will review the most current monthly enrollment report for that service territory to ascertain the residential capacity peak load contribution that has migrated. If either threshold specified in Paragraph 14 of the Phase I Settlement has been reached in that Utility's service territory, the Administrative Charge and Administrative Credit will be adjusted pursuant to Paragraph 14 of the Phase I Settlement.
 17. The term "audit", when used with respect to estimates of actual incremental costs in Paragraphs 31(b)(1)(A), 50(b)(1)(A), 68(b)(1)(A), and 82(b)(1) of the Phase I Settlement, shall be deemed to mean to "review for reasonableness" the estimation process and the level of information supporting the estimate; provided, however, that in no case shall such audit result in the non-recovery of Utility costs that would otherwise be recoverable

pursuant to Paragraphs 31(b)(1)(E), 50(b)(1)(E), 68(b)(1)(E), or 82(b)(5) of the Phase I Settlement.

18. Each Utility will file its final report of actual incremental costs required by Paragraphs 31(b)(1)(B), 50(b)(1)(B), 68(b)(1)(B), and 82(b)(2) of the Phase I Settlement no later than ninety (90) days after the end of each service year of the Utility's Service Period.
19. Each Utility's cash working capital revenue requirement will be calculated for purposes of Paragraphs 31(b)(2), 50(b)(2), 68(b)(2), and 82(b)(6) of the Phase I Settlement as follows:
 - a) In the first year of each Utility's Service Period for each type of non-residential service, 0.15 mills per kWh for cash working capital revenue requirement will be included in actual incremental costs collected, subject to true up.
 - b) After the first year, the following total weighted cost of capital percentages, grossed up for income taxes, will be used:
 - (1) for AP, 13.23%;
 - (2) for BGE, 12.67%;
 - (3) for Delmarva, 12.34%; and
 - (4) for Pepco, 11.68%.
 - c) Also at the end of the first year of the Service Period, each Utility will conduct a lead/lag study in the following manner:
 - (1) Revenue lag will be calculated using the following components:
 - (A) mid-point of the service period to meter reading date;
 - (B) meter-reading date to bill-rendered date; and
 - (C) bill-rendered date to collection date.

- (2) Lag in payment for electric supplier bills for each Utility will be based upon the payment terms set forth in the FSA contained in the Utility Bid Plan as approved by the Commission.
 - (3) Lag in payment of incremental costs will be determined separately for each category of cost.
 - (4) Lag in payment of all applicable taxes will be determined.
 - (5) Deferred income taxes, depreciation expense, and float will not be included in the lead/lag study.
- d) Each Utility will apply its grossed-up cost of capital to the results of its lead/lag study to determine cash working capital revenue requirements, in mills per kWh, for each service type (Type I, Type II, Type III, and Hourly).
 - e) For each Utility and each service type, the cash working capital revenue requirements calculated in this manner will then be halved and used to true up the cash working capital revenue requirement collected in incremental costs for the first year of each Service Period. The mills per kWh working capital charge so determined (up to a ceiling value of 0.15 mills) for each Utility and each service Type, shall be used to calculate the cash working capital revenue requirement for all remaining years of each Service Period.

III. Pricing and True-Up Procedures

- 20. Each Utility will true up the estimated Administrative Credit amounts described in Paragraphs 13, 31(b)(3), 50(b)(3) and 68(b)(3) of the Phase I Settlement to reflect actual revenues collected. All retail price changes resulting from the true-up filings shall be reviewed annually by the Commission.

21. The net costs included in retail prices pursuant to Paragraphs 11(b), 30(b), 49(b), and 67(b) of the Phase I Settlement will be recovered on a cents/kWh basis (energy basis) for non-demand tariff schedules and/or on a \$/kW basis (demand basis) for demand tariff schedules. However, a Utility may request Commission approval to use alternate rate designs to recover transmission-related costs. Each Utility will true up its billings to retail customers for transmission services provided pursuant to Paragraphs 11(b), 30(b), 49(b), and 67(b) of the Phase I Settlement against its payments for these services to PJM. Staff will audit these true-ups annually. In the event that there is any net over or under collection at the end of any type of service (Residential, Type I, Type II, or Type III), the balance will be paid or collected through a mechanism to be determined in accordance with the procedures set forth in Paragraph 31(b)(5) of the Phase I Settlement.
22. Each Utility will true up its billings to retail customers for services provided pursuant to Paragraphs 11(a), 30(a), 49(a), and 67(a) of the Phase I Settlement against its payments to wholesale suppliers. Each Utility will also true up its billings to retail customers to reflect any net damages recovered by the Utility from a defaulting supplier in accordance with Paragraph 7(b) above. Staff will audit these true-ups annually. In the event that there is any net over or under collection at the end of any type of service (Residential, Type I, Type II, or Type III), the balance will be paid or collected through a mechanism to be determined in accordance with the procedures set forth in Paragraph 31(b)(5) of the Phase I Settlement.
 - a) For the purpose of determining such true up, the Utility's payments to its wholesale suppliers will exclude payments made with respect to the upward adjustment in the suppliers' load arising from the activation of the Utility's load response programs as set forth in Sections 4.2 and 6.1 of the FSA.

- b) The retail price to non-residential customers posted pursuant to Paragraphs 32, 51, and 69 of the Phase I Settlement will not change until after the first billing cycle following the start of service. Any difference between a Utility's cost for serving incremental load, as that term is used in Paragraphs 33, 52, and 70 of the Phase I Settlement, and the Utility's revenue from serving incremental load based on the awarded bid prices will be included as part of the retail rate true-up.
23. If a Utility conducts wholesale bidding for a type of service on the basis of aggregated rate classes, then the Utility will make any needed true-ups on a aggregated basis.
24. In addition to the other true-ups described in Paragraphs 19(e), 20, 21, 22 and 23 above, each Utility will true up its total costs allowed under the Phase I Settlement for providing each type of service (Residential, Type I, Type II, Type III, and Hourly) with its total billed revenues for that service. If the service type is still being provided when the true-up is completed, rates will be adjusted to reflect any over or under recoveries established in the true up. In the event that there is any net over or under collection at the end of any type of service (Residential, Type I, Type II, Type III, or Hourly), the balance will be paid or collected through a mechanism to be determined in accordance with the procedures set forth in Paragraph 31(b)(5) of the Phase I Settlement. All retail price changes resulting from the true-up filings shall be reviewed annually by the Commission.
25. Each Utility will conduct the true-ups described in Paragraphs 20, 21, 22, 23, and 24 at least three times per year: concurrent with the start of summer rates; concurrent with the start of non-summer rates; and at the mid-point of the non-summer rate period. The Utility may conduct more frequent true-ups if it so chooses. Any revisions to retail electric prices

resulting from the application of the true-up provisions of this Phase II Settlement shall be reflected in the prices posted on each Utility's web page.

26. To the extent not already recovered through PJM Network Integration Transmission Service charges, any future surcharges assessed to network transmission customers for PJM-required transmission enhancements pursuant to the PJM Regional Transmission Expansion Plan, or for transition costs related to elimination of through-and-out transmission charges will be included in the charges under Paragraphs 11(b), 30(b), 49(b), 67(b), and 79(b), (c), and/or (f) of the Phase I Settlement. Pursuant to the Model FSA, the wholesale suppliers bear the risk of any other changes in PJM products and pricing during the term of their FSAs. In no event will the Utilities bear the risk of any changes in regulation or PJM rules related to such costs or charges. However, if there are any other new FERC-approved PJM transmission charges or other new PJM charges and costs, charged to network transmission customers, that any wholesale supplier believes the Utility should recover through retail rates because they are directly related to the Utility's load obligations within the meaning of Paragraphs 11(b), 30(b), 49(b), or 67(b) of the Phase I Settlement, then:

a) The Utility will file with the Commission, and provide notice to all Parties, a request for approval to recover such new charges through the Utility's retail rates under Paragraphs 11(b), 30(b), 49(b), and 67(b) of the Phase I Settlement. The wholesale supplier that brings the issue to the Utility's attention will be required to intervene before the Commission. The Commission will resolve the Utility's request on an expedited basis.

- b) The wholesale supplier will only charge the Utility for those new costs that the Commission determines may be recovered in rates by the Utility. In no event will the Utilities bear the risk of any changes in regulation or PJM rules related to such costs or charges. Also, in no event shall any PJM charges to other than network transmission customers be recovered through the Utility's retail transmission rates for service under the Phase I Settlement, except to the extent (if any) provided in Paragraphs 11(b), 30(b), 49(b), and 67(b) of the Phase I Settlement.
27. With respect to Paragraph 79(a) of the Phase I Settlement, the "appropriate" locational marginal price will be the hourly integrated real time locational marginal price for energy used by PJM for settlement with all load serving entities within the Utility's Maryland service territory.
- a) The points of settlement for which prices would be set for the Utilities currently are:
 - (1) for AP, PJM Pnode 8394954 at Voltage Zone;
 - (2) for BGE, PJM Pnode 51292 at Voltage Zone;
 - (3) for Delmarva, PJM Pnode 51293 at Voltage Zone; and
 - (4) for Pepco, PJM Pnode 338269 at Voltage PEPCO MD.
 - b) If a new LMP aggregate pricing location is established for PJM settlement with load serving entities within a Utility's Maryland Service territory, then the Utility will notify the Commission and the Parties of the change in LMP settlement location.
28. Capacity for Hourly-Priced Non-Residential Service will be priced for purposes of Paragraph 79(b) of the Phase I Settlement in the following manner:
- a) A Utility may choose to conduct a RFP for full-requirements service for Hourly-Priced Non-Residential Service. In each RFP, the price of the energy component

would be set at the appropriate PJM hourly integrated real time LMP, and the bidders would bid an aggregate amount for all other components of full requirements service, including capacity. The price of capacity for purposes of Paragraph 79(b) would be included in the load-weighted average of the awarded bid prices for such services.

- b) In the alternative, a Utility may choose to purchase capacity separately in the PJM markets. The price of capacity for purposes of Paragraph 79(b) would equal what the Utility paid for the capacity.
- c) The Utilities retain the discretion, as set forth in Paragraph 78 of the Phase I Settlement, to change their method of procuring supply for Hourly-Priced Non-Residential Service. If a Utility intends to adopt a procurement method that would result in a method for pricing capacity that would differ from the two approaches described above, then the Utility will file with the Commission for approval of the change in capacity pricing method, and provide notice to the Parties of the filing.

29. Transmission for Hourly-Priced Non-Residential Service will be priced for purposes of Paragraph 79(c) of the Phase I Settlement in the following manner:

- a) AP, Delmarva, and Pepco will price transmission to each customer in accordance with their respective applicable retail tariffs under which the customer is taking service.
- b) BGE will price transmission on the same basis that it pays PJM for the transmission.

30. Price elements under Paragraph 79(f) of the Phase I Settlement will include the additional costs (if any) that the Utility incurs in meeting its statutory renewables requirements with respect to Hourly-Priced Non-Residential Service. If at any time while Hourly-Priced Non-Residential Service is being provided, any additional price elements, as that term is

used in Paragraph 79(f) of the Phase I Settlement, directly related to that service are identified by a Utility, that Utility may file a request with the Commission (with notice to all the Parties) for approval of recovery of those costs and, to the extent the costs are found to arise from provision of the service, the costs will thereafter be included in the service price determined pursuant to Paragraph 79 of the Phase I Settlement.

31. Any adjustment to rates resulting from a true-up pursuant to this Phase II Settlement shall be deemed not to be a “new rate or change in rates” for purposes of Section 4-203 of the Maryland Public Utility Companies Article (“PUC Article”).

IV. Other Services

32. The Settling Parties agree to the establishment of a working group to continue to explore the development, consistent with the terms set forth in the Phase I and Phase II Settlements, of one or more Experimental Demand Response Services (“EDRS”) that may be offered, as an optional service, to residential and eligible non-residential customers. Representatives of the Settling Parties and any other interested persons (the “Other Services Workgroup”) will continue to meet to monitor ongoing EDRS pilot programs, and related developments in Maryland and other jurisdictions, and may make recommendations to the Commission with respect to EDRS as are deemed appropriate by the workgroup or its members. The Other Services Workgroup will report back to the Settling Parties and the Commission at least annually for the duration of each Utility’s Residential and Type I SOS Service Periods, with the first such report on EDRS due ninety (90) days after Commission approval of this Phase II Settlement. After the second annual report, the Other Services Workgroup will advise the Commission as to whether the group needs to continue to meet and report.

33. The Settling Parties agree that the Other Services Workgroup will also continue to explore the development, consistent with the terms set forth in the Phase I and Phase II Settlements, of one or more “green” or renewable power alternatives (“Green Programs”) that may be offered, as an optional service, to residential and eligible non-residential customers. The Other Services Workgroup will continue to meet to monitor developments relating to Green Programs in Maryland and other jurisdictions, and may make recommendations to the Commission with respect to Green Programs as are deemed appropriate by the workgroup or its members. The Other Services Workgroup will report back to the Settling Parties and the Commission at least annually for the duration of each Utility’s Residential and Type I SOS Service Periods, with the first such report on Green Programs due ninety (90) days after Commission approval of this Phase II Settlement. After the second annual report, the Other Services Workgroup will advise the Commission as to whether the group needs to continue to meet and report.
34. The recommendations described in Paragraphs 32 and 33 above shall not be considered Procurement Improvements subject to the terms of Paragraph 12 above.

V. Miscellaneous

35. The provisions of this Phase II Settlement do not apply to Maryland’s electric cooperatives. In the event that an electric cooperative elects to cease providing standard offer service to any of its customers pursuant to Section 7-510(c)(3)(i) of the PUC Article, the Commission may institute a separate proceeding to determine the rules pursuant to which standard offer service or default service could then be made available in that cooperative’s service territory.

36. Any and all tariff revisions proposed by the Utilities that implement this Phase II Settlement shall be filed with the Commission and served upon the Parties contemporaneously.
37. Notwithstanding Paragraphs 10, 29, 48, and 66 of the Phase I Settlement, the Settling Parties agree that, in the event that legislation is enacted that changes Renewable Energy Resource requirements during the term of any FSA that has already been executed, wholesale suppliers under the FSA may pass through their commercially reasonable additional costs, if any, associated with complying with the new requirement, through the end of the year of SOS service in which the change took effect, in accordance with the following procedures:
- a) The Utility will file with the Commission, and provide notice to all Parties, a request for a proceeding to be opened to consider recovery of such additional charges through the Utility's retail rates under Paragraphs 11(a), 30(a), 49(a), 67(a), and 79(a) or (f) of the Phase I Settlement. The wholesale supplier will be required to intervene before the Commission. The Commission will conduct the proceeding on an expedited basis.
 - b) The wholesale supplier will only charge the Utility for those additional costs that the Commission determines may be recovered in rates by the Utility.
 - c) Those approved additional costs that are incurred by the supplier prior to the date of Commission approval will be increased by interest at the Interest Rate specified in the FSA, applied on a monthly basis.
 - d) The Settling Parties agree that they will meet and consider proposals for terms for current wholesale suppliers to continue to provide incremental Renewable Energy

Resource requirements for the remaining terms of any multi-year FSA impacted by such a change in law, if such change occurs. Terms for continued service of those incremental requirements will be submitted to the Commission for approval at least 30 days prior to the deadline for issuance of the RFP for the year of service in which the proposed terms would apply. If agreement is not reached on proposed terms at least ten (10) days prior to the issuance of the RFP, or if the Commission does not approve the terms, then the incremental requirements will be added to the RFP, and the wholesale suppliers will cease to collect the additional costs provided in (a) and (b) above as of the end of the year of service in which the incremental requirements first took effect. In no event shall the wholesale supplier be obligated to provide the incremental Renewable Energy Resource requirements during the remaining years of a multi-year FSA, unless the supplier enters into a new written agreement with the Utility, approved by the Commission, to do so.

- e) In no event shall the Utilities bear the risk of any changes in law or regulation related to Renewable Energy Resource requirements.

38. If a wholesale supplier has committed an Event of Default under the FSA, other than by failing to meet its Full Requirements Service obligation under Section 2.1 of the FSA, then the Utility affected by default may propose, in lieu of terminating the FSA with that supplier, an alternative remedy for the default (“Special Remedy”). Within 7 calendar days of the Event of Default, the Utility will file with the Commission, and serve upon the Parties, the proposed Special Remedy and an explanation of the reasons for the proposal. The Utility is under no obligation to propose a Special Remedy and shall not be deemed to have been imprudent for not proposing a Special Remedy. The Commission will be

deemed to have denied the Special Remedy if the Commission does not, within 11 calendar days of the filing by the Utility, enter an order specifically approving the proposed Special Remedy and finding that the Utility would be prudent to offer the Special Remedy to the supplier. Absent such an approval order from the Commission, the Utility will terminate the FSA with the defaulting supplier. In no event will the Utility be deemed to have been imprudent for terminating an FSA following an Event of Default, so long as the termination complies with the terms of the FSA. Furthermore, in no event may any Special Remedy result in any increase in the price charged by the wholesale supplier, or in any diminution of the supplier's Full Requirements Service obligation (other than an agreement to transfer part of the defaulting supplier's Specified Percentage to another willing wholesale supplier with no change in terms and conditions).

39. The terms of this Phase II Settlement are intended to coincide in duration with the terms of the Phase I Settlement.

VI. Reservations

40. This Phase II Settlement represents a compromise for the purposes of settlement and shall not be regarded as a precedent with respect to any future case. No Settling Party necessarily agrees or disagrees with the treatment of any particular item, any procedure followed, or the resolution of any particular issue in agreeing to this Settlement other than as specified herein, except that the Settling Parties agree that the resolution of the issues herein, taken as a whole, is in the public interest.
41. No Settling Party shall be deemed to have approved, accepted, agreed, or consented to any principle underlying or supposed to underlie any of the matters provided for in this Phase II Settlement, nor shall approval of this Phase II Settlement constitute in any respect a

determination by the Commission as to the merits of any of the contentions or allegations which might be made by any of the Parties in the absence of settlement.

42. Except as otherwise provided in this Phase II Settlement, all Settling Parties reserve all rights to take any position concerning any issue addressed in this Phase II Settlement in any future proceedings. The Settling Parties and their members (if any) stipulate not to seek judicial review of a Commission order approving the Phase II Settlement as filed without modification, and stipulate not to take any action before the Commission, the Federal Energy Regulatory Commission (“FERC”), or a Court in derogation of the Phase II Settlement. However, notwithstanding any other provision of the Phase I or Phase II Settlements, the Settling Parties expressly reserve their right to take any position before FERC or any other federal agencies with respect to any claims regarding any and all matters related to the design or operation of the wholesale power markets.
43. The various provisions of this Phase II Settlement are not severable. None of the provisions shall become operative unless and until the Commission issues orders approving the Phase II Settlement without modification or condition. If any portion of this Phase II Settlement is modified, conditioned, or rejected by the Commission, or on appeal from approval by the Commission, the Phase II Settlement shall be considered null and void, and each Settling Party individually reserves the right to proceed with the filing of testimony, briefs and evidentiary hearings as contemplated by the Commission’s orders in Case No. 8908. If the Phase II Settlement is rendered null and void by operation of this Paragraph, the Settling Parties agree to immediately enter into good faith negotiations to reach a new settlement, and each Party, including Settling Parties, reserves the right to consent to, oppose, or not oppose any such new settlement.

44. If any future law or regulation is enacted that any Settling Party believes, in good faith, has a material adverse impact on its rights and obligations arising under this Phase II Settlement that is not remedied through a Procurement Improvement in accordance with Paragraph 12 above, the Settling Parties shall meet to discuss what action, if any, should be taken to address the impact of such law or regulation. If the issue is not resolved to the satisfaction of any Settling Party, the Settling Parties reserve all rights to take any position concerning the effect of such change in law or regulation.
45. The discussions that produced this Phase II Settlement have been conducted on the understanding that all offers of settlement and discussions relating thereto are and shall be privileged and confidential, shall be without prejudice to the position of any party or participant presenting any such offer or participating in any such discussions, and are not to be used in any manner in connection with this proceeding or otherwise. If the Commission does not approve the Phase II Settlement without modification or condition, the Phase II Settlement shall be deemed withdrawn and shall not constitute any part of the record in this proceeding or be used for any other purpose whatsoever.
46. Nothing in the Phase II Settlement shall be used to abrogate any existing or future contract for competitive retail electricity supply.
47. Nothing in the Phase I or Phase II Settlements relieves the Utilities of any applicable obligations under the GENCO Code of Conduct or applicable Affiliate Standards of Conduct established by the Commission. It is not the intent of the Settling Parties to create jurisdiction over these matters where none exists. Further, a violation of the Code(s) of Conduct or Affiliate Standards shall not be considered a violation of the Phase I or Phase II Settlements.

48. The headings, titles and captions of the Phase II Settlement and its various sections shall have no legal import or precedential value.
49. This Phase II Settlement may be executed in any number of identical counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute but one and the same instrument. Delivery by any party or its respective representatives of telecopied (counterpart) signature pages shall be as binding an execution and delivery of this Phase II Settlement by such party as if the other parties had received the actual physical copy of the entire Phase II Settlement with an ink signature from such party.

IN WITNESS WHEREOF, the Settling Parties respectfully request that the Commission approve this Phase II Settlement without modification or condition, and set forth their respective signatures as of the 30th day of June, 2003.