

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND**

IN THE MATTER OF A REQUEST BY	*	
POTOMAC ELECTRIC POWER COMPANY	*	
AND DELMARVA POWER AND LIGHT	*	
COMPANY TO REVISE RECOVERY OF	*	CASE NO. 9226
STANDARD OFFER SERVICE RELATED	*	
CASH WORKING CAPITAL REVENUE	*	
REQUIREMENT	*	

**MOTION BY OFFICE OF PEOPLE’S COUNSEL
TO EXPAND SCOPE OF PROCEEDING**

The Office of People’s Counsel hereby requests that the Public Service Commission (“**PSC**” or “**Commission**”) expand the scope of this proceeding (“**Proceeding**”) for the purpose of conducting a full examination of all components of the Administrative Charge (as such term is defined in the Settlement Agreement (hereinafter defined)), including but not limited to, the incremental costs and rate of return charged by each of Potomac Electric Power Company (“**PEPCO**”) and Delmarva Power and Light Company (“**Delmarva**”) in connection with their obligations to provide Standard Offer Service (“**SOS**”) pursuant to Section 7-510 of the Public Utility Companies Article of the Annotated Code of Maryland (the “**PUC**”).

I. PROCEDURAL HISTORY

On March 9, 2010, PEPCO and Delmarva (PEPCO and Delmarva may sometimes be referred to herein collectively as “**Companies**” and individually as “**Company**”) jointly filed with the Commission a *Request to Revise Recovery of Cash Working Capital Costs* (“**Request**”) under PSC Case No. 8908. In the Request, the Companies seek an

increase in their respective SOS cash working capital (“**CWC**”) revenue requirements for all rate classes. Specifically, PEPCO seeks to recover \$0.00094 per kWh in residential SOS rates, and Delmarva seeks to recover \$0.000595 per kWh.¹

Rates for all classes of ratepayers of the Companies are scheduled to decrease commencing as of June 1, 2010.² PEPCO and Delmarva state that the requested increase in CWC revenue requirement will reduce such rate decrease.³ For PEPCO’s residential customers, the Company anticipates that if its request to increase its return for providing SOS is granted as filed, the decrease will be 6.3%, rather than 6.9%, and Delmarva estimates that its residential customers’ average bill will decrease by 4.4%, rather than the 4.8% as originally projected.⁴

PEPCO and Delmarva state that the reasons for their Request are twofold: (i) the prices for SOS supply have increase substantially since execution of the Settlement Agreement; and (ii) PJM Interconnection, L.L.C. (“**PJM**”) now requires utilities to pay suppliers on a weekly basis, while the Companies continue to collect payments from customers on a monthly basis.⁵ PEPCO and Delmarva also state that the terms of Phases I and II of that certain Settlement Agreement executed in connection with Case No. 8908 (the “**Settlement Agreement**”)⁶ remain in effect, but that the Residential Service Period (as defined therein) applicable to each Company has expired.⁷

¹ Request, pg. 7.

² Id., pg. 1.

³ Id.

⁴ Id.

⁵ Id., pg. 2.

⁶ The “Settlement Agreement” shall mean the Settlement Agreement, which was filed on November 15, 2002, and adopted pursuant to Order No. 78400, issued April 29, 2003, in Case No. 8908 (“**Order No. 78400**”), as the same may have been subsequently amended or modified from time to time.

⁷ Request, pg. 2.

On March 11, 2010, pursuant to Order No. 83197, the Commission opened this Proceeding and delegated the matter to the Hearing Examiner Division to consider the Companies' proposals to modify their SOS rates based on an increase in their SOS related CWC revenue requirement. On March 12, 2010, the Hearing Examiner issued a Notice of Pre-Hearing Conference, which among other things, scheduled a pre-hearing conference for April 8, 2010. Further, petitions to intervene were subsequently filed by each of Baltimore Gas and Electric Company, Retail Energy Supply Association and Apartment and Office Building Association of Metropolitan Washington.

II. SUMMARY OF ARGUMENT

If, as stated by the Companies, the Settlement Agreement has expired by its terms, then it has expired as to the Administrative Charge as a whole, and the scope of the Proceeding should be expanded to include a complete examination of *all* components of the Administrative Charge. The Commission's statutory obligation to determine "just and reasonable" rates based upon "verifiable, prudently incurred costs" plus a "reasonable return," requires that the scope of the Proceeding be expanded as requested herein. With the exception of uncollectible costs, the rates that make up the Administrative Charge have not been reviewed since 2003. Since that time, the Commission and utilities have gained considerable experience in the SOS procurement process and actual cost and other data relevant to the process are now available for examination and analysis.

III. BACKGROUND

Section 7-510(c) of the PUC sets forth an electric company's obligation to provide electricity supply and electricity supply service following the phased implementation of customer choice in Maryland. When a customer purchases electricity supply directly from the electric company, rather than from another supplier, the service so provided by the electric company is known as standard offer service. PUC §7-510(c)(2). Section 7-510(c)(3)(ii)2 of the PUC confirms an electric company's obligation to provide SOS to residential and small commercial customers after July 1, 2003, and further states that the price for such service will be that amount which allows the utility to recover "verifiable, prudently incurred costs" in procuring or producing the electricity plus a "reasonable return."

The current rates that make up the Administrative Charge that the Companies charge SOS customers were established when the Commission adopted the Settlement Agreement.⁸ Section 11 of the Settlement Agreement establishes the retail price to residential SOS customers, which price is the sum of (i) the seasonally or time-of-use differentiated load weighted average of all awarded electric supply prices for specific services in each year; (ii) transmission charges approved by the Federal Energy Regulatory Commission and PJM charges and costs directly related to the Company's Residential SOS load obligation; (iii) an Administrative Charge; and (iv) taxes. The Administrative Charge, in the amount of 4 mils (0.4 cents), is comprised of four components: a rate of return component of 1.5 mils (0.15 cents) ("return component"), an incremental costs component of 0.5 mils (0.05 cents) ("costs component"), and a SOS uncollectibles component ("uncollectibles component") and Administrative Adjustment

⁸ Order No. 78400.

component (“Administrative Adjustment”), which are both covered by the remaining balance of 2 mils (0.2 cents).⁹ The Administrative Adjustment is collected from SOS customers and that money is then paid out to all distribution customers in the rate class. This accomplishes a transfer of money from SOS customers to customers who have switched suppliers. The level of the transfer depends on the amount of the cost of uncollectibles and the percentage of customers that have switched from SOS to third party suppliers. The Settlement Agreement expressly provides that each of the return component and the costs component are to remain fixed.¹⁰ Further, Section 12(b) expressly states that the costs component “shall not” include residential SOS CWC revenue requirement, as it is “deemed to be reflected in *full* for residential customers through the return component.” [*emphasis added*]

IV. ARGUMENT

A. Expiration of the Settlement Agreement by its terms requires that the Commission examine all components of the Administrative Charge

If, as acknowledged by the Companies, the Settlement Agreement has expired by its terms, then *all* components of the Administrative Charge should be examined, not simply a portion of a single component. For the Companies, the Residential Service Period, and therefore, the Settlement Agreement term, covered the period of July 1, 2004 through May 31, 2008.¹¹ Thus, it does appear that, as to the Companies, the Settlement Agreement has expired by its terms. The Companies acknowledge this, and further, rely upon this expiration as a basis for their request to increase the recovery of their CWC

⁹ Settlement Agreement, Sec. 12.

¹⁰ Settlement Agreement, Sec. 12(a) and (b).

¹¹ Settlement Agreement, Sec. 1(c) and (d).

revenue requirement. In their Request, however, the Companies ask the Commission to adjust only, and to focus its attention solely on, the CWC revenue requirement, rather than the whole Administrative Charge. As evidenced by the express language of the Settlement Agreement, CWC is a component of the compensation provided to the utility for “return,” and the “return” component is part of the Administrative Charge.¹² The Companies should not be permitted to “cherry pick” those components, or portions of components, which are subject to review and examination.

B. The Commission’s statutory obligation to determine an SOS price that allows “verifiable, prudently incurred costs” plus a “reasonable return,” requires that the scope of the Proceeding be expanded to include a full examination of all components of the Administrative Charge

The Commission’s statutory obligation to determine an SOS price that allows “verifiable, prudently incurred costs” plus a “reasonable return,”¹³ requires that the scope of the Proceeding be expanded to include a full examination of all components of the Administrative Charge. “The Commission has the power to regulate rates of public utility companies,”¹⁴ and “it is the statutory duty of the Commission to determine ‘just and reasonable rates.’”¹⁵ Charges that are added to the wholesale cost of electricity to form the SOS rate are tariffed rates of the utility and regulated by the Commission. The current levels for these rates were set by the Commission in 2003 when it adopted the Settlement Agreement and have not been reviewed since.¹⁶ As the Commission is aware,

¹² Settlement Agreement, Sec. 12(b).

¹³ PUC §7-510(c)(3)(ii)2.

¹⁴ *Gregg v. Laird*, 121 Md. 1, 87 A. 111(1913), *Yeatman v. Towers*, 126 Md. 513, 95 A. 158 (1915), *Bosley v. Dorsey*, 191 Md. 229, 60 A.2d 691 (1948).

¹⁵ *Potomac Edison Co. Public Service Comm’n*, 279 Md. 573, 579, 369 A.2d 1035 (1977).

¹⁶ Order No. 78400.

just and reasonable rates of public service companies are traditionally established by examining the utility's income, expenses and rate base during a test year.¹⁷ The required rate of return is also determined and the amount of income to which the utility is entitled is calculated by multiplying the rate of return by the rate base. To the extent that level of income significantly differs from the test year's net income, the Commission orders an adjustment, an increase or a decrease as the case may be, in the utility's rates, which adjustment is allocated among the various classes of customers to produce the approved level of income. Any inquiry by the Commission limited solely to the Companies' CWC revenue requirements, constitutes single-issue ratemaking or "selective updating" of factors affecting rates, which is improper.¹⁸ Consideration of this single element alone, without a contemporaneous examination of all of the underlying components of the Administrative Charge - including the Companies' incremental costs in providing SOS, the Administrative Adjustment, a determination of the required rate of return, and a determination of the effect of any modification to the Companies' recoveries of CWC revenue requirements on their respective rates of return - may result in a distortion of the impact of the Companies' request on the SOS rates.

A failure to expand the scope of the Proceeding will result in a limited evidentiary record that will substantially impair the Commission's ability to perform its statutory obligation of determining just and reasonable rates. More specifically, evidence relevant to the current scope of the Proceeding will most likely exclude testimony on PEPCO's and Delmarva's respective incremental costs incurred in providing SOS, the reasonable

¹⁷ *Building Owners and Managers Ass'n of Metropolitan Baltimore, Inc. v. Public Service Com'n of Maryland*, 93 Md.App. 741, 753, 614 A.2d 1006, 1012 (Md.App.,1992).

¹⁸ *In re Consolidated Rate Appeals of Green Mountain Power Corp.*, 142 Vt. 373, 384, 455 A.2d 823, 827 (Vt.,1983) ("What the utility sought here was selective updating, a forbidden procedure. . .").

level of return for providing SOS, and the value of the Administrative Adjustment. Without such evidence, the Commission will be unable to determine that the SOS rates are in accordance with the PUC article.

Moreover, unlike in 2003, the Companies have had several years of experience with the SOS procurement process and actual cost and other data are now available for the Commission to perform a “test year” -type analysis. Expiration of the Settlement Agreement presents an opportunity for the Commission to examine the rates currently charged by the Companies for providing SOS. In 2002, at the time the parties entered into the Settlement Agreement, SOS was an entirely new system to all stakeholders of the Maryland electric industry. The Commission, utilities and other stakeholders were inexperienced in the implementation and operation of the competitive bid process and other SOS procedures. Likewise, the Administrative Charge and its components were negotiated on the basis of estimates and projections only. In 2002, hard data for incremental costs and other elements of SOS did not exist. The situation has changed; after 6 years and the completion of 16 competitive bid procedures, the Commission and utilities have had extensive experience with SOS, and actual cost data, as reflected, for example, by the annual incremental cost reports filed by the Companies, is now available for examination and analysis.

OPC’s preliminary analysis shows that 0.5 mil/kwh charge on residential customers for incremental costs to provide SOS results in PEPCO collecting approximately \$2.7 million from its residential customers per year. According to PEPCO’s incremental cost report filed with the Commission on September 1, 2009, in Case No. 8908, PEPCO’s incremental cost for providing SOS for all customer classes

was \$1.4 million. Similarly, Delmarva's collection for incremental costs is approximately \$1.1 million per year from residential customers while its actual incremental costs according to its filing with the Commission on September 1, 2009, in Case No. 8908 is \$0.8 million for all customer classes.¹⁹ It therefore appears that the Companies would be collecting more than their "verifiable, prudently incurred costs" for providing SOS if those rates are not adjusted.

Further, the current return component of SOS rates, 1.5 mils/kwh, results in PEPCO collecting approximately \$8 million per year and Delmarva collecting approximately \$3.2 million dollars per year from their residential customers. Given the experience that has been gained in providing SOS, the level of direction and review of the procurement process provided by the Commission, and the fact that the utilities pass through all wholesale power costs to customers, OPC submits that these levels of return are excessive and should be reviewed.

OPC also submits that the Administrative Adjustment, and the transfer of funds from SOS customers to customers who have switched suppliers associated with the collection and return of the Administrative Adjustment, is inequitable to SOS customers. This mechanism is not mandated by the PUC Article; it is a creation of the Settlement Agreement and the Commission order adopting that agreement. This provision should also be reviewed to determine if it is justified.

¹⁹ This represents an increase from the previous year total cost of \$0.6 million for all rate classes. See Exhibit B to Delmarva's September 1, 2009 filing in Case No. 8908.

V. **CONCLUSION**

For all of the above reasons, OPC recommends that the scope of Proceeding be expanded to include an examination of the Administrative Charge in its entirety, including a full examination of the Companies' incremental costs and the Administrative Adjustment and a determination of a reasonable return in connection with the SOS.

Respectfully submitted,

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April 7, 2010

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of April, 2010, the foregoing Motion by Office of People's Counsel to Expand Scope of Proceeding was hand-delivered, e-mailed or mailed first-class, postage prepaid to all parties of record to this proceeding.

/electronic signature/

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