

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

**ORDER**

**July 7, 2017**

**FORMAL CASE NO. 1017, IN THE MATTER OF THE DEVELOPMENT AND DESIGNATION OF STANDARD OFFER SERVICE IN THE DISTRICT OF COLUMBIA, Order No. 18829**

**I. INTRODUCTION**

1. Pursuant to Commission Rule 4102.2,<sup>1</sup> the Public Service Commission of the District of Columbia (“Commission”) has reviewed the provision of Standard Offer Service (“SOS”) in the District of Columbia and adjusted the program as explained below. In addition, the Commission denies the Office of the People’s Counsel’s (“OPC”) Motion Requesting a Full Evidentiary Hearing, directs the Potomac Electric Power Company (“Pepco”) to file a description of the procedures it employs to mitigate potential conflicts of interests and otherwise ensure that Exelon Generation Company, LLC (“ExGen”) does not receive any competitive advantage as an Exelon affiliate when bidding in the District of Columbia’s SOS auction within 45 days of the date of this Order; directs Pepco to remove the adder from SOS rates beginning with the June 1, 2018 to May 31, 2019 service year; directs Pepco to switch to an annual fixed charge system of compensation starting with the SOS service year beginning June 1, 2018; and directs Pepco, in the Request for Proposal (“RFP”) and Wholesale Full Requirements Service Agreement (“WFRSA”) due to be filed by August 1, 2017, to add a 24-hour cure period from the date that qualification materials for wholesale suppliers are due, to cure any deficiencies in those materials. The Commission also directs Commission staff, Pepco, the SOS Working Group including OPC, and other interested persons to meet within 21 days of the date of issuance of the Order in *Formal Case No. 1139*, to consider what rate classes to consolidate for bidding purposes, including but not limited to time-varying rates and different rates by usage quantity, in the SOS bid sheets. Finally, Commission staff is directed, on behalf of this *ad hoc* working group, to file a report with recommendations for consolidating rate classes in the SOS bid sheets within 35 days of the date of issuance of the Order in *Formal Case No. 1139*.

**II. BACKGROUND**

2. By Order issued March 1, 2004, the Commission adopted a wholesale SOS model in which Pepco, as the SOS Administrator, conducts competitive bidding to obtain third-party contracts to provide SOS for the District.<sup>2</sup> The Commission is periodically required to review the SOS Administrator’s SOS program in the District and make any changes or adjustments to SOS

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<sup>1</sup> 15 DCMR § 4102.2 (2015).

<sup>2</sup> *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.

as competitive developments in the District of Columbia change.<sup>3</sup> In conducting this review and considering options for improving SOS, the Commission, among other things, must seek to ensure that the price for SOS will not hinder the development of a competitive electricity supply market in the District, provide appropriate SOS contract lengths, protect against any SOS Administrator's failure to provide service, ensure an appropriate rate design, provide for a contingency plan in the event of insufficient or inadequate bids, and determine the threshold financial viability of wholesale bidders.<sup>4</sup>

3. On February 1, 2013, in Order No. 17064, the Commission initiated a review of the process for providing SOS, inviting comments on specific questions and a number of interested persons filed comments in response.<sup>5</sup> The Commission received comments from AARP, Exelon Generation Company, LLC and Constellation NewEnergy Inc., the National Energy Marketers Association ("NEM"), Pepco, RESA, and Washington Gas Energy Services, Inc.<sup>6</sup> AARP, the General Services Administration ("GSA"), OPC, Pepco, and RESA filed reply comments.<sup>7</sup> OPC and Pepco also filed sur-reply comments.<sup>8</sup>

4. On April 30, 2014, Pepco Holdings, Inc. ("PHI"), the parent company of Pepco, and Exelon Corporation ("Exelon") announced Exelon's proposed purchase of PHI and, on June 18, 2014, submitted an application for a change of control to the Commission. The Commission recognized that its decision on the application could potentially impact the operation of the SOS program because Pepco is currently acting as the SOS Administrator of the District's annual SOS generation auctions and Exelon, through its subsidiaries, has been a frequent winning bidder at these auctions. The Commission concluded that the prospect of a subsidiary of Exelon bidding at future auctions where an Exelon-owned Pepco is functioning as the SOS Administrator might raise issues that interested persons would want to address and that the Commission would want to consider as part of its review of the SOS process. Additionally, an Exelon-owned Pepco might have additional issues that it would want to raise with respect to the provision of SOS service in

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<sup>3</sup> 15 DCMR § 4102.2 (2015).

<sup>4</sup> See D.C. Code §§ 34-1509 (c), (d)(1)(A), and (e) (2012 Repl.).

<sup>5</sup> *Formal Case No. 1017*, Order No. 17064, rel. Feb. 1, 2013.

<sup>6</sup> *Formal Case No. 1017*, Comments of AARP, filed February 26, 2013 ("AARP's Comments"); Comments of Exelon Generation Company, LLC and Constellation NewEnergy, Inc., filed March 4, 2013; Comments of National Energy Marketers Association, filed March 1, 2013 ("NEM 2013 Comments"); Comments of Potomac Electric Power Company ("Pepco's 2013 Comments"), filed March 4, 2013; Comments of Retail Energy Supply Association ("RESA"), filed March 4, 2013; Comments of Washington Gas Energy Services, Inc. ("WGES Comments"), filed March 1, 2013.

<sup>7</sup> *Formal Case No. 1017*, Reply Comments of AARP, filed April 5, 2013 ("AARP's Reply Comments"); Reply Comments of General Services Administration ("GSA's Reply Comments"), filed March 18, 2013; Reply Comments of the Office of the People's Counsel ("OPC"), filed April 17, 2013; Reply Comments of Pepco ("Pepco Reply Comments") filed April 17, 2013; and Reply Comments of RESA ("RESA Reply Comments"), filed April 17, 2013.

<sup>8</sup> On May 13, 2013, in *Formal Case No. 1017*, OPC filed a Motion for Leave To Respond and Sur-Reply Comments. Those comments are accepted into the record. *Formal Case No. 1017*, Sur-Reply Comments of Pepco, filed May 28, 2013. Pepco's 2013 Sur-Reply Comments were accepted into the record by Order issued June 24, 2016. *Formal Case No. 1017*, Order No. 18257, ¶ 4 n. 6, rel. June 24, 2016.

the District. As the Commission had not completed its review of the SOS program when the proposed merger was announced, we, therefore, chose to suspend our review until such time as we completed our consideration of the merger.

5. On June 17, 2016, we issued a final order on the merger,<sup>9</sup> and, therefore, the Commission resumed our review of the process for providing SOS on June 24, 2016.<sup>10</sup> Given the passage of time, we asked the interested persons who filed comments in response to Order No. 17064 to review their previously filed comments and revise them as necessary to refresh the record. We also invited interested persons who did not comment earlier to address the same questions.<sup>11</sup>

6. In addition, given the passage of time and intervening events, the Commission invited interested persons to address additional questions, including the impact of the enactment of the Community Renewables Energy Amendment Act (“CREA”) on SOS.<sup>12</sup>

7. The Commission received comments from Direct Energy, the D.C. Department of Energy and Environment (“DOEE”), EnerNOC, Inc. (“EnerNOC”), ExGen, NEM, NRG Energy, Inc. (“NRG”), OPC, Pepco, RESA, and WGL Energy Services, Inc. (“WGL Energy”).<sup>13</sup> Direct

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<sup>9</sup> *Formal Case No. 1119, In the Matter of the Joint Application of Exelon Corporation, Pepco Holdings, Inc., Potomac Electric Power Company, Exelon Energy Delivery Company, LLC and New Special Purpose Entity, LLC for Authorization and Approval of Proposed Merger Transaction*, Order No. 18243 (Order on Reconsideration), rel. June 17, 2016.

<sup>10</sup> *Formal Case No. 1017*, Order No. 18257, rel. June 24, 2016 (“Order No. 18257”).

<sup>11</sup> Order No. 18257, ¶ 6. In Order No. 17064, the Commission asked whether the Market Price Service (“MPS”) rate structure should be changed to better reflect real market conditions by eliminating the provisions mandating that the MPS price cannot go below the SOS at any time. In 2015, the Commission eliminated that price floor by amending Commission Rule 4105.7. *See Formal Case No. 1017*, Order No. 17863, rel. April 24, 2015. As we had resolved this issue in Order No. 17863, we did not pose this question again in Order No. 18257.

<sup>12</sup> CREA provides for the SOS Administrator to obtain some portion of the electric supply from Community Renewable Energy Facilities (“CREFs”). D.C. Code § 34-1518.01(i) (2015).

<sup>13</sup> *Formal Case No. 1017*, Comments of Direct Energy, filed Aug. 23, 2016 (“Direct Energy’s Comments”); Comments of the D.C. Department of Energy and the Environment, filed Aug. 23, 2016 (“DOEE’s Comments”); Comments of EnerNOC, Inc., filed Aug. 23, 2016 (“EnerNOC’s Comments”); Comments of Exelon Generation Company, LLC, filed Aug. 23, 2016 (“ExGen’s Comments”); Comments of NEM, filed Aug. 23, 2016 (“NEM’s 2016 Comments”); Comments of NRG Energy, Inc., filed Aug. 23, 2016 (“NRG’s Comments”); Comments of OPC, filed Aug. 23, 2016 (“OPC’s Comments”); Comments of Pepco (“Pepco’s Comments”); Comments of the RESA, filed Aug. 23, 2016 (“RESA’s Comments”); Comments of TechNet filed Aug. 24, 2017 (“TechNet’s Comments”); Comments of WGL Energy Services, Inc., filed Aug. 23, 2016 (“WGL Energy’s Comments”). EnerNOC, NRG, and TechNet all filed Petitions to Intervene with their comments. However, in Order No. 18257 issued June 24, 2017, we indicated that interested persons rather than parties were invited to submit comments, no intervention is, therefore, required in order for the Commission to consider any comments filed. *See* Order No. 18257 at 7. These comments are accepted into the record. TechNet filed its comments one date late. TechNet’s Comments are accepted into the record. ExGen states that it “affirms that the comments and recommendations included in its 2013 submission represent ExGen’s position on the matters raised today”, noting that “[f]or the Commission’s convenience these positions are reiterated” in its Comments filed August 23, 2016. ExGen’s Comments at 3. Accordingly, the Commission is only considering ExGen’s comments filed August 23, 2016 in this Order and not its 2013 Comments. NEM indicates it submitted “these letter comments to reaffirm and readopt the comments that NEM originally filed in this proceeding in 2013.” NEM’s 2016 Comments at 1. Therefore, both sets of comments are considered in this Order. OPC “incorporates by reference the Office’s reply comments filed previously in this matter...” OPC’s

Energy, EnerNOC, Noble Americas Energy Solutions LLC (“Noble”), OPC, Pepco, and RESA filed reply comments.<sup>14</sup> Direct Energy filed sur-reply comments.<sup>15</sup> Each of the questions and comments are addressed below.

#### A. OPC’s Request for a Hearing

8. In addition to its comments, OPC filed a Motion Requesting a Full Evidentiary Hearing to address the issues in more detail.”<sup>16</sup> Direct Energy saw no need for an evidentiary hearing and noted that the issues are disputes over policy not fact. Direct Energy asks “the Commission to consider scheduling evidentiary hearings only after it has made tentative conclusions about how it wishes to change the present provision of SOS service. According to Direct Energy, “[a]n open-ended evidentiary hearing in which the variety of policy recommendations on changing SOS were all debated is unnecessary, would exhaust the resources of the parties, and would unreasonably delay the SOS program.”<sup>17</sup>

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Comments at 6. The Commission, therefore, considers OPC’s 2013 Reply Comments, its 2016 Comments, and 2016 Reply Comments, in this Order, but will not consider its 2013 Sur-Reply Comments. Pepco asserts that it “reaffirms its March 4, 2013 filing comments....,” when answering a number of questions posed in Order No. 18243. Pepco’s Comments at 4, 6, 8, 9, and 10. The Commission, therefore, considers Pepco’s 2013 Comments, its 2016 Comments, and 2016 Reply Comments in this Order, but will not consider its 2013 Reply and 2013 Sur-Reply Comments. RESA declares that it “maintains the positions detailed” in its Comments and Reply comment filed in 2013 and “has provided updated responses to the Commission’s questions....” RESA’s Comments at 2. The Commission, therefore, only considers RESA 2016 Comments and 2016 Reply Comments in this Order. As WGL Energy did not reference its 2013 Comments in its 2016 Comments, we assume that WGL Energy meant its 2016 Comments to supersede its 2013 Comments. Accordingly, the Commission only considered WGL Energy’s Comments in this Order.

<sup>14</sup> *Formal Case No. 1017*, Reply Comments of the Apartment and Office Building Association of Metropolitan Washington, filed Sept. 13, 2016 (“AOBA’s Reply Comments”); Reply Comments of Direct Energy, filed Sept. 13, 2016 (“Direct Energy’s Reply Comments”); Reply Comments of EnerNOC, filed Sept. 13, 2016 (“EnerNOC’s Reply Comments”); Reply Comments of ExGen’s, filed Sept. 13, 2016 (“ExGen’s Reply Comments”); Reply Comments of Noble Americas Energy Solutions LLC (“Noble”), filed Sept.13, 2016 (“Noble’s Reply Comments”); Reply Comments of OPC, filed Sept. 13, 2016 (“OPC’s Reply Comments”); Reply Comments of Pepco, filed Sept. 13, 2016 (“Pepco’s Reply Comments”); Reply Comments of RESA, filed Sept 13, 2016 (“RESA’s Reply Comments”); Reply Comments of WGL, filed Sept. 13, 2016 (“WGL Energy’s Reply Comments”). Noble filed a Petition to Intervene with its Comments. As indicated in n.13, *supra*, intervention is not required for the Commission to consider Noble’s comments. These comments are accepted for the record.

<sup>15</sup> On September 23, 2017, in *Formal Case No. 1017*, Direct Energy filed a Response to the Request to Intervene by Noble America’s Energy Solution LLC and the Substantive Allegations Within That Request (“Direct Energy’s Sur-Reply Comments”). In that Motion, Direct Energy notes that Noble filed comments after initial comments were due but before the deadline for filing reply comments. Direct Energy asserts that Noble’s comments amount to initial comments and as such Direct Energy has not had an opportunity to respond to them. Direct Energy, therefore, asks that it be allowed to respond to Noble’s comments and has filed additional comments in response to Noble’s comments. Direct Energy’s Sur-Reply Comments at 2-3. Direct Energy’s comments filed September 23, 2017 are accepted into the record.

<sup>16</sup> OPC’s Comments at 17-20.

<sup>17</sup> Response of Direct Energy to OPC Motion for a Full Evidentiary Hearing, filed Sept. 6, 2016, at 1-3 (emphasis in original).

9. Pepco and RESA also believe that a hearing is unnecessary. Pepco argues that the issues “are inappropriate for a full evidentiary hearing”<sup>18</sup>, while RESA believes the Commission should only consider holding a hearing after it has provided “a tentative framework for the SOS process going forward and identif[ied] specific issues for the parties to address at the hearing.”<sup>19</sup>

10. The decision on whether to hold an evidentiary hearing is a matter within the Commission’s discretion and driven largely by a consideration of whether a paper proceeding deprives the parties of due process. It is well-settled that due process is a flexible, rather than fixed, concept and requires only such procedural protections as the particular situation demands.<sup>20</sup> The issues before us are primarily issues of policy, not issues of fact or credibility, and can adequately be addressed in writing as each commenter has done. Therefore, an evidentiary hearing is not necessary or useful at this time. Accordingly, we deny OPC’s Motion Requesting a Full Evidentiary Hearing.

### III. DISCUSSION

#### A. **Should Pepco continue to act as the SOS Administrator or should the Commission choose another option such as a retail model for providing SOS?**

11. **AARP.** AARP urges the Commission to keep Pepco as the SOS provider essentially because it has no reason to believe that an alternative SOS provider, such as a licensed retail supplier, “would offer any benefits to residential and small commercial customers since the policy that governs the portfolio and acquisition of SOS by Pepco is a key driver for the resulting price and those policies have worked adequately in the past.” In addition, AARP expressly “does not support assigning residential customers to competitive retail suppliers without their affirmative consent.”<sup>21</sup>

12. **Direct Energy.** Direct Energy believes that the District should transition to a retail model, claiming that the current SOS framework renders a price that significantly hinders the development of the competitive supply market and has left the District with relatively small levels of residential shopping. Direct Energy also notes the recent acquisition of Pepco by Exelon, and claims that this merger may now give Pepco a vested interest in keeping customers on SOS.<sup>22</sup>

13. In order to eliminate any potential for any one dominant company to gain a stronghold in the market, Direct Energy recommends a fixed-price sealed-bid retail auction which will result in five residential, three Small Commercial, and one Large Commercial SOS retail provider for a two-year period starting June 1, 2019. Direct Energy suggests that such auctions then occur every two years to set a price for customers “until the Commission elects to move to a more pro-competition model.” Under Direct Energy’s plan, Residential and Small Commercial

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<sup>18</sup> Pepco’s Reply Comments at 30.

<sup>19</sup> RESA’s Reply Comments at 8.

<sup>20</sup> *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976) (citations omitted).

<sup>21</sup> AARP’s Comments at 4.

<sup>22</sup> Direct Energy’s Comments at 3-4.

customers would each have their own, competitively bid, price while Large Commercial customers (100 kW or greater) would be placed on a rate where energy, capacity and other market-costs would be passed through based on hourly PJM prices and bidders would compete to provide this service based on who offered the lowest administrative fee.<sup>23</sup>

14. Consistent with the retail model, customers would be assigned to a specific winning retail supplier but would be free to change suppliers at any time.<sup>24</sup> Additionally, if one of the retail providers failed to provide service, the Commission would reassign its customers to the remaining providers.<sup>25</sup>

15. Direct Energy asserts that its “proposed Retail SOS Program will also set the stage for a move to a fully competitive model, with a provider of last resort (‘POLR’) and other ‘backup’ rather than ‘first start’ service to accommodate short term service unavailability or supplier market exit.” Direct Energy observes that “[s]uch a market construct has been extremely successful in Texas, where electric customers enjoy a wealth of innovative products and services and shop for electric service using smart phone apps and the like, just like any product or service, with over 100 different retail suppliers to choose from.” Direct Energy notes that in Texas “90% of all customers have made a positive choice in that market.”<sup>26</sup>

16. Direct Energy does believe the Commission should honor the contracts with wholesale suppliers that Pepco has already signed.<sup>27</sup> It also notes that if the Commission decides to maintain the wholesale SOS model, the Commission should consider removing Pepco as SOS Administrator and establish a competitive bid process for determining future administrators.<sup>28</sup>

17. **DOEE.** DOEE is content with Pepco remaining the SOS Administrator but also encourages the exploration of alternative models. It cites the use of long-term Purchase Power Agreements (“PPA”) as one potential model for providing SOS service, noting that the D.C. Department of General Services (“D.C. DGS”) entered into a PPA to purchase 35 percent of the District Government’s supply needs over the next 20 years. DOEE asserts that such PPA will provide affordably priced electricity, promote price stability, and reduce greenhouse gas emissions. DOEE claims that these benefits would also be present if a PPA were used to supply SOS service and that competition would not be affected since customers can always opt out of SOS service.<sup>29</sup>

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<sup>23</sup> Direct Energy’s Comments at 4.

<sup>24</sup> Direct Energy’s Comments at 4.

<sup>25</sup> Direct Energy’s Comments at 12.

<sup>26</sup> Direct Energy’s Comments at 5.

<sup>27</sup> Direct Energy’s Comments at 14-15.

<sup>28</sup> Direct Energy’s Comments at 20.

<sup>29</sup> DDOE’s Comments at 2-5.

18. DOEE also states that the remedy for the situation cannot be to downgrade the quality of SOS by making it more expensive and maintaining its current level of carbon intensity. DOEE does not believe that it would serve the public interest to make SOS an unattractive product in order to make competitive suppliers' products more attractive. DDOE notes that, "clearly, competitive suppliers have been able to develop superior products and services to induce many commercial ratepayers to leave SOS. The fact that most residential ratepayers are still on SOS may simply be the result of retail suppliers having failed to similarly develop superior products for the residential markets."<sup>30</sup>

19. **EnerNOC.** EnerNOC believes that to "ensure competitive, fair prices, Pepco should remain the SOS Administrator." Specifically, it argues that, "[a] fully competitive retail market with no utility-led procurement could jeopardize consumer protection, as all customers, regardless of their desire or knowledge of the energy space, could be forced to choose a competitive supplier." EnerNOC is concerned about "deceptive retail practices such as converting agreements to floating contracts with 'teaser' rates without notice and high contract termination fees" that have been issues in New York and Ohio.<sup>31</sup>

20. **ExGen.** ExGen recommends that Pepco continue as the SOS Administrator. It notes that the "Commission has successfully been able to promote a competitive market through use of the competitive request for proposals ('RFP') process for full-requirements wholesale electricity supply" and that the RFP process has been non-discriminatory and highly transparent. ExGen claims the RFP process has appropriately allocated risks and "insulates customers from the volatility of any given procurement period" and has resulted in competitively priced products. ExGen cites the decade-long, successful track record of the process and the participation in the process as proof of its claims.<sup>32</sup>

21. **NEM.** NEM recommends that Pepco "exit" the role of SOS provider. It believes the utility should focus on "ensuring the reliability of delivery infrastructure" and that removing Pepco from its role as the SOS Administrator will enhance "the competitiveness of the retail electric market." NEM states that retaining Pepco in its current role, along with the "artificially low" price for default service creates a barrier to entry for retail providers.<sup>33</sup>

22. NEM recommends that the Commission use a "phased approach" to removing Pepco as the SOS Administrator and during that transition have Large Commercial and industrial customers on hourly rates, and Residential Customers on monthly-adjusted market-based rates. For Small Commercial and Residential Customers, NEM argues that, during the transition, "SOS pricing should be a monthly-adjusted, market-based commodity rate to which should be added to a utility's fully allocated embedded costs associated with providing all of the otherwise

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<sup>30</sup> DDOE's Comments at 6.

<sup>31</sup> EnerNOC's Comments at 3-4.

<sup>32</sup> ExGen's Comments at 5.

<sup>33</sup> NEM's 2016 Comments at 1-2.

competitive commodity related products, services, information and technologies currently bundled in full service rates.”<sup>34</sup>

23. NEM states that there are a number of ways to transition Pepco from its role as SOS Administrator. In terms of gas utilities, NEM reports that states such as Ohio and Georgia randomly assign suppliers to those customers who do not choose a competitive service provider. Specifically, NEM observes that Ohio also uses an auction system for gas suppliers to “establish a direct retail relationship” with “choice eligible customers”. NEM notes that Illinois provides a “transitional mechanism” whereby once a utility’s service is declared competitive, customers are moved to hourly pricing service with the utility. NEM states that, in Illinois, customers in Ameren’s territory at or above 400kW Peak Load Contribution (“PLC”) and in ComEd’s territory at or above 100kW PLC have been moved to hourly-priced service. NEM notes that Texas required its electric utilities to unbundle into a wholesale power generation company, a retail electric provider, and a transmission and distribution company. In addition, NEM observes that, in Texas, the retail electric providers currently offer PLR service to groups of customer classes.<sup>35</sup>

24. NEM asserts that competitive electricity suppliers can fill the District SOS provider role reliably as they do in “retail choice jurisdictions.” NEM further argues that “[i]t is not necessary for the utility to act as the SOS provider because marketers have the ability and experience to supply these services to customers.” NEM also notes that “[m]arketers have long been involved in developing and aggregating electric generation supply, and providing utilities with energy as a commodity.” In addition, NEM observes that competitive suppliers must already meet the necessary requirements to register as retail suppliers in the District and that they have the tools to manage risk. NEM, however, still wants Pepco to implement the Purchase of Receivables (“POR”) program and remain in charge of billing.<sup>36</sup>

25. **NRG.** NRG supports moving to a retail electricity supply market and removing Pepco from the role of SOS Administrator. NRG claims that the current structure is a serious barrier to competition, noting that after 15 years, only 12.7 percent of the Residential load is shopping.<sup>37</sup> NRG states the current structure with three-year laddered Residential and Small Commercial contracts “ensures that SOS rates will diverge from market prices over time (either up or down). As a result, retail suppliers view the market in the District as presenting only *intermittent* opportunities to attract customers, making it generally unattractive for suppliers to invest in the marketplace and consequently hindering customers’ ability to experience the plethora of options that would otherwise be available from competitive suppliers.”<sup>38</sup>

26. NRG notes that the three-year laddered approach works well, “when SOS rates are low compared to the market price for electricity.” The three-year approach creates “a major

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<sup>34</sup> NEM’s 2013 Comments at 3.

<sup>35</sup> NEM’s 2013 Comments at 3-5.

<sup>36</sup> NEM’s 2013 Comments at 5-6.

<sup>37</sup> NRG’s Comments at 2 (internal citation omitted).

<sup>38</sup> NRG’s Comments at 3 (emphasis in original).



problem when SOS rates are high compared to the market price and those same customers have few or no competitive options that allow them to lower their electricity cost or to experience other benefits from the competitive market place.” NRG asserts that the change from the District’s current wholesale SOS model to the retail model envisioned by NRG will “unshackle the innovation and benefits that are possible when the electricity market is allowed to function like other commodity markets and suppliers compete against one another rather than against an administratively-determined SOS rate.”<sup>39</sup>

27. NRG asserts, moreover, that “the recent movement towards empowering customers with more real-time information about their electricity usage demonstrates customers’ increasing desire for more knowledge about and control over when, and how, they consume electricity.” NRG further argues that, while in theory “utilities can deliver some of these benefits to customers via time of use offerings,” “competitive suppliers have much stronger incentives, as well as the appropriate entrepreneurial mindset, to develop and rapidly bring to market innovative ways to assist customers in taking advantage of these unique opportunities.” NRG concludes that, by removing Pepco from the role of SOS Administrator and moving to a retail electricity supply market, “competition will flourish as competitive suppliers will have incentives to develop value-added services and product offerings to meet their customer’ needs and desires.”<sup>40</sup>

28. NRG proposes a detailed plan for transitioning to a retail model. For Residential and Small Commercial Customers, NRG suggests that, starting June 1, 2019, SOS service be provided by “transitional” retail SOS providers. In NRG’s proposed plan, these providers will be selected through a uniform price-descending clock auction where retail suppliers compete to win blocks of 10,000 customers. NRG states that, as a result of this auction, there will be a single price for all customers for a two-year period, adjusted each 6 months based on the NYMEX natural gas futures price. NRG observes that, during the two-year contract period, Pepco would have the responsibility to provide “backstop” POLR service for customers who are served by a supplier who fails to perform or otherwise leaves the market. While NRG would like to see such a process be phased out after two years of transition, NRG notes that the Commission could replicate this every two years if necessary.<sup>41</sup>

29. NRG states that, after this two-year transitional period, the market would move to a competitive “end-state” where Pepco has no POLR responsibility and that responsibility is taken over by the winning retail suppliers from the transitional auction. At this point, as NRG plans for the “end-state”, the POLR product will be a monthly, variable-priced product based on spot energy prices. In addition, NRG asserts that, at the end of the transition period, Pepco would cease its billing operations and suppliers would purchase Pepco’s receivables and provide universal service to customers including RAD customers. NRG also suggests that the Commission direct

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<sup>39</sup> NRG’s Comments at 3.

<sup>40</sup> NRG’s Comments at 4-5.

<sup>41</sup> NRG’s Comments at 7-10.

Commission staff to “convene a Transition Stakeholder Work Group to develop a comprehensive Transitional Standard Offer Service Plan” to the “end-state.”<sup>42</sup>

30. **OPC.** OPC believes that Pepco should not continue as SOS Administrator as a result of the merger with Exelon, believing that the merger creates a potential conflict of interest. At a minimum OPC believes the Commission should explore having an independent third party run the SOS process.<sup>43</sup>

31. **Pepco.** Pepco believes that it should continue to be the SOS Administrator. Pepco states that, for twelve years, it “has ensured that the integrity of the SOS procurement process is maintained, while subject to oversight by the Commission’s independent Market Monitor Consultant.”<sup>44</sup>

32. Pepco asserts that, “[u]sing the wholesale model in conjunction with the implementation of POR, the District of Columbia retail market has experienced further progression of competition while at the same time providing reasonable and stable prices to customers who do not choose, or are unable to obtain service from a competitive supplier.” Pepco notes that approximately 16 percent of residential load and 85 percent of non-residential load has switched to competitive electricity suppliers as documented in Pepco’s June 2016 market monitor report.<sup>45</sup>

33. In addition, Pepco notes that the majority of jurisdictions with retail choice have “continued with the whole SOS model approach while making incremental improvements in response to changes in law and/or to be more reflective of competitive markets.”<sup>46</sup> Pepco also asserts that, over the years, “potential bidders have become familiar with key aspects of the wholesale model and have sustained participation to produce robust and competitive wholesale pricing.”<sup>47</sup>

34. Pepco states that SOS customers have benefitted from reduced exposure to volatile markets conditions such as the Polar Vortex. In addition, Pepco notes that “the wholesale market is administratively efficient, has an established track record of sustained bidder participation, is complemented with a POR program and other retail competition rules, and has produced bid prices that are reflective of the wholesale market.” Pepco claims that a new administrator would require a comprehensive evaluation of all elements, including customer protection, Pepco’s ongoing role, and the Commission rules and procedures.<sup>48</sup>

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<sup>42</sup> NRG’s Comments at 11-12.

<sup>43</sup> OPC’s Comments at 6.

<sup>44</sup> Pepco’s Comments at 4.

<sup>45</sup> Pepco’s Comments at 5 (citation omitted).

<sup>46</sup> Pepco’s 2013 Comments at 2.

<sup>47</sup> Pepco’s 2013 Comments at 3.

<sup>48</sup> Pepco’s Comments at 5-6.

35. **RESA.** RESA states that the current SOS model hurts the development of a competitive market. RESA believes a transition to a retail model would help lower prices and spur innovation that would provide for new products and services for ratepayers. RESA asks that the Commission move to a competitive retail electricity supply model. RESA advocates convening a stakeholder working group to plan for this transition, while also providing a suggested framework for that transition.<sup>49</sup>

36. RESA proposes a retail supplier-provided “transitional” SOS process beginning in June of 2019 in which competitive suppliers are chosen to serve ratepayers directly via a competitive bidding process to provide supply for a two-year transition period.<sup>50</sup> Under RESA’s proposal, the winning Residential prices from this procurement would be adjusted twice a year.<sup>51</sup> RESA states that it would treat Commercial customers a little differently with, for example, Small Commercial customers’ load being solicited once every three months during this period.<sup>52</sup> RESA states that, once the two-year period is over, the market will be fully competitive and the winning suppliers during the transitional period will become the initial POLR for their SOS customers but customers would be free to shop elsewhere. RESA recommends that POLR service be a short term backup stop-gap measure to ensure continuity of choice.<sup>53</sup> RESA also recommends a customer education campaign begin as soon as possible to inform customers about the transition to a retail model.<sup>54</sup>

37. **WGL Energy.** WGL Energy believes that the Commission should transition from Pepco being the SOS Administrator to a retail model. WGL Energy recommends that, for the years where SOS contracts remain in force, a third party administrator be brought into run RFPs every year for one-year supply contracts, such that by May 31, 2019, Pepco’s entire SOS supply portfolio is up for bid. During this period, WGL Energy recommends that a collaborative working group be established to design the transition to a retail model.<sup>55</sup>

38. During the transition process, WGL Energy recommends a retail supplier reverse auction process, with separate auctions being held for Residential and Small Commercial (up to 100 kW) load. WGL Energy plans for Residential Customers to have at least four different suppliers. WGL Energy wants these contracts to have a three-year terms with price adjustment based on an offered “adjustment factor” relative to an industry benchmark or reference price – resulting in prices being adjusted every quarter. Under WGL Energy’s plan, all Commercial

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<sup>49</sup> RESA’s Comments at 2-4.

<sup>50</sup> RESA’s Comments at 5.

<sup>51</sup> RESA’s Comments at 6-7.

<sup>52</sup> RESA’s Comments at 7.

<sup>53</sup> RESA’s Comments at 11.

<sup>54</sup> RESA’s Comments at 4.

<sup>55</sup> WGL Energy’s Comments at 2-5.

customers over 100kW would be provided hourly priced service by a single retail provider selected to provide that service.<sup>56</sup>

39. WGL Energy recommends that, after the initial three years, if enough customers have transitioned off SOS, SOS would transition to a default service product. WGL Energy suggests that default service would be provided by the prior SOS providers if they desire and new companies could apply to provide default service. Under WGL Energy's plan, the default service pricing would be set by the Commission with re-pricing every three months. WGL Energy states that the default option should not be the lowest cost available option.<sup>57</sup>

40. **AARP Reply.** AARP reiterates its position that Pepco should continue to act as the SOS Administrator, noting that the wholesale model has produced "stable and reasonable prices" and the price of SOS provides a "benchmark" for comparison with the offers of competitive electricity suppliers.<sup>58</sup>

41. AARP does not believe that the District should transition from the current wholesale SOS model to a retail SOS model as NEM and RESA suggest. AARP notes that neither NEM nor RESA provided evidence that the retail model would lead to lower prices or "innovative" new products. AARP asserts that "the opposite is likely to occur." AARP argues that "[w]hen customers are transferred to competitive suppliers without their affirmative consent and the current role of Pepco is eliminated, the Commission's ability to oversee and ensure reasonable and stable SOS prices will be seriously compromised." In addition, AARP believes that, when this occurs and Pepco is no longer the SOS Administrator, these suppliers "will naturally seek to retain them or move them into more profitable contract terms." AARP further argues that the wholesale SOS price's role as a benchmark for customers when comparing competitive energy suppliers' prices would be eliminated under a retail SOS model. AARP also warns that "the Commission should assume that suppliers would insist on an early termination fee in return for any obligation to offer a fixed price SOS for any length of time."<sup>59</sup>

42. AARP asserts that "[t]here is no U.S. jurisdiction that has adopted the 'end state' that RESA and NEM recommend for the provision of essential electricity service." AARP further argues that, while "NEM's comments include what NEM considers potential precedents for transitioning Pepco out of the obligation to provide SOS", "most of their examples are not applicable to the District."

43. AARP notes that, while NEM uses Texas as an example of a successful retail model, Texas "customers were not transferred from their 'affiliated' provider without their affirmative selection of an alternative provider." AARP argues that a 2013 Texas Public Utility Commission ("PUC") study indicates that 59 percent of Texas residential customers "are not served by the former affiliated REP [Retail Electricity Supplier]", which indicates that 41 percent

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<sup>56</sup> WGL Energy's Comments at 5-6.

<sup>57</sup> WGL Energy's Comments at 6.

<sup>58</sup> AARP's Reply Comments at 3.

<sup>59</sup> AARP's Reply Comments at 3-4 (citation omitted).

of residential customers remain with their REP. AARP asserts that there is, however, no plan in Texas which is comparable to SOS.<sup>60</sup>

44. With respect to Georgia, AARP asserts that this state's experience with a retail SOS model for natural gas service was "so highly controversial and resulted in such public dissatisfaction and then legislative reaction that it was widely viewed as the reason why retail electric competition was never seriously considered in Georgia." AARP notes that after "the assignment of customers to retail natural gas suppliers, the Georgia Legislature adopted significant reforms and oversight of the natural gas market, many natural gas marketers exited the retail role, and significant consolidation of retail natural gas suppliers has occurred."<sup>61</sup>

45. With respect to Ohio, AARP asserts that this state's "auction process for natural gas customers has occurred in the context of a publicly available wholesale market benchmark price for natural gas (a price index that is not publicly available for wholesale electric markets) and at a time of lower wholesale natural gas prices."<sup>62</sup>

46. Regarding Illinois, AARP notes that "[t]he 'declaration' of competitive service in Illinois has resulted in the ability of retail electric suppliers to market and sign up residential and other customers for service." AARP argues that, in contrast to assertions made by NEM, "there is no obligation by residential customers to take 'default' service via hourly prices." AARP observes that "Illinois has created the Illinois Power Agency to procure default service pursuant to an obligation for price stability."<sup>63</sup>

47. Finally, AARP notes that the proposals to move to a retail SOS model do not consider "the potentially confusing customer education and consumer protection messages that Pepco and the Commission would need to implement in the District since this policy would differ from that in place in Maryland, Delaware, and New Jersey."<sup>64</sup>

48. **Direct Energy Reply.** Direct Energy groups the comments of this question in three categories – those who recommend moving to a retail model, those who recommend removing Pepco as the SOS Administrator, and those who recommend almost no changes.<sup>65</sup> Direct Energy goes on to compare the different proposals for retail SOS models that parties provided.<sup>66</sup> Direct Energy claims that its proposal is the most acceptable proposal because it properly balances the

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<sup>60</sup> AARP's Reply Comments at 4 (citation omitted).

<sup>61</sup> AARP's Reply Comments at 4.

<sup>62</sup> AARP's Reply Comments at 4.

<sup>63</sup> AARP's Reply Comments at 4-5 (citation omitted).

<sup>64</sup> AARP's Reply Comments at 5.

<sup>65</sup> Direct Energy's Reply Comments at 3.

<sup>66</sup> Direct Energy's Reply Comments at 3-5.

needs of all stakeholders. However, Direct Energy also says it does not think it is prudent to argue over the details at this stage in the process.<sup>67</sup>

49. Direct Energy states that Pepco's reasons for remaining the SOS Administrator are unpersuasive. Direct Energy takes issue with Pepco's claims of limiting customer exposure to the Polar Vortex and PJM's Capacity Performance revisions, saying that there is no proof that SOS fully shielded customers from these effects.<sup>68</sup>

50. **EnerNOC Reply.** EnerNOC states that it supports Pepco and Exelon's position that Pepco should remain as the SOS Administrator. EnerNOC contends that a fully competitive market would expose customers to additional risks that are not seen in the current model. In regards to OPC's concerns about affiliate issues, EnerNOC states that an on-line live reserve auction should help the problem, as all bids, including the winning bid, are fully price-driven, fully recorded and auditable, and transparent to ensure the integrity of the results." EnerNOC notes that "the Commission could require, in live auction events, that participating bidders be assigned alias for the bidding process, such that Pepco cannot determine the actual bidding company, and eliminate any perception of conflict of interest." EnerNOC does acknowledge that if the Commission wants something more they could have a third party wholesale administrator replace Pepco. EnerNOC states that it opposes transitioning to "a Texas-style retail market where all customers are eventually forced to choose a competitive supplier."<sup>69</sup>

51. **GSA Reply.** GSA believes that Pepco should remain the SOS Administrator. GSA does not believe having Pepco serving as the SOS Administrator and the distribution company impedes the development of competitive markets. GSA notes that, as of January 2013, 80.8 percent of commercial usage and 63.4 percent of total consumption in the District was served by competitive electricity suppliers. While GSA believes that "too few residential customers are taking advantage of opportunities to shop for power," GSA does not feel that removing Pepco from the role of SOS provider will help increase residential customer shopping rates.<sup>70</sup> In addition, GSA asks that "administrative costs be kept as low as possible."<sup>71</sup>

52. **Noble Reply.** Noble supports a competitive retail energy market, but does not agree that the only way to achieve a competitive market is to get rid of default service by allocating customers to retail suppliers. Noble states that "[i]t is not fundamental to a functioning retail electric market to supplant customer choice with a 'transition' default service mechanism that replaces a fully regulated standard offer service with a less regulated, subsidized, market carve up scheme. This scheme antithetically would remove the customers' initial affirmative choice away

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<sup>67</sup> Direct Energy's Reply Comments at 3-5.

<sup>68</sup> Direct Energy's Reply Comments at 10-11.

<sup>69</sup> EnerNOC's Reply Comments at 2-3.

<sup>70</sup> GSA's Reply Comments at 1-2.

<sup>71</sup> GSA's Reply Comments at 2.

from the fully regulated Standard Offer Service that would benefit only certain retail market competitors.”<sup>72</sup>

53. Noble asserts that having retail suppliers serve SOS customers would result in “[s]ubsidizing certain market participants’ business plans [and] would create an [sic] non-level playing field and would interfere with the customer’s affirmative choice to utilize a fully regulated product.”<sup>73</sup> In addition, Noble claims that such a model “will actually reduce competition and hinder competitive forces that under normal circumstances lead to a great variety of more innovative products and services....” Noble is also concerned that such a change might result in customers already in the marketplace having to pay for such a transition.<sup>74</sup>

54. Noble notes that under RESA’s proposal there will be a “transitional” SOS and that RESA “suggests that Pepco will need to identify its costs for this transition and that those costs should be recovered over a period of time through surcharges to all customers. Noble states that it opposes this proposal “which would require every District ratepayer and employer to subsidize a market carve up scheme.”<sup>75</sup>

55. In addition, Noble states that the “commercial and industrial” retail electricity market in the District is working as these customers “are already exercising their ability to choose,” citing the Annual Baseline Assessment of Choice in Canada and the United States (“ABACCUS”) 2015 report as support for this proposition.<sup>76</sup>

56. **OPC Reply.** OPC disagrees with moving to a retail model. OPC states that while both Direct Energy and NRG cite Texas as an example of a state with a high percentage of shopping, that high shopping rate is primarily the result of the PLR rate in Texas being set at a high level by that state’s commission to encourage competition. OPC states that “[i]t is not surprising, given an onerously high default price, [that] Texans have been more apt to switch to competitors. OPC is not persuaded however, that more competition spurred by a state-imposed high default service rate is superior to having a low-cost default product.” OPC asserts that “DC ratepayers are likely better off with the District offering low-cost default service.”<sup>77</sup>

57. OPC also disagrees with Pepco and Exelon that Pepco should remain the SOS Administrator and reemphasizes its original point that an independent administrator should be considered to avoid any potential conflicts of interest.<sup>78</sup>

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<sup>72</sup> Noble’s Reply Comments at 2-3.

<sup>73</sup> Noble’s Reply Comments at 3.

<sup>74</sup> Noble’s Reply Comments at 3.

<sup>75</sup> Noble’s Reply Comments at 3 (citations omitted in original).

<sup>76</sup> Noble’s Reply Comments at 3 (citation omitted).

<sup>77</sup> OPC’s Reply Comments at 2-3.

<sup>78</sup> OPC’s Reply Comments at 4.

58. OPC recommends that the District pursue a portfolio approach that allows for the separate procurement of renewable energy, regardless of the ultimate process chosen.” Specifically, OPC agrees with DOEE that long-term renewable PPAs are “a potentially viable option that can provide ‘price affordability,’ ‘price stability,’ and a ‘reduction in GHG [Green House Gas] emissions.’” OPC also advocates that short-term PPAs should be considered as well. OPC concludes that, “[f]or the balance of energy and capacity obligations, the District should use long- and short-term contracts *and* PJM wholesale market purchases – all with the goal of providing low-cost default service.”<sup>79</sup>

59. **Pepco Reply.** Pepco reiterates its reasons for remaining the SOS provider. Pepco believes that it has ensured the integrity of the process and the current model has a track record of bidder participation “[t]hrough twelve years as the SOS administrator.” Pepco asserts that “[r]etaining Pepco as the SOS administrator provides benefits that allow the Commission to continue to improve the process as the energy landscape changes” and that “[t]he regulatory oversight and monitoring that the Commission is able to provide under the current wholesale model ensures that the process remains transparent and non-discriminatory and that the customers enjoy the full protections of the Commission’s regulations.”<sup>80</sup>

60. Pepco also reemphasizes that the SOS program was designed as a safety net for those who did not want to shop or whose retail provider defaulted, while noting that “customers supplied by SOS have a stable source of energy.” Pepco asserts that “the current model allows customers a real choice between the risks and rewards of the market or a true safety net service.”<sup>81</sup>

61. In response to comments from other parties, Pepco notes that no one has claimed Pepco has not effectively performed its role.<sup>82</sup> Pepco asserts that “the full retail model would subject all customers to market risk regardless of their respective appetites for assuming such risk.” Pepco notes, moreover, that, “moving to a full retail model would result in the default provider adding a risk premium, thereby unnecessarily increasing the cost to customers.”<sup>83</sup>

62. Pepco observes that “EnerNOC asserts that a fully competitive retail market with no utility-lead procurement could allow deceptive retail practices to jeopardize consumer protections.” Pepco further notes that, “[u]nder the retail model, there would be no SOS and, thus, no corresponding regulatory protections that are currently enjoyed by SOS participants.”<sup>84</sup>

63. In response to DOEE, Pepco notes that procuring SOS through long-term contracts would have risk premiums included, that these contracts “carry significantly heightened price uncertainty because long-term power forward curves are difficult to assess,” and cite an example

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<sup>79</sup> OPC’s Reply Comments at 3 (citation omitted; emphasis in original).

<sup>80</sup> Pepco’s Reply Comments at 2-3.

<sup>81</sup> Pepco’s Reply Comments at 3.

<sup>82</sup> Pepco’s Reply Comments at 4-5.

<sup>83</sup> Pepco’s Reply Comments at 5.

<sup>84</sup> Pepco’s Reply Comments at 5-6 (citation omitted).



of Delmarva Power signing three long-term REC and electricity supply contracts which are now all above market prices. By contrast, Pepco asserts that “[t]he price uncertainty created by long-term contracts can also result in below market or favorable electric price.” Such a below market outcome could result in driving away “competitive retail suppliers from the market because they cannot compete with the prices resulting from the long-term contract.”<sup>85</sup>

64. In response to NRG’s assertion that, in a full retail model, Pepco would cease its billing operations and suppliers would purchase Pepco’s receivables and provide universal service to customers including RAD customers, Pepco asserts that the D.C. Code only allows Pepco to provide RAD services. Pepco further argues that, even if the utility were allowed to transfer RAD customers, it is the RAD customers in particular who need the safety of SOS as “RAD customers are arguably the most affected by price volatility.”<sup>86</sup>

65. Pepco asserts that OPC’s advocacy of a managed portfolio approach is misplaced as District SOS customers “already receive the benefits of competition based on a portfolio model approach.” Pepco notes that “[t]he winning SOS suppliers who currently provide SOS customers with electricity employ portfolio models to meet their SOS load obligations and bear 100% of the risk that their portfolio is appropriate.”<sup>87</sup>

66. Pepco further asserts that District SOS customers “benefit from the current model in which the suppliers, not the SOS Administrator, use a managed portfolio model”, as these suppliers “insulate customers from numerous supply risks, including load, weather, market volatility, and price.” By contrast, Pepco argues that “[m]oving the SOS Administrator to a managed portfolio service would introduce supply risks to the current safety net service and should be avoided.” Pepco believes that, “under the current wholesale SOS model, the full requirements supply obligations – and the associated risk management burdens – are allocated to the wholesale suppliers and are not directly borne by District of Columbia consumers”, and that those “risk management burdens” should remain with the suppliers.<sup>88</sup>

67. **RESA Reply.** RESA notes that other commenters, like RESA, supported moving to a retail model. While there are some differences among the proposals, RESA believes that the commenters will be able to work out these differences.<sup>89</sup>

68. RESA notes, however, that, if the Commission chooses to continue with the wholesale SOS model, “the long-term power purchase agreements proposed by OPC and DDOE would cripple the District’s competitive market and should be rejected.” RESA argues that, over the course of, for example, a ten-year PPA, SOS prices would likely be significantly lower and higher than market prices causing consumers to move to and from SOS service accordingly. RESA

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<sup>85</sup> Pepco’s Reply Comments at 7-8 (citation omitted).

<sup>86</sup> Pepco’s Reply Comments at 6-7 (citations omitted).

<sup>87</sup> Pepco’s Reply Comments at 9.

<sup>88</sup> Pepco’s Reply Comments at 9-10.

<sup>89</sup> RESA’s Reply Comments at 1-2.

implies that this migration would, in turn, undermine the development of the retail market. RESA asserts that mixing in short-term and spot market purchase with long-term contracts in an “SOS supply portfolio” as OPC and DOEE propose would not ameliorate the harm caused by the use of long-term PPAs.<sup>90</sup>

69. RESA also opposes the continued use of three-year wholesale supply contracts for residential customers, noting that RESA and Direct Energy agree that they “hinder the development of the District’s competitive retail energy market.” RESA asserts that even two-year contracts are too long while reiterating its conviction that the current SOS model hurts the development of a competitive retail market.<sup>91</sup>

70. In addition, RESA opposes Exelon and Pepco’s support of the status quo and states that the current method has not worked to develop retail choice and unless changes are made to the SOS procurement model it does not anticipate an increase in retail shopping.<sup>92</sup>

71. RESA also is troubled by EnerNOC’s comments claiming that retail suppliers offer teaser rates and engage in other deceptive practices stating that these comments were “improper, incorrect and, in any event, immaterial to the present proceeding.”<sup>93</sup>

72. **WGL Energy Reply.** WGL Energy continues its support of moving to a retail model and recommends an independent consultant act as SOS Administrator for the transition procurement to move towards such a model.<sup>94</sup> WGL Energy notes that while it has proposed a different retail model from others such as Direct Energy it is sure that different issues can be resolved in a working group process.<sup>95</sup> WGL Energy recommends that the Commission issue an order to adopt a retail SOS program, establish a working group, direct Pepco to revise the length of their SOS contracts to end by May 31, 2019, and hire an independent third party to act as SOS Administrator.<sup>96</sup>

73. **Direct Energy Sur-Reply.** Direct Energy objects to Noble’s characterization that “to have SOS provided by retail suppliers would amount to a ‘less regulated, subsidized market carve up scheme,’” and that “[t]his scheme antithetically would remove the customers’ initial affirmative choice away from the fully regulated Standard Offer Service that would benefit only certain retail market competitors.”<sup>97</sup>

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<sup>90</sup> RESA’s Reply Comments at 2, 4-5.

<sup>91</sup> RESA’s Reply Comments at 2-4 (citation omitted).

<sup>92</sup> RESA’s Reply Comments at 6.

<sup>93</sup> RESA’s Reply Comments at 7.

<sup>94</sup> WGL Energy’s Reply Comments at 6-7.

<sup>95</sup> WGL Energy’s Reply Comments at 3-4.

<sup>96</sup> WGL Energy’s Reply Comments at 8.

<sup>97</sup> Direct Energy’s Sur-Reply Comments at 3, quoting Noble’s Comment’s at 2.

74. Direct Energy asserts that “Noble does not provide any record evidence in support of it improbable claims” and that these claims are “demonstrably wrong.” Specifically, Direct Energy first notes that, the retail SOS supplier proposal supported by Direct Energy itself, RESA, and other commenters “would not be ‘less regulated’ than the current SOS procedures” and “would remain subject to the Commission’s regulation.” Next, Direct Energy argues that this proposal “would not result in the ‘subsidization’ of any party.” In addition, Direct Energy believes that the proposal, rather than “improperly ‘carve up’ the SOS customers,” would, in fact, “enable market forces to provide SOS service to customers with reasonable, retail priced SOS service from suppliers.” Finally, Direct Energy observes that the proposal would not “remove the customers’ initial affirmative choice away from the fully regulated Standard Offer Service,” but that, instead, “customers would still have the option of receiving fully regulated SOS if they did not select an alternate supplier.”<sup>98</sup>

75. Direct Energy also objects to Noble’s observation that having retail suppliers serve SOS customers would result in “[s]ubsidizing certain market participants business plans would create an [sic] non-level playing field and would interfere with the customer’s affirmative choice to utilize a fully regulated product.” Direct Energy notes that, “without any detailed explanations or submission of any record evidence in support of its claims, Noble argues that ‘[RESA’s proposal] would require every District ratepayer and employer to subsidize a market carve up scheme.’” Direct Energy asserts that Noble does not explain how or why RESA’s proposal “would ‘require’ any ratepayer and/or any ‘employer’ to ‘subsidize a market carve up scheme.’”<sup>99</sup>

76. By contrast, Direct Energy asserts that its “proposal to have retail suppliers submit competitive bids to provide SOS would *eliminate* existing SOS subsidization.” Direct Energy argues that “the existing wholesale framework and the subsidization of costs associated with the provision of SOS service by distribution ratepayers that currently inhibits the competitive supply market.” Direct Energy observes that currently “retail market companies are competing with a three-year laddered contract wholesale supply SOS without any allocation of the indirect costs of providing SOS incurred by the distribution company.” Direct Energy also notes that this “framework renders ongoing ‘boom-bust’ and subsidized prices that continue to hinder the development of competitive markets.”<sup>100</sup>

77. Finally, Direct Energy characterizes Noble’s “claim” that current SOS regime is a success – because the commercial and industrial retail electricity market in the District is working as these customers “are already exercising their ability to choose” based on the findings in the ABACCUS 2015 report – as “[i]n direct contradiction to record evidence in this proceeding”. Direct Energy reasserts that the current SOS model hurts the development of a competitive retail electricity market, noting that “[e]ven Pepco reported in its comments that only ‘approximately 16% of residential load and about 85% of non-residential load have switched to competitive suppliers.’” Direct Energy argues that these numbers cited by Pepco are “convenient statistics, especially on the non-residential side, where just a few large customers (e.g., U.S. General Services

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<sup>98</sup> Direct Energy’s Sur-Reply Comments at 3-4 (citations omitted).

<sup>99</sup> Direct Energy’s Sur-Reply Comments at 4 (citation omitted; emphasis in original).

<sup>100</sup> Direct Energy’s Sur-Reply Comments at 4-5(citation omitted; emphasis in original).

Administration) taking competitive supply can skew the numbers.” Direct Energy believes that it would be better to look at the total number of customers served by retail electricity suppliers rather than load served by retail suppliers, when discussing whether the competitive market is a success. Direct Energy observes that “[t]he same report cited by Pepco shows that only 14% of residential customers and only 35% of commercial customers (a vast difference from the 85% cited by Pepco) are being served in the competitive market.” Direct Energy notes that the retail electricity market in the District is not functioning as well “as Pepco represented in its Comments and puts in context Noble’s assertion that 62.3% of eligible customer load in DC is taking competitive electric service from Non-Incumbent Providers.” Direct Energy notes, therefore, that “the Commission should not make the conclusions suggested by Noble concerning the results of the ABACCUS report.”<sup>101</sup>

78. Direct Energy concludes by reiterating that the current SOS framework renders a price that significantly hinders the development of the competitive supply market. Direct Energy argues that, “[i]t is not the dollars and cents aspect of the SOS price that is deficient; the SOS process, with Pepco as SOS Administrator, is not working to establish a competitive electricity market for customers.” Direct Energy believes that the current SOS framework has resulted in “a paucity of shopping by residential and commercial customers.” Direct Energy, therefore, proposes “a ‘retail SOS’ model, in which retail suppliers would bid to provide SOS service at a fixed price.”<sup>102</sup>

### **DECISION**

79. Direct Energy, NEM, NRG, RESA, and WGL Energy present plans to move from the current wholesale SOS model, where Pepco contracts with wholesale suppliers to provide SOS service, to a retail model where suppliers directly serve customers. While the specifics of each plan differ, the overall goal of all the proposed plans is to move the District to a competitive end-state where customers shop for electricity supply with a provider of last resort service, if proposed, offered as a “backstop” at an hourly or above-market rate. All proposals feature some form of “transition period” where retail providers would provide SOS service prior to the transition to full competition. Under each plan, a competitive procurement would be used to allocate current SOS customers to retail providers.

80. Texas is cited by a number of commenters as a state with high levels of retail competition, with nearly 90 percent of customers in certain areas using an alternate retail supplier. Texas, however, did not reach that level by allocating customers to retail suppliers. First, the Texas PUC established a “price-to-beat” that each utility had to offer to their customers. This price-to-beat was an administratively determined rate which was set high enough so that competitive suppliers could beat it and still make a profit. After five years of this model, the Texas PUC allowed the utilities to stop offering a price-to-beat rate and allowed parties to apply to provide POLR service. The POLR service in Texas is offered at an administratively-determined

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<sup>101</sup> Direct Energy’s Sur-Reply Comments at 5-6 (citations omitted).

<sup>102</sup> Direct Energy’s Sur-Reply Comments at 6.

rate which is set very high, at the real-time spot price times 120 percent,<sup>103</sup> in order to discourage customers from staying on this service. Customers who are forced to take the POLR service in the case of supplier default, therefore, pay a premium price for this service.

81. Georgia has the closest analogy to what the commenters propose, albeit for natural gas supply, where the traditional supplier has no obligation to provide POLR service. In the late 1990's Georgia allowed its largest gas utility, Atlanta Gas Light Company to become a distribution-only business and cease providing POLR service. Customers were not allocated to retail natural gas providers but were, instead, forced to choose a competitive supplier or randomly assigned to one if they did not choose.<sup>104</sup> The result was not successful as customers experienced a wide range of problems with billing, supplier default, slamming, and other issues, including price increases.<sup>105</sup>

82. Two states with particularly high levels of retail electric shopping are Ohio and Illinois, but both states still offer a SOS service, based on a wholesale, not a retail, model. In both cases, the high rates of retail shopping result from municipal aggregation which is a simple process in each state. In Ohio, for example, with the consent of voters, a municipality can enter into an aggregation agreement with a competitive supplier. The resulting aggregation contract is not subject to the Public Utilities Commission of Ohio ("PUCO") review. If a ratepayer does not want to go with the municipality's choice of a specific competitive supplier, the ratepayer can "opt out" of the municipality's decision and pick their own supplier. While municipal aggregation can provide low prices for ratepayers, the lack of contractual review which is sometimes referred to as government slamming can sometimes lead to problems. For example, FirstEnergy Solutions, a retail supplier and the generation-owning affiliate of FirstEnergy Ohio, attempted to pass through charges related to the Polar Vortex to its customers.<sup>106</sup> This caused PUCO to open an investigation asking, "[i]s it unfair, misleading, deceptive, or unconscionable to market or label a contract as fixed-rate when it contains a pass-through clause in its terms and conditions?"<sup>107</sup>

83. The retail model for electricity supply service that most of these commenters advocate – where customers are directly assigned to retail suppliers – does not and has never, to our knowledge, been implemented in the United States. In addition, all the models referenced by these commenters have drawbacks. Adopting the Texas method would mean deliberately making the default product prohibitively expensive, harming those customers who lack the sophistication

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<sup>103</sup> See, for example, Electricity Facts Label, Reliant Energy Retail Services, LLC, Residential POLR Plan, CenterPoint Energy Service Area, Issue Date: 03/01/2017, available at: [https://www.puc.texas.gov/consumer/electricity/polr/Centerpoint\\_Res.pdf](https://www.puc.texas.gov/consumer/electricity/polr/Centerpoint_Res.pdf).

<sup>104</sup> Ken Costello, "The Competitiveness of the Georgia Deregulated Gas Market", National Regulatory Research Institute, January 2002.

<sup>105</sup> Kelly Green and Rick Brooks "Georgia's Gas Deregulation is Messy, But Offers a Lesson to Other States," Wall Street Journal, January 15, 2001.

<sup>106</sup> John Funk, "FirstEnergy Solutions billing customers for reserve power during arctic weather," Cleveland Plain Dealer, March 25, 2014.

<sup>107</sup> Public Utilities Commission of Ohio, "In the Matter of the Commission-Ordered Investigation of Marketing Practices in the Competitive Retail Electric Service Market", Case No. 14-568-EL-COI, Entry, April 9, 2014.

or inclination to actively monitor and participate in the retail electricity market. The Georgia method resulted in widespread customer complaints and is widely viewed as a failure and the Ohio/Illinois method is impractical for a jurisdiction like Washington, D.C, which is a single city. Regarding the latter point, the District has so few ratepayers, relative to states like Ohio, that if they were allowed to aggregate then essentially all load could leave SOS . This would remove Commission control over the prices and terms of service charged to load and reduce or completely remove interest in offering SOS supply. In fact, the District has considered municipal aggregation with an opt-out provision, but decided not to pursue this option.<sup>108</sup>

84. While the advocates for a retail model provide some direction as to what is to be done, all correctly presume that there are many, many details to be worked out. For example, RESA suggests the establishment of a working group to develop a plan to transition to retail competition. WGL and NRG echo or provide similar suggestions. A successful transition to a retail model would require a stakeholder group to debate and come to an agreement on a number of issues, including, but not limited to:

- Billing methods: This includes questions such as who would ultimately be responsible for both billing customers and collecting money from those customers. Some suppliers may want Pepco to continue the purchase of receivable programs and offer some form of joint billing while others may be more willing to completely take over the billing function. In addition, Pepco has recently upgraded their billing system through Solution One, so the issue of stranded costs could come into play.
- The process by which a new customer will choose a retail supplier.
- How to ensure that customers continue to receive service in the event of a supplier bankruptcy/default.
- If Pepco should still offer some form of backstop or POLR service, for example, a market-priced service.
- What customer data can be collected and how can that data be shared securely among suppliers so that they can create offers.
- What additional customer protections might be needed in light of the fact that there would be no default service to return to. Issues such as switching fees, rates disclosure and so forth might need to be revisited and clarified. Credit requirements for suppliers might need to be increased as well.
- How other Commission efforts (e.g. demand response programs and Community Renewable Energy Facilities) may need to be changed in order to function under the new model.

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<sup>108</sup> *Formal Case No. 945, Phase II, In the Matter of the Investigation into Electric Service Market Competition and Regulatory Practices* (“*Formal Case No. 945*”), Order No. 12399, ¶ 153, rel. May 6, 2002.

85. Even in the event that all of these issues were satisfactorily resolved, a comprehensive customer education effort would still be necessary to ensure that customers understand how the transition to a retail model would occur and how exactly the retail model would ultimately function.

86. With one exception – the removal of Pepco from the SOS Administrator role – commenters are also vague on the benefits that the adoption of a retail model would provide. No persuasive evidence has been presented that demonstrates that handing SOS customers to retail suppliers via a competitive allocation would mean lower prices, more innovative product and service offerings, or create an overall, better customer experience for the District’s electricity consumers. Commenters simply assert that there would be more innovative products and services under a retail model but they do not provide any details regarding or examples of these products and services.

87. In the wholesale model, many sophisticated wholesale suppliers that have hedging and risk management expertise compete. The only potential concrete benefit for those customers that is mentioned by commenters is that, under a retail model, Pepco would no longer be administering the SOS service and that more innovative products and services would be offered without saying what these are.

88. Direct Energy, NEM, NRG, RESA, and WGL Energy all support a transition to an end-state retail model, while asserting that the current, wholesale SOS model is inhibiting the development of the retail electricity market in the District. NEM and NRG specifically state that the SOS has been particularly detrimental to the development of the residential retail market. Direct Energy, NEM, NRG, RESA, and WGL Energy all ignore the possibility that the SOS product is something that residential customers choose because it suits their particular needs and they are happy with this service. NEM and NRG claim that the SOS product is not reflective of market conditions. NEM and NRG incorrectly presume that the only market is the short-term or spot market. In fact, the wholesale electricity market offers products of varying lengths. Just as consumers can choose among mortgages of 15 or 30 years or other lengths, the wholesale market can provide full requirements service for 3 years, 2 years, 1 year, or 3 months. Simply because the Commission has created a reasonably priced portfolio that retail competitive suppliers cannot, evidently, compete with on price for residential customers is not a reason to claim that the portfolio should be changed as some have advocated.

89. There is the underlying and unproven assumption by the supporters of the retail model that a competitive marketplace without a regulated, market-priced default service like SOS is the best choice for consumers. In reality, in the Large Commercial sector, the competitive market is beating SOS handedly in the District in terms of load. When given a fair opportunity to compete with a government-regulated product (the Residential SOS product), competitive electricity suppliers cannot compete. The examples of Georgia and Texas that are touted as success stories are anything but. There simply is no successful program for the type of retail model that most of the retail proponents advocate for on which we can model our own.

90. In addition, while ExGen’s and Pepco’s support for the current wholesale SOS model could be dismissed based on a view that these companies have a vested interest in the status quo, OPC and AARP’s support for the current SOS model cannot be so easily dismissed. OPC is

the statutory advocate for utility consumers in the District of Columbia and AARP's mission is to protect America's seniors and retirees.

91. The supporters of the retail model basically ask the Commission to replace a wholesale SOS model that works and has been successful with a retail model that no other jurisdiction has been willing to implement – evidently with good reason. Amazingly, none of the proponents of this type of retail model, except RESA, even claim that this model will lead to lower rates for Residential and Small Commercial customers. Based on the above, the Commission believes it is in the best interest of the District ratepayers to continue to use the current wholesale SOS model. All further comments based on the approval of a retail model are moot and will not be addressed.

92. Regarding the question of Pepco remaining the SOS Administrator, AARP, Pepco, ExGen, DDOE, and GSA all support Pepco continuing as Administrator. As GSA observes with Pepco serving as the SOS Administrator, the wholesale model has produced “stable and reasonable prices”. OPC and Direct Energy argue against Pepco continuing in this role, with OPC asserting that the Exelon/Pepco merger creates a potential conflict of interest.

93. Maryland, New Jersey, Pennsylvania, Delaware, Ohio and Illinois all have competitive wholesale procurements administered by an affiliate in which another affiliate is bidding. Ohio, Illinois, and New Jersey use an independent RFP manager to run the SOS bidding process, presumably to minimize risk. However, after researching this issue, we have not discovered a single instance where an affiliate administering SOS passed on insider information or otherwise sought to unfairly advantage an affiliate which was bidding. While we recognize that having Pepco acting as the SOS Administrator raises concerns, employing an independent RFP manager may be a solution to a problem that does not exist. The Commission will therefore continue to use Pepco as the SOS Administrator for the foreseeable future. In its comments, which are discussed later in this Order, Pepco does describe some of the procedures it employs to avoid potential conflicts of interests and otherwise ensure that ExGen does not receive any competitive advantage as an Exelon affiliate bidding in a Pepco-run SOS auction.<sup>109</sup> We need greater detail regarding Pepco's safeguards and once we have reviewed that information we will determine if any additional safeguards are required.

94. The issue of contract lengths and the related issue of the use of PPAs or long-term contracts for SOS service are discussed by DOEE, NRG, Pepco, RESA, and WGL Energy. These issues are specifically addressed at length later in this Order.<sup>110</sup>

**B. Should the Administrative Charge be modified? The Administrative Charge is the mechanism by which the SOS provider recovers its incremental costs for procuring and providing SOS. These costs, include, but are not limited to, uncollectibles, the Commission's Market Monitoring Consultant costs, wholesale bidding expenses, working capital expenses, wholesale supply transaction costs related to wholesale supplier administration and**

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<sup>109</sup> See ¶¶ 361-363 *infra*.

<sup>110</sup> See discussion in Section III, F., ¶¶ 172-202, and 285-288 *infra*.



**transmission service administration, wholesale payment and invoice processing, incremental billing process expenses, customer education costs, incremental system costs, costs related to the purchase/management of the Community Renewable Energy Facilities (“CREF”) program, and legal and regulatory filing expenses related to SOS requirements.**

95. **AARP.** AARP did not answer this question. Instead, AARP notes that it is “not aware of any evidence that this mechanism has not worked to achieve that purpose.” In addition, AARP expresses concern that the “actual incremental costs incurred by Pepco to plan, procure, and provide SOS are not duplicated and recovered twice through both SOS and distribution rates.”<sup>111</sup>

96. **Direct Energy.** Direct Energy argues that if the Commission does not transition to a retail model then the true costs of SOS need to be transparent and unbundled from the distribution company to make sure the charges are being correctly allocated. Direct Energy further asserts that “[o]nly with a full allocation of SOS related costs being allocated to the standard offer business, would it be possible that a wholesale SOS [model] might meet the threshold of ‘not hindering’ the development of the competitive electric supply market.” Direct Energy asks that “[i]f the Commission continues to allow a wholesale SOS [model] in DC, it should compel Pepco to submit a fully allocated cost of service study that fully allocates on a reasonable basis, all of the cost of running the SOS business to that business and to the customers taking SOS.”<sup>112</sup>

97. **ExGen.** ExGen believes that the Administrative Charge should include incremental costs incurred by Pepco for procuring and providing SOS and that “[t]he costs which are described in the Commissions questions are properly allocated to customers who remain on SOS and are therefore appropriately included in the Administrative Charge.”<sup>113</sup>

98. **NEM.** NEM asserts that “[t]he Administrative Charge, reflecting Pepco’s incremental SOS procurement costs, and the adder, meant to reflect marketers’ customer acquisition and customer care costs, are a partial, minimal proxy for the full unbundling of Pepco’s delivery rates.” NEM further argues that “[t]he Commission should, at a minimum, retain the Administrative Charge and adder in the computation of the SOS rate to include some reflection of the costs of providing SOS.” NEM emphasizes that the costs of providing SOS should be fully and totally unbundled from distribution rates, and fully reflected in SOS rates.<sup>114</sup>

99. **OPC.** OPC believes that the Administrative Charge should be a pass-through of incremental costs incurred by the SOS Administrator and that the cost recovered should be limited to actual verified costs incurred by the SOS Administrator. OPC notes that the “no mechanism has been established by which the incremental costs [associated] with SOS can be audited to ensure that the revenue collected through this charge is used to pay the actual incremental costs

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<sup>111</sup> AARP’s Comments at 4.

<sup>112</sup> Direct Energy’s Comments at 16-17.

<sup>113</sup> ExGen’s Comments at 6.

<sup>114</sup> NEM’s 2013 Comments at 6-7.

incurred to implement SOS.”<sup>115</sup> Furthermore, OPC argues that all costs associated with administering SOS be measured and verified. OPC states that the SOS Administrator should “report a detailed breakdown of cost categories and – should Pepco remain the administrator – demonstrate that these costs are not being recovered elsewhere from ratepayers.” OPC does note, however, that “the latter concern would be moot if the SOS program were administered by an independent third party.”<sup>116</sup>

100. **Pepco.** Pepco does not think the Administrative Charge should be modified. Pepco states that the charge is functioning as designed in accordance with the Commission’s SOS rules and allows Pepco, as the SOS Administrator, to recover the incremental costs of procuring and providing SOS service. Pepco also notes that it reports “the actual incremental costs of procuring and providing SOS” annually.<sup>117</sup>

101. **RESA.** While RESA favors removing Pepco as the SOS provider consistent with moving from a wholesale model to a retail model, RESA does not have a problem with the current components of the Administrative Charge – incremental costs, uncollectible costs, the margin, and the adder, if the wholesale model remains. RESA, however, notes that it is imperative that the charge is set at the right level and not too high or too low. Finally, RESA asserts that if the SOS price does not include all of Pepco’s cost incurred in providing this service, “then SOS customers would effectively be receiving SOS at a discounted price which, if allowed, would further impede competitive retail suppliers’ ability to compete for customers in the District.”<sup>118</sup> RESA further notes that such “an artificially low SOS rate – would be inconsistent with the D.C. statute that requires the Commission to ensure that ‘the price of [SOS] will not hinder the development of a competitive electricity supply market in the District of Columbia.’”<sup>119</sup>

102. **WGL Energy.** WGL Energy provided no comments on this question with respect to the wholesale SOS model.

103. **GSA Reply.** GSA agrees with RESA that the Administrative Charge should not be modified but that administrative costs should be kept as low as possible.<sup>120</sup>

104. **OPC Reply.** OPC recommends reducing the Administrative Charge to a level that is equal to “the annual average SOS-related expenses.”<sup>121</sup> OPC states that no mechanism has been established to audit incremental costs associated with SOS service to ensure revenue collected

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<sup>115</sup> OPC’s Comments at 7 (internal citations and quotation marks omitted).

<sup>116</sup> OPC’s Comments at 7.

<sup>117</sup> Pepco’s Comments at 6.

<sup>118</sup> RESA’s Comments at 13.

<sup>119</sup> RESA’s Comments at 13 *quoting* D.C. Code § 34-1509(d)(1)(A) (2012 Repl.).

<sup>120</sup> GSA’s Reply Comments at 2.

<sup>121</sup> OPC’s 2013 Reply Comments at 8.

through this charge is used to pay the actual incremental costs.<sup>122</sup> OPC asserts that the amount Pepco collects through the Administrative Charge “far exceeds” its actual costs in administering SOS. Specifically, OPC believes that “Pepco collected excess revenue ranging from [\$] 8.5 million in 2010 to [\$] 31.8 million in 2006.” OPC concludes that this situation is “completely unacceptable for District consumers.”<sup>123</sup>

105. OPC agrees with Direct Energy that, if the SOS model remains, a cost of service study should be performed to verify the costs of administering the SOS program and make them transparent.<sup>124</sup>

106. **Pepco Reply.** Pepco does not think the Administrative Charge should be modified, stating that it is functioning as it was designed and in accordance with the Commission’s SOS rules.<sup>125</sup> Pepco responds to the request for a review by OPC by noting that OPC has the opportunity to review and comment on these costs pursuant to Pepco’s “annual update to its [Pepco’s] SOS rates”, and should raise concerns at that time.<sup>126</sup>

### DECISION

107. While commenters stress the importance of an accurate calculation of charges, no one suggests any specific changes be made to the Administrative Charge itself. However, OPC seems to be arguing that Pepco should not receive any profit for providing the service of acting as the SOS Administrator, when OPC asserts that the Administrative Charge should be limited to a pass-through of the incremental costs incurred by the SOS Administrator. Based on the comments received and our own experience, we do not see any reason to change the components of the Administrative Charge with the exception of the adder. (We discuss the adder in the next section.)

108. In response to OPC and Direct Energy’s call for a cost of service study, we believe that concerns about the value of the Administrative Charge are important, but are more efficiently addressed in response to Pepco’s annual rate filing with the Commission in *Formal Case No. 1017*. In that filing, Pepco provides the work papers used to calculate the charge for review by all parties. It appears that the last time any party filed comments was OPC back in 2010.<sup>127</sup> If in any future filing, OPC, Direct Energy, or any other party identifies specific areas of concern, we will consider a targeted investigation in those areas or consider it as part of the next Biennial Review.

109. Finally, RESA asserts that, if the SOS price does not include all of Pepco’s costs incurred in providing this service, “then SOS customers would effectively be receiving SOS at a

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<sup>122</sup> OPC’s 2013 Reply Comments at 9.

<sup>123</sup> OPC’s 2013 Reply Comments at 11.

<sup>124</sup> OPC’s Reply Comments at 5.

<sup>125</sup> Pepco’s Reply Comments at 10.

<sup>126</sup> Pepco’s Reply Comments at 10-11 (citations omitted).

<sup>127</sup> *Formal Case No. 1017*, Response of the Office of the People’s Counsel to Pepco’s Supporting Documents Regarding the Company’s SOS Filing, filed Feb. 16, 2010.

discounted price which, if allowed, would further impede competitive retail suppliers' ability to compete for customers in the District." RESA further notes that such "an artificially low SOS rate – would be inconsistent with" the District statute which mandates that the Commission "ensure that 'the price of [SOS] will not hinder the development of a competitive electricity supply market in the District of Columbia.'" The Administrative Charge does, in fact, include all of Pepco's costs incurred in providing SOS.<sup>128</sup> The Administrative Charge, moreover, includes a "margin" or profit that Pepco earns for its services in providing SOS.

- C. Should the adder be removed? Removing the adder would drastically reduce or potentially eliminate the administrative credit that results from overcharging the Administrative Charge. It would, moreover, eliminate additional oversight on the adder. However, removing the adder would also make the Administrative Charge vary more from year to year. Note that the original purpose of the adder is 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. Such a purpose may not be achieved just because of using the adder.**

110. **AARP.** AARP argues that "the 'adder' that increases SOS prices for the putative purpose of reflecting costs that retail providers might incur to market their services and contracts should be eliminated." AARP characterizes the adder as "hypothetical in nature" and not reflective of the actual costs incurred to provide this service. Specifically, AARP notes that the marketing costs of competitive electricity suppliers are "reflected in retail prices in a manner that is not publicly available." AARP recommends that the Commission's policy be focused on ensuring the lowest reasonable cost for SOS to Residential and Small Commercial customers rather than giving "head room" to competitive electricity suppliers or artificially subsidizing these suppliers' marketing cost. AARP asserts that "[i]n every retail market, the new entrants to the market have to price their product in a manner to get customers to switch to their product from other providers." AARP concludes that this is also true for the retail electricity market.<sup>129</sup>

111. **Direct Energy.** Direct Energy states that if the Commission chooses to stay with the wholesale SOS model, then it "does not support the use of any type of artificial adder to 'prop up prices' to match a supplier's marketing costs or any other costs." It does, however, add that there are costs of SOS that are not captured other places, such as new customer costs, which are being subsidized by customers who have gone into the retail market and for that reason, recommends a full cost of service study to allocate an equitable amount of costs from its distribution business to the SOS business and the adder should be assessed to all SOS customers, not to shopping customers. In addition, Direct Energy asserts that "Pepco should not be enriched by the incorporation of this fully allocated SOS adder, as the adder should only reflect a reallocation of costs." Direct Energy suggests, instead, that "Pepco should be required to implement

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<sup>128</sup> See 15 DCMR § 4103.4 (2015); *Formal Case No. 1017*, Pepco's Annual Rate Filings, Attachment D, Feb. 6, 2017.

<sup>129</sup> AARP's Comments at 5.

a true-up mechanism whereby all SOS adders collected are credited back to all distribution customers.”<sup>130</sup>

112. **NEM.** See NEM’s answer to the previous question.

113. **OPC.** OPC believes the adder should be eliminated as the “existence of the adder guarantees that ratepayers are paying a premium for [SOS] service.” OPC states that the “adder was intended to cover the marketing costs of electricity suppliers associated with the SOS. OPC asserts that ratepayers “should not bear the burden of such costs.” OPC notes that bidders “in the SOS auction are profit-seeking entities that would not offer a bid if it were not financially advantageous to their business.” OPC believes that since “energy suppliers regularly consider the costs of production and sales (including marketing) in the prices they are willing to offer, there should not be a separate component (i.e., adder) to support the suppliers’ endeavors.” OPC asserts that suppliers’ “marketing costs can be absorbed in the bidder’s margin whereby ratepayers would avoid paying a guaranteed premium.” OPC notes that “the adder was approved before the full implementing and testing of the SOS in the District” and that at that time “the Commission did not have the data and evidentiary support to determine whether it was just and reasonable.” Finally, OPC concludes that “[w]e now have the data and information necessary to analyze the impact of the adder so that the [Commission] can make a determination regarding whether it is just and reasonable.”<sup>131</sup>

114. **Pepco.** Pepco asserts that the adder should not be eliminated. Pepco argues that without the adder SOS rates would probably be lower than the competitive electricity supply rates. Pepco further argues that “[m]aintaining the adder along with the POR program may contribute to increased competition in the retail market in the District of Columbia while allowing SOS to retain its function as a ‘safety net’ service.” Pepco also notes that “Maryland has continued to include the adder in its Administrative Charge since the charge went into effect on July 1, 2004 and also has had a POR program since 2010.”<sup>132</sup>

115. **RESA.** RESA recommends keeping the adder if the wholesale model remains. RESA notes that “[t]he current Administrative Charge seeks to identify specific incremental costs and also to approximate other costs that should be reflected in SOS rates.” RESA states that the purpose of the adder is to account for costs that are paid for by distribution customers that are related to SOS – typically “joint and common” costs such as call centers and advertising. RESA believes that the adder helps to even the playing field for competitive energy suppliers. RESA feels that removing the adder would place those customers or retail suppliers at a disadvantage.<sup>133</sup>

116. **WGL Energy.** WGL provided no comments on this question with respect to the wholesale SOS model.

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<sup>130</sup> Direct Energy’s Comments at 18.

<sup>131</sup> OPC’s Comments at 8.

<sup>132</sup> Pepco’s Comments at 6-7.

<sup>133</sup> RESA’s Comments at 16.

117. **AARP Reply.** In its reply comments, AARP simply repeats the arguments it makes in its initial comments responding to this question.

118. **Direct Energy Reply.** Direct Energy does not think having an adder just for the sake of having an adder is a good idea. Rather it says the only way to assure a level playing field is to make sure that all Pepco's costs as SOS Administrator are fully allocated by undertaking a full cost of service study. It also adds that the way the adder is currently calculated does not support a competitive retail market.<sup>134</sup>

119. **GSA Reply.** GSA agrees "with RESA that the adder should remain a part of the SOS Administrative Charge." In addition, GSA "supports the position that the incremental costs RESA identifies as 'joint and common' costs should be unbundled from distribution rates to the maximum extent feasible and placed in the adder."<sup>135</sup>

120. **OPC Reply.** OPC disagrees with Pepco and states that the adder should, in fact, be eliminated. In OPC's view, "the source of the disagreement over the adder can be reduced to questions about [the] fundamental purpose of SOS: Should it be (1) a low-cost, default service product or (2) a 'backstop' against options available in the retail competitive market." OPC asserts that the adder was originally put in place to spur competition "to make up for Pepco's competitive advantage compared to non-SOS competitors" by adding this cost to SOS. OPC notes that, "as many parties have pointed out, most residential ratepayers remain on SOS," and, therefore, "the adder has merely led to higher bills for most ratepayers." While acknowledging that the revenue collected from the adder is passed back to all ratepayers, both SOS and non-SOS customers, through distribution rates, OPC argues that the adder "effectively subsidizes non-SOS customers at the expense of SOS customers", since money is returned to all customers and collected from SOS customers.<sup>136</sup>

121. OPC also notes that the "adder creates a market distortion in the name of 'competition' but is unnecessary if the goal is to provide low-cost, default service." While OPC recognizes the "tension between spurring competition and providing low cost, default service", OPC "does not want the District to emulate the Texas model by creating an artificially high default product in order to force ratepayers to shop." OPC argues that the District should, instead, "focus on having the lowest possible cost for SOS customers." OPC concludes that Pepco "has failed to demonstrate that the adder is needed" and that the adder is both "unnecessary and contrary to the aim of low-cost default service."<sup>137</sup>

122. **Pepco Reply.** Pepco believes the adder should remain as is. Pepco states that the adder is a pass through to all distribution customers and that Pepco "does not retain any portion of

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<sup>134</sup> RESA's Reply Comments at 12.

<sup>135</sup> GSA's Reply Comments at 2-3. GSA's Reply Comments were filed in 2013. Thus, GSA's references to RESA's Comments are references to RESA's 2013 Comments which have been superseded by RESA's 2016 Comments. See n.13 *supra*.

<sup>136</sup> OPC's Reply Comments at 5-6 (internal citations omitted).

<sup>137</sup> OPC's Reply Comments at 6.

the revenues collected through the adder.” Pepco favors “retaining the adder in order to promote the competitive market.” Pepco reiterates its belief that, without this adder, the SOS rates would be below the competitive rates.<sup>138</sup>

123. Pepco notes that “Direct Energy agrees that there should be an adder but expresses concern that the current adder does not fully account for SOS costs because it argues that some SOS costs are paid by distribution customers, thereby creating subsidies, and advocates for a fully allocated cost of service study to reallocate costs from the distribution business to the SOS business.” Pepco asserts that Direct Energy fails to realize that “the adder does not account for any SOS costs but rather is returned to *all* distribution customers, including those on third-party supply.” Pepco states that “non-SOS customers are the beneficiaries of the adder, and the adder is returned in a competitively neutral fashion.” Pepco concludes that the “adder is not intended to be representative of actual costs but, instead, is intended to allow competition to grow by ensuring that SOS rates were not prohibitively low.”<sup>139</sup>

124. Pepco also argues that OPC, without citing to any authority, asserts that “the adder should be eliminated because it was intended to cover suppliers’ marketing costs.” Pepco, by contrast, states that the Commission did not “tie the adder to marketing costs.” The purpose of the adder, Pepco insists, was instead established by the Commission “to place potentially competing services on a par with one another’ and that inclusion of an adder allows SOS to provide a safety net service without impeding the competitive market.” Pepco concludes that “[t]he same logic holds today”, and that “[t]he adder promotes competition and should be retained.”<sup>140</sup>

### **DECISION**

125. The adder is a part of the Administrative Charge which recovers Pepco’s incremental costs to conduct the SOS bidding, charge offs due to uncollectible expenses, collection to provide cash working capital, the margin, and true-ups to adjust for past over or under collections.<sup>141</sup> Any revenue collected from the SOS adder is returned to all distribution customers through the Administrative Credit. 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. In approving the adder in 2004, the Commission concluded that:

Absent an adder, SOS rates would likely be below what the market for competitive electricity supply will demand. Therefore, the adder places SOS on par on a rate basis with competitive electricity supply in a way that meets the 1999 Act’s

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<sup>138</sup> Pepco’s Reply Comments at 11.

<sup>139</sup> Pepco’s Reply Comments at 11-12 (citations omitted, emphasis in original).

<sup>140</sup> Pepco’s Reply Comments at 12 (citations omitted).

<sup>141</sup> See generally Order No. 13268. “The adder consists of the fixed overall Administrative Charge minus incremental costs, uncollectible costs and the margin.” Order No. 13268, ¶ 72. Pepco explained further that “competitive electricity suppliers will incur customer acquisition and customer care costs that the Company will not incur as the SOS provider.” Order No. 13268, ¶ 73.

mandate that SOS not impede the development of a competitive retail market and allows this service to retain its backstop nature.<sup>142</sup>

126. While Pepco and others contend that maintaining the adder *may* contribute increased competition in the retail market in the District, we are no longer convinced that the adder is necessary as “not to impede the development of a competitive retail market.” Initially our market monitoring report reveals that there are currently **29** active third party suppliers serving residential electric customers in the District (and **36** active suppliers serving commercial customers) which tends to demonstrate that the market is competitively robust.<sup>143</sup> While the Company acknowledges there are no Pepco costs actually contained in the adder,<sup>144</sup> NEM, RESA, and GSA’s support for maintaining the adder seems to rely on the misconception that the adder accounts for costs that are paid for by distribution customers that are related to SOS such as call centers and advertising. AARP, Direct Energy, and OPC support eliminating the adder primarily for the reason that there are no actual costs for Pepco rather the adder is a hypothetical equation which increases SOS rates.<sup>145</sup> We agree with OPC that “most residential ratepayers remain on SOS,” and, therefore, “the adder has merely led to higher bills for most ratepayers.”<sup>146</sup> We also agree that despite the fact that Pepco does not retain but returns the adder funds to both SOS and non-SOS customers through distribution rates, the adder “effectively subsidizes non-SOS customers at the expense of SOS customers,” since money is collected only from SOS customers. Thus removing the adder will lower costs for SOS customers and eliminate a subsidy going to retail shopping customers from SOS ratepayers. Removing the adder will have the additional benefit of simplifying the auditing of Pepco’s rates by eliminating the Administrative Credit calculation which the Commission has found to be confusing and difficult to audit.

127. The residential adder itself is about 0.28 mills or \$0.00028 per kWh for Residential Customers or under 0.4 percent of the SOS price to compare rate<sup>147</sup> which amounts to 19 cents-a-month for the average residential customers with an average bill of \$ 81.00.<sup>148</sup> Thus removing the adder will lower the SOS rates slightly. Moreover, there is no evidence to suggest that this small

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<sup>142</sup> Order No. 13268, ¶ 107.

<sup>143</sup> Pepco’s June 15, 2017 PEPEMMR.

<sup>144</sup> Pepco’s Reply Comments at 11-12 (citations omitted, emphasis in original).

<sup>145</sup> Pepco’s Reply Comments at 11-12 (citations omitted, emphasis in original).

<sup>146</sup> With respect to other nearby jurisdictions, Maryland has had an adder for Pepco since it began SOS, while Delaware also uses wholesale SOS model but has never had an adder. *See generally* PSC Docket No. 04-391, *In the Matter of the Provision of Standard Offer Supply to Retail Consumers in the Service Territory of Delmarva Power After May 1, 2006*, Order No. 6746, rel. Oct. 11, 2005. Also *see* MD Pepco’s recent administrative credit--[http://www.pepco.com/uploadedFiles/wwwpepco.com/Content/Page\\_Content/Tariff\\_Repeats/Pepco%20MD%20Admin%20Credit.pdf](http://www.pepco.com/uploadedFiles/wwwpepco.com/Content/Page_Content/Tariff_Repeats/Pepco%20MD%20Admin%20Credit.pdf). We notice, however, the Maryland utility Baltimore Gas and Electric Company (“BGE”) defines its adder differently. BGE’s adder includes unbundling components of the utility such as billing costs. *See generally* Case No. 9221, *In the Matter of a Request by Baltimore Gas and Electric Company for Recovery of Standard Offer Service Related Cash Working Capital Revenue Requirement*, Order No. 87891, rel. Nov. 17, 2016.

<sup>147</sup> *Formal Case No. 1017*, Pepco’s Revised Attachment A through E and Associated Work Papers, at Attachment C, p.1, and Attachment D, p. 1, filed Feb. 6, 2017.

<sup>148</sup> \$0.00028/kWh times 675 kWh = 19 cents.



extra amount of the adder is enough to help competitive electricity suppliers compete more effectively with SOS. Accordingly, we direct Pepco to remove the adder from SOS rates beginning with June 1, 2018, to May 31, 2019, service year.

**D. Should the SOS Administrator continue to be compensated for the costs of administrating SOS through a margin that is calculated on a volumetric, per kilowatt hour charge basis or instead be paid on an annual fixed-cost basis? Is a volumetric, per kilowatt hour charge consistent with the goal of energy efficiency? If the provider is paid on a fixed annual basis, how much should they receive and how should this charge be split amongst Pepco's rate classes? Specifically, how much of a return/profit should the SOS Administrator receive above its costs? Should the margin be fixed at a 3-year historical average? What are the reasonable options?**

128. **AARP.** AARP asserts that, with respect to “the Administrative Charge that currently exists,” it “is not aware of any additional costs that Pepco would incur for ‘administrating SOS’ and that would need to be collected through a volumetric or any other mechanism.” In addition, AARP opposes “the artificial increase in SOS rates to reflect hypothetical costs or costs that have not been properly documented as incremental to the SOS wholesale market contract price.”<sup>149</sup>

129. **Direct Energy.** If the current wholesale model is retained, Direct Energy is concerned that the method of compensation incentivizes Pepco to keep SOS load high and believes a competitive bid process should be used to get a new company to replace Pepco as the SOS Administrator. Direct Energy states that bids in this process should include incentives to move customers off the SOS service. Direct Energy asserts that the “SOS Administrator should be provided incentives to move customers to competitive retail supply in a manner similar to how Energy Efficiency or Demand response resources are compensated – have less SOS load, get paid more.”<sup>150</sup>

130. **ExGen.** ExGen asserts that the “Administrative Charge is properly captured through a volumetric calculation, which is administratively easier to manage by both retail suppliers and SOS suppliers.” ExGen claims that a volumetric margin makes it easier to make price comparisons and “would properly capture increased costs that the SOS provider incurs when a large number of customers are on SOS.”<sup>151</sup>

131. **OPC.** OPC asserts that, “before determining the proper rate design for the administrator charge, the cost of SOS service should be determined, measured, and verified.” OPC believes that, absent “this information,[the Commission] risks exposing consumers to unreasonable and burdensome costs for which they should not be held responsible.” OPC further argues that “the administrator cost should be recovered on a fixed rather than volumetric charge”,

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<sup>149</sup> AARP’S Comments at 5.

<sup>150</sup> Direct Energy’s Comments at 19-20.

<sup>151</sup> ExGen’s Comments at 6.

noting that the “level of effort for procuring service does not increase linearly with the level of energy procured.” OPC states that the administrative charge “should be cost-based” and that the “administrator should not receive a return or profit on its administrative costs.”<sup>152</sup>

132. **Pepco.** Pepco argues that it should continue to be compensated for the costs “associated with the administration of SOS” under the current volumetric methodology.<sup>153</sup>

133. **RESA.** RESA notes that transitioning to a retail model would eliminate the margin. RESA argues that a “margin that is calculated on an annual fixed-cost basis, including a margin that is collected from customers via a customer charge, might make comparison shopping more difficult, confuse customers, and skew development of a competitive market.”<sup>154</sup>

134. **WGL Energy.** WGL Energy provided no comments on this question with respect to the wholesale SOS model.

135. **GSA Reply.** GSA asserts that the Administrative Charge should continue to be collected on a volumetric basis.<sup>155</sup>

136. **OPC Reply.** OPC “agrees with WGL and Direct Energy that the charge should be collected based on the fixed costs to administer the program.” OPC asserts that “[t]his is more reasonable than a throughput-based cost recovery mechanism.”<sup>156</sup>

137. OPC states that “a fixed-cost charge allows ease and better understanding by consumers.” In addition, OPC believes that a “fixed-cost charge will also facilitate energy efficiency or conservation because, unlike the volumetric charge, it is stable, does not vary with changes in energy usage and consumers will be able to see more clearly on their monthly bill how making adjustments in their electricity usage can reduce their energy expenses.” OPC also asks that “the Commission find ways in which charges to administrate the SOS can be consolidated with components of the Administrative Charge.” OPC believes that such a change “will facilitate easier billing, minimize costs and permit easier auditing of cost[s] incurred.”<sup>157</sup>

138. In addition, OPC raises the concern that “it is unclear whether or not elements of this margin were captured by the Administrative Charge.” If that is the case, OPC asks that “this component of SOS should be eliminated.”<sup>158</sup>

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<sup>152</sup> OPC’s Comments at 9.

<sup>153</sup> Pepco’s Comments at 7.

<sup>154</sup> RESA’s Comments at 17.

<sup>155</sup> GSA’s Comments at 3.

<sup>156</sup> OPC’s Reply Comments at 26 (citation omitted).

<sup>157</sup> OPC’s 2013 Reply Comments at 26.

<sup>158</sup> OPC’s 2013 Reply Comments at 26.

139. **Pepco Reply.** Pepco argues that it should continue to “receive a margin that is recovered through a volumetric charge” and that a “volumetric charge would more accurately reflect the changing costs incurred by the SOS provider.”<sup>159</sup>

140. In addition, Pepco takes issue with Direct Energy’s claim that “the volumetric basis for calculating the Administrative Charge incentivizes the SOS Administrator to keep volume high and, therefore, would have a negative impact on customer participation in the competitive market”, asserting that “Direct Energy’s argument is undercut by the facts.” Specifically, Pepco notes that commercial customers “provide the highest volume supply for retail suppliers.” Pepco argues that if it were “incentivized to keep SOS customers due to the volumetric Administrative Charge, then the biggest benefit to Pepco would be to keep commercial customers, and one would expect to see the lowest level of shopping among those customers.” Instead, Pepco observes that, “since the competitive [electricity] market was formed, a significant amount of commercial customer volume has moved away from SOS to the retail market, and Pepco has not promoted SOS supply to either commercial customers or residential customers.”<sup>160</sup>

141. Next, Pepco takes issue with OPC’s claims that “a fixed charge is more appropriate because of the level of effort for procuring service does not increase with the level of energy procured” and that the “per-kilowatt-hour charge results in an inappropriate margin for Pepco.” Pepco asserts that it’s “margin of 1.5 mils equates to a 2% return.” Pepco then cites to and provides testimony from a case in Maryland where their witness studied firms that provided a similar service to Pepco’s. Specifically, Pepco notes the witness looked at firms that handled transactions where they did not produce the products sold or keep the money received – similar to what Pepco does for SOS service. Pepco states that the witness found that such firms typically earn fees of two to ten percent of these transactions. Pepco believes that this shows that its administrative charge is, therefore, “reasonable.” In addition, Pepco notes that RESA states that “a fixed margin charge would make shopping more difficult, confuse customers, and skew development of a competitive market.” Pepco concludes that the “margin should continue to be calculated on a per-kilowatt-hour basis.”<sup>161</sup>

### **DECISION**

142. ExGen asserts that a volumetric charge is “administratively easier to manage”, makes it easy to make price comparisons, and “would properly capture increased costs that the SOS provider incurs”. ExGen does not, however, indicate why these assertions are true. Similarly, Pepco says that it should continue to be compensated on a volumetric basis but does not say why. Likewise, RESA says that a fixed charge “*might* make comparison shopping more difficult, confuse customers, and skew the development of a competitive market” but does not say why.<sup>162</sup> GSA supports continuing with the volumetric approach but also does not give any reasons why.

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<sup>159</sup> Pepco’s Reply Comments at 12 (citation omitted).

<sup>160</sup> Pepco’s Reply Comments at 13 (citations omitted).

<sup>161</sup> Pepco’s Reply Comments at 13-14 (citations omitted).

<sup>162</sup> Emphasis added.

143. The purpose of switching to a fixed charge would be to remove the incentive for Pepco to sell additional energy. Under the current mechanism, Pepco makes money for every kWh sold. Such a mechanism appears inconsistent with an overall regulatory scheme in the District which seeks to reduce electricity consumption and encourages the development of distributed generation and renewable energy to achieve a variety of public policy goals such as reducing pollution generally and greenhouse gas emissions in particular. In addition, as Direct Energy notes, the volumetric approach of compensation incentivizes Pepco to keep the SOS load high. OPC correctly observes that the “level of effort for procuring service does not increase linearly with the level of energy procured” and argues that a fixed charge should, therefore, be used instead. Based on the above, we direct Pepco to switch to an annual fixed charge system of compensation starting with the SOS service year beginning June 1, 2018. This change requires three supplemental determinations: 1) determining the overall level of compensation Pepco should receive, 2) determining how to divide it between the classes, and 3) determining how individual customers within each class are charged. For the overall compensation, we look at the values over the last seven years, shown in the table below:

**Pepco’s Compensation<sup>163</sup>**

	2015-16	2014-15	2013-14	2012-13	2011-12	2010-11	2009-10
Residential	\$2,703,591	\$2,772,184	\$2,743,674	\$2,689,886	\$2,785,328	\$3,112,121	\$2,926,877
Small Commercial	\$417,111	\$456,490	\$460,357	\$408,136	\$355,201	\$392,696	\$425,057
Large Commercial	\$2,914,062	\$3,195,487	\$2,536,906	\$2,502,762	\$2,611,279	\$3,055,652	\$3,530,477
HPS	\$71,170	\$12,241	\$21,602	\$70,584	\$15,289	\$2,530	\$3,130
Total	\$6,105,934	\$6,436,402	\$5,762,539	\$5,671,368	\$5,767,097	\$6,563,000	\$6,885,541

Over the last seven years, Pepco’s annual compensation ranged from \$5.67 million to \$6.89 million. Based on these values, we will allow Pepco to receive a compensation going forward equal to the average of the last three years, which is \$6,101,625. This new approach will be applied to Pepco’s 2018/2019 rate filing. At that time, the latest three years become 2014/2015, 2015/2016, and 2016/2017.<sup>164</sup> The new approach for computing the compensation will start for the June 2018 through May 2019 service year and be used each year thereafter.

144. Next, we determine how to divide payment to Pepco between the classes. Based on the table above, Residential customers have paid between 43 and 48 percent of total compensation over the past seven years while Large Commercial and Hourly Priced Service customers have paid between 44 and 51 percent.<sup>165</sup> Small Commercial customers have paid

<sup>163</sup> This information is from Pepco’s Annual Rate filings in *Formal Case No. 1017*, Attachment D. p. 2, over the past seven years filed on Feb. 6, 2017, Feb. 5, 2016, Feb. 4, 2015, Feb. 7, 2014, Feb. 5, 2013, Feb. 14, 2012, and Feb. 22, 2011.

<sup>164</sup> At the time of the 2018/2019 rate filing, we will be in the 2017/2018 service year, so the total compensation for that year will not yet be known.

<sup>165</sup> Based on the small size and volatility of load for the HPS class from year to year, we determine that it would be reasonable to group this class with Large Commercial customers.

between 6 and 8 percent of total annual compensation. In order to reflect the current customer mix, we elect to use the average of the most recent three years compensation in order to determine the split between classes. This works out to 45.0 percent for Residential customers, 7.3 percent for Small Commercial customers, and 47.7 percent for Large Commercial customers, based on the 2013/2014, 2014/2015, and 2015/2016 service years.

145. The manner in which Pepco should collect this is to take the compensation amount assigned to each customer class and divide it by the SOS kWhs expected to be sold in the upcoming service year. Current charges are 1.5 mills per kWh for Residential, 2.0 mills per kWh for Small Commercial, and 3.0 mills for Large Commercial.<sup>166</sup> A per kWh charge for rate payers is preferable to a fixed fee per customer as it incentivizes usage reduction on the customer's part. Additionally, a per kWh charge makes it easier for third party suppliers to compare their costs to those of Pepco.

146. Pepco should true-up this value each year in its annual rate filing. For example, if the fixed compensation amount is \$6.102 million, anything exceeding that or below that would be trued-up. Given Pepco's true-up has a year lag, Pepco should provide in its rate filing an estimate of what is anticipated for the year currently being served. That estimate along with the year being trued-up will provide the rate for the upcoming year. We will direct Pepco to file every two years, during the Biennial Review process, an assessment of the allocation level between classes.

147. Finally, as to OPC's contention that Pepco as the SOS Administrator should not receive a return or profit on its administrative costs, 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."<sup>167</sup>

148. The issue of what a reasonable profit is for Pepco to earn as SOS Administrator is not something that commenters addressed, other than OPC asserting that Pepco should receive no profit at all. This is a very important issue that we want interested persons to comment on. We will review this issue as well as the relationship between this return and cash working capital as part of the next Biennial Review which we will initiate in 2018.

**E. Should a peak load ceiling for Large Commercial SOS customers be established where Large Commercial users would be eligible only for hourly priced service? If a peak load ceiling is established, what should be the peak load ceiling?**

149. **Direct Energy.** If the current wholesale SOS model is kept, Direct Energy states that there should be a peak load ceiling at 100 kW and notes that Pennsylvania adopted this threshold as a matter of policy. Direct Energy asserts that a "load ceiling would help bidders better assess the risk of customer movement within a bid class." Specifically, Direct Energy argues that, if "large customers are in a class, the risk of their departure from SOS increases the risk premium

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<sup>166</sup> Using the most recent rate filings, this would have worked out to charges of 1.44 mills per kWh for Residential customers, 2.28 mills per kWh for Small Commercial customers, and 3.07 mills per kWh for Large Commercial customers.

<sup>167</sup> Order No. 13268, ¶¶ 62-71.

paid by all other customers in the class.” Direct Energy concludes, therefore, that implementation of “a load ceiling for fixed price SOS at 100 kW is in the public interest.”<sup>168</sup>

150. **ExGen.** ExGen states that any transition to an hourly-priced service threshold should ensure that no changes are made to existing SOS supply contracts. ExGen notes that such an administrative reduction in SOS load will change the make-up of the product initially bid on and will result in future bidders adding in additional costs to accept such regulatory risks in their bids. ExGen suggests that wholesale bidders may also “limit their participation in future SOS RFPs”, under this scenario.<sup>169</sup>

151. **NEM.** NEM notes that “[a] number of retail choice jurisdictions have implemented hourly pricing thresholds for Large Commercial consumers that have the buying sophistication and knowledge to utilize this information and also have the access to requisite metering technology.” NEM asks that “[t]he Commission adopt a similar threshold in the District, particularly pending Pepco’s exit from the SOS provider role. In addition, NEM provides the following examples of thresholds that other states have implemented: 500 kW in Pennsylvania, 600 kW in Maryland, and 400 kW in Illinois, except in ComEd’s territory where the threshold is 100 kW.”<sup>170</sup>

152. **NRG.** NRG proposes that a 100kW peak demand ceiling be set and that customers above that level be transitioned to hourly-priced services, starting with the upcoming RFP. NRG also notes that Pennsylvania has recently adopted a 100kW ceiling and that, to NRG knowledge, “there have been no problems raised by customers as a result.”<sup>171</sup>

153. **OPC.** OPC states that there should be a peak load ceiling for Large Commercial customers. OPC asserts that this ceiling “be established in a manner that would not result in unreasonable cost-shifting between customer classes.” OPC also asks that the level of the peak ceiling should be determined in an evidentiary hearing.<sup>172</sup>

154. **Pepco.** Pepco is opposed to the establishment of a peak load ceiling for Large Commercial customers. Pepco notes that only about 10 percent of the Large Commercial customers remain on SOS. Pepco observes that currently Large Commercial customers can choose between an alternative supplier, hourly-priced service, and SOS as “best meets their needs.” Pepco states that it is unclear if these customers would actually prefer hourly pricing “or whether it would discourage shopping.” Pepco also notes that forcing these customers off SOS would expose them to “spot market volatility.”<sup>173</sup>

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<sup>168</sup> Direct Energy’s Comments at 21-22.

<sup>169</sup> ExGen at 7-8.

<sup>170</sup> NEM’s 2013 Comments at 8.

<sup>171</sup> NRG’s Comments at 15-16.

<sup>172</sup> OPC’s Comments at 10.

<sup>173</sup> Pepco’s Comments at 8.

155. **RESA.** RESA recommends a peak load ceiling at 100kW, with hourly priced service being the only option for non-residential customers above this threshold. RESA argues that “hourly service promotes the development of retail competition”, “demand response programs and more efficient usage” which in turn promotes reliability, and that “all Pepco customers now have smart meters, making moving all customers >100 kW possible.”<sup>174</sup>

156. RESA notes that larger commercial customers are “sophisticated energy users and are able to understand and negotiate retail electricity contracts”, and that 89 percent of non-residential load is already served by retail suppliers. RESA asserts that this change will make for a more reliable system as customers will be able to react to hourly price signals. RESA concludes that the Commission should, therefore, “not hesitate to implement an hourly-priced SOS for customers 100 kW or greater.”<sup>175</sup>

157. In support of its position, RESA states that the Pennsylvania Commission concluded that customers larger than 100 kW were well-equipped to manage their costs in an hourly Locational Marginal Pricing default service environment and has made this change.<sup>176</sup>

158. **WGL Energy.** WGL Energy provided no comments on this question with respect to the wholesale SOS model.

159. **AOBA Reply.** AOBA asserts that “a peak load ceiling that would limit large commercial customers to hourly priced SOS is not necessary or appropriate given the maturity of the competitive supplier market.”<sup>177</sup>

160. AOBA asks that, if the Commission does impose a ceiling, the 12-month minimum stay provision should be removed in order to allow customers time to find a new retail supplier. Alternatively, AOBA requests that the Commission implement “a peak load ceiling that limits large commercial customers to hourly priced SOS should not occur until existing SOS commercial supply contracts have expired.”<sup>178</sup>

161. **GSA Reply.** GSA concurs with RESA that hourly priced service “should be the only default SOS for larger non-residential accounts.” GSA believes the peak load ceiling should be 100 kW, if Pepco has installed hourly meters for these customers. GSA asserts that, while “most non-residential accounts will continue to contract for third party supply underpricing terms that customers,” having hourly-priced service “as the default SOS option will encourage customers to understand that electricity prices are extremely time and weather sensitive.”<sup>179</sup>

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<sup>174</sup> RESA’s Comments at 17-18

<sup>175</sup> RESA’s Comments at 18 (citations omitted).

<sup>176</sup> RESA’s Comments at 18-19 (citations omitted).

<sup>177</sup> AOBA’s Comments at 1.

<sup>178</sup> AOBA’s Comments at 1-2.

<sup>179</sup> GSA’s Reply Comments at 4.

162. Additionally, GSA asserts that there will only be demand response benefits if most non-residential customers remain on hourly-priced service or “select a form of time-of-use pricing from their retail supplier.” GSA notes that a tangential benefit to moving to hourly priced service as the default SOS for these commercial customers is “that Pepco will directly pass-through capacity and transmission charges on SOS bills.” Specifically, GSA observes that because “most customers never see capacity and transmission obligation information on their Pepco bills, they are often not aware of what capacity and transmission obligations are and that those pricing elements comprise a significant portion of the total electric bill in a constrained delivery zone such as Pepco[’s].” GSA concludes that “Pepco should educate customers as to what capacity and transmission obligations are and that Pepco be required to include the customer’s capacity and transmission obligations on each Pepco bill.”<sup>180</sup>

163. GSA, however, is concerned about whether hourly-priced service customers will actually know what the prices are in time to adjust usage. Specifically, GSA notes that most commercial customers on hourly-priced service “will not find out the ‘true cost of electricity’ until they get their bill the following month.” GSA, therefore, suggests that the Commission “work with Pepco and retail suppliers to develop an hourly pricing messaging system or information center for customers during the summer months so that non-residential customers have a resource to assist them in altering usage in response to price signals.”<sup>181</sup>

164. **OPC Reply.** OPC asserts that establishment of a load ceiling should “not cause reliability problems.”<sup>182</sup>

165. **Pepco Reply.** Pepco notes that WGL, RESA, and Direct Energy all “argue that customers over 100kW in demand should be placed on an hourly-priced service.” Pepco reiterates its opposition to a load ceiling. Pepco argues that Large Commercial customers currently have three options – to stay on SOS, move to hourly-priced service (which only 0.001 percent of customers currently take), or go to the retail market. Pepco does not think removing one of these choices is a good idea. Pepco states that customers “can evaluate their electricity needs” and “choose from a range that best meets their needs”, in contrast to “creating a peak load ceiling [that] would force a subset of large commercial SOS customers onto hourly-priced service, many of whom would not otherwise chosen hourly pricing.”<sup>183</sup>

166. Pepco argues that if “the Commission were to establish a peak ceiling,” the Commission should only do so after “undertaking a careful analysis”, noting that OPC has warned that “a peak load ceiling must be established in a manner that avoids unreasonable cost shifting between customer classes.” Pepco suggests that such an analysis would include looking at “the potential impact on customers, which may include an examination of the type of customers to be affected as well as the distribution of the number of customers over various ranges of peak loads and the total megawatt load associated with the ranges.” By contrast, Pepco notes that

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<sup>180</sup> GSA’s Reply Comments at 4-5.

<sup>181</sup> GSA’s Reply Comments at 5.

<sup>182</sup> OPC’s 2013 Reply Comments at 14.

<sup>183</sup> Pepco’s Reply Comments at 14-15.



“[a]rbitrarily selecting a peak load ceiling would have a diminishing effect on the size and number of blocks procured and potentially affect bid offer prices and presents the possibility of cost-shifting among customer classes.”<sup>184</sup>

### DECISION

167. RESA argues that establishment of a peak load ceiling will spur development of the competitive market by forcing larger customers – customers who are deemed sophisticated enough to properly manage their energy supply – onto an hourly-priced service. Rather than expose themselves to the risks associated with staying on hourly-priced service, these customers will presumptively, ultimately choose a competitive electric supplier. However, the percentage of Large Commercial load still on SOS is relatively small. Only about 10 percent of this load still takes SOS, while the other roughly 90 percent has already switched. RESA and other commenters note that Pennsylvania has established a peak load ceiling at 100 kW and that other states have established peak load ceilings. RESA also notes that moving customers above the ceiling to hourly-priced service will promote demand response programs and energy efficiency which in turn promotes reliability. Similarly GSA notes that moving customers above the ceiling to hourly-priced service “will encourage customers to understand that electricity prices are extremely time and weather sensitive.” Direct Energy, NEM, NRG, and OPC also support the establishment of a peak load ceiling, while ExGen, Pepco, and AOBA oppose establishing such a ceiling.

168. The establishment of a peak load ceiling would reduce the amount of Large Commercial supply bid out and could make the Large Commercial product less appealing to SOS suppliers, resulting in less competitive pricing. Generally speaking, smaller levels of supply bid out result in lower levels of competition.<sup>185</sup> In addition, Pepco correctly observes that currently Large Commercial customers can choose between an alternative supplier, hourly-priced service, and SOS as “best meets their needs.” Pepco also notes that forcing these customers off SOS would expose them to “spot market volatility.” While RESA and GSA correctly observe that demand response, energy efficiency, reliability, and an understanding of the time and weather sensitivity of electricity pricing would be promoted, at least to some extent, by moving to a peak load ceiling, customer choice would be undermined. The reality is that there are some Large Commercial consumers who, for whatever reasons, prefer SOS service. The additional promotion of the retail market and the other marginal benefits of forcibly moving these customers to hourly-priced service is simply not worth the price of undermining customer choice by eliminating SOS as a service option and exposing these customers to the potential risk of rate shock that taking hourly-priced service entails. Large Commercial customers should participate in the retail market by choice not through coercion by establishing a peak load ceiling. Based on the above, we are not persuaded that a peak load ceiling should be established at this time.

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<sup>184</sup> Pepco’s Reply Comments at 15 (internal citation omitted).

<sup>185</sup> For example, the October 2016 Maryland SOS RFP saw between 7 and 10 bidders offer Residential supply for BGE and Pepco (the largest two Maryland utilities) compared to 4 to 6 bidders for Delmarva and Potomac Edison. See the Direct Testimony of James Letzelter, Case No 9056, October 20, 2016. See Maryland Public Service Commission, *In the Matter of the Commission’s Investigation Into Default Service for Type II Standard Offer Service Customers*, Case No. 9056, Direct Testimony of James Letzelter, filed Oct. 20, 2016.

**F. Currently, the SOS provider procures one-year SOS electricity contracts for the Large Commercial customer load and three-year SOS electricity contracts for the Small Commercial and Residential customer load. Should the length of these contracts be changed? If so, why?**

169. **AARP.** AARP believes that Pepco should procure whatever combination of default service contracts that will result in the lowest and most stable costs for Residential and Small Commercial customers. While AARP could support the idea of procuring contracts of different lengths, it would not support any proposal that only involves short-term market prices. AARP asserts that before any changes are made, research should be conducted to ensure the changes would result in lower and stable prices. AARP also notes that both New Jersey and Delaware procure one-third of their three-year SOS contracts each year and that Maryland has a similar laddered process to avoid price volatility.<sup>186</sup>

170. **Direct Energy.** If the Commission chooses to continue with a wholesale model, Direct Energy believes that the three-year contracts should be replaced with six-month contracts. Direct Energy asserts that, with “the abundance of natural gas available in the US”, “the U.S. Energy Information Agency predicting relatively stable and low energy pricing going forward”, “the deployment of demand response resources in and around DC”, and “the growth of distributed energy resources such as rooftop solar panels”, “[a]ll signs in the electricity market are pointing towards lower and less volatile costs – both in the long-term and in the spot markets.” Direct Energy, therefore, concludes that “there is no need for the SOS contracts to span three years”. Direct Energy further argues that reducing the contract terms to six months “would be beneficial to both the retail market and the wholesale markets, ultimately reducing the costs to end-users”, given the reduced regulatory risk associated with six-month contracts. Direct Energy, moreover, asserts that “more frequent, lower duration contracts allow the SOS retail prices to more closely reflect current market conditions, allowing competitive supply companies to offer more competitive products from day to day.”<sup>187</sup>

171. **ExGen.** ExGen believes the current contract lengths should stay as they are. ExGen claims that potential bidders are comfortable with the structure as evidenced by participation in the process.<sup>188</sup>

172. **NEM.** NEM argues that “the efficiency of the retail market could be improved if commodity pricing signals followed the market more closely rather than the pricing peaks and valley that do not reflect current market conditions and are the result of the utility SOS procurements.” NEM further asserts that “[t]he current length of SOS electricity contracts contributes directly to these pricing peaks and valleys.” NEM believes that consumers are “harmed by utility long-term pricing that bears little resemblance to market conditions.” Specifically, NEM argues that the utility will either “have unnecessarily locked in an above market rate, resulting in

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<sup>186</sup> AARP’s Comments at 6.

<sup>187</sup> Direct Energy’s Comments at 22-24.

<sup>188</sup> ExGen’s Comments at 8 (citations omitted).

higher prices for ratepayers over a prolonged period, or the utility will lock in a below market rate that distorts the value of competitive market offerings.”<sup>189</sup>

173. NEM asserts that “[w]hen utilities are permitted to lock in rates that are below market, consumers may experience rate shock when those contracts expire and rates need to be adjusted upward, possibly dramatically.” NEM, therefore, ask that “SOS contract lengths should be frequent enough to avoid putting consumers in the position of either paying above market rates for energy, or alternatively, facing rate shock.” In addition, NEM notes that consumer price comparisons of competitive electricity supplier offerings are “undermined when there is a lack of market-based utility rates.”<sup>190</sup>

174. In conclusion, NEM suggests that, “during Pepco’s transition from the SOS provider role, large commercial and industrial customers who can be billed hourly should receive an hourly, time of day rate.” For small commercial and residential consumers, NEM asks that “SOS pricing should be a monthly-adjusted, market-based commodity rate to which should be added the full costs of providing 24/7 no-notice last resort commodity service.”<sup>191</sup>

175. **NRG.** NRG thinks the Residential product should be shortened to two years to allow for an end date of May 2019 and a transition to a retail market beginning in June of 2019. NRG feels the one-year product for Large Commercial customers is “reasonable” as it facilitates a transition to the retail market.<sup>192</sup>

176. **OPC.** OPC recommends shortening the three-year contracts for Residential and Small Commercial customers to two years, arguing that “[t]hree year contracts increase bidders’ market risks and, therefore, likely lead to a higher risk premium included in the bids”, and that “[t]he additional risk is seen in fuel and electricity futures markets where trading is typically thin to non-existent going out three years.”<sup>193</sup>

177. **Pepco.** Pepco recommends keeping the contract lengths as they are. Pepco argues that “[m]aintaining a one-year contract term continues to make the contracts for large commercial customers more reflective of market conditions while reducing the risk exposure of wholesale suppliers.” Pepco also notes that the “‘laddered’ three-year contracts simultaneously balance the need for reasonable fixed-price SOS service, mitigate against excessive volatility and provide small commercial and residential customers the opportunity to shop for an alternate supplier.”<sup>194</sup>

178. **RESA.** If the Commission decides to continue with the wholesale SOS model, RESA “recommends that the Commission transition the SOS procurement structure to enable the

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<sup>189</sup> NEM’s 2013 Comments at 8.

<sup>190</sup> NEM’s 2013 Comments at 8.

<sup>191</sup> NEM’s 2013 Comments at 8.

<sup>192</sup> NRG’s Comments at 14-15.

<sup>193</sup> OPC’s Comments at 10.

<sup>194</sup> Pepco’s Comments at 8-9.

further development of the competitive retail market by implementing more frequent procurements of shorter term products held closer to the delivery date, rather than continuing the current SOS structure.” RESA argues that this transition will result in “more market reflective SOS rates, which will benefit customers by ensuring them continued access to a variety of innovative energy products tailored to meet their individual needs.”<sup>195</sup>

179. RESA argues that the current SOS structure, where “residential and small commercial customers pay for electricity based on a three-year weighted average, which can be significantly higher or lower than current market prices for extended periods of time”, “serves as a barrier to robust, sustainable retail competition.” RESA asserts that, without “a strong competitive market, customers are denied access to a diversity of value-added products and services that meet their individual needs....”<sup>196</sup>

180. RESA states that this “lack of a vibrant customer choice may not seem like a significant problem when SOS rates are low compared to the market price”. RESA notes that this “will be a problem, however, when SOS rates are high compared to the market price and those same customers have few or no competitive options to lower their electricity costs or to experience other benefits from the competitive market place.” RESA argues that this “has been the case for mass market customers in D.C. during the past few years.” RESA asserts that a proven way “to ensure customers have consistent access to a broad range of products and services from electric suppliers is to price SOS in a manner that avoids a sustained divergence from underlying wholesale market prices.” RESA believes that this goal “can be achieved by ensuring that SOS rates are more market reflective through the procurement of shorter term supply contracts and by ensuring that the lag time between procurement and delivery is short.” RESA notes that the “longer the lag between energy procurement and delivery, the more likely the SOS rate will diverge from current market prices at the time of delivery and the larger the risk premiums included in those rates will be.”<sup>197</sup>

181. RESA submits that to “overcome these negative effects of the current SOS procurement structure and promote the development of a sustainable, competitive retail market in D.C.”, “that the Commission direct Pepco to begin a transition for SOS customer classes (less than 100 kW) that will ultimately end with quarterly SOS rates.”<sup>198</sup>

182. **WGL Energy.** WGL Energy notes that, under its retail market proposal, “prices will be adjusted quarterly based on a market reference benchmark plus an adjustment factor.” WGL Energy states that as this “price will be adjusted quarterly” “the selection of bids dates no

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<sup>195</sup> RESA’s Comments at 20.

<sup>196</sup> RESA’s Comments at 20.

<sup>197</sup> RESA’s Comments at 20-21.

<sup>198</sup> RESA’s Comments at 20-21.

longer carries the extended impact that is associated with 3 year contracts.” Thus, WGL Energy does not answer the question the Commission posed.<sup>199</sup>

183. **AARP Reply.** AARP concurs with Pepco on retaining the current residential customer contract terms. AARP asserts instead that “the purpose of SOS is to provide a diverse mix of contracts that will ensure a reasonable degree of price stability and that will ensure reasonable and low cost essential electricity service.” In addition, AARP argues that, “[c]ontrary to the assertions of RESA and NEM, when acquired through a competitive and transparent process, the SOS price is a reflection of the ‘market’ price for the contract terms solicited.” AARP observes that “[t]he ‘market’ is not merely a reflection of short-term contract prices, but rather a reflection of a wide range of contract options and services available in the wholesale market.”<sup>200</sup>

184. AARP asserts that, before considering changes to the SOS contract mix, “the Commission should undertake a fact-based approach and analysis of any other potential procurement proposals to determine if there is any basis for a conclusion that changes would result in lower cost to residential customers.” AARP argues that “[t]he purpose of the SOS price and portfolio should not be designed to benefit retail suppliers”<sup>201</sup>

185. **ExGen Reply.** ExGen, in response to Direct Energy, disagrees that if the wholesale model is retained a procurement for 100 percent of the load should be held every six months. ExGen is concerned that this would expose SOS customers to market volatility. In support of its position, ExGen notes that the “existing procurement process insulates customers from the volatility of any given procurement period through a structure which bids out only a portion of Pepco’s load for three-year periods (and one-year periods for large [Commercial and Industrial customer] supply) at each procurement cycle.” ExGen concludes that the “decade long successful track record of the SOS RFP process has instilled confidence in this process resulting in efficient pricing in the RFPs.”<sup>202</sup>

186. **GSA Reply.** GSA generally agrees with RESA that “the length of SOS contracts for residential and small commercial customers should be shortened as well as the procurement lead times for SOS contract actions,” but takes no position on how frequently residential and small commercial customers’ SOS rates should change.<sup>203</sup>

187. **OPC Reply.** OPC first notes that “Pepco defends the current three-year, laddered contracts for small commercial and residential customers as a way to ‘mitigate against excessive volatility.’” OPC submits that “volatility and risk are priced in[to] the SOS bids – so the contracts include a premium that SOS customers pay, but no quantitative assessment (retrospective or prospective) has been made concerning whether or not the premiums are excessive, or whether

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<sup>199</sup> WGL Energy’s Comments at 10

<sup>200</sup> AARP’s Reply Comments at 7-8.

<sup>201</sup> AARP’s Reply Comments at 8.

<sup>202</sup> ExGen’s Reply Comments at 5.

<sup>203</sup> GSA’s Reply Comments at 6.

and to what degree the customers value price stability.” OPC asserts that currently “ratepayers are paying a premium to have stable prices in order to account for the market risks of the bidder,” as three-year contracts are inherently riskier and as a result could be more expensive than two-year contracts. OPC, therefore, recommends that, if the Commission stays with the wholesale model for SOS, the contract term for small commercial and residential customers should be two rather than three years.<sup>204</sup>

188. In addition, OPC asserts that “[t]wo year contracts would constitute an improvement on the current program because they would facilitate increased flexibility for residential consumers to respond to increasing and decreasing market prices through adjusting their energy usage while also limiting their exposure to price volatility.”<sup>205</sup>

189. OPC asserts that using one-year contracts could lead to adverse consequences such as “undermining participation of potential bidders” and exposing small commercial and residential consumers to the effects “of extreme price volatility.” OPC believes that continuing with three-year contracts “might not galvanize desired price signal responsiveness among consumers.”<sup>206</sup>

190. **Pepco Reply.** Pepco reiterates that contract term lengths should remain unchanged. Pepco notes that the “current process has resulted in robust supplier participation, is well designed, and is stable.”<sup>207</sup>

191. Pepco also asserts that “[m]aintaining a one-year contract term continues to make the contracts for large commercial customers more reflective of market conditions while reducing the risk exposure of wholesale suppliers,” while “pricing of the one-year SOS contract continues to serve as useful input for customers to compare similar term price offers from alternative suppliers and also provides support to customer’s annual budget planning.” Pepco notes that the one-year contracts also provide large commercial customers with “the opportunity to shop for an alternate supplier.”<sup>208</sup>

192. Pepco argues that the “‘laddered’ three-year contracts simultaneously balance the need for reasonable fixed-price SOS service, mitigate against excessive volatility, protect against rate shock[,] and provide small commercial and residential customers the opportunity to shop for an alternate supplier.”<sup>209</sup>

193. Pepco notes that OPC, WGL Energy, RESA, and Direct Energy all argue that the contract term for small commercial and residential customer supply should be shortened. Pepco argues that as the contract length shortens so does the market volatility and potential for rate shock.

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<sup>204</sup> OPC’s Reply Comments at 7 (citation omitted).

<sup>205</sup> OPC’s 2013 Reply Comments at 15.

<sup>206</sup> OPC’s 2013 Reply Comments at 15.

<sup>207</sup> Pepco’s Reply Comments at 15-16.

<sup>208</sup> Pepco’s Reply Comments at 16.

<sup>209</sup> Pepco’s Reply Comments at 16.

Pepco believes that, as “a safety net service, SOS should provide protection against market volatility for those customers who do not have an appetite for risk.” Pepco, therefore, argues that “SOS contracts should not be so short that they begin to reflect market volatility and lead to potential rate shock.” Pepco concludes that OPC’s suggestion of two-year contracts may be worth considering, while six-month or quarterly contracts are “too short and would create too much volatility for a safety net service.”<sup>210</sup>

### DECISION

194. If the SOS wholesale model is kept, Direct Energy, OPC, and RESA all advocate for shorter contract terms for residential and small commercial customers. Direct Energy and RESA argue that this change will make the supply portfolio more reflective of market conditions, while OPC argues that this change will lower the risk premiums embedded in contracts. Direct Energy and RESA both believe shortening SOS contract terms will allow retail electricity suppliers to compete more effectively against SOS in the residential and small commercial markets. RESA specifically argues that the current, three-year contract structure can result in SOS service being priced significantly higher or lower than “the market price”, stifling the ability of the retail electricity suppliers to compete. By contrast, AARP argues that, “when acquired through a competitive and transparent process, the SOS price is a reflection of the ‘market’ price for the contract terms solicited.” AARP observes that, “[t]he ‘market’ is not merely a reflection of short-term contract prices, but rather a reflection of a wide range of contract options and services available in the wholesale market.” We are persuaded by AARP that it is a fallacy to assume that the short term market price is *the* market price. In addition, while RESA argues that the three-year contract structure inhibits the ability of the retail suppliers to compete, RESA provides no credible evidence in support of this assertion.

195. Under the current SOS structure, Pepco only replaces one third of its residential and small commercial supply portfolio in each year. This helps limit volatile rate increases or decreases since the remaining two-thirds of the supply portfolio is already under contract. For example, if the new supply is 10 percent more expensive than the expiring contracts the resulting rate increase will be limited to around 3.33 percent.<sup>211</sup> This laddered portfolio structure is fairly common across PJM states. Maryland uses two-year contracts, replacing 50 percent of the residential SOS supply portfolio each year. New Jersey uses a three-year contract period for residential service, just as the District does. Ohio utilities use a mix of contract lengths, but they generally try and replace one-third of their supply portfolio each year with contracts ranging up to three years in length.

196. Regarding OPC’s suggestion of using two-year contracts to serve residential and small commercial load, as is done in Maryland, we have not observed any noticeable decrease in Maryland bid prices based on their shorter contract durations. This does not mean there is no

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<sup>210</sup> Pepco’s Reply Comments at 16-17.

<sup>211</sup> Note that this is a simple example. Actual rate changes are based on other factors beyond the price difference between new and expiring SOS contracts.

difference in risk premium between two- and three-year contracts, only that the difference is so small that it cannot be observed.

197. It is, however, certain that shortening contract length would increase price volatility. Going back to the example above, if we replace 50 percent of the load with contracts that are ten percent more expensive than the expiring contracts we could see a rate increase of around five percent instead.

198. It is generally the case when the prices are going up, the rolling average and longer-term contract will lead to lower prices. Conversely, when prices are coming down, the short-term contract will lead to lower prices. However, after we look into the past pricing patterns, there is a mix of “increasing trend” versus “decreasing trend” in pricing, which is caused by market shifts, not the length of the contract. Without empirical evidence that the result will be better if we change the length of contract terms, the Commission is not persuaded that a change in the length of contract terms is needed at this point.

199. While no one has the capability to perfectly forecast future electricity prices, it is a fact that shorter-term contracts would be more volatile. Avoiding price volatility and rate shocks which would adversely affect the District’s SOS ratepayers, particularly our moderate and low-income residents, is a critical concern. Accordingly, the Commission declines to shorten the current contract lengths for either Large Commercial or Small Commercial and Residential customers at this time.

**G. Currently, the bidding for SOS is scheduled on an annual basis with two bid days, one in December and one in January. Should the bidding be scheduled differently and if so, what schedule should be used for the bidding? For example, there could be a larger spread between bid dates, as in Maryland where they procure most residential SOS in October and April.**

200. **Direct Energy.** If the Commission retains the current wholesale SOS model, Direct Energy believes the auctions should be spread out so that that Pepco is procuring 100 percent of its wholesale requirements every six months.<sup>212</sup>

201. **ExGen.** ExGen observes that the current structure, of two bids days per year, one in December and one in January, “has worked well and continues to be acceptable.” ExGen notes that if the Commission does want to make changes that it should be careful that the new bid days do not overlap with other jurisdiction’s procurements.<sup>213</sup>

202. **OPC.** OPC states that it “does not currently oppose a continuation of the current bidding schedule.” OPC is, however, “amenable to further evidence and review of the possible benefits of an alternative bidding schedule.”<sup>214</sup>

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<sup>212</sup> Direct Energy’s Comments at 25

<sup>213</sup> ExGen’s Comments at 8-9.

<sup>214</sup> OPC’s Comments at 11.



203. **Pepco.** Pepco states that the bidding schedule should not be changed. Pepco suggests that if the Commission wishes to change the schedule it should minimize overlap with other jurisdictions' bid days "to ensure maximum participation by potential bidders", not have bid days "too far away from the delivery period to cause suppliers to increase risk premiums in their bids prices," and "allow for new suppliers to participate in the PJM Auction Revenue Rights ("ARR") allocation process" in February.<sup>215</sup> Pepco notes that the "inability to participate in the ARR may lead suppliers to add a risk premium to their bid prices."<sup>216</sup>

204. Finally, Pepco cautions that, if the bid days were moved earlier in the year, the schedule for the filing of the SOS working group's documents, the Commission's approval of these documents, and "the expected date for release of the RFP website" would need to be adjusted as well.<sup>217</sup>

205. **RESA.** RESA recommends that, if "the Commission retains its current wholesale SOS procurement structure," the procurements should be held as close as possible to the delivery period so the rates are more "market reflective." RESA notes that the "Pennsylvania Commission has recognized the benefits of shorter procurement lead times" as being "more reflective of current market conditions." RESA, therefore, recommends that the SOS procurements should occur no more than 60 days from the start of the delivery period.<sup>218</sup>

206. **WGL Energy.** WGL Energy provided no comments on this question with respect to the wholesale SOS model.

207. **GSA Reply.** Regarding Residential and Small Commercial customer classes, GSA concurs with RESA's comments.<sup>219</sup>

208. **Pepco Reply.** Pepco believes that the SOS bidding schedule should not change. Pepco notes that the current bidding schedule and structure "of 1/3 overlapping 3-year contracts has served to insulate Pepco's SOS customers from significant annual price swings". In addition, Pepco asserts that "the current 3-year overlapping full requirements contracts have resulted in SOS supply prices that have been declining since 2010, even through extreme weather events such as the 2014 Polar Vortex...."<sup>220</sup>

209. In addition, Pepco notes that "[b]oth RESA and Direct Energy would shorten all contract terms to 60 days and six months, respectively, to make SOS rates more reflective of the market." Pepco observes that "short-term contracts at frequently changing prices reflect only the

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<sup>215</sup> ARR are entitlements allocated annually to firm transmission service customers that entitle the holder to receive an allocation of the revenues from the annual firm transmission rights auction. ARR are another hedging mechanism available to PJM's transmission service customers.

<sup>216</sup> Pepco's Comments at 9-10.

<sup>217</sup> Pepco's Comments at 10.

<sup>218</sup> RESA's Comments at 22 (citation omitted).

<sup>219</sup> GSA's Reply Comments at 6.

<sup>220</sup> Pepco's Reply Comments at 17.

short-term element of the market and so introduce significant volatility and uncertainty to customers.” Pepco asserts that “the nature of SOS as a safety net service requires longer contract terms to insulate SOS customers from volatility.” Pepco concludes that “[t]he laddered three-year contact structure should not be changed.”<sup>221</sup>

210. Pepco also believes that the two-bid days in December and January schedule should remain unchanged. Pepco reiterates its assertion in its initial comments that “the current schedule avoids bidding too close to the December holidays, avoids conflict with other jurisdictions to allow for maximum supplier participation, and completes the bidding process in advance of the PJM Auction Revenue Rights.” In addition, Pepco warns that, if “new bid days are required as proposed, an overhaul of the District of Columbia’s overall SOS process would be necessary.”<sup>222</sup>

### **DECISION**

211. ExGen and Pepco favor keeping the bid days as is. Direct Energy wants 100 percent of SOS bid out every six months. This would entail changing the length of the SOS contracts which we have already decided not to do. RESA wants the delivery period to begin within 60 days of bid day and GSA concurs with RESA. OPC does not object to the continuation of the status quo.

212. Currently, there are many wholesale default service RFPs for bidders to participate in, running from the fall through spring – including Maryland (bid days in October, mid to late January, and April), Delaware (bid days in November and late January or early February), New Jersey (auction in February), Illinois (bid days in September and April for energy products), all four utilities in Ohio (bid days in October, November, late January, and March) and multiple utilities in Pennsylvania (bid days frequently in September, October, mid to late January, and April).

213. The District’s bid days in early December and early January do not overlap with other jurisdictions’ bid dates. While RESA asserts that prices will be more “market reflective” when moving the bid day closer to when the delivery starts, neither RESA, nor the other commenters, provide any evidence that this will result in better prices for SOS customers. As there is no discernible benefit to changing the bid dates, the Commission chooses to continue our current practice.

**H. Currently, SOS is procured using a sealed-bid auction format. Should the bidding method be changed? If so, what bidding method should be used and why? For example, a reverse descending clock auction could be an alternative bidding method.**

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<sup>221</sup> Pepco’s Reply Comments at 17-18 (citation omitted).

<sup>222</sup> Pepco’s Reply Comments at 18 (citation omitted).

214. **AARP.** While AARP does not offer any specific comments regarding whether the bidding method should be changed, AARP “emphasizes that any change should consider the costs of making such a change in light of any benefit that might be made.”<sup>223</sup>

215. **Direct Energy.** If “the Commission decides to retain the current wholesale SOS model, Direct Energy supports the current auction model.”<sup>224</sup>

216. **EnerNOC.** EnerNOC describes itself as “a leading provider of energy intelligence software (‘EIS’) and demand response solutions.” Among the product and services this company provides is EnerNOC Exchange which EnerNOC describes as a “cloud-based Auction Platform” that is “designed to procure electricity, natural gas and other commodities.” EnerNOC notes that “[t]he EnerNOC Exchange utilizes a host of auction formats, most notably live reverse auctions, to procure energy contracts.”<sup>225</sup>

217. EnerNOC recommends that the Commission change bid formats “from the current sealed-bid format to an on-line live reverse auction, as this method will drive a lower price than either a sealed-bid or multi-round descending clock format.”<sup>226</sup> EnerNOC reviews the pros and cons of different procurement methods and concludes that such an auction is preferable because it captures the benefits of both descending clock and sealed bid auctions – allowing for some price discovery as bidders bid the price down but encouraging a “blind” bid in the last few seconds before the bidding window closes.<sup>227</sup> Additionally, EnerNOC points out that bidders get paid as bid which may result in a lower overall price rather than a single clearing price auction.<sup>228</sup>

218. EnerNOC cites academic research in support of its contention that a descending clock auction is the best method of procuring electricity.<sup>229</sup> EnerNOC also notes that the World Bank has stated that “[a] clock auction enables an efficient price discovery, and is therefore conducive to more aggressive behavior among bidders, thereby resulting in lower prices.”<sup>230</sup>

219. EnerNOC notes that this method is currently used in Delaware. EnerNOC asserts that “[t]he independent consultants utilized in Delaware to review the auction processes from year to year have repeatedly praised the results witnessed in the auctions, with the current independent consultant stating this year[,] ‘The auction process itself promotes competition due to EnerNOC’s

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<sup>223</sup> AARP’s Comments at 6.

<sup>224</sup> Direct Energy’s Comments at 25

<sup>225</sup> EnerNOC’s Comments at 1-2.

<sup>226</sup> EnerNOC’s Comments at 5.

<sup>227</sup> EnerNOC’s Comments at 9-10.

<sup>228</sup> EnerNOC’s Comments at 11.

<sup>229</sup> EnerNOC’s Comments at 14, 16.

<sup>230</sup> EnerNOC’s Comments at 15 (citation and emphasis omitted).

auction platform. It provides real-time feedback to induce competitive bidding behavior.”<sup>231</sup> EnerNOC also notes that GSA uses “EnerNOC’s auction platform to procure its energy.”<sup>232</sup>

220. **ExGen.** ExGen notes that “the current RFP method utilized by the District has resulted in prices that bolster the growth of retail electricity markets in the city, while providing competitively-priced service to those consumers that remain on SOS.” ExGen further observes that the “RFPs have elicited robust participation”<sup>233</sup>

221. **OPC.** OPC states that, because of the size of the auction, the current structure makes sense. OPC fears that a reverse auction would lead to a decrease in participation, hurting competition.<sup>234</sup>

222. **Pepco.** Pepco argues that “the current sealed bid auction format remain in place.” Pepco notes that this format has been utilized for 12 years and that bidders are familiar with this process. In addition, Pepco observes that this process “continues to produce competitive wholesale prices” and “produces prices that are consistent with the broader PJM capacity and energy commodity market trends.” Pepco also notes that since this process is used in Maryland it provides the opportunity for easy comparison of results between jurisdictions.<sup>235</sup>

223. Pepco argues that PHI has designed and “established an automated internet-based bid platform to support the sealed-bid auction format for both the District of Columbia and Maryland jurisdictions.” Pepco believes that this platform, the Energy Procurement System (“EPS”), allows suppliers “to complete and track virtually every required task related to the sealed-bid submittal process.” Finally, Pepco asserts that the EPS functions well and that suppliers know how to use this system “for submitting bids, accessing eligibility documents, and downloading all the data necessary to support their bid offerings.”<sup>236</sup>

224. **TechNet.** TechNet believes that the bidding method should be changed to an on-line reverse auction format. TechNet first argues that “[i]ndependent, third-party experts have consistently reasoned that technologically driven, online auctions, deliver superior results to the sealed-bid auction format which does not utilize modern-day technology.” TechNet cites to a World Bank report which concludes that use of such an auction “enables an efficient price discovery, and is therefore conducive to more aggressive behavior among bidders, thereby resulting in lower prices.”<sup>237</sup>

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<sup>231</sup> EnerNOC’s Comments at 12-13 (citation omitted).

<sup>232</sup> EnerNOC’s Comments at 13 (citation omitted).

<sup>233</sup> ExGen’s Comments at 9.

<sup>234</sup> OPC’s Comments at 11.

<sup>235</sup> Pepco’s Comments at 11.

<sup>236</sup> Pepco’s Comments at 11-12.

<sup>237</sup> TechNet’s Comments at 2-3 (citation omitted).

225. Next, TechNet argues that, given the choice between an on-line descending clock auction and an on-line live reverse auction, the Commission should choose the latter. TechNet asserts that an on-line reverse auction “achieves both price discovery but also finishes in a fashion similar to a sealed-bid in that bidders feel compelled to give their best and final offer without the benefit of easily knowing what the competition is doing.” TechNet contends that this “can lead to a bidder outbidding themselves in the final seconds of the auction, lowering costs for SOS customers in Washington, DC.” TechNet concludes that this format “enables the best features of the sealed-bid and the descending clock formats while eliminating the negatives.”<sup>238</sup>

226. TechNet also notes that reverse auctions are “being increasingly deployed across the country....” In addition, TechNet observes that the federal Executive Office of Management and Budget endorses “the use of reverse auction[s] in federal procurement practices, ‘multiple benefits have been identified with the use of reverse auctions....’” TechNet concludes that “[t]hird-party experts have consistently found that these auctions achieve highly competitive results.”<sup>239</sup>

227. TechNet states their position is “supported in the comments filed by EnerNOC”. TechNet also notes that it agrees with the EnerNOC that “auctions should be concluded within minutes or a couple of hours, and not be all day or multi-day affairs that increase the risk premium in bids placed by suppliers who could be concerned about changes in the market.” TechNet concludes that by “switching from a sealed-bid procurement to a technologically-advanced on-line live reverse auction, the Commission can ensure that Standard Offer Service customers in Washington, D.C. pay as competitive a price as possible for their energy.”<sup>240</sup>

228. **WGL Energy.** WGL Energy provided no comments on this question with respect to the wholesale SOS model.

229. **AARP Reply.** While AARP does not have any specific position as to whether the current bid format should be change, AARP “emphasizes that any change should consider the costs of making such a change in light of any benefits that may be gained.”<sup>241</sup>

230. **EnerNOC Reply.** EnerNOC reiterates its support of an on-line live reverse auction. EnerNOC notes that “other commenters were mixed in their opinions about what procurements approach should be utilized, ultimately recommending some variation of a technology platform or continuation of the legacy sealed-bid procurement.” EnerNOC asserts that “the other commenters either did not focus on this question, or did not provide any evidence that

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<sup>238</sup> TechNet’s Comments at 3.

<sup>239</sup> TechNet’s Comments at 3 (citation omitted).

<sup>240</sup> TechNet’s Comments at 3-4.

<sup>241</sup> AARP’s Reply Comments at 9.

the legacy sealed bid process is driving lower prices than the on-line live reverse auction for Standard Offer Service customers.”<sup>242</sup>

231. EnerNOC argues that, while Pepco, Exelon, OPC, and Direct Energy all support “the continued use of the legacy sealed-bid process,” they have not “presented persuasive arguments justifying why its use should continue.” EnerNOC specifically takes issue with Pepco’s argument that “suppliers are completely familiar with the Pepco Energy Procurement System (‘EPS’), which helps manage the Pepco sealed-bid process.” EnerNOC notes that, although “Pepco states that prices from those seal-bid auctions have been consistent with PJM wholesale pricing, Pepco does not address in its comments whether or not the sealed bid method drives lower prices than the on-line reverse auction.”<sup>243</sup>

232. Next EnerNOC notes that its “on-line reverse auction platform has been used thousands of times to successfully drive risk and premiums out of commodity purchases.” EnerNOC submits that “the PJM ecosystem of suppliers are completely familiar with our and other platforms, and will not hesitate to use such platforms if adopted” by the Commission. EnerNOC asserts that, based “on Pepco’s description, the EPS appears to be used more for project and bidder task management, than to induce real-time competitive bidding.”<sup>244</sup>

233. EnerNOC argues that the “change to another procurement platform should not be a rationale for maintaining the sealed bid.” EnerNOC notes that the Delaware Public Service Commission’s independent auction consultant recently reported that the “auction process itself promotes competition due to EnerNOC’s auction platform”, and that it provides real-time feedback to induce competitive bidding behavior.”<sup>245</sup> EnerNOC next observes that the consultant noted that “[p]articipation was higher than previous levels, too, and resulted in a competitive bidding process.” EnerNOC concludes that the Commission should adopt “the procurement mechanism that will drive the lowest price for SOS customers” rather than “let the status quo be a barrier to success.”<sup>246</sup>

234. In addition, EnerNOC takes note of Pepco’s assertion that “because the sealed-bid procurement approach is used in Maryland, ‘its continued use provides additional opportunities to compare annual outcomes between the District of Columbia and Maryland across several key metrics, such as bidder participation, number of winning suppliers, change in SOS prices and customer bill impacts.’” EnerNOC admits that “this kind of evaluation is useful”, but argues that such an analysis would be “more robust” and “more beneficial” to the Commission, if the comparative analysis was “made with Delmarva in Delaware, given that Delmarva has roughly the same number of SOS customers as Pepco does in D.C.” EnerNOC asserts that, in the event that the Commission “adopted the use of an on-line live reverse auction platform, the Commission

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<sup>242</sup> EnerNOC’s Reply Comments at 3.

<sup>243</sup> EnerNOC’s Reply Comments at 3-4.

<sup>244</sup> EnerNOC’s Reply Comments at 4.

<sup>245</sup> EnerNOC’s Reply Comments at 4.

<sup>246</sup> EnerNOC’s Reply Comments at 4 (citation omitted).

could continue to compare key D.C. SOS metrics with Maryland's metrics" and "further compare the historical evaluations to the outcomes resulting from use of an on-line platform...."<sup>247</sup>

235. EnerNOC asserts that, in its comments, "OPC did not provide evidence to support its response, only stating '[g]iven the size of the auction, OPC recommends maintaining the sealed bid auction process. A reverse auction may lead to a decrease in bidder participation which would hinder competition.'" By contrast, EnerNOC asserts that an examination of the "academic literature" and the Delaware's experience that EnerNOC provided in its comments "effectively rebuts both of those arguments, as the on-line live reverse auction platform and process has clearly proven to engender greater competition, with better market outcomes." EnerNOC also notes that "Direct Energy offers no supporting arguments for the use of the sealed bid approach only stating that they 'support the current model.'" EnerNOC concludes that "[n]one of the entities suggesting the use of the legacy sealed-bid procurement approach have presented any persuasive arguments justifying why its use should continue."<sup>248</sup>

236. EnerNOC observes that "NRC supports the use of a descending clock auction in its retail auction proposal, citing New Jersey as an example of where it is used." EnerNOC argues, however, that the descending clock auction has "two primary flaws" as compared to the on-line reverse auction that EnerNOC is asking the Commission to adapt. First, EnerNOC argues that "the descending clock format, with its 'pay as cleared' clearing mechanism, does not always clear to the lowest ultimate price to customers." Specifically, EnerNOC observes that, "in the descending clock format, all auctions winners will get paid (and customers will be charged) the 'clearing price', whether or not one or more bidders could have offered and secured a transaction at an even lower market price."<sup>249</sup>

237. By contrast, EnerNOC notes that, "in a 'pay as bid' auction, the downward bidding continues until everyone offers their lowest bids and the winners are selected from the lowest cost upward until enough power is secured to fulfill the needs." EnerNOC asserts that "this ensures at least as low and most probably a lower cost than the 'pay as cleared' approach."<sup>250</sup>

238. In addition, EnerNOC argues that "the descending clock auction is designed to chip away at a set market price until bidders cease to participate, and there is no way for bidders to optimize their price, as the bidders are ensured a price equivalent to that of the *least-competitive competitor*. EnerNOC believes that, absent such a "price-optimization feature, driving to the best market outcome is unlikely, and does not assure the 'lowest' possible price from each of the participants." EnerNOC then notes that "the on-line reverse auction uses an inherent feature that does not allow a bidder to see other bidders' behaviors at the end of the auction, incentivizing not just a 'lower' price, but the 'lowest' possible price from each of the participants." EnerNOC also

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<sup>247</sup> EnerNOC's Reply Comments at 4-5 (citation omitted).

<sup>248</sup> EnerNOC's Reply Comments at 5-6 (citation omitted).

<sup>249</sup> EnerNOC's Reply Comments at 5-6 (citation omitted).

<sup>250</sup> EnerNOC's Reply Comments at 7.

observes that “a descending clock auction can take days”, while “[a]n on-line reverse auction can be undertaken in a period of minutes or hours”.<sup>251</sup>

239. EnerNOC concludes that it “has provided the Commission with ample academic research and educational information stating that when procuring a commodity such as electricity or related electricity products, an on-line reverse auction will welcome more bidders and competition and will elicit behaviors from bidders that will drive the best possible price for customers.” EnerNOC, therefore, asks the Commission to adopt its “recommendation to move SOS procurement to an on-line live reverse auction platform.”<sup>252</sup>

240. **GSA Reply.** GSA asks that, regardless of the method used to solicit bids, “the hold times for bidder prices... be kept as short as possible.”<sup>253</sup>

241. **OPC Reply.** OPC does not recommend changing the current auction format as it does not believe others have shown enough evidence that the current method is problematic and hurts customers. OPC admits that the proponents of the reverse auction format “have raised issues and possible benefits that should be further investigated”, but argues that one thing to consider in such an investigation is the small size of the D.C. market relative to other markets.<sup>254</sup>

242. **Pepco Reply.** Pepco disagrees with TechNet and EnerNOC’s calls for a reverse auction process. Pepco asserts that, while EnerNOC asserts that the reverse auction format is best based on the Delaware experience, the experience of Pepco’s affiliate, Delmarva, with the reverse auction suggests that D.C.’s process would require significant modifications to transition to a reverse auction. Specifically, Pepco notes that the “Delaware bid structure is for a much simpler bid product that allows bidder[s] to make rapid offers in the real-time auction process in order to meet the time constraints of the reverse auction and be competitive enough to win a contract.” Pepco also observes that, in contrast to the District “where bidders have the ability to submit pricing structures that may change annually and by rate components over the contract term,” the Delaware bid structure for residential and small commercial customers “requires customers to submit seasonally differentiated (summer, winter) offers that are of a fixed price for the 3-year term.”<sup>255</sup>

243. In addition, Pepco notes that, “[w]hile the Delaware process adopts a simpler bid product, it requires administratively converting the winning wholesale bid prices into retail rates using a Delaware commission-approved ‘retail pricing mode.’” Pepco asserts that this is a “fundamentally different” model than the current model used in the District. Pepco states that supplier “bid the tariffs” in the District, resulting in retail rates that are “a direct reflection of market

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<sup>251</sup> EnerNOC’s Reply Comments at 7 (emphasis in original).

<sup>252</sup> EnerNOC’s Reply Comments at 7.

<sup>253</sup> GSA’s Reply Comments at 7.

<sup>254</sup> OPC’s Reply Comments at 8.

<sup>255</sup> Pepco’s Reply Comments at 18-19.



prices”, which in turn allows customers to compare SOS prices with offers from retail competitive electricity suppliers.<sup>256</sup>

244. Pepco observes that implementing a reverse auction “after twelve years of successful SOS procurement would require a rigorous evaluation of the costs and benefits of a range of alternative SOS bid structures to support such an auction, the result of which must be established in new SOS regulations.” Pepco also warns that a “transition to a reverse auction process would necessarily require Pepco to incur implementation costs to develop and test new wholesale supplier settlement and website invoice support systems.”<sup>257</sup>

245. Pepco concurs with OPC’s and Direct Energy’s observation that the “current sealed bid method has elicited robust supplier participation and produced competitive prices.” Pepco notes that, while “there might be reasonable improvements to the current bid format, the rules and structure of the format are familiar to bidders, and the sealed-bid format continues to produce wholesale prices.” In addition, Pepco notes that the price resulting from the current bid format “are consistent with the broader PJM capacity and energy commodity market trends.” Pepco believes that, if “the Commission wants to consider the adoption of a reverse auction model, a working group should be established to define how that process might work.”<sup>258</sup>

### **DECISION**

246. Direct Energy, ExGen, OPC, and Pepco all recommend keeping the current auction format while TechNet and EnerNOC recommend moving to a live online reverse auction format such as that used in Delaware.

247. In a reverse auction format, a bidding window is opened for a specific period of time, maybe ten minutes, for a single block of supply. During that time, each bidder can bid a price to serve this block and can bid as many times in the bid window as the bidder wishes. All bidders can see the current lowest bid price. When the bidding window closes, the lowest price bid is the winner. All participating bidders see the winning price, and the next block of supply is then put up for bid.

248. The prime benefit to this method is that bidders can react in real time to the actions of other bidders. This provides them with more information regarding the value of the product and they can adjust their valuation of the product in real time, potentially offering a lower price than they were planning to offer.

249. The chief drawback of the reverse auction format is that while it provides some information regarding how other bidders value the product it can also provide information regarding the level of competition in a particular auction. In an extreme example, if there is only one bidder that bidder may figure out, based on the lack of price-lowering action, that no other bidders are present and have no incentive to drop their offer. Additionally, if multiple blocks are

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<sup>256</sup> Pepco’s Reply Comments at 19.

<sup>257</sup> Pepco’s Reply Comments at 19.

<sup>258</sup> Pepco’s Reply Comments at 19-20.

offered, the bidder may bid much higher prices on subsequent blocks to take advantage of being the only bidder.

250. While the reverse auction method could certainly be used in the District, we are concerned that changing the auction method could cause problems on bid days in which participation is low. Furthermore, despite the academic literature and experience of Delaware and New Jersey cited by EnerNOC, there is no evidence provided, in the form of actual bidding results, that this format would deliver significantly lower prices for SOS service than District's current, sealed-bid method. Finally, wholesale suppliers are familiar with the District's current auction method and, without some proof of significantly lower prices, we are reluctant to change our practice. We do, however, see that there may be merit to the reverse auction method, so we will consider this as alternative for the future. Accordingly, the Commission chooses not to change to the format for SOS bidding at this time.

**I. Is there any other aspect of the SOS program that should be changed in light of competitive developments in the District of Columbia?**

251. **AARP.** AARP urges the Commission not to make "any time-varying rate as the 'default' structure for SOS." Specifically, AARP "opposes time-of-use rates as default service." AARP asserts that SOS should instead be "a plain vanilla fixed price service that offers price stability at reasonable rates." In addition, AARP states that competitive electricity suppliers "can offer dynamic pricing and demand response options and consumers can choose to participate, or not, in such pricing plans." AARP suggest that "a Peak Time Rebate (PTR) program could be an optional component of SOS so long as there is no change in the underlying flat SOS price." In such a PTR program, AARP asserts that "[c]ustomers who choose to participate in lowering critical peak usage below their baseline usage will earn a rebate or credit on their bill." Finally, AARP notes that this recommendation is based on the forthcoming implementation of a PTR program by Pepco and Baltimore Gas & Electric in Maryland, "as well as a large pilot program for PTR by Delmarva Power in Delaware."<sup>259</sup>

252. **Direct Energy.** If the Commission retains the current wholesale SOS model, Direct Energy asks that Pepco make "customer usage, count and capacity data available at more frequent intervals to help wholesale bidders monitor changes and if serving load, adjust forecasts to better project load."<sup>260</sup>

253. **DOEE.** As noted above, DOEE recommends that the Commission explore the possibility of long-term PPAs. DOEE notes that the D.C. DGS signed a 20-year PPA for wind-generation to support 35 percent of its load. DOEE recommends such a method be considered because it allows for price affordability, reduces greenhouse gas emissions, and provides price stability.<sup>261</sup>

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<sup>259</sup> AARP's Comments at 6-7.

<sup>260</sup> Direct Energy's Comments at 35.

<sup>261</sup> See *supra* ¶ 17.

254. **ExGen.** ExGen recommends that the Commission repeal the 12-month minimum stay requirement for commercial customers as this is “one of the most important market structure improvements the District can make that will improve the availability and functionality of competitive electricity markets in the city”. ExGen asserts that customers who are subject to this requirement are sophisticated customers and should not be harmed by “missing an enrollment window either as a result of a technicality or error.” ExGen also notes that the market structure in the District provides both competitive suppliers and default service providers the tools to effectively manage customer switching.<sup>262</sup>

255. In addition, ExGen recommends that the Commission change the performance assurance “to align the District requirements with commonly used practices in the energy market.” Specifically, ExGen asks that “the Commission change the current requirement that winning suppliers post 15% of notional value as performance assurance and implement a mark-to-market based performance requirement instead.”<sup>263</sup>

256. ExGen asks that suppliers be permitted “to use unsecured credit lines based on their credit ratings to satisfy the [mark to market] requirement.” ExGen notes that this mechanism “has worked successfully in Maryland and Delaware for several years.” ExGen believes that if “the Commission is unwilling to take this step, supplier should nonetheless be authorized to use unsecured credit lines based on their credit ratings, with no need for a corporate guarantee in certain situations.”<sup>264</sup>

257. Finally, ExGen requests that any changes ordered by the Commission with respect to SOS not affect existing SOS supply contracts.<sup>265</sup>

258. **NEM.** NEM asks that the Commission abolish the 12-month minimum stay provision that requires that a commercial consumer switching from a competitive electricity supplier to SOS stay on SOS for a minimum of 12 months. NEM asserts that this minimum stay provision is punitive and unnecessarily restricts consumer shopping.<sup>266</sup>

259. **NRG.** NRG also wants to remove the 12-month minimum stay provision for commercial customers. NRG states that it is not aware of any other jurisdiction that has such limitations and specifically notes that the Pepco-affiliated electric distribution companies “in Maryland and Delaware do not have minimum stay requirements.” NRG asserts that, in its experience, “non-residential District customers returning to SOS can unwittingly find themselves on this fixed service and be precluded from switching to their chosen supplier and their desired electricity product.” NRC views the minimum stay as “an antiquated policy intended as a

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<sup>262</sup> ExGen’s Comments at 4.

<sup>263</sup> ExGen’s Comments at 4.

<sup>264</sup> ExGen’s Comments at 4.

<sup>265</sup> ExGen’s Comments at 10.

<sup>266</sup> NEM’s 2013 Comments at 9.

consumer protection.” NRC argues that, “[i]nstead of protecting customers, it leaves them with a negative shopping experience and denies these customers their statutory right to shop.”<sup>267</sup>

260. **OPC.** OPC believes that “the current SOS process should be supplanted by a portfolio management structure that combines long and short-term contracts with market purchases.” OPC suggests that “the District’s renewable energy obligations could be separated out from the standard energy and capacity procurement process.” Specifically, OPC notes that “long-term contracts for renewable energy would act as a hedge by locking in low, stable prices for energy and comply with the District’s increasing renewable energy requirements.” Such contracts, OPC argues, “would also insulate ratepayers from fuel price volatility and environmental regulatory risk”, while for “the remainder of its energy needs, the District can sign other contracts or rely on the PJM marketplace.” OPC notes that the “District is a part of the world’s largest wholesale electricity market that has cleared at low prices in recent years – in terms of both energy and capacity.” OPC concludes that it “is unlikely that the SOS process will provide a better value given that profit-seeking bidders are acting as an intermediary between the market and ratepayers.”<sup>268</sup>

261. In addition, OPC suggests that the following questions be addressed at an evidentiary hearing:

- What form or construct for wholesale level physical SOS load procurement would result in the greatest level of competition and lowest prices for SOS load customers?
- What form or construct for wholesale level load procurement would optimally further the District of Columbia’s sustainability goals?<sup>269</sup>

262. **Pepco.** Pepco asserts that “no other aspects of the SOS program be changed because the SOS program as currently structured continues to provide a valuable ‘safety net’ service.”<sup>270</sup>

263. **RESA.** RESA has three recommendations. First, for small commercial customers, RESA recommends that the Commission clarify what standards apply. RESA points out that the Commission adopted interim protection standards in 2000 and published a Consumer Bill of Rights (“CBOR”) in 2009. RESA asserts that it was not clear whether the 2009 CBOR applies to small commercial customers or just residential customers. RESA states that, “assuming the Interim

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<sup>267</sup> NRG’s Comments at 16-17.

<sup>268</sup> OPC’s Comments at 11.

<sup>269</sup> OPC’s Comments at 11-12.

<sup>270</sup> Pepco’s Comments at 12.

Standards still apply to small commercial customers and the revised CBORs apply to residential customers”, “these two sets of rules are not consistent and create confusion in the marketplace.”<sup>271</sup>

264. Second, RESA recommends that more customer education for residential customers on the opportunities in the retail market be provided and requests that the Commission approve a customer education plan to increase awareness of retail choice.<sup>272</sup>

265. Third, RESA recommends that the minimum 12-month stay provision be removed.<sup>273</sup> RESA asserts that “the only reason Pepco offers [Market Price Service] is because of the minimum stay provision.”<sup>274</sup>

266. **Direct Energy Reply.** Direct Energy disagrees with DOEE’s advocacy of long term contracts PPAs for SOS. Direct Energy’s reason is that such contracts create a substantial risk for ratepayers and could result in stranded costs. Direct Energy also notes that while a price might look good today, energy costs could decline, hurting ratepayers.<sup>275</sup>

267. **ExGen Reply.** ExGen notes that in comments both DOEE and OPC suggested long-term PPAs, the latter as part of a portfolio management structure. ExGen states that long term contracts can turn out to be either much higher or much lower than current prices at any given time, meaning the contract has an equal chance of being a good or bad deal for SOS customers. Additionally, ExGen notes that, in a market with competitive suppliers, if the long-term SOS contracts turn out to be higher than current market prices offered by these suppliers, customers will migrate from the default service leaving a smaller and smaller set of customers to pay for the long term contracts.<sup>276</sup>

268. ExGen states that the market does not usually support contracts over five years, so such a solicitation might have less competition which “means there could be a significant risk of reduced participation in any long term procurement.” ExGen asserts that such a reduced participation in the SOS procurement process could “result in less efficient pricing of proposals and obstruct the approval process for the entire procurement.” Finally, ExGen notes that, “given the lack of market liquidity for such products, there is no benchmark against which to assess the competitiveness of long term contracts.”<sup>277</sup>

269. ExGen states that OPC’s portfolio management option does not always guarantee lower prices. ExGen also asserts that wholesale suppliers already manage their portfolio with short

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<sup>271</sup> RESA’s Comments at 23-24.

<sup>272</sup> RESA’s Comments at 23-24.

<sup>273</sup> RESA’s Comments at 25-26.

<sup>274</sup> RESA’s Comments at 26.

<sup>275</sup> Direct Energy’s Reply Comments at 8-9.

<sup>276</sup> ExGen’s Reply Comments at 2-3 (citations omitted).

<sup>277</sup> ExGen’s Reply Comments at 3.

and long term contracts when bidding into the D.C. SOS RFP and that they are in a better position to do that than Pepco. ExGen argues that adopting the OPC's portfolio management option would deprive SOS "customers of the expertise wholesale full requirements suppliers provide in terms of lower hedging and energy prices."<sup>278</sup>

270. In particular, ExGen warns that the use of spot market prices in a portfolio approach carries a great risk to SOS customers, noting that prices on the spot market "can either be significantly lower than or higher than the current default service rate and can be extremely volatile, as was the case during the Polar Vortex." Similarly, ExGen suggests that "this hot summer of 2016 would have resulted in price spikes if spot market purchases were included in the portfolio approach."<sup>279</sup>

271. **GSA Reply.** GSA believes that customer data "should be available from Pepco online to both customers and retail suppliers with basic safeguards put in place to protect privacy." GSA asks that this data be updated as frequently as possible and be free of charge. GSA asserts that "[r]eadily available customer data will make it easier for customers of all sizes to shop for electric power."<sup>280</sup>

272. GSA believes that POR program for all customer classes should be adopted by the Commission for D.C. GSA argues that "a POR program will encourage more retail suppliers to aggressively pursue customers in the residential and small commercial customer classes." GSA observes that Pepco has a successful POR program in place for all customers in Maryland. In addition, GSA asserts that a "POR would ensure predictable monthly payments to retail suppliers and thereby eliminate one impediment to serving the small customer market segment." GSA further argues that a "POR would also encourage new and potentially smaller retail suppliers to enter the District of Columbia residential and small commercial market." GSA notes that a "POR would also allow customers to continue to pay a single, Pepco electric bill that contains all electric charges which keeps the process simple." GSA concludes that "[s]uch a change, coupled with increased customer education and readily available customer data should increase switching rates for residential and small commercial customers."<sup>281</sup>

273. **OPC Reply.** OPC reiterates its recommendation for a portfolio management structure using a mix of short and long term contracts and PJM wholesale market purchases. OPC also suggests that "[r]enewable energy, in particular, should be procured separately from any SOS-type product."<sup>282</sup>

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<sup>278</sup> ExGen's Reply Comments at 3-4 (citations omitted).

<sup>279</sup> ExGen's Reply Comments at 4.

<sup>280</sup> GSA's Reply Comments at 7.

<sup>281</sup> GSA's Reply Comments at 8.

<sup>282</sup> OPC's Reply Comments at 8.

274. **Pepco Reply.** Pepco recommends that the “current well-functioning system be maintained because the SOS program, as currently structured, continues to provide a valuable safety net service.”<sup>283</sup>

275. In response to OPC’s call for a portfolio management structure, Pepco asserts that D.C. SOS customers “already receive the benefits of competition based on a portfolio model approach because the suppliers that bid on SOS service use a managed portfolio approach.” Pepco further argues that “[m]oving Pepco to a managed portfolio approach would undermine the customer protections inherent in the current SOS process in which suppliers take on the risk of managed portfolios, insulating customers from such supply risks as load, fuel price, weather, market volatility, and market price.”<sup>284</sup>

276. Pepco takes issue with RESA’s request that the Commission “approve a customer education campaign to promote choice”, and “joins OPC in objecting to a request for SOS customers to directly subsidize the marketing activities of retail suppliers.” Pepco notes that “[a]dvertising the offerings of a competitive retail supplier through Pepco communications might be interpreted as the endorsement by Pepco of the products and services offered by a particular supplier.”<sup>285</sup>

277. Pepco opposes the elimination of the minimum stay requirement because it provides certainty to suppliers when bidding and eliminates a customer’s ability to arbitrage.<sup>286</sup> If the Commission does decide to change SOS Administrators, Pepco urges that the Commission continue to ensure that SOS service remains the safety net that it was intended to be.<sup>287</sup>

278. **RESA Reply.** RESA opposes the suggestions made by OPC and DOEE proposing long-term renewable PPAs. RESA feels that such contracts would harm the competitive market and would be heading in the wrong direction, resulting in SOS rates that are less market reflective than the current three-year procurements. RESA observes that “[i]ncluding shorter-term or spot market purchases in the same SOS supply portfolio as longer-term contracts does not repair the damage done by inclusion of long-term contracts, as OPC and DDOE propose. RESA further argues that “[w]ith long-term contracts, a portion of the SOS rate will be based on stale wholesale pricing, causing a lag between the SOS rate and the underlying wholesale market prices.”<sup>288</sup>

279. RESA takes issues with DOEE’s argument that “the impact of long-term PPAs on the competitive market will be minimal because ‘SOS customers, even under a long-term PPA, can always opt-out and choose their own supplier at any time’”, as DOEE fails “to consider that District consumers will only be able to opt-out of SOS if there are competitive offers available.”

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<sup>283</sup> Pepco’s Reply Comments at 20.

<sup>284</sup> Pepco’s Reply Comments at 20-21 (citation omitted).

<sup>285</sup> Pepco’s Reply Comments at 21 (citation omitted).

<sup>286</sup> Pepco’s Reply Comments at 29.

<sup>287</sup> Pepco’s Reply Comments at 4-5.

<sup>288</sup> RESA’s Reply Comments at 5 (citation omitted).

RESA asserts that, if the Commission were to adopt DOEE's proposal, "there would be very limited alternatives, if any, available to District consumers." RESA argues that such a "result would directly contradict the Commission's statutory obligation to 'ensure that the price for standard offer service will not hinder the development of a competitive electricity supply market in the District of Columbia.'" RESA concludes by reiterating that the "best course forward is a transition to a fully competitive retail market model", but that, in the event that the Commission sticks with a wholesale SOS model, "any future wholesale SOS procurements should incorporate more market-reflective and shorter-term, not longer-term, procurements."<sup>289</sup>

280. **WGL Energy Reply.** WGL Energy notes that DOEE recognizes that a "long-term PPA might negatively impact market competition, but explains that SOS customers could opt out and choose a [competitive] supplier anytime." WGL Energy opposes DOEE's proposal for a long-term PPA because "in addition to being potentially adverse to competition, such a contract would not be a competitive market contract but would be a completely regulated contract with no parallel in competitive commodity markets."<sup>290</sup>

### DECISION

281. ExGen, NEM, NRG, and RESA advocate removing the minimum stay provision. The Commission's minimum stay provision requires that, if a commercial customer leaves SOS for a competitive electricity supplier and subsequently returns to SOS, that customer must stay on SOS for a minimum period of 12 months. In addition, there is a grace period for customers whose suppliers default, which gives the customer three full billing cycles to go to another competitive electricity supplier or change to Market Price Service (for which service there is no minimum stay provision) rates in order to avoid the minimum stay.<sup>291</sup> The goal of the minimum stay provision is to allow SOS suppliers to better manage migration between the SOS service and third party suppliers. We do 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, especially as there is a grace period allowing commercial customers time to choose another supplier.

282. OPC suggests that a "Portfolio Manager" be employed to create a portfolio of contracts to serve ratepayers, including longer-term contracts. This suggestion has been made in many jurisdictions for the past several years. Most jurisdictions have decided against this option.<sup>292</sup> It is unclear whether any person or entity could constantly "beat" the competitive market by picking just the right mix of contracts at any moment in time. In some years, a short term contract would be the "best" choice, while in other years a longer term SOS portfolio would be optimal. As Direct Energy notes, using long term contracts may result in higher costs for consumers. In addition, Pepco observes that bidders themselves manage their individual supply

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<sup>289</sup> RESA's Reply Comments at 5-6 (citations omitted).

<sup>290</sup> WGL Energy's Reply Comments at 3.

<sup>291</sup> 15 DCMR § 4105.6 (2015).

<sup>292</sup> For example, See New Jersey Board of Public Utilities, *In the Matter of the Provision of Basic Generation Service for the Period Beginning June 1, 2008*, Docket No ER07060379, Decision and Order, p. 7, Jan. 25, 2008.



portfolios and they stand ready to absorb losses if they “bet” wrong on the direction of the market, moving the portfolio management function to a government agency, like the Commission, simply shifts the risks associated with portfolio management to ratepayers. Specifically, Pepco notes that SOS customers “already receive the benefits of competition based on a portfolio model approach because the suppliers that bid on SOS service use a managed portfolio approach.” Pepco is correct. It simply does not make sense to implement a managed portfolio approach, as OPC suggests, since bidders are essentially already using this approach.

283. The only jurisdiction, to our knowledge, that uses a portfolio manager is Illinois, and that portfolio management model operates a little differently from the model OPC proposes. In Illinois, the results have been mixed. For example, back in 2007 a five-year contract was approved to supply a portion of the needs of default service customers. This was done “to promote price stability for residential and small commercial customers during the transition to competition in Illinois”.<sup>293</sup> For ComEd customers, this resulted in the utility locking in price swaps for a fixed quantity of energy ranging from \$48/MWh to over \$53/MWh over the five-year period.<sup>294</sup> However, instead of continuing to rise, prices decreased.<sup>295</sup> Customers who did not switch to a competitive supplier did not receive the benefit of lower market prices and faced excess costs instead as the utilities had to sell the above-market contracts at a loss.

284. In addition, the portfolio management structure can require more active participation from the utility. For example, the Illinois energy RFPs procure blocks of energy for a given month either off-peak or on-peak. Illinois might procure 300 MW of energy for July on-peak but only 200 MW of energy of July off-peak, while October might be 100 MW on-peak and 75 MW off-peak. The suppliers who win in July on-peak are responsible for delivering 300 MW of energy to the utility whether or not the utility needs it. The utilities then go out into the energy market and buy additional energy when the 300 MW is not enough and sell excess when they do not need all the electricity. The utility is then constantly buying and selling electricity.

285. Finally, we have not been presented with any evidence that Illinois achieves overall lower supply costs than other states. For this reason and based on the above, we decline to utilize a portfolio management structure. We note that it is possible to manage the Renewable Energy Portfolio Standard (“REPS”) requirement separately. We discuss this option in more detail later in this Order.<sup>296</sup>

286. RESA makes two additional requests, one regarding customer education and another regarding the application of the CBOR. We do not advocate initiating another round of “retail competition” education at this point. The retail choice program started in 2000 to 2001 and

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<sup>293</sup> Public Utilities Act of Illinois, § 16-111.5(k)

<sup>294</sup> Exelon Corporation Form 8-K, Aug. 28, 2007, Item 8.0, filed Sept. 4, 2007.

<sup>295</sup> For example, in ComEd’s May 2011 Energy procurement the average winning price was \$43.56/MWh for a June 2011 to May 2012 annual peak product, and \$26.22/MWh for an off-peak product. See Illinois Commerce Commission, “Public Notice of Winning Bidders and Average Prices Concerning the Illinois Power Agency’s May 16, 2011 Procurement of Standard Energy Products for Commonwealth Edison Company”, rel. May 18, 2011.

<sup>296</sup> See discussion *infra* ¶¶ 319-320.

the Commission previously approved an education program for retail choice.<sup>297</sup> With regard to RESA's comments on the CBOR, we note that the CBOR clearly applies only to Residential customers. Section 300.2 of the CBOR states that "[t]his chapter applies to those Residential Services regulated by the Public Service Commission ('Commission') provided by Electric, Natural Gas and Telephone Utilities, and Residential Services provided by Energy Suppliers and Telecommunications Service Providers licensed or certified by the Commission."<sup>298</sup>

- J. The SOS Administrator will be revising its bid form spreadsheet to comply with the Commission's December 2015 Order requiring all low-income and non-low income residential customers (i.e., Electric Company Rate Schedules Residential ("R") and Residential Aid Discount ("RAD") as well as All Electric ("AE") and RAD-AE) to be bid together. Given that the SOS Administrator is already making this one change, should it revise its bid sheets further by merging additional rate classes for bidding purposes? If so, what classes should be merged together? For example, should the R and AE rate class customer loads be combined for bidding purposes? Should some other bid categories be removed, such as the Large Commercial demand charge, which is frequently bid at \$0/kW? Alternatively, similar to New Jersey's Basic Generation Service (BGS) auction, should the SOS Administrator ask for a single price offer for the entire SOS contract period and administratively allocate the charge to each class? If so, how?<sup>299</sup>**

287. **Direct Energy.** Direct Energy does not take a position on this question, if the Wholesale SOS model continues.

288. **OPC.** OPC is concerned that there may be unintended consequences of bundling classes with different load shapes. OPC states that the R and AE classes have different load shapes which could lead to "cost allocation issues." OPC, however, also states that "bidding in larger groups could provide cost savings by increasing the size of the pool", while suggested that these issues should be investigated further in a Commission evidentiary hearing.<sup>300</sup>

289. **Pepco.** Pepco recommends that the R and AE classes not be combined for bidding purposes as they are two "distinctly different" rate classes. Pepco believes that preserving these classes separately allows bidders the flexibility to price customers based on their specific characteristics and "prevailing market conditions." Pepco assert that "[t]his flexibility allows bidders to better prepare their SOS bids and for Pepco to capture any competitive benefits that might be offered by suppliers that take advantage of the ability to bid each rate separately and, allows for decreased winning bids." Pepco further argues that "[c]ombining the R and AE removes

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<sup>297</sup> See the District of Columbia Retail Electric Consumer Protection Act of 1999, § 104(c)(6)(a)

<sup>298</sup> 15 DCMR § 300.2 (2008).

<sup>299</sup> This question was asked prior to the 2016-2017 RFP. Pepco has already made the edits to combine the R and RAD classes and the AE and RAD-AE classes. This question is still relevant as to what other changes should be done to the bid sheet.

<sup>300</sup> OPC's Comments at 12.

a supplier's assessment of the seasonality characteristics that distinguish the R and AE classes and that translates into lower pricing for one class versus another." Pepco notes that "[c]urrent SOS prices show that as a result of bidding the R and AE classes separately, the prices in both the summer and winter seasons are lower for the AE class than for the R class." Pepco states that "[c]ombining the two classes may improve the price outcome benefits of one class at the expense of the other, compared to what it might have been had the classes been bid separately."<sup>301</sup>

290. Finally, Pepco notes that "[i]ntroducing an entirely new procurement process, similar to New Jersey's Basic Generation Service auction, based on a single price bid format structure and administratively allocating charges to each class would fundamentally change the administratively efficient RFP model adopted by the Commission and used successfully by Pepco for twelve procurement cycles."<sup>302</sup>

291. **WGL Energy.** WGL Energy provided no comments on this question with respect to the wholesale SOS model.

292. **Pepco Reply.** Pepco reiterates its initial comments that R and AE should not be combined because they have different seasonal characteristics and, as OPC mentions, there could be adverse effects of combining the classes. Pepco again states that it would be willing to remove the demand charge for Large Commercial customers next year presuming that no successful bidder uses the charge this year, based on the fact that winning bidders in the last few years have not included a demand charge in their bids.<sup>303</sup>

### **DECISION**

293. The objections raised by Pepco and OPC focused solely on the initial examples of the R and AE classes and the demand charge for Large Commercial customers, but did not address issues found in other classes. For example, the bid sheet includes classes like R-TM-EX which has roughly .03 percent of the total Residential and Small Commercial load and was an experimental class that has since been deleted from the tariff. Beyond that, there are classes like TS, TN&SL-TN, and GS-3A that currently have zero percent of the SOS load.

294. The Commission, by Order issued July 25, 2014, solicited comments from the SOS Working Group and other interested persons on ways to reduce the number of different prices on the SOS bid sheets.<sup>304</sup> Pepco and the Working Group filed comments in response to that Order.<sup>305</sup> Based on these comments, the Commission, by Order issued October 10, 2014, chose not to

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<sup>301</sup> Pepco's Comments at 12-13.

<sup>302</sup> Pepco's Comments at 13.

<sup>303</sup> Pepco's Reply Comments at 21-22.

<sup>304</sup> *Formal Case No. 1017*, Order No. 17559, rel. July 25, 2014.

<sup>305</sup> *Formal Case No. 1017*, Report of the SOS Working Group in Response to the Changes Proposed in Order No. 17559 to the Bid Sheets Used in the SOS Solicitation, filed Aug. 15, 2014; *Formal Case No. 1017*, Comments of Pepco in Response to the Changes Proposed in Order No. 17559 to the Bid Sheets Used in the SOS Solicitation, filed Aug. 15, 2014.

require Pepco to make any changes to the bid sheets.<sup>306</sup> However, the Commission did note that we might revisit the issue as part of the next Biennial Review of SOS.<sup>307</sup>

295. Based on the above, the Commission directs Pepco to work with Commission staff, the SOS Working Group which includes OPC, and other interested persons to consider what rate classes to consolidate in the bid sheet. Specifically, this group should consider merging rate classes for customers who have less than one percent of the load with other larger categories, removing classes that are no longer accounted for in the tariff, and removing categories that do not get used by bidders. This action should help provide simpler bid sheet formats for potential bidders, while still maintaining many of the class breakouts and still allowing bidders flexibility in pricing their bids. Some of these changes are rate design and tariff issues currently being considered in *Formal Case No. 1139*. Any changes in the bid-form spreadsheets recommended by the *ad hoc* working group should be consistent with the Commission's upcoming decision in that case regarding these matters. The Commission expects to issue this Order later this summer. The working group should meet within 21 days of the date that Order issues. Based on the discussions within the working group, a report with recommendation should be filed by Commission staff on behalf of this *ad hoc* working group within 35 days of the date of the Order in *Formal Case No. 1139*. We expect the changes recommended by the working group to be considered in time for implementation by the Commission for the upcoming SOS bidding in December 2017 and January 2018.<sup>308</sup>

**K. Some interested persons have recommended that the SOS rates should be a single fixed price and not feature any time-varying rates or different rates by usage quantity. Should such an adjustment be made and, if so, which rates should be simplified?**

296. **Direct Energy.** If the Commission retains the current wholesale SOS model, Direct Energy "supports moving to one standard offer product per rate class. Direct Energy argues that it is not "a 'standard offer' if the utility is making several different offers available to customers in a rate class." Direct Energy asserts that, by contrast, "[a]lternative rate structures such as time of use rates should be provided by the competitive market as is done currently in other jurisdictions."<sup>309</sup>

297. **OPC.** OPC states this should be investigated further in a Commission proceeding, noting that these issues have been raised in *Formal Case No. 1114*, "regarding the potential for dynamic pricing." OPC recommends that a procedure schedule be established in that case so that

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<sup>306</sup> *Formal Case No. 1017*, Order No. 17660, ¶ 17, rel. Oct. 10, 2014 ("Order No. 17660").

<sup>307</sup> Order No. 17660, ¶ 17.

<sup>308</sup> The Commission typically issues an Order in mid- to late- September directing Pepco on behalf of the SOS Working Group to make certain changes to the SOS RFP and WFRSA in time for the upcoming December 2017 and January 2018 bid days and to file those changes with the Commission by the first working day in October. *See generally Formal Case No. 1017*, Order No. 18547, rel. Sept. 22, 2016. If the *ad hoc* working group files its report by reasonably early in September of this year, the Commission can consider its recommendations in our September 2017 Order and, therefore, have consolidated bid sheets ready for use in the upcoming round of SOS bidding.

<sup>309</sup> Direct Energy's Comments at 27.

these issues related to SOS and the potential for some form of time-varying rates can be explored further.<sup>310</sup>

298. OPC recommends that the following additional issue be addressed in an evidentiary:

- How should the Commission’s investigation of the potential for dynamic pricing in the District, in Formal Case No. 1114, inform the Commission’s review of SOS?<sup>311</sup>

299. **Pepco.** Pepco recommends that “no adjustments be made to change the SOS rates into a single fixed-price product.” Pepco notes that the “current SOS rate construct has been used successfully for twelve years and should not be changed.” Pepco asserts that “[i]dentifying rate classes for which such adjustments would be applicable and then converting the bid sheets into single SOS rates provides little to no benefit and would result in increased costs.” Pepco argues that “[s]uppliers should not be constrained in their bidding options”, and that the “current rate class structure provides the necessary flexibility”, allowing bidders to “price the various components based on prevailing market conditions and a supplier’s assessment of the characteristics of the customer class.” Pepco concludes that this “flexibility allows the bidding process to capture, for the benefit of customers, any competitive benefit that might be offered by suppliers that take advantage of the ability to bid components separately and, thus, allows for lower winning bid prices.”<sup>312</sup>

300. Pepco also notes that any changes to the bid sheet will result in costs such as modifications to the bid system as well as the transaction confirmation and notices of performance assurance. Pepco observes that, if the Commission directs Pepco to modify the bid sheets, “Pepco would require Commission direction regarding which rates should be modified and would also seek approval of estimated costs to implement.”<sup>313</sup>

301. **WGL Energy.** WGL Energy believes that all Residential and Small Commercial load should be a single fixed rate. It appears, but is not clear, that this comment refers to their proposed retail model.<sup>314</sup>

302. **Pepco Reply.** Pepco reiterates its initial comments that the current time-varying structure should remain as is. Pepco does agree with OPC that any review of time-varying rates should be conducted in the *Formal Case No. 1114* proceeding on dynamic pricing.<sup>315</sup>

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<sup>310</sup> OPC’s Comments at 12.

<sup>311</sup> OPC’s Comments at 12-13.

<sup>312</sup> Pepco’s Comments at 14.

<sup>313</sup> Pepco’s Comments at 14-15.

<sup>314</sup> WGL Energy’s Comments at 11.

<sup>315</sup> Pepco’s Reply Comments at 22.

## DECISION

303. WGL Energy and Direct Energy support a simpler pricing scheme, while Pepco claims the current structure should remain. The Commission has already directed Pepco to work with Commission staff, the SOS Working Group which includes OPC, and other interested persons to consolidate the bid sheet. Thus, bid sheet simplification will be achieved through this reform. However, we do not think it should have only one rate for all residential and small commercial classes as WGL Energy suggests. Residential and Small Commercial classes have different load profiles and load characteristics and we, therefore, choose not to merge them together at this time. In addition, there is no empirical evidence to support such a change.

304. As we noted in our discussion of the previous question, rate design and tariff issues are currently being considered in *Formal Case No. 1139*. Time-varying rates and different rates by usage quantity are also being considered in that case. As stated above, we expect an Order in *Formal Case No. 1139* later this summer. The *ad hoc* working group previously referenced should also ensure that any changes in time metered residential service rates/tariff should be reflected in the bid sheets in time for the upcoming SOS bidding in December 2017 and January 2018.

- L. The SOS Administrator currently solicits a full requirements product. This product is for a fixed percentage of the SOS load (either Residential and Small Commercial or Large Commercial). It includes many components (i.e., energy, capacity, RECs, ancillary services, load shaping, etc.). Should the District of Columbia keep this type of SOS product, or should it revise the product being procured? For example, in the default service program in Illinois, the utilities procure blocks of energy, not percentages of load, buy capacity in the PJM market, MISO market, or through a separate RFP, and have a separate RFP for RECs. The utilities are the ones in charge of combining these and other components together to provide full requirements service to ratepayers and the Illinois Commission has approved separate RFPs for RECs, energy, and capacity procurement. Is this or some other form a better option for the District of Columbia or should it stay with the current bundled product?**

305. **Direct Energy.** Direct Energy recommends that, if the Commission keeps the current wholesale model, energy should be procured separately, because the “[o]ther components of the auction pose greater risks of change to the wholesale supplier.” Direct Energy also advocates for “a separate RFP for RECs as well as a mechanism to recover any major changes (i.e., changes to the capacity constructs) after contract flow.”<sup>316</sup>

306. **ExGen.** ExGen recommends staying with the status quo, which it claims encourages customer choice while providing a reliable and cost-effective product for those default customers who do not switch to a competitive supplier. In addition, ExGen notes that Illinois uses

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<sup>316</sup> Direct Energy’s Comments at 28.

“a power authority to manage its procurement of default service, a structure very different from that utilized by the District.”<sup>317</sup>

307. **OPC.** OPC believes this “fundamental” issue should be among those addressed in an evidentiary hearing. OPC raises concerns that the “current SOS procurement construct passes unreasonable and unjustified costs on to consumers” and “may function as a hindrance to meaningful achievement of the District’s renewable energy objectives.” OPC claims that the bundling of many components into a single product can lead to high prices being passed on to ratepayers. As support, OPC points out that SOS suppliers typically pay the compliance fee instead of purchasing solar RECs (“SRECs”), meaning that “suppliers pay the highest possible costs to comply and pass those costs through to all SOS customers”, that “[t]hese suppliers have little incentive to procure in a least-cost manner.” For that reason, OPC feels that the REPS requirements for SOS customers should be procured separately either through a long-term or short-term REC contracts. OPC also believes that customers would benefit from procuring capacity directly from PJM.<sup>318</sup>

308. **Pepco.** Pepco recommends keeping the current structure. Pepco notes that the current method shifts the risk of supply obligations to the wholesale supplier, allows for comparison shopping with retail competitive suppliers, and is consistent with what is done in neighboring jurisdictions which in turn “creates opportunities to compare annual outcomes... across several key metrics, such as bidder participation, number and name of winning suppliers, change in SOS prices and customer bill impacts.”<sup>319</sup>

309. Pepco argues that the full requirements contract is an “administratively efficient way to procure supply to meet SOS customer needs, as such needs change around the clock.” Pepco notes that “[a]ll components of the bundled product are clearly defined and, as a single product offering, can take advantage of the skill sets and diverse range of suppliers with varying portfolios to obtain the lowest price.” Pepco also asserts that breaking apart the product would mean Pepco would need to take on a new role to re-bundle the product as well as result in substantial revisions to the SOS Rules.<sup>320</sup>

310. Pepco asserts that the “Illinois approach to unbundling of the full requirements product into a portfolio of multiple products that are bid through separate RFPs would require the Commission to develop applicable rules to guide such a portfolio design and would also require careful assessment of the risks, costs and price stability associated with adopting a supply portfolio of products.” By contrast, Pepco argues that the “current sealed-bid RFP procurement process for full requirements products is working well, has an established track record of performance of over ten years and should not be changed.” In addition, Pepco observes that redesigning the SOS product to something along the lines of the Illinois portfolio of products model would require the Commission to comprehensively revise the District’s SOS rules. Specifically, Pepco notes that

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<sup>317</sup> ExGen’s Comments at 10.

<sup>318</sup> OPC’s Comments at 13-14.

<sup>319</sup> Pepco’s Comments at 15.

<sup>320</sup> Pepco’s Comments at 15.

the new rules would “need to address legal, regulatory and policy issues that this structure may create.”<sup>321</sup>

311. **WGL Energy.** WGL Energy provided no comments on this question with respect to the wholesale SOS model.

312. **ExGen Reply.** ExGen disagrees with OPC’s conclusion that, due to the bundled nature of the SOS product, wholesale suppliers would rather pay the compliance fee instead of purchasing SRECs at a lower cost. ExGen responds that the reason suppliers frequently pay the solar compliance fee is that there are not enough SRECs in the District for all the suppliers to meet their targets. ExGen argues that this scarcity forces suppliers to pay the compliance fee instead.<sup>322</sup>

313. **OPC Reply.** OPC recommends – in contrast to Pepco and ExGen who support maintaining the full requirements model for SOS – that “alternative approaches should be fully explored.” If, however, the current SOS model is continued that the Commission should, at least, separate “renewable energy and credit procurement from the SOS product.” OPC notes that currently “the full requirements product lumps any different costs together that make it onerous to compare other procurement alternatives.” OPC, therefore, argues that “[a]dditional transparency and analytical rigor is needed to compare the current process to other alternatives.” OPC concludes that, “[b]y separating renewable procurement, the remaining requirements product could be more easily compared to an all-in market purchase.”<sup>323</sup>

314. **Pepco Reply.** Pepco states that the product should continue to be a full requirements product, where the risks and supply obligations are born by the suppliers not the ratepayers “consistent with SOS as a safety net service.” Pepco also repeats arguments made regarding this matter in its initial comments.<sup>324</sup>

315. Pepco states that splitting out the REC procurement or other components such as energy as proposed by Direct Energy would be administratively inefficient and would increase the volatility of the SOS prices. Pepco notes that “suppliers already separately bid the various elements of supply.” Pepco claims that these suppliers have already obtained “the lowest price bid for the bundled product that suppliers have put together by managing their portfolio.” Pepco asserts that “[u]nder Direct Energy’s construct for SOS, the suppliers would bid separate products and manage their portfolio.” Pepco argues that the “SOS administrator would need to recreate the process for the same products that the suppliers had already bid separately.”<sup>325</sup>

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<sup>321</sup> Pepco’s Comments at 16.

<sup>322</sup> ExGen’s Reply Comments at 4-5.

<sup>323</sup> OPC’s Reply Comments at 9.

<sup>324</sup> Pepco’s Reply Comments at 23.

<sup>325</sup> Pepco’s Reply Comments at 23-24.



## DECISION

316. OPC claims that the bundling of many components into a single product can lead to high prices being passed on to ratepayers. Specifically, OPC suggests the REPS requirement and capacity be removed from the full requirements product and be procured separately via some other mechanism. OPC points out that SOS suppliers typically pay the compliance fee instead of purchasing SRECs, meaning that “suppliers pay the highest possible costs to comply and pass those costs through to all SOS customers” and that “[t]hese suppliers have little incentive to procure in a least-cost manner.” ExGen asserts that the reason suppliers frequently pay the compliance fee is that there are not enough SRECs in the District for all the suppliers to meet their targets. ExGen argues that this scarcity forces suppliers to pay the compliance fee instead.

317. The vast majority of REPS compliance costs are for the solar portion of the REPS. There are, as ExGen suggests, simply not enough SRECs in the District. So if SRECs are so scarce that most suppliers are paying the solar compliance fee, then a procurement is unlikely to fetch prices much below the solar compliance fee. OPC’s assertion that “suppliers have little incentive to procure SRECs in a least-cost manner” is misplaced. Suppliers are in a competitive business to make a profit. Like any business they live and die by their ability to conduct business in a cost effective manner. In addition, it is unclear if the benefits of a separate procurement would outweigh the administrative costs of such a procurement. Similarly, when OPC suggests that other parts of the full requirements package be separately procured, specifically for capacity, OPC has not offered any evidence that suggests that separately procuring these elements will result in reduced electricity prices for consumers. In addition, one of the beauties of the full requirements product is that all the components of electricity service are included in that product – except for the tariffed transmission and distribution rates – which has the advantage of being administratively efficient. Without some evidence that separately procuring the elements of the full requirements product will result in lower prices and given the administratively efficient nature of this product, we are not willing to separately procure components of the full requirements product at this time.

**M. Should bidders or their guarantors be required to be rated by at least one credit rating agency? If not, what credit protections should these bidders provide to the SOS Administrator to guarantee performance?**

318. **Direct Energy.** Direct Energy asserts that, under either a retail or wholesale SOS model, a bidder should be rated by at least one credit rating agency. Direct Energy states that “[a] credit agency rating is a fair and consistent way to validate financial standing for bid participants.” Direct Energy recommends “no changes to the current SOS credit practices if the current [SOS] model continues.”<sup>326</sup>

319. **OPC.** OPC “strongly believes that bidders and their guarantors should be rated” and have at least a C credit rating.” OPC asserts that “[t]he credit rating requirement enables the SOS Administrator to determine whether the potential supplier has the ability to provide the energy

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<sup>326</sup> Direct Energy’s Comments at 29.

supply being bid.” OPC argues that, “[w]ithout this requirement, ratepayers are exposed to unreasonable and burdensome risk that could have serious reliability and cost implications.”<sup>327</sup>

320. **Pepco.** Pepco first asserts that, in determining the eligibility of a bidder, “the bidder or its guarantor be rated by at least one of the major credit ratings agencies”. Pepco further argues that that rating should be a minimum of “BBB-“ from S&P or Fitch or “Baa3” from Moody’s. In addition, Pepco observes that, while the WFRSA has a credit rating requirement, the RFP does not.<sup>328</sup>

321. Pepco asserts that, if the Commission “deems it permissible for unrated or non-investment grade entities to participate in the competitive bid process,” such entities “should be subject to increased bid assurance collateral based on our experience in Maryland.” Pepco notes that, in Maryland currently, unrated bidders are “allowed to participate in bidding by posting an additional \$300,000 per bid block as bid collateral for a total of \$600,000 per bid block and that such collateral be required to be reposted before each auction of a multi-procurement RFP.” In the event that the Commission allows unrated entities to participate in SOS bidding in the future, Pepco believes that the Commission should adopt this requirement. Finally, Pepco recommends that these entities be “required to post cash or [provide] a letter of credit to satisfy performance assurance collateral requirements.”<sup>329</sup>

322. **WGL Energy.** WGL Energy believes that either the bidder or its guarantor should have an investment grade rating.<sup>330</sup>

323. **Pepco Reply.** Pepco reiterates its prior comments, adding that OPC, WGL Energy, and Direct Energy all think a minimum credit rating should be established.<sup>331</sup>

### DECISION

324. As previously indicated, the Commission resumed our review of the process for providing SOS, by Order issued June 24, 2016.<sup>332</sup> By Order issued September 22, 2016, the Commission changed the language in the RFP to allow companies not rated by one of the three major credit rating agencies to bid, if they provide bid assurance collateral in the amount of \$600,000 per bid block, as opposed to the \$300,000 per block collateral required for rated bidders.<sup>333</sup> While Direct Energy, OPC, Pepco, and WGL Energy all believe a minimum credit rating should be established, we believe that possession of a credit rating together with bid

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<sup>327</sup> OPC’s Comments at 14.

<sup>328</sup> Pepco’s Comments at 17-18.

<sup>329</sup> Pepco’s Comments at 18-19.

<sup>330</sup> WGL Energy’s Comments at 11.

<sup>331</sup> Pepco’s Reply Comments at 24.

<sup>332</sup> Order No. 18257.

<sup>333</sup> *Formal Case No. 1017*, Order No. 18547, ¶ 13, rel. Sept. 22, 2016.

assurance collateral of \$300,000 per bid block provides sufficient protection. In addition, we stand by our decision to allow unrated companies with assurance collateral of \$600,000 per bid block to participate. We note that this change increases the potential field of bidders.

**N. What method should be used for performance assurance? Currently the SOS Administrator requires winning bidders to post 15 percent of the value of the contract. Should this be continued? Is the percent of value adequate? Should some form of mark-to-market calculation be used such as that used in Maryland?**

325. **Direct Energy.** Direct Energy states that, for the current wholesale SOS model, “the current financial assurance requirements are appropriate.”<sup>334</sup>

326. **EnerNOC.** EnerNOC takes “no position on performance assurance obligations except to say that the obligations must balance the interests of costs of the assurance and how that affects pricing on end use customers with the desire to ensure that all winners have the financial stability to participate in the market for the term of its obligation.”<sup>335</sup>

327. **ExGen.** ExGen believes that the Commission should alter the way performance assurance is calculated. ExGen notes that currently “winning bidders are required to provide 15% of nominal value of the contract’s total Purchase Amount.... as performance assurance.” ExGen argues that this “percentage of value is arbitrary and may not reflect the actual value exposure Pepco faces if a supplier were to default or go bankrupt.”<sup>336</sup>

328. ExGen believes that the Commission should change to a mark to market approach as is used in Delaware and Maryland to more accurately reflect Pepco’s exposure to suppliers. ExGen asserts that the mark to market approach has “worked successfully” in those states. Additionally, ExGen asks that suppliers be allowed an “unsecured credit line based on the supplier’s credit ratings” to satisfy the mark to market requirement. As an alternative to mark to market, ExGen argues that “suppliers should be authorized to rely upon unsecured credit lines based on their credit ratings, with no need for a corporate guarantee.”<sup>337</sup>

329. **OPC.** OPC states that “[i]f performance has been an issue then this could be considered in an evidentiary hearing.” In addition, OPC notes that “such restrictions could place undue barriers to new entrants which would hinder competition.”<sup>338</sup>

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<sup>334</sup> Direct Energy’s Comments at 31.

<sup>335</sup> EnerNOC’s Comments at 19.

<sup>336</sup> ExGen’s Comments at 10.

<sup>337</sup> ExGen’s Comments at 10-11.

<sup>338</sup> OPC’s Comments at 15.

330. **Pepco.** Pepco recommends leaving performance assurance at the 15 percent level. Pepco notes this method has worked to protect customers and it protects against all risks, not just shifts in the market price of energy.<sup>339</sup>

331. **WGL Energy.** WGL Energy recommends a mark to market collateral system based on the three month exposure of the supply commitment compared to current market prices.<sup>340</sup>

332. **Pepco Reply.** Pepco recommends leaving performance assurance at the 15 percent level, noting that Direct Energy supports its position. Pepco notes this method has worked as intended to protect SOS customers against all risks.<sup>341</sup>

333. Pepco also notes that ExGen and WGL Energy “urge the Commission to move to a mark to market approach, arguing that the current methodology is arbitrary and that the mark to market approach is more reflective of Pepco’s actual exposure due to a particular supplier.” Pepco observes that the Commission has, in 2004, “expressed concern that allowing a mark to market performance assurance would result in the supplier not having to commit the necessary collateral”, and that the Commission “wanted guaranteed protection that collateral amounts based on the value of the awarded contract provides.” Pepco argues that the “same logic holds true today.” Pepco asserts that, in addition, “adding a mark to market requirement will increase the administrative costs associated with SOS.” Pepco concludes that the Commission should not adopt this approach “without a better demonstration of [the] benefits of such an approach in light of the changes that would be necessary to adopt this approach.”<sup>342</sup>

### DECISION

334. Two suppliers, ExGen and WGL Energy, recommend moving to a “mark to market” approach. Direct Energy and Pepco recommend keeping the 15 percent performance assurance.

335. Under the mark to market approach, the performance assurance amount increases as market prices increase. The initial “marks” are set on bid day and updated regularly to see if more collateral is needed. As an example, on bid day the average cost of energy futures for the upcoming SOS contract period might be \$50/MWh. Then, six months later, futures prices for the same period increase to \$60/MWh. The SOS supplier would then owe an additional \$10/MWh for each MWh they were expected to supply.

336. The logic behind this methodology is that the amount of collateral expands based on the utility’s exposure to market prices, so if prices rise and a supplier defaults, Pepco would

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<sup>339</sup> Pepco’s Comments at 19.

<sup>340</sup> WGL Energy’s Comments at 11.

<sup>341</sup> Pepco’s Comments at 25.

<sup>342</sup> Pepco’s Comments at 25 (citation omitted).

have sufficient capital to buy replacement supply. Similarly, when using this methodology, if prices fall, the amount of performance assurance would fall accordingly.

337. However, the current method makes it very easy for suppliers and Pepco to calculate the required level of performance assurance. In addition, there is no evidence, that we are aware of, to indicate that the current method is discouraging participation or resulting in excessively high bid prices. Moreover, this method assures that some performance assurance will be required, even if market prices stay the same or decrease, giving suppliers more incentive to hold to their commitments. For these reasons, the Commission declines to change our performance assurance methodology.

- O. Currently, the Commission’s SOS rules provide that “[n]inety (90) days following the Commission’s approval of the selection of winning bidders for the final tranche, the Commission will disclose upon request (a) the total number of bidders, and (b) the names of the winning bidders.”<sup>343</sup> In addition, the RFP for SOS states that “[a]ny information about the supply procurement results that does not provide supplier-specific information, or disclose any individual bid prices may be made public by the Commission and OPC, at their discretion after all tranches of bidding for that year of SOS are completed. 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.” Do these provisions provide the right balance between allowing bidders to protect their competitive advantages in bidding versus providing consumers and other members of the public with a transparent procurement process? Should more information be released to the public and if so, what should be released? Should the information be released earlier than 90 days and if so, when?**

338. **Direct Energy.** Direct Energy recommends that, if the Commission keeps the current wholesale model, the average winning prices and average bid prices should be revealed as soon as possible, but no more than 14 days after the auction. Direct Energy asserts that “[t]his will enable non-winning suppliers to better understand how they might refine their offers for the next auction.” In addition, Direct Energy believes that after 60 days the names of the bidders and the names of the winners should be released. Direct Energy argues that “[i]nformation tying a particular bid price to a specific company should be held as confidential.”<sup>344</sup>

339. **OPC.** OPC asserts that “[f]ailing to provide the actual bid prices (on a redacted basis) and the final auction price does not lead to a transparent process.” OPC therefore recommends that the actual bid prices and the final winning price be provided as well as the winning bidders and the corresponding supply amount.<sup>345</sup>

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<sup>343</sup> 15 DCMR § 4111.5 (2015).

<sup>344</sup> Direct Energy’s Comments at 32.

<sup>345</sup> OPC’s Comments at 15.

340. **Pepco.** Pepco does not provide specific details on what they would or would not recommend releasing, but does provide data on what is released in New Jersey, Maryland, and Delaware, noting that different information is released at different times. Pepco also notes that each jurisdiction uses a two-part process, with initial data coming *via* the initial public testimony and Commission Order and more specific data being presented at a later date.<sup>346</sup>

341. **WGL Energy.** In its retail SOS proposal, WGL Energy states that all customers will be paying the same rate and that rate is sufficient as far as pricing details to be released immediately. In addition, WGL Energy wants the names of the winning suppliers for retail SOS released after 60 days.<sup>347</sup>

342. **Pepco Reply.** Pepco first notes that Direct Energy, OPC, and WGES “all argue for increased transparency though to varying degrees.” Pepco supports additional transparency, but suggests a level of transparency that balances the desire for more information with some protection of bidder competitive information. Specifically, Pepco believes that there are “confidentiality concerns with providing certain information, such as the bid prices and names of bidders who did not win.”<sup>348</sup>

## DECISION

343. Commenters generally agree that the winning price and names of winning suppliers should be released, though Direct Energy proposes a two-stage process, where some information is released soon after the bid day and additional information is released much later. OPC argues that “[f]ailing to provide the actual bid prices (on a redacted basis) and the final auction price does not lead to a transparent process.” OPC does not say why this is the case.

344. The current SOS rules provide for Pepco to disclose the total number of bidders, and the names of the winning bidders, 90 days after the approval of the final tranche of bidding.<sup>349</sup> Interested parties can also derive average winning price information for the current and upcoming June to May period by reviewing Pepco’s rate filing, which is made a few weeks after the bidding concludes. We do not know of any jurisdictions where information regarding individual bids is disclosed and we are particularly concerned that losing bidders may not want their bids disclosed. We believe the current disclosure rules are adequate. Finally, we note that the Commission posts the names of the winning bidders for each yearly SOS auction on the Commission’s website.<sup>350</sup>

**P. Currently, bidders must turn in complete qualifications documents by the due date specified in the RFP. If there are errors in the documents, the bidders are**

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<sup>346</sup> Pepco’s Comments at 19-21.

<sup>347</sup> WGL Energy’s Comments at 12.

<sup>348</sup> Pepco’s Reply Comments at 25-26.

<sup>349</sup> 15 DCMR § 4111.5 (2015).

<sup>350</sup> See Public Service Commission of the District of Columbia, “Winning Wholesale Suppliers for Standard Offer Service,” available at <http://www.dcpsc.org/Utility-Information/Electric/Historical-and-Analytical-Information-for-Electric/Background-Information/Winning-Wholesale-Suppliers-for-Standard-Offer-Ser.aspx>.

**allowed to cure those errors, but only up until the due date. If documents are submitted early there is sufficient time to cure deficiencies. If not, there is not. Should a cure period be added after the due date to allow for the remedy of any deficiencies and if so, what should be the cure period?**

345. **Direct Energy.** Direct Energy believes bidders should be given at least five business days to cure deficiencies whether under a retail or wholesale SOS model.<sup>351</sup>

346. **OPC.** OPC opposes a cure period, recommending that the due date for bids remain the same. Specifically, OPC “is concerned that adding this error period could allow for sophisticated bidders to potentially game their bids to their advantage while other bidders will not have the opportunity.”<sup>352</sup>

347. **Pepco.** Pepco is against a cure period. Pepco asserts that the “schedule of due dates specified in the RFP and approved by the Commission provides for an orderly and transparent SOS bidding process whereby all market participants are governed by a standardized set of rules, including the process schedule.” Specifically, Pepco states that “[a]ll participants are required to meet the deadline for submittal of eligibility documents.” Furthermore, the RFP, Pepco notes, urges bidders to provide such material as soon as practicable so that Pepco can perform its due diligence. In addition, Pepco observes that the “RFP also note that early submittal of materials will provide the greatest flexibility to correct deficiencies before the due date.” Pepco points out that, “[i]f for some reason a bidder does not comply and submits qualifications that do not meet all the requirements before the deadline to be eligible to bid in the first tranche, the RFP provides the bidder with the opportunity to cure deficiencies and participate in subsequent tranches if the deficiency is cured no later than two weeks prior to the due date of proposals for the next tranche.” Pepco concludes that “[t]hese procedures properly allocate to bidders the responsibility to comply with the established and successful RFP process adopted by the Commission.”<sup>353</sup>

348. **WGL Energy.** WGL Energy supports having a cure period and recommends it be two weeks long. It is unclear from WGL Energy’s comments whether this opinion applies to the current SOS process or just to their proposed retail model.<sup>354</sup>

349. **Pepco Reply.** Pepco reiterates that a cure period is not needed, noting that these are sophisticated bidders who are familiar with the process and that “the RFP contains certain bidder protections to avoid and cure deficiencies.”<sup>355</sup>

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<sup>351</sup> Direct Energy’s Comments at 32-33.

<sup>352</sup> OPC’s Comments at 15.

<sup>353</sup> Pepco’s Comments at 21-22.

<sup>354</sup> WGL Energy’s Comments at 12.

<sup>355</sup> Pepco’s Reply Comments at 26-27.

## DECISION

350. This question addresses concerns about adding additional time after the due date for qualification materials to cure any deficiencies in those materials. OPC's comment appears to confuse the due date for bids with the due date for qualification materials. No parties have suggested changing the due date for bids.

351. Pepco supports the current system, whereas Direct Energy and WGL Energy suggest additional cure periods (though, as noted above, it is unclear if WGL Energy is referring to the current process or its proposed new retail model).

352. The reason for having a cure period is to allow for increased participation in the RFP process by ensuring that bidders with errors or missing information in their applications can still participate in the process provided they can fix those deficiencies within a very short amount of time. As an example, New Jersey allows for a 24-hour cure period to fix any shortcomings in the bidder's application.

353. While it is true, as Pepco points out, that Pepco's process allows bidders to submit application materials early, thus giving them time to cure any issues with their application, the reality is that bidders can sometimes wait until the last minute to submit these materials, leaving them no time to fix any problems, even if those problems can be easily cured. In order to avoid this problem, the Commission directs Pepco to include a 24-hour cure period from the notification of a deficiency exclusively to fix deficiencies found in submitted applications after the deadline and to revise the WFRSA and RFP accordingly. Thus, if application materials are due on, say, November 9 at close of business ("COB") and the applicant was notified on November 10 of a deficiency, that applicant would have until COB the next day to fix identified issues. To be clear, this does not mean that bidders could wait until November 11 to submit materials, this cure period only applies to applications received by the regular due date.

**Q. Are there additional enhancements that the Commission should incorporate into its procedures to assure a level playing field when affiliates of the SOS Administrator are participating in the bidding and if so, what enhancements should be included?**

354. **Direct Energy.** If the wholesale model is retained, Direct Energy believes that the auction should be hosted by someone other than the utility and that "participation of any affiliated utility or wires company in the administration of the auction should be prohibited."<sup>356</sup>

355. **EnerNOC.** As noted above, EnerNOC recommends changing the auction format to a live on-line reverse auction. EnerNOC believes that will "ensure a level playing field" as this auction "is based nearly solely on price, which drives bidders to compete on an apples-to-apples basis". EnerNOC argues that requiring that all bids be time-stamped will help ensure the integrity

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<sup>356</sup> Direct Energy's Comments at 33.



of the results. EnerNOC also believes that the auction could be run with aliases to eliminate any conflict of interest.<sup>357</sup>

356. **ExGen.** ExGen first notes that it “is newly affiliated with Pepco...” Next, ExGen indicates that it “participates in default service auctions in several jurisdictions where affiliates of the SOS Administrator participate in the auction.” ExGen believes a level playing field has been created and that no additional changes are needed. ExGen cites examples in New Jersey and Ohio where affiliates regularly bid as proof that auctions can be successful even when affiliated bidders are involved. ExGen concludes that the “structure of the default service auction in the District, which includes a bid monitor who reviews the bids and recommends winning suppliers, ensures neutrality and an even playing field.”<sup>358</sup>

357. **OPC.** OPC reiterates its position that having an independent SOS Administrator “would obviate this concern.” As an alternative, OPC suggests requiring that affiliates submit bids earlier than non-affiliates. OPC then “submits that while this approach may be doable, it could create an administrative burden for the Commission and would not necessarily ensure a level playing field.”<sup>359</sup>

358. **Pepco.** Pepco believes that the “current SOS rules are sufficiently robust to protecting against any affiliate related concerns.” Pepco asserts that, as SOS Administrator, it “is committed to ensuring that the integrity of the bidding process is maintained” and that it “has been since inception.” Pepco notes that it “ensures that the necessary confidentiality and security protections are applied during the SOS bidding process.” Pepco states that it identifies and limits the number of employees who collect bid offers and who are present during the evaluation of bids”, and that these “employees are required to sign a confidentiality agreement.” In addition, Pepco indicates that bidding is conducted at a secure and separate site from Pepco’s offices with oversight by the Commission Staff, OPC, and the Commission’s market monitor.<sup>360</sup>

359. Pepco also argues that the Commission’s rules provide additional protections. Specifically, Pepco notes that the rules provide for this review, the independent market monitor consultant, and a proscription against the SOS Administrator providing any information to an affiliated wholesale SOS bidder.<sup>361</sup>

360. Pepco also stated that there were no issues from 2005 to 2007 when it was affiliated with Conectiv Energy who participated in the SOS market as a wholesale supplier. Pepco notes that “[t]he Exelon merger will not alter Pepco’s compliance with the letter and spirit of the affiliate restrictions.” In addition, Pepco asserts that it “abides by a strict risk policy, which has been enhanced, and conducts FERC training to ensure the integrity of the SOS process is maintained.”

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<sup>357</sup> EnerNOC’s Comments at 20.

<sup>358</sup> ExGen’s Comments at 11.

<sup>359</sup> OPC’s Comments at 16.

<sup>360</sup> Pepco’s Comments at 22.

<sup>361</sup> Pepco’s Comments at 23 (citations omitted).

Finally, Pepco suggests that a public hearing such as in Delaware or Maryland might be helpful and in that hearing the Commission's market monitor could provide public testimony as well as provide some limited data from the bidding.<sup>362</sup>

361. **WGL Energy.** WGL Energy provided no comments on this question with respect to the wholesale SOS model.

362. **Pepco Reply.** Pepco reiterates that the arguments it made regarding the utility affiliate, stating that OPC's and Direct Energy's concerns are unfounded and noting that the "wholesale procurement model and the controls and rules established by the Commission have been effective in ensuring an equitable and transparent SOS procurement process."<sup>363</sup>

### **DECISION**

363. Pepco and ExGen believe that the current rules and procedures are sufficient to handle affiliate issues, while Direct Energy and OPC believe that Pepco should not continue as SOS Administrator. Direct Energy, in addition, argues that no company affiliated with Pepco should be SOS Administrator but does not say why that should be the case. As an alternative, OPC suggests requiring affiliates to submit bids earlier than non-affiliates, but OPC then backs off this assertion noting that such an arrangement "could create an administrative burden for the Commission and would not necessarily ensure a level playing field."

364. In a discussion earlier in this Order addressing the question of whether Pepco should continue as the SOS Administrator, the Commission determined that Pepco should continue in this role.<sup>364</sup> In the comments filed in response to that question, interested persons raised concerns regarding affiliate bidding. We have asked Pepco to describe in detail the procedures it employs to avoid potential conflicts of interests and otherwise ensure that ExGen does not receive any competitive advantage as an Exelon affiliate bidding in a Pepco-administered SOS auction. As previously indicated, once we review Pepco's response, the Commission will then determine if any additional safeguards are required. We do note, however, that banning ExGen from bidding, as Direct Energy suggests is an extreme measure and could mean less future competition in the District's SOS auctions which in turn could lead to higher prices for District consumers, when there is no evidence before us that ExGen has gained a competitive advantage in the SOS auction process.

**R. What data, if any, would a wholesale supplier need to know about the CREA Program to better prepare its SOS bid? (e.g. the number and capacity of CREFs, the number of CREF subscribers)**

365. **Direct Energy.** If the wholesale model is retained, Direct Energy asserts that a "wholesale supplier providing would need the type of resources, size in kw, historical daily capacity factors, number of subscribers, names, addresses, customers types (residential or

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<sup>362</sup> Pepco's Comments at 23-24 (citation omitted).

<sup>363</sup> Pepco's Reply Comments at 27-28.

<sup>364</sup> See discussion *supra* ¶ 93.

commercial) and percentage ownership of each of the subscribers, hourly electricity demand of each subscriber for the prior 12 months and any other relevant data that might be available.”<sup>365</sup>

366. **ExGen.** ExGen states it would need granular data for both quantity and type of load that is being offset as well as what customer classes are being offset by the CREF output.<sup>366</sup>

367. **OPC.** OPC states that bidders would need to know the capacity of all CREFs and how their generation affects “the overall energy needs of the region”, but that bidders would not need to know granular data like number of CREFs subscriptions – which might raise privacy concerns.<sup>367</sup>

368. **Pepco.** Pepco states that it is providing all the data required by Commission Order No. 17863<sup>368</sup> – the amount of supply acquired from CREFs and the total capacity of all CREFs. Pepco also notes that for the 2016/2017 procurement there are no authorized CREFs and thus no electricity has been produced by CREFs. Pepco, moreover, observes that “[a]dditional information will be available to potential wholesale bidders in Pepco’s filings related to the implementation of CREA, available at the Commission’s website, and on Pepco’s website related to” CREFs.<sup>369</sup>

369. **WGL Energy.** WGL Energy provided no comments on this question with respect to the wholesale SOS model.

370. **Pepco Reply.** Pepco added in its reply comments that the only data Pepco has will be limited to number and size of existing CREFs and those in the interconnection queue.<sup>370</sup>

### **DECISION**

371. Parties generally agree that providing the capacity of the CREF facilities and the number of facilities would be useful information. Some suppliers such as Direct Energy ask for more granular data to be provided, though OPC raises a valid concern that the more granular data that is provided, the more legitimate concerns about privacy become. Pepco currently must provide the amount of supply acquired from CREFs and the capacity of authorized CREFs. This information helps SOS bidders judge the effect of CREF output on the load shape of SOS service. At this point, the current data requirements appear sufficient for that purpose, especially considering that there are no currently active projects. The Commission will not, therefore, ask Pepco to provide additional information at this time. It may be appropriate to reassess whether

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<sup>365</sup> Direct Energy’s Comments at 36.

<sup>366</sup> ExGen’s Comments at 11.

<sup>367</sup> OPC’s Comments at 16.

<sup>368</sup> *Formal Case No. 1017, and RM41-2015-1, In the Matter of 15 DCMR Chapter 41-District of Columbia Standard Offer Service-Community Renewable Energy Amendment Act of 2013*, Order No. 17863, rel. April 24, 2015.

<sup>369</sup> Pepco’s Comments at 24 (citations omitted). See [www.pepco.com/community-commitment/renewable-energy/green-power-connection/dc/dc-community](http://www.pepco.com/community-commitment/renewable-energy/green-power-connection/dc/dc-community).

<sup>370</sup> Pepco’s Reply Comments at 28.

additional information should be disclosed when CREFs start to come on-line in significant numbers.

**S. Will the implementation of CREA cause wholesale suppliers to adjust their bid prices in the SOS procurement process? If so, how?**

372. **Direct Energy.** If the wholesale SOS model is retained, Direct Energy states that “suppliers will use the data provided about CREF resource(s) to determine if an adjustment is warranted” and that any “such adjustment would be borne by all SOS customers.”<sup>371</sup>

373. **ExGen.** ExGen believes that a risk premium may be added to bids “[t]o the degree implementation of CREA creates uncertainty with respect to supplier obligations.”<sup>372</sup>

374. **OPC.** OPC believes CREA will affect the bid price based on how it changes the SOS load profile.<sup>373</sup>

375. **WGL Energy.** WGL Energy provided no comments on this question with respect to the wholesale SOS model.

**DECISION**

376. Commenters suggest that CREA will have some effect on bid prices. ExGen believes that a risk premium may be added to bids, Direct Energy and WGL similarly say that an “adjustment” to prices bid may occur, and OPC believes that CREA will affect bid prices to the extent that the SOS load profile changes. Given that there is no operating data and no authorized facilities at this time it is hard to say with any certainty what the effect of CREA will be. On the other hand, it can be easily argued that CREF generation, being solar powered, will occur during peak hours. Since CREF generation will reduce SOS demand this means that there will be less need in peak hours, when energy is typically more expensive, making the SOS product slightly less expensive to provide. Again, at this point, this is a theoretical view, since no authorized CREFs exist, nor have we observed any increase in risk premiums included in SOS bids tied to the passage of CREA. Accordingly, no Commission action is needed at this time with respect to this matter.

**T. Are there any changes that would need to be made to the SOS process once CREA is in effect? If so, identify the changes and when they would need to be made?**

377. **Direct Energy.** For the current SOS process, Direct Energy does not believe any changes are needed. Direct Energy also notes that “[i]t appears as though the CREF program was designed with the current (utility-managed) wholesale SOS model as the basis”, and, therefore,

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<sup>371</sup> Direct Energy’s Comments at 37.

<sup>372</sup> ExGen’s Comments at 12.

<sup>373</sup> OPC’s Comments at 16.

“[i]f the Commission decides to move away from the utility as the Administrator, but intends to keep the wholesale model in place, then some significant changes might be required.”<sup>374</sup>

378. **ExGen.** ExGen asserts that, prior to an auction that could include a supply period with CREF output, “suppliers require quantity information and details regarding how the load offset will be calculated or applied.”<sup>375</sup>

379. **OPC.** OPC reiterates its support for “exploring the possibility of separating renewable energy procurement from the SOS product.” OPC believes that the use of long or short-term contracts for renewable energy will more meaningfully facilitate renewable energy deployment in the city, in furtherance of the District’s sustainability goals.” Specifically, OPC asks for a “more in-depth review and analysis of this potential construct in an evidentiary hearing.”<sup>376</sup>

380. **Pepco.** Pepco believes there are three changes that are necessary because of CREA. First, Pepco notes that, per the Commission’s SOS rules, it will have to “track its costs of administration related to the purchase of electricity supply from CREFs and include them in the calculation of the SOS Administrative Charge.” Second, Pepco observes that the SOS Administrator is required “to use energy produced by CREFs to offset wholesale supply in a manner that is most economically advantageous to SOS customers”, and Pepco believes that it should be used to offset residential load. Third, Pepco anticipates in adding two new expenses that will be included in the Purchase Cost Adjustment, specifically the value of the Community Net Metering Credit and the payments to CREFs for unsubscribed energy.<sup>377</sup>

381. **OPC Reply.** OPC states that Pepco has mentioned that it plans to track the CREA related costs and that it then anticipates passing these costs through to ratepayers through the Administrative Charge. OPC reiterates that all costs from SOS and CREA should be scrutinized and recommends the Commission establish a hearing in which this can be done.<sup>378</sup>

382. **Pepco Reply.** Next Pepco notes that ExGen’s believes that, “prior to an auction that could include output from a CREF, suppliers will require quantity information and details regarding how the load offset will be calculated or applied.” Pepco observes that, under the Commission’s rules, it is required “to file a report with the Commission providing an overview of the CREFs, including numbers of subscribers, type of generation, and other items.” Pepco states that it has been filing this and other information in the Commission’s “RM9” docket.<sup>379</sup>

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<sup>374</sup> Direct Energy’s Comments at 38.

<sup>375</sup> ExGen’s Comments at 12.

<sup>376</sup> OPC’s Comments at 17.

<sup>377</sup> Pepco’s Comments at 24-25.

<sup>378</sup> OPC’s Reply Comments at 11 (citations omitted).

<sup>379</sup> Pepco’s Reply Comments at 29 (citations omitted).

### DECISION

383. Under the Commission's SOS rules, SOS supplier obligations are to be "adjusted for offsetting electric supply procured from CREFs", meaning that energy above and beyond the needs of the CREF will be purchased by Pepco and used to reduce the amount of supply procured from SOS suppliers.<sup>380</sup> Both ExGen and Pepco note the need for some determination regarding how Pepco will use the supply from CREFs, in other words, which specific rate classes will be credited with purchasing CREF energy. We concur with Pepco that the simplest way to implement this action would be to credit residential customers with the load offset.

384. OPC and Pepco also bring up the costs of administering CREF facilities. The Commission agrees that it is important to review these costs and the Commission has already provided for this in the SOS Rules. This concern is addressed in the Commission's SOS rules which state that:

[t]he Administrative Charge will be designed to recover the SOS Administrator's incremental costs for procuring and providing the service. Actual incremental costs shall include, but not be limited to, a proportionate share of SOS customer uncollectibles for each SOS Customer Group, Commission Consultant expenses (as described in Subsection 4110.1), wholesale SOS bidding expenses, working capital expenses related to SOS for each SOS Customer Group, wholesale supply transaction costs related to Wholesale SOS Provider administration and transmission service administration, wholesale payment and invoice processing, incremental billing process expenses, customer education costs, incremental system costs, costs related to the purchases of electric supply from CREFs and legal and regulatory filing expenses related to SOS requirements.<sup>381</sup>

**U. What additional issues, if any, related to the implementation of CREA or the integration of CREA and the SOS procurement process need to be brought to the attention of the Commission?**

385. **Direct Energy.** Regarding the current wholesale SOS process, Direct Energy "is not aware of any other issues at this point."<sup>382</sup>

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<sup>380</sup> See 15 DCMR § 4102.1 (2015).

<sup>381</sup> See 15 DCMR § 4103.4 (2015).

<sup>382</sup> Direct Energy's Comments at 38.

386. **Pepco.** Pepco is not aware of any other issues. Pepco also observes that there are “no CREFs, pending or in operation.” Pepco asserts that there may be a need to address other issues once CREFs become operational.<sup>383</sup>

387. **RESA.** RESA notes that integration of CREA into its proposed transitional SOS proposal and “competitive retail end-state, including any regulatory and statutory changes that may be necessary,” is an issue that will need to be addressed by a stakeholder working group. RESA does not offer a response to this question regarding the current wholesale SOS model.<sup>384</sup>

388. **Pepco Reply.** Pepco states that, since it opposes a retail model, “RESA’s request for a working group to discuss integrating CREF in the transitional SOS and retail model are unnecessary.”<sup>385</sup>

### **DECISION**

389. No issues regarding the implementation of CREA within the context of the SOS wholesale model were raised here.

#### **THEREFORE, IT IS ORDERED THAT:**

390. The Office of the People’s Counsel’s Motion Requesting a Full Evidentiary Hearing is **DENIED**;

391. The Potomac Electric Power Company is **DIRECTED**, consistent with this Order, to file a detailed description of the procedures it employs to avoid potential conflicts of interests and 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 Standard Offer Service auction within 45 days of the date of this Order;

392. The Potomac Electric Power Company is **DIRECTED**, consistent with this Order, to remove the adder from Standard Offer Service rates beginning with the June 1, 2018 to May 31, 2019 service year;

393. The Potomac Electric Power Company is **DIRECTED**, consistent with this Order, to switch to an annual fixed charge system of compensation starting with the Service Offer Service service year beginning June 1, 2018;

394. The Potomac Electric Power Company is **DIRECTED**, consistent with this Order, to add in the Request for Proposals and Wholesale Full Requirements Service Agreement due to be filed by August 1, 2017 a 24-hour cure period from the date for qualification materials for wholesale suppliers are due to cure any deficiencies in those materials;

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<sup>383</sup> Pepco’s Comments at 25.

<sup>384</sup> RESA’s Comments at 31.

<sup>385</sup> Pepco’s Reply Comments at 29 (citation omitted).

395. The Potomac Electric Power Company, Commission staff, the Standard Offer Service Working Group including the Office of the People’s Counsel, and other interested persons are **DIRECTED**, consistent with this Order, to meet within 21 days of the date of issuance of the Order in *Formal Case No. 1139*, to consider what rate classes to consolidate, including but not limited to time-varying rates and different rates by usage quantity, in the Standard Offer Service bid sheets; and

396. Commission staff is **DIRECTED**, consistent with this Order, to file, on behalf of this *ad hoc* working group, a report with recommendations for consolidating rate classes in the Standard Offer Service bid sheets within 35 days of the date of issuance of the Order in *Formal Case No. 1139*.

**A TRUE COPY:**

**BY DIRECTION OF THE COMMISSION:**

**CHIEF CLERK:**

**BRINDA WESTBROOK- SEDGWICK  
COMMISSION SECRETARY**



July 7, 2017

**FORMAL CASE NO. 1017, IN THE MATTER OF THE DEVELOPMENT AND DESIGNATION OF STANDARD OFFER SERVICE IN THE DISTRICT OF COLUMBIA, Order No. 18829**

**STATEMENT OF COMMISSIONER RICHARD BEVERLY**

Although my concern over eliminating the adder does not rise to the level of a dissent, I write separately to express my reservation in taking such action based on this record. There is little doubt that eliminating the adder would lower SOS costs but D.C. Code § 34-1509 (d)(1)(A) also mandates that the SOS price not hinder the development of a competitive electricity supply market. Our sole rationale for eliminating the adder is that the adder is so small that it has little to no impact on competition, despite RESA's representation that the adder helps to even the playing field for the suppliers it represents. Even Pepco cautions against eliminating the adder because, without it, SOS rates would be below competitive rates and make it more difficult for suppliers to compete.

Admittedly, there is no hard evidence in the record to show that the adder actually makes the market more competitive but, by the same token, there is no hard evidence to show that it does not. It seems to me that the better course of action would be to defer this issue to the upcoming Biennial review where we could explore it in more depth and develop a more complete record before making a decision that could negatively impact competition.