ORDER NO. _____

IN THE MATTER OF THE REVIEW OF DELMARVA POWER & LIGHT COMPANY STANDARD OFFER SERVICE ADMINISTRATIVE CHARGE	*	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND
_____	*	_____
	*	CASE NO. 9226
	*	_____
IN THE MATTER OF THE REVIEW OF THE POTOMAC ELECTRIC POWER COMPANY STANDARD OFFER SERVICE ADMINISTRATIVE CHARGE	*	_____
	*	CASE NO. 9232
_____	*	_____

Issue Date: August 21, 2013

To: The Parties of Record and Interested Persons

Background

In 2003 the Public Service Commission ("Commission") approved a settlement agreement in Case No. 8908 ("2003 Settlement") that established a wholesale competitive procurement methodology to implement utility provided Standard Offer Service, ("SOS").[1] The 2003 Settlement included adoption of an Administrative Charge as part of the total SOS price. SOS prices also include purchased power costs, transmission costs and taxes, which are not an issue in this proceeding.[2] The SOS Administrative Charge currently consists of a utility return component,[3] an incremental costs component, uncollectibles, and an Administrative Adjustment component.[4] The

[1] *Re* Competitive Selection of Electricity Supplier/Standard Offer Service, Case No. 8908, Order No. 78400, 94 MD PSC 113 (2003).
[2] Public Service Commission Staff ("Staff") Memorandum on Appeal ("Staff Appeal") at 2.
[3] The Office of People's Counsel ("OPC") states that the cash working capital revenue requirement is deemed to be entirely included in the return component for Residential SOS. OPC Appeal at 2.
[4] Order No. 78400 at 118.

Administrative Adjustment is paid by SOS customers according to service type and is credited back to all distribution customers eligible for that service type.[5]

On March 9, 2010, Potomac Electric Power Company ("Pepco") and Delmarva Power & Light Company ("Delmarva"), (jointly "PHI" or "Companies")[6], filed a Request to Revise Recovery of Cash Working Capital Costs ("Request"). According to the Companies, the Request is based upon two factors, a significant increase in SOS prices since 2004 and a significant change in the PJM[7] settlement process.[8]

On April 7, 2010, the Office of People's Counsel ("OPC") filed a Motion to Expand Scope of Proceeding ("OPC Motion"). OPC requested a full examination of all components of the Administrative Charge because the 2003 Settlement had expired, noting that with the exception of uncollectible costs, the components of the Administrative Charge had not been reviewed since 2003.[9] On April 27, 2010, the Commission Staff ("Staff") filed a Motion to Bifurcate Proceeding ("Staff Motion"), noting that, although Pepco and Delmarva have a common parent company, the costs and expenses of each utility are often very different, as are their existing rate and customer class rate structures.[10] Motions to Intervene were filed by Baltimore Gas and Electric Company ("BGE"), Retail Energy Supply Association Inc. ("RESA"), Apartment and Office Building Association Inc. ("AOBA"), Washington Gas Energy Services Inc. ("WGES"), and MXenergy Inc. and all were granted by the Hearing Examiner.

[5] Staff Appeal at 2.
[6] Pepco and Delmarva are subsidiaries of Pepco Holdings, Inc., "PHI".
[7] PJM is PJM Interconnection, LLC, the regional transmission operator.
[8] Request at 1.
[9] OPC Motion at 1-3.
[10] Staff Motion at 4.

On May 20, 2010, the Commission granted the OPC and Staff Motions and entered Order No. 83345, which: 1) expanded the scope of these proceedings to include a review of all components of the Administrative Charge; 2) initiated Case No. 9232 to review Pepco's Administrative Charge, and 3) revised the title of Case No. 9226.

Proposed Order of Hearing Examiner

On February 4, 2011, the Hearing Examiner issued his Proposed Order ("POHE") in these proceedings. He noted that Pepco and Delmarva advocate retaining the current Administrative Charge as is, with additional recovery for increased cash working capital ("CWC") costs.[11] OPC proposed eliminating the Administrative Adjustment component from the Administrative Charge because in its opinion, it does not reflect verifiable, prudently incurred costs in procuring SOS supply and because retail suppliers should not be given an artificial competitive edge. Further, OPC advocated eliminating the return component and replacing it with a CWC component to allow the Companies a reasonable return. AOBA asserted that Pepco has not correctly computed its SOS costs and has overstated the risk of providing SOS. Staff argued that SOS is subsidized by all distribution customers because (some) SOS costs are embedded in distribution rates paid by all customers. Staff recommended retaining the existing Administrative Adjustment and adopting its proposed Allocated Cost component as part of the Administrative Charge in order to address the subsidization issue. Finally, the Hearing Examiner noted RESA's endorsement of Staff's recommendation.[12]

The Hearing Examiner went on to conclude that the 2003 Settlement was not

[11]The Companies noted that CWC is required to cover the lag between purchasing SOS supply and the receipt of payment from customers. Companies' Appeal at 13.
[12] POHE at 15-16.

intended to create a permanent SOS structure but rather was intended to represent a stepping stone toward a competitive electricity supply market. He also concluded that SOS "carries very little risk."[13] Moreover, he stated that "SOS cannot exist without distribution services, and it is a part of a normal utility service with the same level of risk as the Companies' overall risk level."[14] Consequently, he determined that "any return on SOS should be at the level of the Companies' overall rate of return, as is set in their most recent rate cases."[15]

The Hearing Examiner also determined that because all customers require distribution services, non-SOS customers are not overcharged by having some SOS costs embedded in distribution rates. Further, he concluded that since the retail supply market is "fully mature and functional"[16] there is no need to have any adjustments to try to keep SOS rates high, which the Administrative Charge causes. Therefore, the Hearing Examiner found: that the Administrative Charge and the return component should be eliminated; that all SOS costs and revenues should be considered as part of the Companies' standard operations in their next rate case; CWC should be recovered dollar for dollar by the Companies and earn a return at the authorized rate of return until their next rate case, and that CWC cost recovery shall be subject to an annual review and true-up process.[17]

[13] POHE at 17.
[14] POHE at 18.
[15] POHE at 18. As OPC noted at pages 5 to 6 of its Appeal, the Hearing Examiner's findings that SOS has "little risk" and that it has the "same level of risk as the Companies' overall risk level" is somewhat contradictory.
[16] POHE at 18. This was also OPC's position.
[17] POHE at 18-19.

Parties' Appeals

Appeals were filed by the Companies, Staff, OPC, RESA, BGE and WGES on March 7, 2011.[18] Memorandums on Appeal were filed on March 17, 2011.[19] Reply Memorandums were filed on April 6, 2011.[20] Additionally, on April 6, 2011, OPC filed a Motion to Strike Portions of the Appeal Memorandum of BGE and BGE filed a Response on April 28, 2011.[21]

The appellants are unanimous that the POHE should be reversed.[22] Specifically, they noted that no witness and no party recommended eliminating the Administrative Charge altogether.[23] The Companies argued that the POHE must be reversed because it is legally deficient, makes a significant policy shift that is unsupported by the evidence, and is contrary to judicial precedent.[24] Staff stated that the POHE is contrary to the record evidence, Maryland law, and public policy and will not serve the public interest.[25] BGE asserted that the POHE fails to meet the statutory requirement that SOS be provided at a "market price" that incorporates both "costs to procure" and a "reasonable return."[26] Finally, OPC opined that the Hearing Examiner erred when he found that SOS bears the same level of risk as the Companies' overall level of risk, and that their overall cost of capital is a reasonable rate of return for SOS.[27]

[18] The Companies filed a Motion for Extension of Page Limitation, which the Commission granted on March 16, 2011.
[19] The parties' Memorandums are simply noted as "Appeal(s)".
[20] They are noted as "Reply(s)".
[21] In light of the Commission's decision herein, OPC's Motion to Strike is denied because BGE's Memorandum is not prejudicial to OPC's position.
[22] Companies' Appeal at 2-3.
[23] WGES Appeal at 4 and RESA Appeal at 4.
[24] Companies' Appeal at 2-3.
[25] Staff Appeal at 6.
[26] BGE Appeal at 1.
[27] OPC Appeal at 5-6.

A. Companies' Appeal

The Companies stated that the only change necessary to the current Administrative Charge is the recovery of additional CWC costs.[28] They claim that there has been an 85% increase in wholesale electricity costs since 2004 (when market-based SOS was implemented), which has increased the requirement for CWC. Additionally, in 2009 PJM changed its accounting practices to require weekly settlements, instead of monthly settlements, further increasing CWC costs. The Companies asserted that at the current rate of CWC recovery, Delmarva is not recovering CWC costs of approximately $900,000 a year and Pepco is not recovering approximately $750,000 a year for providing residential SOS.[29]

The Companies argued that the POHE contradicts the requirements of the Public Utilities Article ("PUA") because: 1) the right to recover the cost to procure SOS plus a reasonable return is mandated by § 7-510(c)(3)(ii)2;[30] 2) the POHE violates rules of statutory construction;[31] and 3) the POHE is contrary to the ruling of Maryland's Court of Special Appeals in *Severstal Sparrows Point, LLC v Pub. Serv. Comm'n of Md.* [32]

[28] Companies' Appeal at 4.
[29] Companies' Appeal at 5.
[30] Companies' Appeal at 8-9. PUA §7-510(c)(3)(ii)2 states: On and after July 1, 2003, an electric company continues to have the obligation to provide standard offer service to residential and small commercial customers at a market price that permits recovery of the verifiable, prudently incurred costs to procure or produce the electricity plus a reasonable return.
[31] Companies' Appeal at 9-13.
[32] 194 Md. App. 601 (2010). In 2008 the Commission changed the SOS definition of "Small Commercial Customers", also known as "Type I" customers, which resulted in some of them becoming "Type II"(larger) SOS customers. Due to electricity supply cost increases the Commission ordered the SOS rates of the "New Type II" customers to be capped for three months and allowed the utility to recover the lost revenue from all non-residential customers through their distribution rates. *Id.* at 606-608. The Commission based its decision on its authority under the "just and reasonable rate" standard found in Title 4 of the PUA. *Id.* at 609. Large commercial customers sought judicial review. Upon review the Court held that "before July 1, 2003, the PSC retained its Title 4 powers with respect to SOS and, after that date, its powers to regulate SOS were limited to those set forth in Section 7-510." *Id.* at 626. Thus, the *Severstal* opinion is generally cited for the proposition that SOS is not to be subsidized, particularly by distribution rates.

("Severstal") regarding the recovery of SOS return.[33]

Citing § 7-510(c)(3)(ii)2, the Companies asserted that the Hearing Examiner's proposed elimination of the SOS Administrative Charge return component is inconsistent with the statute and that the POHE violates established rules of statutory construction because the language of the statute is clear and unambiguous. Furthermore, the Companies asserted that the determination that the Administrative Charge should be eliminated and that all SOS costs and revenues be examined as part of each Company's next distribution rate case, with no additional return, confuses the different standards that apply to distribution rate cases and the procurement of SOS.[34] The Companies stated that "[t]he question for the Commission regarding SOS is not whether the costs to provide SOS are 'just and reasonable,' the standard for distribution rate cases, but whether the incremental costs proposed to be recovered by the Companies are verifiable and prudently-incurred; the Commission then determines what additional reasonable return the Companies should receive solely on the provision of SOS."[35] Moreover, the Companies asserted that the return they proposed is "far from excessive" amounting to approximately 1.2% of Pepco's procurement obligation and 1% of Delmarva's.[36] Finally, the Companies' emphasized that in *Severstal*, the Court confirmed that SOS is separate from distribution services and that SOS must be provided at a market price that permits cost recovery plus a reasonable return.[37]

The Companies also argued that the POHE is arbitrary, capricious, and

[33] Companies' Appeal at 13-16.
[34] Companies' Appeal at 8-10
[35] Companies' Appeal at 12.
[36] Companies' Appeal at 13.
[37] Companies' Appeal at 14.

unsupported by the record because: it does not address evidence offered regarding the risks faced in procuring SOS;[38] it does not address evidence regarding the immature state of the retail supply market;[39] and it rejects the "universal agreement" of the parties that the Companies should recover incremental costs and uncollectible expenses.[40] They noted that their combined obligation for SOS in a single supply year exceeds $1.1 billion and asserted that in 2010 Delmarva suffered a loss and Pepco barely broke even on providing SOS. Further, they argued that they face legislative risks and regulatory lag associated with uncollectibles and CWC. Thus, the Companies concluded that the Hearing Examiner was wrong in finding that providing SOS carries very little risk.[41] Moreover, with less than 2% of Delmarva's Maryland residential customers and only 8.8% of Pepco's residential customers purchasing supply from retail suppliers, the Companies stated that the competitive market can hardly be called mature.[42] Inasmuch as all parties agreed that the Companies' incremental SOS costs and uncollectible expenses should be recovered, they argued that the POHE is arbitrary in eliminating the Administrative Charge, which also eliminates recovery of these cost elements.[43]

Finally, the Companies argued that the POHE arbitrarily proposes an "experiment", which will create even greater risks for them and harm emerging retail competition.[44] The Companies asserted that the POHE attempts to subject SOS procurement to the traditional rate-making model by eliminating the Administrative

[38] Companies' Appeal at 16-19.
[39] Companies' Appeal at 19-22.
[40] Companies' Appeal at 22-23.
[41] Companies' Appeal at 16-18.
[42] Companies' Appeal at 20.
[43] Companies' Appeal at 22-23.
[44] Companies' Appeal at 23-26.

Charge and return component and embedding SOS costs in distribution rates.[45] This would result in distribution customers subsidizing SOS, which would cause utility SOS prices to be artificially low, resulting in harm to the retail competitive market.[46] The Companies argued that the POHE dismisses all rationale set forth in the 2003 Settlement and the Commission's approval of it and substitutes the Hearing Examiner's own experimental rationale for establishing the future policy for the provision of SOS.[47] They conclude that burying SOS costs in distribution rates will result in distribution rates that are not just and reasonable, violate the Commission's statutory mandate to create a competitive electricity market, and are contrary to the Court's ruling in *Severstal*.[48] For these reasons the Companies requested that the Commission authorize them to recover CWC costs using their authorized rates of return while leaving all other aspects of the Administrative Charge unchanged.[49]

B. OPC's Appeal

OPC argued that the Hearing Examiner's findings that SOS bears the "same level of risk" as the Companies distribution services, and that the return used to calculate CWC costs should be set at the Companies' current overall rates of return constitute errors of fact. These errors, OPC submitted, led to the Hearing Examiner's error of law in finding that the current authorized rate of return constitutes a "reasonable return" under § 7-510(c)(3)(ii)2. OPC asserted that its witnesses calculated an appropriate "hybrid" rate using each Company's overall rate of return for that portion of CWC costs traditionally

[45] Companies' Appeal at 24.
[46] Companies' Appeal at 25.
[47] Companies' Appeal at 24.
[48] Companies' Appeal at 25-26.
[49] Companies' Appeal at 26.

billed monthly by PJM and the short-term debt rate (of 3.25%) for the incremental CWC costs associated with PJM's change to weekly billings.[50]

OPC noted that the Hearing Examiner found that SOS is not a meaningful part of a utility's overall level of risk.[51] Therefore, OPC argued that the level of risk of providing SOS must be something less than the overall level of risk.[52] OPC concluded that using the Companies' overall rates of return on all SOS related CWC exceeds their CWC costs, will over compensate them for procuring SOS and will result in excessive residential electric rates. OPC opined that its proposal "strikes a middle ground" because it recognizes both the cost and asset aspects of CWC, applying the lower short-term debt rate to the incremental cost portion of the CWC and the Companies' overall rate of return to the remaining asset portion of the CWC.[53] Additionally, OPC argued that its method of calculating CWC costs is more economically efficient, provides a lower cost to ratepayers and results in a fair return for the Companies on their CWC.[54] According to OPC, utilities have a "considerable advantage" in financing CWC because utilities are explicitly permitted to recover such costs in their rates.[55] OPC emphasized that the financing need for CWC is short-term, as the lag between incurring expenses and receiving payment is 33 to 37 days, noting that financing short term cash requirements has a lower cost than long-term liabilities.[56] Consequently, OPC concluded that the ratemaking practice is "generous" resulting in a higher cost to ratepayers of financing

[50] OPC Appeal at 6, 8 and 12-13.
[51] OPC Appeal at 5 citing the POHE at 17.
[52] OPC Appeal at 6.
[53] OPC Appeal at 6-7.
[54] OPC Appeal at 9.
[55] OPC Appeal at 9.
[56] OPC Appeal at 10.

CWC than is actually incurred.[57] OPC calculated Delmarva's SOS costs for CWC to be 0.54mills/kWh and Pepco's to be 0.70 mills/kWh.[58]

C. Staff's Appeal

Staff stated that the POHE offers no basis for decisions that are extremely far reaching and has virtually no citations to the record, which resulted in many arbitrary findings. Staff argued that elimination of the Administrative Charge in its entirety results in a decision that is more extreme than any party advocated. Staff recommends that the Commission adopt its Administrative Charge proposal, which would include a new Allocated Cost component.[59]

Staff noted that the Hearing Examiner based his decision to eliminate the Administrative Charge on two findings: first, that there is enough of a choice of suppliers to support OPC's assertion that the retail market is mature and does not need artificial subsidization to promote competition and second, because all customers use distribution service there is no overcharge of non-SOS customers by having some SOS costs embedded in distribution service. However, Staff argued that the Hearing Examiner did not identify any facts to support these findings. Staff noted that the POHE cites the fact that the Commission's website lists at least 70 suppliers in each Company's service territory. However, Staff argued that this information is not part of the record and that no party requested the Hearing Examiner to take judicial notice of this information. Additionally, Staff pointed out that the record shows that almost all of the Companies' joint and common costs are embedded in distribution rates but that these rates only

[57] OPC Appeal at 10.
[58] OPC Appeal at 11.
[59] Staff Appeal at 8-10. Staff's position is summarized at pages 6-7 of its Appeal.

generate about one-quarter of their revenues, whereas SOS generates three-quarters of their revenues. Moreover, Staff noted OPC's admission that distribution rates include some joint and common costs that are more properly allocable to SOS. Staff concluded that the POHE should be vacated because it adopts findings that no party advocated and for which there is no record evidence.[60]

Staff argued that, because the POHE only authorizes SOS recovery of purchased power costs and cash working capital, the SOS price would be a below-market price. Additionally, Staff noted that no party argued that SOS rates should not include incremental costs and uncollectible costs. Because the POHE would shift these costs to distribution rates for recovery, Staff stated that the POHE violates the law. Moreover, Staff argued that the requirement in the POHE to examine all SOS costs in each Company's next rate case would require the Commission to use two separate legal standards, as required by the *Severstal* decision, or illegally apply a single standard to both SOS and distribution rates.[61]

Staff noted that the statute also requires the collection of a return on SOS, yet the POHE would abolish the separate SOS return, compensating utilities through their overall return for the service, if at all. Staff emphasized that no party supported this result.[62] Staff also argued that the Administrative Adjustment corrects a subsidy from non-SOS customers to SOS customers as a result of SOS costs being historically embedded in distribution rates. Staff concluded that eliminating the return and Administrative Charge would create an underpriced SOS against which few suppliers could compete, which is

[60] Staff Appeal at 10-12.
[61] Staff Appeal at 13-15.
[62] Staff Appeal at 15-16.

inconsistent with the statutory goals to promote competitive electricity markets. Moreover, Staff argued that allowing SOS costs to remain in distribution rates is contrary to the Commission's policy that customers have accurate price information and be able to compare SOS rates and supplier offers.[63]

Staff argued that the Commission should adopt its Administrative Charge proposal, which includes an incremental cost component, a return component, CWC, and an Allocated Cost component, which would be new. Staff noted that its proposal is designed to capture SOS costs currently embedded in distribution rates. Specifically, these include customer account expenses, billing, credit and collection costs, customer service and customer information expenses.[64] Staff stated that its proposal, which includes the Administrative Credit mechanism, would create a more level playing field between SOS and competitive suppliers. Staff stated that the allocated costs would include a fixed proportion of known SOS expenses in the identified FERC accounts, which would be allocated based upon the relative proportions of total electric revenues that come from providing SOS (three-fourths) and distribution service (one-fourth). These amounts would be collected in the Allocated Cost component and credited back to distribution customers to prevent double charging them and avoid a double recovery by the Companies. Staff stated that eventually amounts in the Allocated Cost component could be removed from distribution rates in a base rate case, which would eliminate the need to credit them back to customers through the Administrative Credit mechanism.[65] Staff noted that the Commission is required by law to create a competitive market for

[63] Staff Appeal at 16-20. Staff cited § 7-504 and § 7-505(a)(1) of the PUA.
[64] Staff Appeal at 20. Staff cites FERC (Federal Energy Regulatory Commission) Accounts 903, 907, 908, 909 and 910.
[65] Staff Appeal at 20-23.

electricity and argued that its proposal will promote this objective. Staff concluded that if the Commission is unwilling to adopt its proposal it should at least reverse the POHE and retain the existing Administrative Charge and Credit mechanism.[66]

D. RESA's Appeal

According to RESA, competing against a quasi-regulated SOS rate leads to market distortions that must be addressed by regulatory measures such as the Administrative Charge. RESA pointed out that suppliers must incur customer acquisition costs that are not present with utility provided SOS. Furthermore, while utilities can recover embedded infrastructure costs in distribution rates such as billing, customer care and back office costs, retail suppliers have no such alternative revenue stream. RESA argued that if the SOS rate does not include all of a utility's costs of providing SOS, retail suppliers will be forced to compete against an artificially low SOS rate. RESA concluded that the Administrative Charge seeks to identify specific incremental costs and approximate other costs such as "joint costs" through the Administrative Adjustment, which requires imperfect allocations.[67] RESA also supports Staff's proposal to include an Allocated Cost component in the Administrative Charge arguing that Staff's proposal is consistent with Commission precedent not to subsidize SOS.[68]

RESA denied that the retail electricity supply market is mature. Moreover, RESA stated that whether the market is mature is irrelevant; the issue is cost-causation, and the Administrative Charge is designed to properly allocate costs between distribution service and SOS. RESA argued that the market is not fully developed as there are few suppliers

[66] Staff Appeal at 24.
[67] RESA Appeal at 8 and 10-13.
[68] RESA Appeal at 19-22. RESA cites Order No. 80265 in Case No. 8950.

and few retail residential and small commercial customers in the Companies' territories. Finally, RESA argued that there is not any "artificial" subsidization in the current SOS pricing structure as the Administrative Charge is a proxy for fully unbundling utility distribution rates and separating out SOS costs. Consequently, RESA asserted that the legally required "market price" on which the SOS rate must be based includes the same cost elements that the Hearing Examiner would exclude. RESA concluded that adopting the Hearing Examiner's decision would result in below-market SOS rates, subsidized SOS, ruin any chance of a competitive market ever developing for Maryland's residential and small commercial customers and might even reverse the market that has developed for larger customers.[69] RESA noted that the Court rejected subsidization as part of its decision in *Severstal* and RESA concludes that the Commission should reject the Hearing Examiner's proposal to require subsidization in this case.[70]

RESA argued that the POHE would require the Companies to recover incremental costs through distribution rates. RESA noted that these costs would not be incurred but for the provision of SOS and that no party proposed such a modification to the Administrative Charge.[71] RESA stated that the uncollectible portion of the Administrative Charge should be trued up frequently, at least annually, to avoid the uncollectible rate becoming stale. Finally, RESA argued that utilities should be allowed a return as part of the SOS rate, as required by § 7-510(c)(3)(ii)2, because otherwise retail suppliers would be competing against an SOS rate that does not include pricing

[69] RESA Appeal at 13-16.
[70] RESA Appeal at 16-17.
[71] RESA Appeal at 22.

components that are similar to those included in retail supplier offerings.[72] For these reasons RESA concluded that the Administrative Charge is both useful and necessary.[73]

E. WGES's Appeal

WGES requested that either the POHE be "clarified" that the Administrative Charge is retained, or that the POHE be reversed and Staff's proposed Allocated Cost component be included as part of the Administrative Charge.[74] WGES concluded that if the Hearing Examiner intended that incremental and uncollectible expenses should remain in the SOS price, which WGES submits is the most appropriate intent, then all he had to do was modify the components of the Administrative Charge. However, if the intent of the POHE is to shift recovery of incremental and uncollectible expenses to distribution rates, WGES argued that this is counter to the positions of the parties and the evidence of record. WGES concluded that such an interpretation would "violate the parties' rights to be heard" because that interpretation was not an alternative in the record, nor was it contemplated in the order initiating this proceeding, nor would it reflect any consideration of its impact on the retail market.[75]

WGES argued that the Administrative Adjustment and Credit mechanism is intended to mitigate the subsidization of SOS by distribution service. WGES concluded that, while a fully distributed cost of service allocation would be the best method to assure that costs are properly allocated between SOS and distribution service, absent such a study Staff's Allocated Cost proposal fairly mitigates the existing SOS subsidy.

[72] RESA Appeal at 23-24.
[73] RESA Appeal at 24.
[74] WGES Appeal at 1.
[75] WGES Appeal at 10-13.

However, WGES stated that it could support OPC's proposal to eliminate the Administrative Adjustment from Residential SOS if Staff's Allocated Cost component was adopted as a replacement.[76]

WGES supported the POHE's conclusion that cash working capital should be included in the SOS price based on a utility's authorized rate of return because this is consistent with SOS being a utility default service and the principles of utility regulation should apply. However, WGES stated that the return component should not be artificially increased to provide head room for suppliers to compete against SOS as this was a false premise at the time of the 2003 Settlement. WGES agreed with the Hearing Examiner that there is little if any risk with the provision of SOS and noted that gas utilities receive no return on the gas commodity, except for the cost of financing gas acquisition.[77]

F. BGE's Appeal

BGE stated that the POHE fails to meet the statutory requirement that SOS be provided at "market price" that includes both "costs to procure" plus a "reasonable return" and that the POHE improperly reallocates SOS costs to distribution rates.[78] BGE requested that the Commission reject the POHE and find that: 1) all SOS costs must be included in the SOS market price and not in distribution rates; 2) the cost of CWC is equal to the provider's weighted cost of capital and that this represents an SOS cost and not a "return"; and 3) the Companies are entitled to a separate reasonable return, which is to be included in the SOS price.[79]

[76] WGES Appeal at 13-16.
[77] WGES Appeal at 17-19.
[78] BGE Appeal at 1-2. BGE also noted that its SOS rates are under review in Case No. 9221.
[79] BGE Appeal at 7.

BGE noted that the Hearing Examiner held that "all SOS costs and revenues will be considered as part of the Companies' standard operations in the next rate case."[80] BGE asserted that this decision is contrary to law, specifically § 7-510(c)(3)(ii)2 and also violates the *Severstal* decision because the POHE would combine SOS and distribution service cost recovery rather than keeping them separate. Furthermore, BGE stated that this decision is also contrary to Commission Order No. 83345, which directed that changes to SOS collection be undertaken in this case.[81] Because the SOS rate requirement is separate and distinct from the Commission's ratemaking authority, BGE argued that separate cost recovery and a separate return is required for SOS. BGE asserted that it is also bad policy to combine SOS and distribution cost recovery as it would result in subsidization of SOS rates by non-SOS customers and harm competition.[82] Finally, BGE argued that the POHE is contrary to the goals of electric restructuring as the purpose is to create a competitive retail electricity supply market.[83]

BGE argued that, because the POHE provides CWC costs shall be recovered at the Companies' authorized rate of return, the POHE allows CWC revenue sufficient only to cover their CWC costs. Therefore, BGE argued that there will not be any SOS revenue in excess of SOS costs available for a "return." BGE emphasized that CWC represents a cost to the SOS provider, not a return. Further, BGE stated that because CWC is a composite of equity and short and long-term debt, the utility's overall cost of capital must be used to quantify the cost of CWC, but that method of calculation does not alter its

[80] BGE Appeal at 8, citing the POHE at 18.
[81] BGE Appeal at 7-8.
[82] BGE also argued that it would result in SOS being subsidized by the SOS provider and its investors. BGE Appeal at 7.
[83] BGE Appeal at 8-12.

nature as a cost.[84] BGE asserted that the testimony in support of the 2003 Settlement and the Commission's order approving it indicate that placing CWC costs in the return component of the Administrative Charge was "merely a construct of the parties and not an indication that the CWC constitutes a return." Moreover, BGE asserted that there is good reason to abandon the 2003 Settlement construct and remove CWC costs from the return component of the Administrative Charge because SOS is not being provided at a market price that recovers prudently incurred costs (and a reasonable return) since CWC costs have "risen dramatically" since that time. BGE emphasized that because SOS costs are known with greater certainty today, the Commission cannot continue in effect the 2003 Settlement.[85] BGE asserted that the DC Public Service Commission found that CWC is a cost that must be recovered in SOS rates and not within the return to be fair to utility investors and to promote competition.[86] Finally, BGE argued that SOS procurement involves significant risks, as noted by the Companies, which is contrary to the finding in the POHE that it carries very little risk.[87] For all of these reasons BGE concluded that the POHE should be reversed and the Commission should establish an SOS market price sufficient to permit full cost recovery, plus a reasonable return.

G. Companies' Reply

The Companies asserted that there are real risks in providing SOS, including: the phase-in of rate increases in 2006 without recovery of carrying costs, uncollectible

[84] BGE Appeal at 12-13.
[85] BGE Appeal at 14-16.
[86] BGE Appeal at 16-17.
[87] BGE Appeal at 17-18.

expense and CWC expense, regulatory lag, and legislative risks. However, despite these risks, the POHE incorrectly concluded that there is very little risk.[88]

According to the Companies, the POHE eliminates the return, either by illegally combining it with distribution rates, or by taking what is a cost of providing service and using that as a return. They emphasized that the costs and return for SOS are separate and distinct from cost recovery for distribution service. Furthermore, they stated that the return on CWC is not a profit or return but a cost of providing SOS. Consequently, the Companies concluded that by ruling that the only return allowed is the return on CWC, the POHE has eliminated the reasonable return required by § 7-510(c)(3)(ii)2 and therefore violated the statute.[89]

The Companies also asserted that implementation of the POHE would be detrimental to a competitive retail market because it would embed SOS costs in distribution rates, cause subsidization of SOS by non-SOS customers and lower SOS prices below what they should be. Not only is this contrary to law, but it would perpetuate excessive distribution rates that are not just and reasonable. Moreover, the Companies argued that it would stifle competition since retail suppliers must cover all their costs and earn a profit if they are to compete.[90]

The Companies stated that they do not support Staff's proposal to modify the Administrative Charge and include an Allocated Cost component, because most of these costs (approximately $23 million) would be allocated to SOS, materially increasing costs particularly for Residential SOS ($16 million). The Companies argued that these costs

[88] Companies' Reply Memorandum ("Reply") at 11-12.
[89] Companies' Reply at 7.
[90] Companies' Reply at 17-20.

would be incurred with or without SOS. Moreover, they oppose the use of sales dollars as an allocation factor because, they assert, sales dollars do not accurately or reasonably reflect how these costs are used in distribution service or for SOS. The Companies argue that if Staff's proposal is adopted that the Commission should reconsider the method for calculating the Allotted Cost component, noting their concern with the fact that fewer customers would be available to pay the amounts collected in the revised Allocated Cost component.[91]

The Companies noted that Staff has proposed that they continue to collect their present level of return; however, Staff would have this return taken away in the next rate case by including the SOS return as electric operating revenues. They stated that the result is that the Companies would not receive any return for providing SOS.[92]

The Companies asserted that the receipt of a reasonable return outside of the CWC requirement is consistent with COMAR 20.52.02A, which states that the Administrative Charge includes not only costs but also a return or profit. They argued that because the CWC requirement is the return of the Companies' costs, it cannot be the "return or profit" described in COMAR or § 7-510(c)(3)(ii)2. The Companies concluded that the Commission should follow the "precedent" established in approving the 2003 Settlement and find that the return component of the Administrative Charge is not the return on CWC that is advocated by Staff.[93]

The Companies noted Staff argued that a return beyond the CWC requirement is not warranted by the risks incurred to provide SOS, which they argue is incorrect. The

[91] Companies Reply at 3 and 20-22.
[92] Companies' Reply at 8.
[93] Companies' Reply at 8-9.

Companies noted that Pepco and Delmarva now pay SOS suppliers on a weekly basis but only receive payment from customers monthly. Therefore, investor-supplied capital, with accompanying carrying costs, is required to meet these needs. The Companies argued that the authorized rate of return portion of the CWC expense represents the cost to the Companies of the capital used to provide the cash for SOS. Consequently, they concluded that CWC and its accompanying carrying costs are costs of procuring SOS. Finally, they argued that the return on CWC cannot be the reasonable return required by § 7-510(c)(3)(ii)2 because the statute requires recovery of SOS costs plus a reasonable return.[94]

The Companies also contested OPC's calculation of the cost of CWC, which includes part of the cost at the short-term debt rate, because OPC has not shown why the Commission should depart from the traditional use of the authorized rate of return.[95] The Companies noted that OPC has proposed use of each Companies' overall rate of return for CWC costs traditionally billed monthly by PJM and a short-term debt rate of 3.25% for the incremental CWC costs associated with the change in PJM's billing cycle to weekly. They argued that OPC's characterization of the CWC requirement as short-term is contrary to the practical nature of CWC. The Companies stated that the CWC requirement is the summation of tens of thousands of daily transactions that are of a continuous nature and long-term and therefore, it is appropriately financed as part of each Company's long-term capital structure. They noted that the Companies have historically calculated CWC revenue requirements based upon the long-term, pre-tax, overall cost of

[94] Companies' Reply at 9-11.
[95] Companies' Reply at 3-4.

capital for each Company, which they argued is consistent with Commission precedent. Therefore, they concluded that OPC's position should be rejected.[96]

H. OPC Reply

OPC identified three issues in its Reply: 1) How much additional return revenue is the utility entitled to for providing SOS? 2) How should distribution and SOS charges be structured and determined to ensure that the utility receives the appropriate compensation for the services it provides? 3) Should there be any additional charges added to SOS rates that are not retained by the utility but refunded to customers?[97]

OPC noted that Delmarva has requested $3.2 million annually and Pepco $8.3 million annually in additional return revenue. OPC asserted that the POHE correctly denied these requests because additional return for the Companies for providing SOS would be unreasonable.[98]

OPC asserted that reasonable SOS related CWC compensation is sufficient return under § 7-510(c)(3)(ii)2. OPC noted that the Companies' statutory interpretation would necessitate reading into the law an additional requirement that any return granted to the Companies for SOS procurement be stated as a separate and distinct component. OPC argued that the term "plus" simply means that the SOS rate must reflect a reasonable return for performing the SOS function. Consequently, OPC concluded that the Hearing Examiner appropriately eliminated the separate return component, but did not eliminate the required reasonable return.[99]

[96] Companies' Reply at 22-24.
[97] OPC Reply at 2.
[98] OPC Reply at 2-3.
[99] OPC Reply at 5-7.

OPC argued that the Companies are not entitled to any additional return beyond that authorized in distribution base rate cases because procuring SOS does not require the Companies to invest in any additional plant or property. Additionally, OPC stated that although SOS is separated from distribution service, it is really a "routine utility service" and that SOS does not have risks that are different and apart from normal utility service. Therefore, OPC concluded that SOS risks and return are already accounted for in the overall distribution rates of return. Consequently, any additional separate return for SOS would amount to "double-recovery."[100] OPC argued if the Commission finds that a separate additional return for SOS is required by law that it should affirm the Hearing Examiner's finding that SOS carries very little risk and is not a meaningful part of a utility's overall level of risk.[101]

According to OPC, while the Companies claimed that they are subject to SOS procurement risks, they did not detail or quantify the magnitude of these risks and admitted that they collected all but a "de minimus" amount of the deferred rates in 2006.[102] Additionally, OPC noted the Companies' conceded that establishing an SOS rate permitting them to recover all CWC costs would resolve CWC risks associated with regulatory lag. OPC argued that the Commission approved SOS procurement process is structured to minimize risk to the Companies for procuring SOS and therefore reduces the return they are entitled to receive. OPC concluded that legislative and regulatory risk should be rejected as these are typical public utility risks, which are accounted for in the overall distribution rate of return.[103]

[100] OPC Reply at 7-9.
[101] OPC Reply at 9-10.
[102] OPC Reply at 10-11.
[103] OPC Reply at 11-14.

According to OPC, it would be most efficient to set the rates for all of the utility's services in one case because separating consideration of a utility's costs and return into two parts, one for SOS and one for distribution service, could lead to over-recovery by the utility and is not necessary. OPC also pointed out that rates could be established separately for distribution service and SOS in a single utility rate case[104] using the just and reasonable standard in § 4-101 to set distribution rates and the §7-510 (c)(3)(ii)2 standard to set SOS rates.[105] For these reasons, OPC concluded that the POHE's finding, that SOS costs and revenues should be considered in each Company's next rate case, should be affirmed.[106]

OPC asserted that the POHE appropriately denied the various requests to add charges to SOS customers' rates. According to OPC, the proposed additional charges are not permitted under the PUA, and even if they were, do not represent sound public policy.[107] OPC stated that the only costs for which there is a record in this case are the Companies' incremental costs.[108] Therefore, OPC concluded that there is no statutory authority for continuing to charge SOS residential customers the Administrative Adjustment. Moreover, OPC argued that because the other costs are not incurred to procure electricity and are not verifiable then these costs cannot be deemed to be prudent. Specifically, OPC noted that a call center and customer information system as well as billing and collection would be required even if SOS was not provided by the utilities. Even if these costs were verified as prudently incurred, OPC argued that they are still not

[104] OPC Reply at 3-5.
[105] OPC Reply at 19.
[106] OPC Reply at 14.
[107] OPC Reply at 20-21.
[108] OPC states that Pepco's incremental SOS costs in the (then) most recent year were $1,015,946 and Delmarva's $604,686. OPC Reply at 22.

costs to procure SOS but relate only to the provision of SOS. OPC estimated that Staff's proposed Allocated Cost Component would be 2.25 times the current Administrative Charge paid by SOS customers.[109]

OPC also argued that adding new charges to SOS rates would not be sound public policy. OPC asserted that after a decade of competition the retail market is mature and therefore the Administrative Adjustment is no longer necessary. OPC emphasized that no evidence was presented supporting any finding that the Administrative Adjustment fosters competition despite the fact that the mechanism has existed for seven years. Further, despite the fact that the Administrative Adjustment is credited to all distribution customers, OPC argued that the charges are not harmless to SOS customers because they pay the full amount of the charge but do not receive back the full amount since some residential customers are customers of retail suppliers. OPC concluded that artificially increasing SOS prices is not necessary and is contrary to a competitive and equitable retail environment.[110]

I. Staff Reply

According to Staff, the Commission should permit the Companies to collect a return as part of the Administrative Charge, but should include this return in revenue in future base rate cases. Furthermore, Staff argued that the CWC return should be at the Companies' overall rate of return and not the return advocated by OPC.[111]

Staff asserted that the risks of providing SOS are in fact quite limited and that the separate return beyond the CWC return may no longer be necessary to compensate the

[109] OPC Reply at 20-26.
[110] OPC Reply at 26-28.
[111] Staff Reply at 2 and 5. Staff argued that Commission precedent supports use of the Companies' overall return. *Id.* at 5.

Companies for their risks in providing SOS. Staff noted that a return is generally earned on rate base and that the only rate base item in the SOS Administrative Charge is CWC. Moreover, actual events have shown that even in a worst case scenario, as occurred in 2006, the Legislature and the Commission were scrupulous in ensuring that the utilities recovered all of their costs plus compensation for the delay in recovery. Additionally, Staff emphasized that under its proposal the Companies would continue to collect the return at the current level in the SOS Administrative Charge. However, Staff proposed that the money collected be counted as part of the Companies' operating revenues in their next rate case. Staff argued that this would assure compliance with the § 7-510 (c)(3)(ii)2 requirement that the utilities receive a return for providing SOS but also ensure that the overall return they collect is not excessive. Staff noted that under its proposal the SOS return would not be moved to distribution rates but would continue to be collected in the SOS rate and retained by the Companies. However, the SOS return would be considered in the Companies' revenues in a rate case, which might then reduce the Companies' distribution revenue requirement. Finally, Staff argued that the record does not support BGE's claim that CWC is a cost as it is an item of invested capital upon which a current return is allowed.[112]

J. RESA Reply

According to RESA, eliminating the Administrative Charge and recovering SOS costs through distribution rates, violates § 7-510(c)(3)(ii)2 and the *Severstal* decision.[113] RESA argued that the *Severstal* decision is important for three reasons. First, the Court

[112] Staff Reply at 2-5.
[113] RESA Reply at 3-4.

interpreted § 7-510(c) to require a "market price," which must include all SOS costs, otherwise suppliers will be forced to compete against a below-market SOS rate. Second, SOS and distribution service are separate services governed by different statutory standards. Shifting SOS related costs to distribution rates, as RESA asserted the POHE requires, would have the effect of applying the § 4-101 review standard to SOS rates in a distribution rate case, which *Severstal* does not permit.[114] Third, RESA argued that because SOS and distribution service are separate services, it is improper to require suppliers' customers to continue to pay for SOS related costs when they do not receive SOS. RESA emphasized that eliminating the Administrative Charge from SOS rates would create an SOS that is "seriously underpriced" and hinder competition.[115]

RESA also contended that POHE should be rejected because it violates COMAR 20.52.05.02A, which provides that SOS shall include an Administrative Charge.[116] Additionally, RESA argued that the POHE violates the customer choice goals in § 7-504 and § 7-505, which include being fair to customers and electricity suppliers and providing economic benefits to all customer classes, which RESA argued is inconsistent with a below-market, subsidized SOS rate.[117]

RESA argued that the POHE relied upon facts not in evidence. While, the Hearing Examiner referenced a list of 70 suppliers on the Commission's website as "evidence" that the retail market is mature, RESA asserted that this is not evidence of a mature market and that citing this statistic for that purpose leads to an arbitrary and

[114] Section 4-101 of the PUA defines "just and reasonable rate".
[115] RESA Reply at 4-5.
[116] RESA Reply at 6. The Commission notes that COMAR 20.52.05.02A is limited to the service periods stated in COMAR 20.52.02, which have expired.
[117] RESA Reply at 6-7.

incorrect assumption about the market. Moreover, while the Hearing Examiner referred to retail competition as an experiment, RESA argued that this conclusion is unsupported by the record. RESA argued, again, that the competitiveness of the market is not the issue, cost causation and the proper allocation of costs between SOS and distribution service is what is at issue.[118] RESA also argued that adoption of the POHE would preclude customers from receiving accurate and adequate SOS pricing information because having SOS costs in distribution rates would disguise real SOS costs and make price comparisons impossible. Finally, RESA urged the Commission to accept Staff's Allocated Cost proposal because it would more properly capture SOS costs in SOS rates than the structure that exists today.[119]

K. WGES Reply

According to WGES, disputes over the return component for a default service like SOS have to date been resolved in settlements. WGES noted that originally the mandatory provision of SOS by the utilities was set to expire July 1, 2003, and that they voluntarily agreed to provide SOS thereafter, when in 2006 the General Assembly made utility provision of SOS (for residential and small commercial customers) mandatory. Therefore, WGES argued that the theory of SOS being a competitive, below the line service, was "switched" in 2006 to a regulated above-the-line utility service. WGES argued that a reasonable return should reflect the business and financial risks of an above the line, SOS default service, noting that the Hearing Examiner found these risks to be

[118] RESA Reply at 8-11.
[119] RESA Reply at 11-12.

"minimal" given the cost recovery mechanisms in place and the highly prescriptive, non-judgmental SOS procurement procedures in place.[120]

WGES concluded that because utility provided SOS is not really a competitive service, the SOS risk should be similar to what gas utilities assume in providing gas commodity sales, where there is no return allowed on the gas commodity, except that the cost of financing gas acquisition and Purchased Gas Costs are identified and approved in a proceeding outside of a distribution rate case.[121]

WGES argued that Staff has demonstrated that the Companies' current distribution rates include common costs that are recorded in certain FERC Accounts. Moreover, WGES stated that this was known at the time of the 2003 Settlement, which it says is why the Administrative Adjustment and Credit were included in the Administrative Charge. WGES asserted that by eliminating the Administrative Adjustment the Hearing Examiner violated the principle of cost causation, which mandates that some common costs be allocated to SOS.[122] WGES concluded that, because distribution service is subsidized by SOS, some form of Administrative Adjustment and Credit must be retained in the SOS price.[123]

L. BGE Reply

BGE asserted that Staff and OPC impermissibly conflate SOS ratemaking with statutorily distinct distribution ratemaking.[124] BGE noted that Staff proposed permitting the Companies to continue collecting the return at the current level in the SOS

[120] WGES Reply at 5-7.
[121] WGES Reply at 7-9.
[122] WGES Reply at 10. WGES stated that gas common costs have been allocated between utility sales and utility distribution service, citing: In *re Baltimore Gas & Electric Company*, Case No. 8950, Phase III, Order No. 80265, 2005.
[123] WGES Reply at 11.
[124] BGE Reply at 1-2.

Administrative Charge but would then include this return as part of the Companies' operating revenues in their next distribution rate case. BGE concluded that Staff's proposal would have the nominal appearance of complying with the statute while avoiding doing so in substance. BGE concluded that Staff's proposal fails to meet the standards of § 7-510(c)(3)(ii)2 because it omits a reasonable return on SOS and places SOS revenue in distribution rates.[125] Moreover, BGE argued that Staff's proposal "runs afoul" of the *Severstal* ruling because SOS and distribution service ratemaking are mutually exclusive.[126]

BGE argued that OPC's position, that SOS and distribution services are inextricably intertwined, is contradicted by the PUA as the former is based on a "market price" standard and the latter on a "just and reasonable" standard. BGE stated that distribution service is a regulated monopoly utility function and SOS exists within a competitive market where suppliers compete with utility provided SOS. BGE argued that distribution service requires just and reasonable rates because competition is nonexistent while SOS must be at a market price in order to encourage competition. BGE stated that regardless of whether SOS can exist without distribution services, the ratemaking requirements for the two services were clearly intended to be distinct.[127] Furthermore, BGE noted that distribution is plant-intensive whereas the costs of SOS are mainly in procurement and operation, which makes SOS "more akin to a common carrier service than a traditional utility service."[128] Consequently, BGE concluded that distribution

[125] BGE Reply at 2-3.
[126] BGE Reply at 4.
[127] BGE Reply at 5-6.
[128] BGE Reply at 6. BGE also noted Staff witness Timmerman's testimony in Case No. 8908 that SOS "will require little or no capital investment by the utility."

ratemaking principles do not reflect the reality of SOS as a procurement and operation intensive service. BGE asserted that OPC's position fails to recognize the differing goals for distribution service and SOS and therefore the two processes should not be treated the same by the Commission.[129]

BGE asserted that OPC's support for using a short-term debt rate for a portion of CWC costs rests upon a fundamental misunderstanding of the nature of CWC. BGE stated that while the billing cycle at PJM has changed from monthly to weekly, this does not affect the method of financing CWC, which is financed with a mixture of equity, long-term debt, and short-term debt. BGE asserted that consequently OPC's proposal would cover only a portion of CWC costs and would be insufficient to cover the Companies' more expensive equity and long-term debt costs. Therefore, BGE stated that OPC's proposal would deny the Companies recovery of their verifiable prudently incurred costs. Additionally, OPC's proposal to eliminate any further return would eliminate the required "reasonable return" and result in SOS prices that are below the statutorily required "market price" thereby harming competition as well. For these reasons BGE recommended that the proposals of Staff and OPC be rejected.[130]

Commission Decision

These proceedings were initially opened to consider the Companies' requests to recover increased Standard Offer Service cash working capital costs. Except for the uncollectibles component, the Companies' SOS Administrative Charges have not been reviewed since the Commission approved the 2003 Settlement, which established the provision of SOS. Consequently, we agreed with OPC that a complete review of the

[129] BGE Reply at 7.
[130] BGE Reply at 8-9.

Companies' Administrative Charges was warranted and delegated this matter to the Hearing Examiner Division for further proceedings.[131]

On February 4, 2011, the Hearing Examiner[132] issued a Proposed Order, which determined that the Administrative Charge should be eliminated and that all SOS costs and revenues should be considered as part of the Companies' standard operations in their next rate case.[133] We reverse the Proposed Order because we do not agree that the Administrative Charge should be eliminated at this time and we further find that it would not be appropriate to consider SOS issues in the Companies' future rate cases. Rate cases involve the examination of many complex distribution rate issues within a statutorily prescribed time frame.[134] The Commission finds that adding additional complex SOS issues would not promote the thorough analysis required to address either distribution rates or SOS issues appropriately.

All of the parties concurred that the Companies are entitled to recover their incremental costs and uncollectible costs in the provision of SOS. Although there was substantial disagreement on how the return is to be calculated, or the form in which it is to be collected, all parties recognized that the Companies are entitled to a return in some form or another, whether that return is separately stated, included as part of the CWC requirement, or is considered within the overall context of the Companies' rate of return. Except for OPC, the parties' also recommended some form of Administrative Adjustment. Therefore, we conclude that there is no point to reinventing the wheel and that SOS should continue to include some form of Administrative Charge, in addition to

[131] The division has since been renamed the Public Utility Law Judge Division.
[132] Hearing Examiners are now referred to as Public Utility Law Judges.
[133] POHE at 18.
[134] *See* PUA § 4-204.

the purchased power costs, transmission charges and taxes, which are not at issue in this case. However, we also conclude that, based upon our review, the record has not been sufficiently developed to finalize Delmarva's or Pepco's Administrative Charges.

We find that it is appropriate to remand this matter to the Public Utility Law Judge ("PULJ") to conduct further proceedings to determine appropriate SOS Administrative Charges for Pepco and Delmarva. We direct the parties to address and the PULJ to determine both the SOS incremental costs and uncollectible costs for Pepco and Delmarva and kWh rates to recover these costs. Since such costs should be readily ascertainable, we encourage the parties to seek consensus on these two Administrative Charge components.

As for the return, we expect a record to be developed that will permit the PULJ to determine specific dollar and kWh rate figures. The PULJ shall also make a finding as to whether CWC should be included in the return requirement or whether the return and CWC should be separately stated. We specifically direct the Companies and invite other parties to provide evidence as to the ability to finance SOS cash working capital needs using short-term debt exclusively, and the cost of doing so. Furthermore, we want to make clear that, although financing SOS CWC at the Companies' overall distribution rate of return might be a reasonable outcome, such an outcome is not to be presumed and must be supported by the record.

Finally, we do not make any findings at this time whether the Administrative Adjustment should remain part of the Administrative Charge, nor whether Staff's proposed Allocated Cost component should be adopted as part of the Administrative Adjustment or in lieu of it. We find that the record has not been sufficiently presented to

make this determination at this time. We expect the PULJ to develop the record and to make a finding regarding the Administrative Adjustment component of the Administrative Charge.

In conclusion, we expect the PULJ to make a determination of the total Administrative Charge costs and rates for Pepco and Delmarva, broken down by the individual components, namely, incremental costs, uncollectible costs, return and CWC whether stated together or separately, and if appropriate an Administrative Adjustment.

For the reasons discussed herein, the Proposed Order of Hearing Examiner issued February 4, 2011, is reversed and remanded for further proceedings consistent with this Order.

IT IS THEREFORE, this 21st day of August, in the year Two Thousand and Thirteen, by the Public Service Commission of Maryland,

ORDERED: (1) The Proposed Order of Hearing Examiner, issued February 4, 2011, is reversed;

(2) These cases are remanded to the Public Utility Law Judge for further proceedings consistent with this Order;

(3) All Motions not granted are denied.

/s/ W. Kevin Hughes

/s/ Harold D. Williams

/s/ Lawrence Brenner

/s/ Kelly Speakes-Backman

Commissioners