

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1325 G STREET N.W., SUITE 800
WASHINGTON, D.C. 20005**

ORDER

August 9, 2018

FORMAL CASE NO. 1017, IN THE MATTER OF THE DEVELOPMENT AND DESIGNATION OF STANDARD OFFER SERVICE IN THE DISTRICT OF COLUMBIA, Order No. 19431

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) initiates the 2018 Biennial Review of Standard Offer Service (“SOS”).

II. BACKGROUND

2. By statute, the Commission may conduct competitive bid procedures for the selection of a retail electricity supplier or suppliers to provide SOS for the District of Columbia; or authorize the electric company, Potomac Electric Power Company (“Pepco” or “Company”), to conduct competitive bid procedures to obtain third-party contracts to provide SOS for the District; or both.¹ In 2004, the Commission adopted a wholesale model in which Pepco, as the SOS Administrator, conducts competitive bidding to obtain third-party contracts to provide SOS for the District.² The Commission periodically reviews the process for providing SOS in the District and determines whether any changes or adjustments to SOS are needed based on this review.³ This process is referred to as the Biennial Review.

III. DISCUSSION

3. In 2017, the Commission completed its most recent Biennial Review and made substantive changes to the SOS bidding process based on those findings.⁴ The Commission also identified issues to be considered further in the next Biennial Review to be conducted in 2018 including: 1) what is a reasonable margin or return for Pepco to earn as the SOS Administrator and what is the relationship between this return and its cash

¹ D.C. Official Code § 34-1509 (d) (1) (2010 Repl.).

² *Formal Case No. 1017, In the Matter of the Development and Designation of Standard Offer Service in the District of Columbia (“Formal Case No. 1017”),* Order No. 13118, rel. March 1, 2004.

³ 15 DCMR § 4102.2 (2015).

⁴ *Formal Case No. 1017,* Order No. 18829, rel. July 7, 2017 (“Order No. 18829”); *Formal Case No. 1017,* Order No. 19106, rel. Sept. 13, 2017 (“Order No. 19106”).

working capital;⁵ 2) whether to eliminate the adder;⁶ and 3) whether to eliminate the minimum stay provision for commercial customers.⁷ In addition, during the last Biennial Review, the District of Columbia Department of Energy and Environment (“DOEE”) suggested the inclusion of Purchase Power Agreements (“PPAs”) in the SOS procurement process.⁸

A. What is a Reasonable Margin or Return for Pepco as the SOS Administrator and What is the Relationship Between this Return and its Cash Working Capital?

4. The Commission previously determined that Pepco is entitled to a margin as, *inter alia*, Pepco should be compensated for the risks associated with serving as the SOS administrator.⁹ However, the Commission indicated that in the next Biennial Review it would review the issue of what is a reasonable return for Pepco to earn as the SOS Administrator and the relationship between this margin and cash working capital.¹⁰ The Commission has not reconsidered this issue since the establishment of the margin 14 years ago.¹¹ The margin is part of the Administrative Charge which also includes incremental costs, uncollectible costs, and the adder.¹²

5. In Pepco’s latest retail SOS rate filing submitted on February 12, 2018, the Company noted that it made an annual return of approximately \$6 million for its services as the SOS Administrator for the SOS service year ending May 31, 2017, while Pepco’s incremental costs for administering SOS were around \$900,000.¹³ This filing appears to suggest that cash working capital is being treated as an expense for which Pepco is being

⁵ Order No. 18829, ¶ 148

⁶ Order No. 19106, ¶ 6.

⁷ Order No. 19106, ¶¶ 9-10.

⁸ See Order No. 18829, ¶ 17. In Order No. 18829, the Commission also noted that, while Pepco, in its comments filed as part of the Biennial Review process, had described some of the procedures it employs to avoid potential conflicts of interest otherwise ensure that Exelon Generation Company, LLC does not receive any competitive advantage as an Exelon affiliate when bidding in the District of Columbia’s SOS auction, the Commission needed greater detail regarding Pepco’s safeguards. The Commission, therefore, directed Pepco to file a detailed description of these procedures. Order No. 18829, ¶¶ 93, 391. Pepco filed its response on August 21, 2017. *Formal Case No. 1017*, Letter from Peter E. Meier, Vice President Legal Services, Inc., Pepco, to Brinda Westbrook-Sedgwick, Commission Secretary (Aug. 21, 2018). No comments were filed in response to Pepco’s filing. The Commission has reviewed this filing and determined that no additional safeguards are required at this time.

⁹ Order No. 18829, ¶ 147 (internal citations and quotation marks omitted).

¹⁰ Order No. 18829, ¶ 148.

¹¹ See generally *Formal Case No. 1017*, Order No. 13268, ¶¶ 25-71, rel. Aug. 19, 2004 (“Order No. 13268”).

¹² Order No. 13268, ¶ 3 (citation omitted).

¹³ *Formal Case No. 1017*, Pepco’s Refiled Retail Rates, Including Administrative Charges, for SOS, Attachment D, at 2, filed February 12, 2018 (“Pepco’s 2018 Refiled Retail Rates”).

reimbursed annually.¹⁴ If the Commission were to reduce the current level of the margin by, for example, having the margin calculated as a percentage of Pepco's incremental costs for administering SOS, this could lower the price of SOS and could make it more difficult for competitive electricity suppliers to compete in the D.C. market. As part of the last Biennial Review, the Commission determined that the margin should no longer be calculated on a per kWh volumetric basis and should, instead, be an annual fixed charge.¹⁵ Given this historical experience and perspective, the Commission is interested in information supporting a conclusion that Pepco's margin is reasonable or, in the alternative, what evidence supports a conclusion that the margin should be modified.¹⁶ Therefore, the Commission as part of the 2018 Biennial Review, invites comments on the following issue:

- What is the appropriate return for Pepco to earn as SOS Administrator? What should be the relationship between this return and cash working capital?¹⁷

B. Whether to and Why Eliminate the Adder?

6. The original purpose of the adder was to reflect the retail electricity suppliers' marketing costs in SOS rates in order to ensure that the suppliers are not placed at a competitive disadvantage.¹⁸ Subsequently, the Commission determined that removing the adder will lower costs for SOS customers and eliminate a subsidy going to retail shopping customers from SOS ratepayers.¹⁹ Thus, in Order No. 18829, the Commission directed Pepco to remove the adder from SOS rates beginning with the June 1, 2018, to May 31, 2019, service year.²⁰ On August 7, 2017, the Retail Energy Supply Association ("RESA") challenged the Commission's rationale for eliminating the adder and filed an Application for Reconsideration of Order No. 18829, asking that "the Commission reconsider its decision to eliminate the adder."²¹ The Commission agreed that the better course of action would be to defer this issue to the next Biennial Review so the Commission

¹⁴ Pepco's 2018 Refiled Retail Rates, Attachment D.

¹⁵ Order No. 18829, ¶¶ 1, 143, and 393.

¹⁶ The Maryland Public Service Commission recently initiated an investigation regarding what an appropriate level of margin was for Baltimore Gas and Electric Company to receive as SOS administrator. See www.psc.state.md.us/search-results/?keyword=9221&x.x=17&x.y=14&search=all&search=case.

¹⁷ In preparing comments on this issue, interested persons are encouraged to examine the Commission initial consideration of this issue in 2004. See generally *Formal Case No. 1017*, Order No. 13268, ¶¶ 25-71, rel. August 19, 2004.

¹⁸ Order No. 18829 at 28 (citation omitted in original). The adder consists of the fixed overall Administrative Charge minus incremental costs, uncollectible costs and the margin. See Order No. 13268, ¶ 72.

¹⁹ Order No. 18829, ¶ 126.

²⁰ Order No. 18829, ¶¶ 1, 127, and 394.

²¹ *Formal Case No. 1017*, Retail Energy Supply Association's ("RESA") Application for Reconsideration, filed August 7, 2017 ("RESA's Application").

could explore the matter in more depth and develop a more complete record before making a decision that could negatively impact competition.

7. Like the margin, the adder was established 14 years ago.²² Given this lapse of time and potential changes in the competitive marketplace, commenters should consider what evidence suggests that the adder has accomplished what it was designed to do. That is to reflect retail electricity suppliers' marketing costs in SOS rates to ensure that these electricity suppliers are not placed at a competitive disadvantage. The alternative is for commenters to consider what evidence supports the elimination of the adder. We encourage commenters to review the Commission's previous consideration of this issue in Order Nos. 18829 and 19106.²³ Commenters are requested to support their positions as to whether to retain or eliminate the adder with a numerical analysis and/or other empirical evidence. As indicated above, this could lower the price of SOS and could make it more difficult for competitive electricity suppliers to compete in the D.C. market. Interested persons may want to consider this possibility, when commenting on whether the adder should be eliminated. Therefore, consistent with its decision in Order No. 19106, the Commission invites comments on the following issue:

- Should the adder be eliminated? If so, why; if not, why not.

C. Whether to and Why Eliminate the Minimum Stay Provision?

8. In Commission Order No. 18829, the Commission initially decided not to abolish the 12-month minimum stay provision that requires a commercial customer to remain on SOS for a minimum of 12 months when switching from a competitive electricity supplier to SOS, because the goal of the provision is to allow SOS suppliers to better manage migration between SOS service and third party suppliers and the Commission did not see the benefit of eliminating the minimum stay provision and, thereby, creating more uncertainty for SOS suppliers which could result in higher prices being bid.²⁴ On Reconsideration, RESA requested that the Commission reverse its decision.²⁵ The Commission, in Order No. 19106, did not reverse its initial decision having determined that the "present record is too thin to support a change in policy at this time."²⁶ However, the Commission indicated that the issue could be revisited during the next Biennial Review.

9. Again, the Commission is interested in knowing whether there have been changes in the marketplace over the last 14 years that would warrant a change in policy to eliminate the minimum stay provision. When commenting, proponents of this provision should provide evidence that the minimum stay has, in fact, allowed SOS suppliers to better manage migration and thereby avoid bidding higher SOS prices. Opponents, by contrast,

²² See generally Order No. 13268, ¶¶ 72-108.

²³ See Order No. 18829, ¶¶ 110-127; Order No. 19106, ¶¶ 4-6.

²⁴ Order No. 18829, ¶ 281.

²⁵ RESA's Application at 10.

²⁶ Order No. 19106, ¶ 10.

should provide evidence that this has not been the case and the minimum stay provision should now be eliminated. Commenters are encouraged to review the Commission's previous consideration of this issue in Order Nos. 18829 and 19106.²⁷ Therefore, as part of the 2018 Biennial Review, the Commission invites comments on the following issue:

- Should the 12-month minimum stay provision for commercial customers be eliminated? If so, why; if not, why not.

D. Should Purchase Power Agreements (“PPAs”) be used in the SOS Procurement Process?

10. During the last Biennial Review comment period, commenters were asked whether Pepco should continue as the SOS administrator and whether there were other aspects of the SOS program that should be changed in light of competitive developments in D.C., DOEE suggested that the Commission consider procuring electricity for SOS through long-term PPAs for renewable energy. According to DOEE, PPAs can provide affordable electricity, price stability, and reduce Green House Gas (“GHG”) emissions.²⁸ The Office of the People’s Counsel agreed with DOEE.²⁹ RESA, Direct Energy, Exelon Generation Company, LLC, and WGL Energy Services opposed the introduction of PPAs into the SOS procurement process.³⁰ Subsequently, Mayor Muriel Bowser pledged that the District will achieve its goal of GHG neutrality by 2050.³¹ Moreover, the most recent draft of “Clean Energy DC’s: District of Columbia Climate and Energy Plan” suggests that, in “transitioning to a low-carbon District”, one tool to help achieve this goal is the use of PPAs to buy renewable energy when procuring electricity for SOS.³² Therefore, the Commission seeks to obtain additional information about the potential advantages and disadvantages of incorporating PPAs for renewable energy and long-term purchase agreements for Renewable Energy Credits (“RECs”) into the SOS procurement process.

²⁷ See Order No. 18829, ¶¶ 258, 259, 265, 277, and 281; Order No. 19106, ¶¶ 7-10.

²⁸ See Order No. 18829, ¶ 17.

²⁹ See Order No. 18829, ¶ 58.

³⁰ See Order No. 18829, ¶¶ 68, 266, 267, and 278-280. RESA and WGES argued that these PPAs could or would adversely affect retail electricity services competition. See Order No. 18829, ¶¶ 68 and 280. Direct Energy and ExGen argued that the price of electricity procured through long-term PPAs could end up being significantly higher than future prices of electricity, hurting consumers. See Order No. 18829, ¶¶ 266 and 267. Direct Energy also argued that such contracts could result in stranded costs. See Order No. 18829, ¶ 266.

³¹ On December 4, 2017, Mayor Muriel Bowser pledged at the inaugural North American Climate Summit, to make Washington, DC carbon-neutral and climate resilient by 2050, and to implement a roadmap to reduce greenhouse gas emissions by 100 percent. See <https://doee.dc.gov/release/mayor-bowser-commits-make-washington-dc-carbon-neutral-and-climate-resilient-2050>.

³² Department of Energy & Environment, Government of the District of Columbia, *Clean Energy DC: The District of Columbia Climate and Energy Plan (Draft)*, October 2016, at 33, 41.

11. Accordingly, as part of the 2018 Biennial Review, the Commission invites comments on the following issues:

- Should a certain percentage of the SOS load be procured through long-term PPAs for renewable energy generation (“clean energy PPAs”)? If so, what should that percentage be? What percentage of the SOS load should continue to be procured through the Wholesale Full Requirements Service Agreement?
- Should the clean energy PPAs supply energy for all customers classes – Residential, Small Commercial, and Large Commercial – or only some classes?
- What is the optimum contract term for clean energy PPAs? 5 or 10 years or longer? Should there be one contract term for all clean energy PPAs or a mix of contract terms?
- What renewable sources should be included in long-term clean energy PPAs? Wind and solar only, or should additional sources such as biomass and hydro or other Tier One resources be considered?
- What would the impact of the implementation of clean energy PPAs be in terms of the estimated reduction of GHG?
- Assuming less than 100 percent of the SOS is procured through clean energy PPAs, what impact, if any, will the use of PPAs have on the bid prices for the remainder of the SOS load?
- States can procure their SOS energy and RECs (including solar renewable energy credits (SRECs)) to meet their Renewable Energy Portfolio Standards in a bundled fashion or purchase them separately. Which method is more economical for long-term purchase agreements? Which method will better promote the goal of reducing GHG? Will the use of clean energy PPAs for SOS energy bundled with RECs and SRECS have any impact on the retail market for RECs and SRECs?
- If, as part of the procurement of SOS generation, the clean energy PPAs are entered into with extremely low per kWh prices, how would this affect competition between SOS and competitive electricity suppliers?

- How can the Commission avoid a scenario where clean energy PPAs are entered into for what may turn out to be at rather high prices, especially in the out years, and a large proportion of SOS customers migrate to competitive electricity suppliers as a result? (Under this scenario, substantially more generation would be procured than what is needed, resulting in excess generation being sold at a loss and thus increasing the remaining SOS customers' costs per kWh of electricity.)
- Would the use of long-term clean energy PPAs for SOS procurement be viewed by the credit agencies (Moody's, S&P, and Fitch) as an increase in Pepco's debt and, thereby, adversely impact Pepco's credit worthiness? If yes, could this be avoided by Pepco restructuring its position as the SOS administrator or by the use of a third-party entity as the SOS administrator?
- Would clean energy PPAs constitute an out-of-market financial subsidy to renewable energy generation facility owners that sell wholesale electricity supply services in PJM's markets? And, if yes, would such subsidies have an adverse impact on the PJM capacity market's ability to promote robust supply competition and the selection of the least-cost supply resources?

Interested persons commenting on whether long-term PPAs for renewable energy should be employed to supply all or part of the District's SOS load are encouraged to provide specific examples of where such PPAs have been successful or unsuccessful.

12. Finally, the Commission invites comment on any other recommended changes to the SOS program in light of competitive developments in the District of Columbia.

THEREFORE, IT IS ORDERED THAT:

13. Interested parties shall have 30 days from the date of this Order to file comments and 45 days to file reply comments.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:



CHIEF CLERK:

**BRINDA WESTBROOK- SEDGWICK
COMMISSION SECRETARY**