

**BEFORE THE
PUBLIC SERVICE COMMISSION OF MARYLAND**

**In the Matter of the Commission's Inquiry)
Into the Competitive Selection of Electricity)
Supplier/Standard Offer Service)**

Case No. 8908

**REPLY BRIEF OF THE
NATIONAL ENERGY MARKETERS ASSOCIATION**

This Reply Brief is filed by the National Energy Marketers Association (NEM) pursuant to the Notice issued March 4, 2002, in the above-referenced proceeding pertaining to competitive selection of standard offer service (SOS) suppliers.

1. Can the Commission make a finding under PSC Article § 7-510(c)(3)(ii) that the electricity market is not competitive without first conducting a competitive bid process as described in § 7-510(c)(4)?

Some parties noted the legislature's use of the disjunctive "or" in Article § 7-510(c)(3)(ii) pertaining to the Commission's ability to extend the utility obligation to provide SOS if the electric supply market is not competitive or no acceptable competitive proposal is received. (Pepco Initial Brief at 2-3; Office of Peoples Counsel Initial Brief at 1-2; Staff Initial Brief at 5; Allegheny Power Initial Brief at 2). NEM submits that even though the statute uses the disjunctive "or," it is unlikely, perhaps even illogical, that the Commission could make a finding of one condition without the other. Maryland is part of PJM, which is regarded by many as a model of a competitive wholesale electric market. The success of PJM has and will foster the growth of competitive retail electric markets and this success should contribute to a Commission finding that the electric supply market is competitive.

2. Whether the § 7-510(c)(4) power to delay implementation of the standard offer service selection process can be exercised for reasons other than and independent of the findings set forth in § 7-510(c)(3).

Certain parties argue that Section 7-510(c)(4) imposes no limits on the Commission's ability to delay implementation of standard offer service and that the conditions set forth in Section 7-510 (c)(3) do not form the basis of the Commission's authority to delay. (Pepco Initial Brief at 7; Office of People's Counsel Initial Brief at 2; Staff Initial Brief at 6). NEM submits that this interpretation artificially

separates the requirements of Section 7-510. Reading Section 7-510 as a whole, it is clear that the reference to "delay" in Section 7-510 (c)(4) is to be read in conjunction with the Commission authority to extend SOS subject to findings that the, "electricity supply market is not competitive or that no acceptable competitive proposal has been received," under Section 7-510 (c)(3)(ii).

3. Whether the phrase “competitive selection of electricity suppliers” in § 7-510(c)(4) can be interpreted to mean a competitive selection for wholesale contracts to meet the needs of retail customers.

Some parties argue that the statute directs that SOS service can only be provided to retail customers by the utility. (Delmarva Initial Brief at 8). NEM submits that if the legislature did not intend that competitive suppliers would provide standard offer service directly to retail customers, it would not have required in Section 7-510 (c)(4) that the Commission adopt regulations or orders to govern the competitive selection of competitive electricity suppliers to provide SOS. The utilities have already contracted for the wholesale supply of energy to provide SOS. (Pepco Initial Brief at 6). The Commission need not develop new rules for that purpose. The condition which has not yet occurred, and for which the legislature intended the development of new rules, is the provision of SOS to retail customers by competitive suppliers.

NEM submits that it is not a coincidence that the date set forth in the statute when the utility obligation to provide SOS ends and the date when the competitive selection of electricity suppliers to provide SOS to customers¹ is to take effect is the same - July 1, 2003. This indicates that the second condition is meant to supplant the first. Accordingly, retail customers are to receive SOS from competitive suppliers, not from utilities that receive supply from competitive sources on a wholesale basis.

4. What is the energy supply obligation of an electric company to a customer without a supplier, if any?

Staff argues in its Initial Brief that, "[a]s a practical matter, however, the electric companies must

1. As NEM noted in its Initial Brief, the legislature's use of the words "to customers" in Section 7-510 (c)(4), requires that competitive provision of standard offer service be rendered directly to retail customers, not on a wholesale basis to the utilities.

be willing to provide POLR service at some price by virtue of their monopoly on electric distribution service, or cease operation altogether." (Staff Initial Brief at 10). NEM submits that Staff's argument that because utilities control the wires they will have an unending obligation to supply commodity must be rejected. The fact of utility ownership of wires only indicates that utilities will have a continuing obligation to deliver.

Furthermore, Staff argues that the utilities must always offer a form of standard offer service, namely provider of last resort service to customers that cannot arrange for competitive supply. (Staff Brief at 9-10). NEM submits that the distinction that Staff makes between these and other customers in need of standard offer service (those that choose SOS, that do not choose a competitive supplier, or those that do not receive electricity they contracted for) is, in effect, rewriting the statute. If the legislature had intended to distinguish and cull out a form of standard offer service that the utilities would retain the obligation to provide, it would have explicitly provided such language in the statute, but it did not.

NEM urges that the Commission implement competitive standard offer service consistent with the recommendations set forth herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of March, 2002, a copy of the foregoing Reply Brief of the National Energy Marketers Association has been served electronically on the parties on Staff's email service list in Case No. 8908.

Stacey Rantala