

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE PROVISION OF)
STANDARD OFFER SUPPLY TO RETAIL)
CONSUMERS IN THE SERVICE TERRITORY) PSC DOCKET NO. 04-391
OF DELMARVA POWER & LIGHT COMPANY)
AFTER MAY 1, 2006)
(FILED OCTOBER 19, 2004))

FINDINGS, OPINION, AND ORDER NO. 6746

BEFORE COMMISSIONERS: ARNETTA McRAE, Chair
JAYMES B. LESTER, Commissioner
JOANN T. CONAWAY, Commissioner
DALLAS WINSLOW, Commissioner

APPEARANCES:

On behalf of Delmarva Power & Light Company:

RANDALL V. GRIFFIN, ESQUIRE

On behalf of the Division of the Public Advocate:

G. ARTHUR PADMORE, ESQUIRE

On behalf of the Delaware Public Service Commission Staff:

JAMES MCC. GEDDES, ESQUIRE
ASHBY & GEDDES
Rate Counsel

and

BRUCE H. BURCAT, Executive Director
CONNIE S. MCDOWELL, Chief of Technical Services
KAREN L. NICKERSON, Secretary
JANIS L. DILLARD, Regulatory Policy Administrator
Delaware Public Service Commission Staff

On behalf of Conectiv Energy Supply, Inc.:

I. DAVID ROSENSTEIN, ESQUIRE

On behalf of the Delaware Energy Users Group:

BRIAN R. GREENE, ESQUIRE
CHRISTIAN BARTON LLP

On behalf of the Retail Energy Supply Association, Select Energy,
Inc. and Strategic Energy LLC:

DANIEL CLEARFIELD, ESQUIRE
WOLF, BLOCK, SCHORR & SOLIS-COHEN LLP

On behalf of Premcor Refining Group:

KENNETH G. HURWITZ, ESQUIRE
HAYNES & BOONE

BACKGROUND

1. The Electric Utility Restructuring Act of 1999 (the "Act") required Delmarva Power & Light Company ("Delmarva" or "the Company") to file a restructuring plan under which it would provide standard offer service ("SOS") for an initial transition period ending on September 30, 2002 for non-residential customers and on September 30, 2003 for residential customers. The restructuring plan and related matters relevant to customer choice and restructuring were approved in a series of Orders issued in Docket No. 99-163. Among other things, the approved restructuring plan reduced rates for residential customers and froze those reduced residential rates and the applicable rates for non-residential customers until the end of the respective transition periods.

2. Prior to the end of the initial transition periods, a merger involving Delmarva and Potomac Electric Power Company was proposed. In the resolution of that docket, the Delaware Public Service Commission (the "Commission") approved a settlement that authorized the proposed merger on the condition that Delmarva's

obligation to provide SOS would continue until May 1, 2006 at rates that were reset to reflect market prices at that time. (Docket No. 01-194).

3. On October 19, 2004, noting that SOS rates had increased significantly in other jurisdictions once the freeze on supply rates had been lifted, the Commission initiated this docket to "explore issues related to the selection of an SOS supplier for [Delmarva's] service territory and the appropriate prices to be charged for SOS after that date." (Order No. 6490, Oct. 19, 2004 at ¶ 3). In Order No. 6490, the Commission discussed certain statutory requirements and prior cases involving the provision of SOS to Delmarva customers pursuant to the Act. The Order established a process pursuant to which major policy issues would be resolved in an initial phase of the docket, while other technical and policy issues would be reserved for resolution in one or more subsequent phases of the docket. The Commission established February 28, 2005 as the deadline for the conclusion of the first stage and appointed Senior Hearing Examiner William F. O'Brien as a monitor to oversee the proceedings.

4. Pursuant to the Commission's instructions in Order No. 6490, Staff conducted two workshops, during which it solicited both written and oral comments from the participants. On January 5, 2005, Staff submitted a position paper addressing several issues that the parties agreed were fundamental SOS issues.

5. On March 22, 2005, in Order No. 6598, the Commission reviewed the report and recommendations prepared by Staff that had been the subject of written comments and oral argument presented by

parties that had participated in the docket. In Order No. 6598, the Commission adopted all of Staff's recommendations notwithstanding opposition from certain parties. First, the Commission determined that SOS in Delaware would be provided pursuant to a "wholesale" model, whereby the Commission would select the incumbent distribution utility (Delmarva) as the SOS provider. Delmarva would secure the power to serve SOS customers from the wholesale power market but would continue to interface directly with the customer. This model was selected over various forms of the "retail" model, whereby the Commission would select one or more SOS providers through some form of competitive bidding process and those providers would assume some or all of the duties of interfacing with the retail SOS customer.

6. Second, the Commission deferred the remaining Phase 1 issues to Phase 2, including the method by which the wholesale power would be procured, the composition of the "retail adder" or margin that Delmarva would include in its SOS rates, and the use of SOS to promote various societal benefits (such as renewable resource and demand side management programs). The Commission again appointed Hearing Examiner O'Brien to monitor the Phase 2 proceedings and to handle any disputes regarding the provision of information.

7. In Phase 2, the parties established a two-track procedural schedule consisting of a litigation track for the determination of the composition of the retail adder and a non-litigation track for the remaining, primarily policy-driven, issues. These latter issues included Commission oversight of the process, splitting of rate classes, and rate translation of bids into tariffs.

8. After Staff had conducted four workshops and had solicited oral and written comments on the issues, Staff, the Division of the Public Advocate (the "DPA"), the Delaware Energy Users Group ("DEUG"), Delmarva, and Conectiv Energy Supply, Inc. ("CESI") reached a proposed settlement of all of the issues, including the litigation-track retail adder. These parties submitted the proposed settlement to the Hearing Examiner on July 14, 2005. On July 14, 2005, the Hearing Examiner modified the procedural schedule to provide that the signatories to the proposed settlement would submit pre-filed testimony in support of the settlement on July 18, 2005, and that opponents would submit pre-filed testimony in opposition to the settlement on July 26, 2005. A hearing was scheduled for August 1-2, 2005, with post-hearing briefs due on August 16, 2005.

9. Staff witness Janis L. Dillard, Delmarva witness Peter E. Schaub, DPA witness Andrea C. Crane, Conectiv witness Champe Fisher and DEUG witness Dr. Alan Rosenberg all filed testimony supporting the proposed settlement on July 18, 2005. Subsequently, the parties requested additional time to try to reach a unanimous settlement. The testimony filing date was extended from July 26 to July 29, and the evidentiary hearing originally scheduled for August 1 and 2 was postponed to August 4.

10. The parties were unable to reach a unanimous settlement, and, therefore, on July 29, 2005, Select Energy, Inc. ("Select") submitted the pre-filed testimony of witnesses Leonard Navitsky and Marc Hanks in opposition to the proposed settlement. The Premcor

Refining Group ("Premcor") submitted a letter from Michael Polluf, Refinery Manager, opposing the proposed settlement.

11. On August 1, 2005, Senior Hearing Examiner O'Brien conducted the public comment portion of the hearing. Only one non-party attended the public comment session, and, although this person asked several questions, she offered no public comment.

12. On August 4, 2005, the Hearing Examiner presided over a duly-noticed evidentiary hearing at which the Settling Parties presented the proposed settlement agreement and offered testimony in support of the settlement. The Hearing Examiner also heard oral surrebuttal testimony by the settlement proponents. Select's witnesses presented their pre-filed testimony. Moreover, although the Retail Energy Supply Association ("RESA") had not submitted any testimony in opposition to the proposed settlement, its counsel appeared at the evidentiary hearing and cross-examined the settlement proponents' witnesses. At the conclusion of the hearing, the record, consisting of 10 exhibits and a 676-page transcript of the hearing, was closed.

13. On August 16, 2005, the parties submitted their post-hearing briefs in favor of or in opposition to the proposed settlement.

14. On September 1, 2005, Senior Hearing Examiner O'Brien issued his findings and recommendations, in which he found the proposed settlement to be in the public interest and recommended that the Commission approve it.

15. On September 13, 2005, RESA, Select, and Strategic submitted a combined set of exceptions to the Hearing Examiner's findings and recommendations. Also, on September 13, 2005, Premcor submitted a letter to the Commission stating its opposition to the Hearing Examiner's findings and recommendations. DEUG filed in support of the Hearing Examiner's findings and recommendations. Commission Staff, DPA, and Delmarva submitted letters stating that they took no exceptions.

16. On September 20, 2005, the Commission met at its regularly-scheduled public meeting to consider and deliberate on the Hearing Examiner's proposed Findings and Recommendations. At that meeting, we adopted the Findings and Recommendations of the Hearing Examiner and approved the Settlement Agreement into which the Settling Parties had entered.

17. On October 5, 2005, the parties executing the Settlement Agreement and Premcor filed an amendment to the Settlement Agreement, which amendment provides an alternative mechanism for assigning certain billing system costs to Premcor and other customers. The amendment was unopposed and, at the Commission's October 11, 2005 meeting, was discussed and approved.

18. We set forth herein the reasoning behind our adoption of the Hearing Examiner's Findings and Recommendations and our approval of the Settlement Agreement, as amended.

THE SETTLEMENT

19. The proposed settlement provides that Delmarva will provide SOS to all customer classes, with no specified termination date.

There will be two categories of SOS: (1) a fixed price SOS available to all but the largest customers (the GS-T customers); and (2) an Hourly Priced Service ("HPS") that is mandatory for GS-T customers and will be offered as an option for GS-P customers. In order to take HPS, a GS-P customer must make an affirmative election prior to the Request for Proposal ("RFP") process, and must have an interval meter or be willing to pay for installation of such a meter prior to beginning HPS. GS-P customers will have the opportunity to elect HPS or fixed price SOS every year.¹

20. A competitive RFP process will be used to procure the full requirements of customers eligible for a fixed price SOS. Bidders will be asked to bid seasonally, but the retail rates will be developed using the bids and converting them into the existing rate design structures. In consultation with the other parties in this docket, Delmarva is in the process of developing a Full Requirements Service Agreement ("FSA") and an RFP (collectively, a "Bid Plan"). The proposed settlement calls for a consultant selected by the Commission to monitor and participate in the bidding process. The Company will pay for the consultant, with the expenses being recovered in charges that are part of the fixed price SOS. That consultant, as well as the DPA and its consultant, will be permitted unfettered access to the bid process, subject to confidentiality concerns.

¹ Delmarva's witness testified that the HPS is similar to MPSS, a currently-existing service classification in which Delmarva acquires the capacity and energy necessary to supply the load through short-term PJM markets rather than through the longer-term RFP process. The HPS energy price, like the MPSS energy price, is based on PJM's real time locational marginal pricing ("LMP") delivered into the Delmarva Zone.

21. To provide rate stability for residential and small commercial customers, Delmarva will initially procure 1/3 of the load with a three-year contract (which will actually be 37 months for the first three-year contract), 1/3 with a two-year contract (which will actually be 25 months for the first two-year contract), and 1/3 with a one-year contract (which will actually be 13 months for the first one-year contract).² By the end of the second year, there will be a portfolio of three-year contracts to serve this load, and each year thereafter, a new three-year contract for 1/3 of that load will be entered into to replace the expiring one. One-year contracts will be used for all other customer classes eligible for the fixed price SOS.

22. There are two major components of the SOS retail supply rates. First is the Full Requirements Costs ("FRC"), which, with the exception of the Volumetric Risk Mechanism ("VRM"),³ is comprised of the costs that Delmarva pays to the winning bidders. Absent a Commission finding of exceptional circumstances, the FRC component will be reset and fixed for 12 months. The FRC will be trued up annually, and this will result in the retail rate for SOS being reset on an annual basis.

²The purpose of the extra month in the initial contracts is to move from the May 1, 2006 start date for SOS in this proceeding to a PJM year, which commences June 1 of every year.

³A VRM will be implemented for the large customer classes that receive the fixed price SOS (MGS-S, LGS-S and GS-P). This is in lieu of imposing a minimum stay requirement or a returning customer rule. It is designed to recognize that there are cost risks associated with customers departing from and then returning to fixed price SOS. To the extent that the fixed price SOS load per 50 MW block shrinks by 3 MW or more, the wholesale bidders' supply obligations will also be reduced. To the extent that the fixed price SOS load per 50 MW block increases by more than 5 MW, that incremental load will become Delmarva's responsibility to supply.

23. The reasonable allowance for retail margin ("RARM") mandated by the Act is comprised of several elements: (1) incremental expenses incurred (a) to provide fixed price SOS and HPS; (b) to administer the VRM applicable with respect to fixed price SOS customer load; and (c) carrying costs on Cash Working Capital for fixed price SOS and HPS; (2) \$2.75 million per 12-month period, which for the Year 1 and Year 2 rates, is deemed to include any carrying costs on incremental capitalized costs associated with providing fixed price SOS and the VRM, but does not include the separately-calculated carrying costs for capitalized billing system software costs needed to bill and track HPS costs and revenues and also does not include any return on investment that is removed from distribution rates as supply-related; and (3) for GS-T customers and those in the GS-P class that have elected HPS, the allocable share of the above categories plus an amortized amount, including carrying costs on the unamortized balance of the capitalized billing system software costs and interface costs needed to bill and track HPS costs and expenses.⁴ In the event that investment is removed from distribution rates in a future distribution base rate proceeding as supply-related, the RARM shall include an additional component comprised of the rate necessary to recover the same revenue requirement components as would have been

⁴It is the method by which this "allocable share" is determined that was the subject of the amendment to the Settlement Agreement. Both the original Settlement Agreement and the amendment assign the Delaware-retail share of the costs of the billing system associated with the hourly priced service to GS-T customers and electing GS-P customers. The amendment uses a different mechanism than did the original Settlement Agreement for calculating each customer's share of those costs.

applied if such investment were to have remained in distribution rates e.g., depreciation expense, return on investment grossed-up for taxes, etc.). Such an adjustment to the RARM shall be made without regard to any other cost component.

24. Delmarva will establish the incremental costs of providing SOS by conducting a lead-lag study to determine its cash working capital requirements. The calculation of these requirements will use Delmarva's total weighted cost of capital grossed up for income taxes. Delmarva will apply its grossed-up cost of capital to the results of the lead-lag study to determine its cash working capital requirements in mills per kWh for each customer class. It will estimate its other incremental capital costs and expenses and provide the Staff and DPA with the supporting workpapers, documents, cost centers and internal work order numbers that Delmarva uses to collect and track costs. These estimates will be reconciled in a proceeding that will be held after actual cost data are known. After this one-time reconciliation, the RARM will remain fixed unless changed by the Commission.

25. The combination of the costs paid for the capacity and energy plus the RARM is designed to comply with the Act's mandate that the SOS price after the end of the transition periods be "based upon and/or representative of regional wholesale electric market prices, plus a reasonable allowance for retail margin to be determined by the Commission." 26 Del. C. § 1006(a)(2)c.

26. The proposed settlement also permits Delmarva to implement a pass-through mechanism pursuant to which its retail transmission rates will be developed and billed on the same basis that PJM and FERC

use to develop rates and bill Delmarva for transmission. Currently, Delmarva's Delaware transmission rates are designed so that in the aggregate, they collect what PJM charges Delmarva. However, PJM bills based on peak load capacity and Delmarva's retail rates currently bill based on monthly billing demand for larger customers and on a kWh basis for residential and smaller commercial and industrial customers. The settlement proposal reduces the potential for mismatches between FERC costs and retail rate recovery and provides an incentive for customers to participate in demand response programs.

27. As of May 1, 2006, all residential customers and all commercial, industrial, governmental, and other customers other than GS-T customers and electing GS-P customers will be eligible for fixed price SOS.⁵ SOS rates will vary by customer type because the prices will be based on the winning bids received from wholesale suppliers under an RFP bidding process. The supply requirements for residential and the smallest non-residential customers will be bid out as one group. MGS-S customers will form another group, and their load will be bid for separately. LGS-S customers will form a third group, and non-electing GS-P customers will comprise the fourth group. (Exhs. 2, 3).

⁵Although the term used to describe this SOS is "fixed price," the proposed settlement maintains existing seasonal and time of use rate differentials reflected in the current Commission-approved rates. Furthermore, because bids will be taken annually, the fixed rates will change every year.

THE HEARING EXAMINER'S PROPOSED FINDINGS AND RECOMMENDATIONS

1. The Proposed Settlement Complies With the Act.

28. The Hearing Examiner began by observing that the Act provides that if Delmarva is the SOS supplier, the SOS price shall be revised from time to time for each customer rate class to be representative of the regional wholesale electric market price plus a reasonable allowance for retail margin, and that the Commission may review the SOS price to determine whether it continues to reflect the regional wholesale electric market price plus a reasonable allowance for retail margin. 26 Del. C. § 1010(a)(2)(C). (Hearing Examiner's Report and Recommendations at ¶ 39) (hereafter ("HER at ____")). He found that the proposed settlement satisfied each of those requirements.

29. First, the power to provide SOS would be acquired at a price "representative of the regional wholesale electric market price" because Delmarva would obtain that power either through PJM's competitive markets (in the case of hourly-priced SOS) or through a competitive bidding process. Moreover, the integrity of the bidding process would be assured by the presence of an outside consultant who would monitor the process and report to the Commission. (HER at ¶ 40).

30. The Hearing Examiner also found that the proposed settlement contained a "reasonable allowance for retail margin" as required by the Act. The RARM proposed in the settlement includes Delmarva's incremental cost of providing SOS and a component for return (profit). The RARM further contains a true-up provision to

capture costs to the extent they were not identified or recovered in the first year's rates and also has a "catch-all" provision to capture any other cost category that may have been overlooked. (HER at ¶ 41).

2. The Proposed Settlement Is In The Public Interest.

31. The Hearing Examiner next concluded that the proposed settlement was in the public interest. First, he found that the proposed settlement was supported by a variety of divergent interests: Staff, which represented the interests of ratepayers and regulated utilities; the DPA, which represented all ratepayers with a primary focus on residential and small commercial customers; DEUG, which represented certain large customers, including members of the GS-T class, which would be the only customers subject to the mandatory HPS form of SOS; CESI, which represented a prospective bidder in the RFP process to supply Delmarva with power; and Delmarva, the SOS provider and local distribution company. (HER at ¶43). He agreed that the public interest argument would be stronger if the retail marketers had joined the agreement, but observed that the retail marketers, who would be competing with Delmarva, had "a direct interest in making the SOS service as unattractive as possible in order to increase their chances of gaining market share." (HER at ¶ 44).

32. The Hearing Examiner further found that the retail marketers' interests had been considered in the negotiation of the proposed settlement. He identified several terms in the proposed settlement that benefit retail marketers: (1) the annual resetting of rates to better reflect current market prices; (2) the elimination of returning customer rules; (3) the addition of the RARM, which includes

a profit margin, on top of wholesale prices (to provide "headroom" under which competitors can price their services); and (4) restructuring how Delmarva charges for transmission and ancillary rates to correspond more closely with how PJM charges retail marketers for such services (to enhance a marketer's ability to match its price components with the SOS pricing). (HER at ¶ 45).

33. The Hearing Examiner rejected the retail marketers' arguments that the proposed settlement should be modified: (1) to require all large commercial and industrial customers to take HPS SOS; and (2) to increase the RARM to be more representative of "actual" costs (which they claimed was better reflected in Delmarva's original pre-settlement position). First, the Hearing Examiner found that imposing mandatory HPS on all large commercial and industrial customers would reduce the choice available to those customers because, if they would be unable to take fixed-price SOS from Delmarva; their only option would be to take a fixed-price service from a retail marketer, which they might not want to do. The Hearing Examiner quoted the DPA to explain why that was inappropriate:

Although Select argues that HPS provides better price signals to customers, Select admitted that it has no Delaware customers taking HPS. It is ironic that Select is promoting implementing HPS in Delaware, even though none of its customers in Delaware take HPS. Clearly, Select does not need [Delmarva] to offer an HPS so that it can be put on a level playing field with [Delmarva] because Select itself has no customers on HPS. Select's proposal to increase mandatory HPS appears to be simply a ploy to drive customers away from SOS. DPA witness Crane explained in her testimony that it would be Select, not Delaware ratepayers, who would benefit under Select's proposal.

(HER at ¶ 47).

Furthermore, the Hearing Examiner found that even if further restricting the availability of fixed price SOS somehow advanced competition, that was outweighed by the interests of affected customers that may wish to remain on SOS but who seek the stability of a fixed price service. He was persuaded by the testimony of DEUG witness Rosenberg, who observed that some large customers might not find HPS attractive because of the volatility, which would create budgeting chaos and uncertainty. (HER at ¶ 47).

34. The Hearing Examiner next addressed the retail marketers' argument that there was not substantial evidence on the record to support the RARM. First, he noted that the settlement proponents' witnesses had testified that the RARM components would cover Delmarva's incremental costs and that the proposed return would satisfy the statutory requirement of a "reasonable" retail margin, and that the expert testimony constituted record evidence. (HER at ¶ 49). Second, the fact that Delmarva originally supported larger retail margins than those espoused in the proposed settlement did not mean that the profit margins in the proposed settlement were inadequate or otherwise failed to encourage competition. Third, he observed that under Delaware law, the parties contesting a settlement do not have a right to a full trial on their issues; rather, the adjudicator of a contested settlement need only know enough about its merits and the identity of the parties to the settlement to be able to evaluate the settlement. (HER at ¶ 49, citing *In re Amsted Industries, Inc. Litigation*, 521 A.2d 1104 (Del. Ch. 1986); *Rome v. Archer*, 197 A.2d 49, 53 (Del. 1964)).

35. Next, the Hearing Examiner noted that even if the parties had fully litigated the RARM component of the proposed settlement, their positions would still have been substantially divergent and "determination of the 'correct' numbers would remain elusive" because the parties' positions would largely depend on their views of cost allocation and risk valuation - a subject on which experts frequently disagree. (HER at ¶ 50). Avoiding the costs associated with fully litigating this issue alone supported a conclusion that the proposed settlement was in the public interest. (HER at ¶ 50).

36. Finally, the Hearing Examiner rejected Premcor's objection to the proposed settlement that it should not have to bear any of the cost of a system that it was not using. He noted that Premcor's witness at the evidentiary hearing testified that if Premcor's load serving entity was no longer qualified as such by PJM, it "would probably have to fall back to Delmarva." (HER at ¶ 51, quoting Tr. at 567). As the SOS supplier, Delmarva would be obligated to provide supply to Premcor under HPS service at any time if Premcor requested Delmarva to do so. The costs for which Premcor (and others) would be responsible are the costs of establishing the hourly billing system, and the Hearing Examiner found that those costs would exist whether or not Premcor takes HPS initially or not. (HER at ¶ 51).

OPINION

37. *Twenty-six Del. C. § 512* encourages the resolution of matters brought before the Commission through stipulations and settlements. Indeed, Section 512(a) of the Public Utilities Act specifically exhorts us to encourage the parties before it to resolve

matters by stipulation or settlement. We may approve such stipulations or settlements, even if all parties do not agree, if we find the resolution contemplated by the stipulation or settlement to be in the public interest. 26 Del. C. § 512(c); *Constellation New Energy, Inc. v. Public Service Commission*, 825 A.2d 872, 882 (Del. Super. 2002) (... the legislature has determined that settlements are to be encouraged and that the Commission may approve any settlement it finds to be in the public interest, regardless of whether that settlement has been agreed to by all the parties.").

38. We have reviewed the record and the Findings and Recommendations of the Hearing Examiner, and we agree with the Hearing Examiner that this settlement is in the public interest. For the reasons set forth by the Hearing Examiner, we find that the settlement complies with the requirements of 26 Del. C. § 1006(a)(2)(c), which provides that if Delmarva is the SOS provider (which it is), then the SOS price must be representative of the wholesale electric market price, plus a "reasonable allowance for retail margin." We reject the retail marketers' assertion that expert opinion testimony is not substantial evidence and that this settlement is not supported by substantial evidence; indeed, we believe that the Superior Court rejected a similar argument that Constellation New Energy made in its appeal of our decision in Docket No. 01-194. In *Constellation New Energy*, Constellation argued that the settlement proponents and the Commission bore the burden of establishing that each aspect of the settlement must be supported by specific numeric analysis. The Superior Court, however, disagreed, stating:

This case involves judicial review for the first time of a statute authorizing settlements of disputes before the Commission. That statute authorizes the Commission to approve settlements, even ones contested by non-settling parties, where the Commission finds such resolution to be in the public interest.

Constellation New Energy, 825 A.2d at 874.

39. Later in the opinion, the Court described Constellation's argument with respect to the settlement's provision for the establishment of the regional wholesale electric market price as follows:

Constellation criticizes the Commission because it did not rely on any quantitative analysis as to market prices. Essentially, it maintains that the Commission did not identify any numerical evidence of the "regional wholesale market price," or reasonable allowance for retail margin." Constellation concludes that since the Court cannot identify - and therefore cannot review - the components of the price determination formula set up under section 1006, the Court cannot find that the Commission's decision was based on substantial evidence.

Id. at 884. The Superior Court, however, disagreed:

However, several parties to the settlement and appellees point out that there is no single "wholesale price" that can be said to be "representative." This is because any such wholesale price is necessarily a composite of the prices of capacity, energy and ancillary service, each of which will vary depending on whether one looks at today's prices, future price curves generated by models, or bid and ask prices in future markets. Additionally, all of these factors are necessarily evaluated by each market participant through the lens of its perceptions of the risks assumed for variations in weather, customer usage, risks of lost or added customers, and other forces. Therefore, they conclude, any determination as to whether a particular standard offer service price is representative of regional wholesale market price plus a reasonable allowance for retail margin necessarily entails

judgments not easily reducible to a mathematical formula. That is why, the argument continues, it was necessary for the Commission to take the "end results" approach, relying on the experts' opinions that the settlement's rates were reasonable approximations.

Id. at 884-85. After reviewing other corollary arguments of Constellation and setting forth the expert testimony upon which the Commission relied, the Court concluded: "The foregoing constitutes substantial evidence from which the Commission could conclude that approval of the settlement with the proposed rates were in the public interest." *Id.* at 887.

40. We further observe that in Section 1002 of the Act, the Legislature declared that one of the standards governing the Commission's oversight of the transition process is that "customers shall have the right to choose among electric suppliers." 26 Del. C. § 1002(a)(2).⁶ We believe that the retail marketers' proposal to require HPS SOS for all large commercial and industrial customers (defined as all GS-T, GS-P and LGS customers having a PLC of greater than 600 kW) would reduce the right of these customers to choose their electric supplier, as DPA witness Crane testified. See Tr. at 497. We do not believe that promotion of retail competition, to the exclusion of all other considerations, is the be-all and end-all of the Act. We must take other considerations into account, and we do not interpret the Act as precluding us from doing so.

⁶See also 26 Del. C. § 1003(a): "Customers of electric distribution companies in this state shall have the opportunity, but not the obligation, to purchase electricity from their choice of electric suppliers" (emphasis added).

41. The Settlement Agreement also results in reduced regulatory expense, which is a benefit to Delmarva customers because it reduces the legal and other rate case expense costs that Delmarva will seek to recover in its next case (which has been filed). In a time of rising costs for nearly every commodity, this cost limitation is certainly in the public interest.

42. We rejected Premcor's objections to the original Settlement Agreement for the reasons set forth by the Hearing Examiner. In particular, we note that Premcor, like other customers, has the right to use a competitive retail supplier or to take a Delmarva-provided SOS. Delmarva has incurred costs, in this instance, billing system costs, to be ready to provide an hourly form of SOS (HPS SOS) to Premcor and other customers within the GS-T customer class and those GS-P customers that elect this form of SOS. Thus, it is reasonable that all such customers pay a share of those "make ready" costs even if, at any particular moment in time, some or all of those customers may not be using the service. The Settlement Agreement provided one reasonable approach, based on peak load, for assigning these costs among customers that will have the right to take the HPS form of SOS. The amendment to the Settlement Agreement provides a different, but also reasonable, mechanism using a per customer charge, except that peak load is used for "smaller" customers within this group of generally large customers.

43. For these reasons, as well as those set forth in the Hearing Examiner's Findings and Recommendations, we hereby adopt the

Findings and Recommendations of the Hearing Examiner in their entirety. (4-0).

MISCELLANEOUS

44. On September 15, 2005, Delmarva filed two documents developed as part of the process for the solicitation of electric supply to meet its SOS obligations on and after May 1, 2006. The first of these documents consists of a single page identifying the Service Types of the customer groups for which supply will be separately solicited, the approximate loads of each of those groups (the Peak Load Contribution or "PLC") and the contract duration. The second document is a draft request for proposal ("RFP") that will be sent to prospective bidders. The attachments to the RFP included various forms that bidders would need to complete in order to participate in the process or, upon winning a bid, to complete the contemplated transaction. A draft Full Requirements Supply Agreement ("FSA"), that the winning bidders would be required to sign, is also attached as an appendix to the RFP.

45. Delmarva's September 15, 2005 filing was served on all parties to the proceeding. At the Commission meeting on September 20, 2005, Delmarva requested that the Commission take appropriate steps to solicit any comments that other parties may have on the draft documents and, if possible, to consider approving these documents for use in Delmarva's SOS solicitation at the Commission's meeting on October 11, 2005. The Commission directed Hearing Examiner O'Brien to solicit such comments and Staff has reported back that no such

comments have been received. Staff has also indicated that it has reviewed the documents and does not propose any changes to them.

46. Delmarva has requested that the Commission approve the form of these documents, including the FSA with a recognition that minor changes to the documents may be made as the result of continuing discussions with Staff and other parties, or from feedback received in pre-bid meetings with prospective bidders.⁷

ORDER

AND NOW, this 11th day of October, 2005, IT IS HEREBY ORDERED:

1. That the Findings and Recommendations of the Hearing Examiner dated September 1, 2005 (attached to the original hereof as Exhibit "A") recommending that the parties' Settlement Agreement be approved are hereby approved and adopted in their entirety. The September 28th amendment to the Settlement Agreement is also approved (attached to the original hereof as Exhibit "B").

2. The Commission hereby approves the form of the documents filed on September 15, 2005, and explicitly recognizes that some changes to these documents may be necessary or appropriate as the RFP process proceeds. The Commission will not require that each such change be brought back to the Commission for a further approval, but does direct the Company to ensure that Staff and the Public Advocate are made aware of any such changes. To the extent that Staff or the Public Advocate believe that the changes are significant enough to

⁷As an example, Delmarva has noted that Exhibit D of the FSA contains a list of items on the monthly PJM bill items and specifies whether buyer (Delmarva) or seller is initially responsible for such charges. A new line

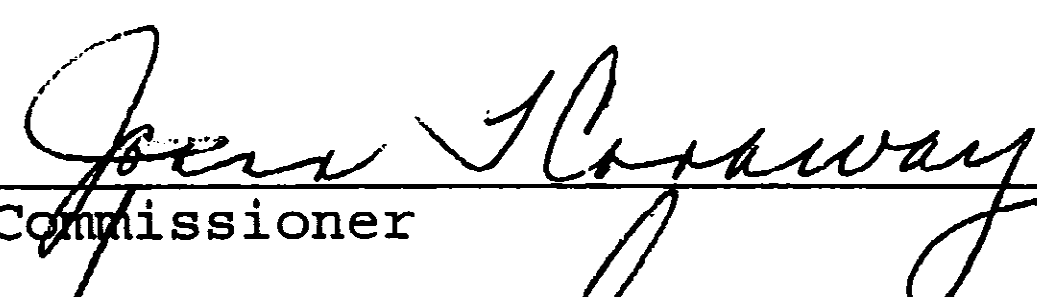
warrant further Commission consideration, the Commission will review any such request.

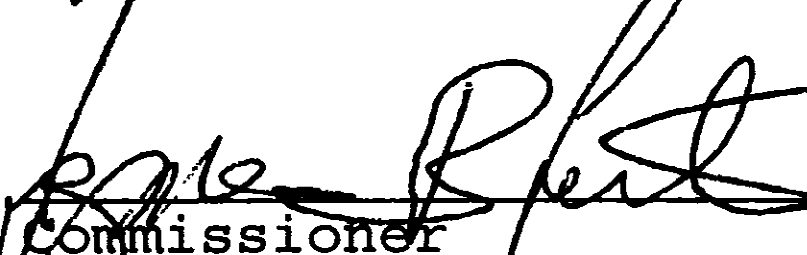
3. That the Commission retains the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.


BY ORDER OF THE COMMISSION:


Chair

Vice Chair


Commissioner


Commissioner


Commissioner

ATTEST:


Acting Secretary

item has recently been added by PJM and Exhibit D will therefore be modified to include this new line item.

EXHIBIT "A"

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE PROVISION OF)	
STANDARD OFFER SUPPLY TO RETAIL)	
CONSUMERS IN THE SERVICE TERRITORY)	PSC DOCKET NO. 04-391
OF DELMARVA POWER & LIGHT COMPANY)	
AFTER MAY 1, 2006)	
(OPENED OCTOBER 19, 2004))	

REPORT OF THE HEARING EXAMINER

DATED: September 1, 2005

**WILLIAM F. O'BRIEN
HEARING EXAMINER**

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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE PROVISION OF)	
STANDARD OFFER SUPPLY TO RETAIL)	
CONSUMERS IN THE SERVICE TERRITORY)	PSC DOCKET NO. 04-391
OF DELMARVA POWER & LIGHT COMPANY)	
AFTER MAY 1, 2006)	
(OPENED OCTOBER 19, 2004))	

REPORT OF THE HEARING EXAMINER

William F. O'Brien, duly appointed Hearing Examiner in Stage 1 and Stage 2 of this docket, pursuant to Commission Orders Nos. 6490 (Oct. 19, 2004) and 6598 (Mar. 22, 2005), reports to the Delaware Public Service Commission ("Commission") as follows:

I. APPEARANCES

On behalf of the Delaware Public Service Commission Staff:

JAMES McC. GEDDES, ESQUIRE
ASHBY & GEDDES
Rate Counsel

On behalf of the Division of the Public Advocate:

G. ARTHUR PADMORE, ESQUIRE

On behalf of Delmarva Power & Light Company:

RANDALL V. GRIFFIN, ESQUIRE

On behalf of Intervenor Conectiv Energy Supply, Inc.

I. DAVID ROSENSTEIN, ESQUIRE

On behalf of Intervenor Delaware Energy Users' Group:

BRIAN R. GREENE, ESQUIRE
CHRISTIAN & BARTON, LLP

On behalf of Intervenor Retail Energy Supply Association:

DANIEL CLEARFIELD, ESQUIRE
WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

On behalf of Intervenor Select Energy, Inc.:

FREDERICK LEE KLEIN, ESQUIRE

On behalf of Intervenor Premcor Refining Group:

MR. JAMES T. FUESS

II. BACKGROUND

1. Delaware's Electric Utility Restructuring Act of 1999 ("Restructuring Act") established a framework under which Delmarva Power & Light Company ("Delmarva" or "DP&L") and Delaware Electric Cooperative, Inc. would surrender their exclusive franchises to serve retail electric utility customers, thereby providing competitive retail electric marketers the opportunity to compete for customers within those utilities' service territories. Under the Restructuring Act, those customers who do not choose an electric supplier will take "standard offer service" ("SOS") from the "standard offer service supplier" after the applicable "transition period."¹ In this docket, the Commission selects the SOS supplier for Delmarva's service territory and establishes the process under which SOS supply will be procured and priced.

2. The statutory transition period for all customer classes in Delmarva's service territory ended in September 2003. In the early part of 2002, however, as part of the resolution of its merger with PEPCO Holdings, Inc., Delmarva agreed to serve as the SOS supplier for

¹ See 26 Del. C. §§ 1001; 1006(a)(2)a.-c.; 1006(b)(2)a.-c.

its service territory until May 1, 2006, and to freeze its SOS rates (with certain exceptions) until May 1, 2006.² The SOS prices would then be reviewed in connection with a process intended to result in the selection of an SOS supplier for the period beginning May 1, 2006.

3. On October 19, 2004, noting that SOS rates had increased significantly in other jurisdictions once the freeze on supply rates had been lifted in those jurisdictions, the Commission opened this docket to "explore issues related to the selection of an SOS supplier for DP&L's service territory and the appropriate prices to be charged for SOS after that date."³ In that Order, the Commission adopted Staff's proposal to conduct this proceeding in three stages: (1) resolving the larger, fundamental issues underlying the selection of a supplier and the setting of SOS rates; (2) crafting the necessary rules or procedures for implementing the choice of an SOS supplier(s) and establishing SOS rates; and (3) implementing the selection and pricing mechanisms from the second stage to determine the post-May 2006 SOS supplier and SOS rates. In addition, the Commission established a deadline of February 28, 2005 for the conclusion of the first stage and appointed a Hearing Examiner as a monitor to oversee the proceedings.

4. Pursuant to the Commission's directives in Order No. 6490, Staff conducted two workshops, through which it solicited written and oral comments from the participants, and then, on January 5, 2005,

² See PSC Order No. 5941 (Apr. 16, 2002), Hearing Examiner's Report, App. A (Settlement) at ¶¶ B, C, D.1, *aff'd sub nom. Constellation New Energy, Inc. v. Public Service Commission*, 825 A.2d 872 (Del. Super. 2003); see also 26 Del. C. §1010(a)(2).

³ See PSC Order No. 6490 (Oct. 19, 2004) at ¶ 3.

submitted a position paper addressing several issues that the parties agreed were fundamental SOS issues. On March 22, 2005, the Commission adopted all of Staff's recommendations, as follows, despite opposition from certain parties. (PSC Order No. 6598.)

5. First, the Commission determined that SOS in Delaware would be provided pursuant to a "wholesale" model, whereby the Commission would select the incumbent distribution utility (DP&L) as the SOS provider, who would secure the power to serve SOS customers from the wholesale power market but would continue to interface directly with the customer. The "wholesale" model was chosen over various forms of the "retail" model, whereby the Commission would select one or more SOS providers through some form of competitive process and those providers would assume some or all of the duties of interfacing with the retail SOS customer. (*Id.*)

6. Second, the Commission decided to defer the remaining Stage 1 issues to Stage 2, including the method by which the wholesale power will be procured, the composition of the "retail adder" or margin that Delmarva would include in its SOS rates, and the use of SOS to promote various societal benefits (e.g., renewable resources and demand response programs). In addition, the Commission again appointed a Hearing Examiner "to superintend and monitor the Stage 2 process and to deal with any disputes regarding the adequate provision of relevant information." (*Id.*)

7. In Stage 2, the parties established a two-track procedural schedule consisting of (1) a litigation track for the determination of the composition of the "retail adder" and (2) a non-litigation track for the remaining issues, which were considered primarily policy-

driven and which could be resolved without evidentiary hearings. Track 2 issues included Commission oversight of the process, splitting of rate classes, and rate translation of bids into tariffs, as well as certain issues that the Commission deferred from Stage 1 to Stage 2.

8. After conducting four workshops and soliciting written and oral comments on the issues, however, certain parties agreed on a "Proposed Settlement," dated July 14, 2005, regarding all issues from both tracks. As a result, the Hearing Examiner consolidated the two tracks and, rather than conduct a hearing solely on the "retail adder," conducted a hearing on whether the Commission should adopt the terms of the Proposed Settlement. The parties who joined the Proposed Settlement are Staff, the Division of the Public Advocate ("DPA"), DP&L, Conectiv Energy Supply, Inc. ("CESI"), and Delaware Energy Users' Group ("DEUG") (collectively, "Settling Parties").

9. On August 1, 2004, I conducted the public comment portion of the hearing, as noticed by newspaper publication, press release, and direct contact with Delmarva's Project Concern participants.⁴ Leslie Lee, who administers the low-income home energy assistance program for the Division of State Service Centers of the Department of Health and Social Services, was the only non-party to appear. She asked several procedural questions but offered no public comment.

10. On August 4, 2005, after postponing the evidentiary portion of the hearing in order to allow the parties more time to negotiate changes to the Proposed Settlement in an effort to secure full

⁴ The affidavits of publication of notice from the *Delaware State News* and *The News Journal* are included in the record as Exhibit 1. Exhibits will be cited as "Ex. __" and references to the hearing transcript will be cited as "Tr. __."

consensus among the parties, I conducted the remainder of the hearing. At the hearing, the Settling Parties each appeared in support of the Proposed Settlement while Retail Energy Marketers' Association ("RESA"), Select Energy, Inc. ("Select"), Strategic Energy, LLC ("Strategic"), and Premcor Refining Group ("Premcor") opposed the Proposed Settlement.⁵ The record, as developed at the hearing, consists of a 680-page verbatim transcript and ten exhibits.

11. On August 16, 2005, in accordance with the approved post-hearing schedule, certain parties filed post-hearing briefs. Staff, DPA, Delmarva, and CESI each filed briefs supporting the Proposed Settlement. Three of the retail marketers that participated in this proceeding, RESA, Select, and Strategic (collectively "Retail Marketers") jointly filed one brief opposing the Proposed Settlement.⁶ I have considered all of the record evidence as well as the post-hearing briefs and, based thereon, I submit for the Commission's consideration this Report of the Hearing Examiner.

III. THE PROPOSED SETTLEMENT

12. A summary of the terms of the Proposed Settlement (Ex. 2), taken largely from Staff's in its brief, is as follows.

13. The Proposed Settlement provides that Delmarva will provide SOS to all customer classes, with no specified termination date. There will be two categories of SOS: (1) a fixed price service ("FPS")

⁵ The parties who did not actively participate in the hearing and did not otherwise support or oppose the Proposed Settlement include Delaware Electric Cooperative, Inc., PSEG Energy Resources & Trade LLC, PEPCO Energy Services, Inc., Washington Gas Energy Services, Inc., Constellation Energy Commodity Group, Inc., Constellation New Energy, Inc., and PJM Interconnection, LLC.

⁶ The briefs submitted by the Settling Parties will be cited as "[party name] Br. at ____." The Retail Marketers' brief will be cited as "RM at ____."

available to all but the largest customers (i.e., the eleven GS-T customers, who all take at a transmission level voltage); and (2) an hourly priced service ("HPS") that is mandatory for GS-T customers and will be offered as an option for GS-P customers (generally, the large commercial customers). In order to take HPS, a GS-P customer must make an affirmative election prior to the Request for Proposal ("RFP") process for selecting wholesale SOS providers, and must have an interval meter or be willing to pay for installation of such a meter prior to beginning HPS. GS-P customers will have the opportunity to elect HPS or FPS every year.⁷ All other SOS customers must take the FPS.

14. Under the Proposed Settlement, a competitive RFP process will be used to procure the full requirements of customers eligible for a fixed price SOS. Bidders will be asked to bid seasonally, but the retail rates will be developed using the bids and converting them into the existing rate design structures. In consultation with the other parties in this docket, Delmarva is in the process of developing a Full Requirements Service Agreement ("FSA") and an RFP (collectively, a "Bid Plan"). The proposed settlement calls for a consultant selected by the Commission to monitor and participate in the bidding process. The Company will pay for the consultant, with the expenses being recovered in charges that are part of the fixed price SOS. That consultant, as well as the DPA and its consultant,

⁷ According to Delmarva, the HPS is similar to MPSS, a currently existing optional service classification in which Delmarva acquires the capacity and energy necessary to supply the load through short-term PJM markets rather than through the longer-term RFP process. The HPS energy price, like the MPSS energy price, is based on PJM's real time locational marginal pricing ("LMP") delivered into PJM's "Delmarva Zone."

will be permitted unfettered access to the bid process, subject to confidentiality concerns.

15. To provide rate stability for residential and small commercial customers, Delmarva will initially procure 1/3 of the load with a three-year contract (which will actually be 37 months for the first three-year contract), 1/3 with a two-year contract (which will actually be 25 months for the first two-year contract), and 1/3 with a one-year contract (which will actually be 13 months for the first one-year contract).⁸ By the end of the second year, there will be a portfolio of three-year contracts to serve this load, and each year thereafter, a new three-year contract for 1/3 of that load will be entered into to replace the expiring one. One-year contracts will be used for all other customer classes eligible for the fixed price SOS.

16. Under the Proposed Settlement, there are two major components of the SOS retail supply rates. First is the Full Requirements Costs ("FRC"), which, with the exception of the Volumetric Risk Mechanism ("VRM"),⁹ is comprised of the costs that Delmarva pays to the winning bidders. Absent a Commission finding of exceptional circumstances, the FRC component will be reset and fixed

⁸ The purpose of the extra month in the initial contracts is to move from the May 1, 2006 start date for SOS in this proceeding to a PJM year, which commences June 1 of every year.

⁹ A VRM will be implemented for the large customer classes that receive the fixed price SOS (i.e., MGS-S, LGS-S and GS-P). This is in lieu of imposing a minimum stay requirement or a "returning customer" rule. It is designed to recognize that there are cost risks associated with customers departing from and then returning to fixed price SOS. To the extent that the fixed price SOS load per 50 MW block shrinks by 3 MW or more, the wholesale bidders' supply obligations will also be reduced. To the extent that the fixed price SOS load per 50 MW block increases by more than 5 MW, that incremental load will become Delmarva's responsibility to supply.

for 12 months. The FRC will be trued up annually, and this will result in the retail rate for SOS being reset on an annual basis.

17. Under the Proposed Settlement, the "reasonable allowance for retail margin" ("RARM") mandated by the Restructuring Act is comprised of the following components:

(1) Incremental expenses incurred:

(a) to provide fixed price SOS and HPS;

(b) to administer the VRM applicable with respect to fixed price SOS customer load; and

(c) carrying costs on Cash Working Capital for fixed price SOS and HPS;

(2) \$2.75 million per 12-month period, which for the Year 1 and Year 2 rates, is deemed to include any carrying costs on incremental capitalized costs associated with providing fixed price SOS and the VRM, but does not include the separately-calculated carrying costs for capitalized billing system software costs needed to bill and track HPS costs and revenues and also does not include any return on investment that is removed from distribution rates as supply-related; and

(3) For GS-T customers and those in the GS-P class that have elected HPS, the allocable share of the above categories plus an amortized amount, including carrying costs on the unamortized balance of the capitalized billing system software costs and interface costs needed to bill and track HPS costs and expenses.

18. In the event that investment is removed from distribution rates in a future distribution base rate proceeding as supply-related, the RARM shall include a fourth component comprised of the rate necessary to recover the same revenue requirement components as would have been applied if such investment were to have remained in distribution rates (e.g., depreciation expense and return on

investment grossed-up for taxes). Such an adjustment to the RARM shall be made without regard to any other cost component.

19. Delmarva will establish the incremental costs of providing SOS by conducting a lead-lag study to determine its cash working capital requirements. The calculation of these requirements will use Delmarva's total weighted cost of capital grossed up for income taxes. Delmarva will apply its grossed-up cost of capital to the results of the lead-lag study to determine its cash working capital requirements in mills per kWh for each customer class. It will estimate its other incremental capital costs and expenses and provide the Staff and DPA with the supporting workpapers, documents, cost centers and internal work order numbers that Delmarva uses to collect and track costs. These estimates will be reconciled in a proceeding that will be held after actual cost data are known. After this one-time reconciliation, the RARM will remain fixed unless changed by the Commission.

20. The Proposed Settlement also permits Delmarva to implement a pass-through mechanism pursuant to which its retail transmission rates will be developed and billed on the same basis that PJM and FERC use to develop rates and bill Delmarva for transmission. Currently, Delmarva's Delaware transmission rates are designed so that in the aggregate, they collect what PJM charges Delmarva. PJM, however, uses peak load capacity as a billing determinant while Delmarva uses monthly demand for larger retail customers and kWh usage for residential and smaller commercial and industrial customers. The settlement proposal reduces the potential for mismatches between FERC costs and retail rate recovery and provides an incentive for customers to participate in demand response programs.

21. As of May 1, 2006, all residential customers and all commercial, industrial, governmental and other customers other than GS-T customers and electing GS-P customers will be eligible for fixed price SOS.¹⁰ SOS rates will vary by customer type because the prices will be based on the winning bids received from wholesale suppliers under an RFP bidding process. The supply requirements for residential and the smallest non-residential customers will be bid out as one group. MGS-S customers will form another group, and their load will be bid separately. LGS-S customers will form a third group, and non-electing GS-P customers will comprise the fourth group. (Exs. 2, 3.)

IV. SUMMARY OF EVIDENCE

22. Testimony in support of the Proposed Settlement (Ex. 2) was pre-filed (and adopted as sworn testimony) by DP&L witness Schaub (Ex. 3), DEUG witness Alan Rosenberg (Ex. 4), CESI witness Champe Fisher (Ex. 5), DPA witness Andrea C. Crane (Ex. 6), Staff witness Janis L. Dillard (Ex. 8), and Premcor witness Jay Fuess (Ex. 9). The following is a summary this pre-filed testimony as well as the live testimony from the hearing (as provided, in large part, by Delmarva in its brief).

23. Mr. Schaub summarized the Proposed Settlement and concluded that adoption thereof would be in the public interest. (Ex. 3 at 2, 6-9; Tr. 393-96.) He identified several specific elements of the Proposed Settlement that were beneficial to customers, including that:

¹⁰ Although the term used to describe this SOS is "fixed price," the proposed settlement maintains existing seasonal and time of use rate differentials reflected in the current Commission-approved rates. Furthermore, because bids will be taken annually, the fixed rates will change every year.

- a) Delmarva will provide SOS under PSC regulation;
- b) Wholesale procurement of SOS is a proven method to obtain fair market prices;
- c) The structure of the procurement is modeled after successful programs in other states, and a similar process has received affirmation from FERC;
- d) Customers may shop at any time if that is to their advantage and can therefore have the benefits of retail choice;
- e) Customers most inclined to shop will have SOS prices reset annually to reflect market conditions thereby allowing more contemporary pricing offers from third party suppliers;
- f) The largest customers may take advantage of volatile hourly pricing if they are able to manage the volatility to their benefit;
- g) Residential and small commercial customers are provided less volatile pricing through longer term procurement because price stability is most important to them;
- h) Delmarva's experience with performing similar procurements means low incremental expenses associated with procurement and related functions; and
- i) The wholesale market has proven quite competitive when similar procurements have been conducted.

(Ex. 3 at 2-3.)

24. Mr. Schaub further identified elements of the Proposed Settlement that were beneficial to wholesale suppliers of power, retail marketers, and DP&L. (Ex. 3 at 3-4.) He noted that the Proposed Settlement reflected compromise by each of the Settling Parties and asserted that the Settling Parties aggressively represented customer interests. (Ex. 3 at 5.)

25. In oral surrebuttal, Mr. Schaub responded to comments filed by Premcor regarding whether Premcor should have to pay for services that it does not intend to use. Mr. Schaub explained that Delmarva was legally obligated to provide SOS to Premcor. (Tr. 398.) Because there are fixed costs that are incurred to stand ready to serve hourly priced service (HPS) customers, Mr. Schaub concluded that Premcor should pay a share of those fixed costs irrespective of whether or not Premcor availed itself of that service. (Tr. 398-99.)

26. Mr. Schaub also responded to Select's alternative proposal for how the SOS procurement process should be implemented and rates set and identified several reasons for rejecting that proposal. He noted that Select's proposal was unacceptable to the Company because it would cause existing rate classes to be split into different groups based on size, causing additional administrative expenses for the Company. (Tr. 400.) Additional administrative burdens were proposed in the form of quarterly procurement cycles, which Mr. Schaub opposed because there "doesn't seem to be any benefit accruing to customers that justifies that incremental cost." (Tr. 401.) Mr. Schaub also opposed Select's proposal to deny fixed price SOS to larger customers in the GS-P and LGS-S classes, noting that "we're certainly not hearing any interest in that from the representatives of those customers." (Tr. 400-01.) He also testified that for residential and small non-residential customers, the use of rolling three-year contracts as set forth in the Proposed Settlement rather than the one-year contracts proposed by Select, "satisfies the needs of those customers for some rate stability over time while still providing a market base[d] price." (Tr. 401-02.)

27. DEUG witness Rosenberg testified that DEUG was comprised of industrial customers taking service primarily under the GS-T and GS-P service classifications and that the Proposed Settlement met the objectives of the DEUG members to establish an appropriately priced hourly priced service for the customers who were sophisticated enough to want such a service while not mandating such a service for the GS-P customers; many of whom may be less sophisticated. (Ex. 4 at 3.) Dr. Rosenberg noted the benefits to industrial customers from having no minimum stay or other requirements limited customers' ability to move between a Delmarva provided supply service and a supply service from a competitive retail marketer. (Id. at 4.) He testified that the provisions that change the way transmission and ancillary rates are charged for retail purposes to use the same billing mechanisms that PJM uses to charge Delmarva will promote demand side management. (Id. at 5-7.) He supported the pricing mechanisms established for the HPS, including how the HPS billing system costs would be recovered from HPS customers. (Id. at 9-12.) He concluded that the Proposed Settlement was in the public interest and should be approved. (Id. at 14.)

28. CESI witness Fisher testified that the sections of the Proposed Settlement that deal with the way in which Delmarva will acquire the supply required to meet its SOS supply obligations are in the public interest. (Ex. 5 at 3.) In particular, Mr. Fisher supported the RFP process set forth in the Proposed Settlement and the use of a Volumetric Risk Mitigation ("VRM") mechanism that should operate to encourage active participation in the RFP process by wholesale sellers of electricity. (Ex. 5 at 3-5.) On the stand, Mr. Fisher testified that a wholesale bid from CESI would be higher to a

retailer under an agreement that did not contain a VRM than it would be to a retailer under an agreement with a VRM. (Tr. 480-81.) He also noted that standard contract provisions between CESI and retailers contain alternative mechanisms for limiting CESI's risk. (Tr. 484-85.)

29. DPA witness Crane testified that the Proposed Settlement was in the public interest and should be approved. (Ex. 6 at 5.) She further testified that:

On balance, I believe that the Settlement provides a fair and reasonable resolution of the issues in this case. The Settlement provides a competitive process for procuring electric generation supply. Moreover, it allows Delmarva to recover its actual procurement costs as well as the incremental administrative costs of providing SOS. In this regard, the Settlement is consistent with the statute, since it ensures that the SOS price will be "representative of the regional wholesale electric market price, plus a reasonable allowance for retail margin... ."

The Settlement also provides some rate stability to customers, particularly residential and small commercial customers who will receive SOS procured through three-year contracts. Additional stability will be provided after Year 2, when the RARM is reset, since the settlement does not provide for annual changes to the RARM after the Year 1 true-up. The Settlement also avoids the "residual charge" proposed as part of Delmarva's Administrative Charge, which in my opinion would have inflated SOS rate without providing any attendant benefit to customers. Finally, the Settlement will avoid the need for protracted and expensive litigation. Avoiding such litigation is especially important given the fact that the SOS process must be in place by May 1, 2006.

(Id. at 12.)

30. Ms. Crane, in oral surrebuttal, testified against Select's recommendations. In particular, she opposed Select's proposal to "restrict choice by requiring an hourly price service for all

customers over six hundred kW by year two." (Tr. 490.) She also noted that Select's proposal would increase costs by requiring four rounds of bids each year and by splitting rate classes by size. (Tr. 490-91.) She noted that while some costs involved in the RFP process may be one-time set up costs, other costs, such as the \$75,000 in estimated costs for an outside consultant reporting to the Commission to oversee the RFP process, would be incurred multiple times per year under the Select proposal. (Tr. 514-16.) She also testified against a so-called "retail adder" that was included in the Company's originally filed proposal and in Select's proposal, but is not incorporated in the Proposed Settlement. (Tr. 491.)

31. Staff witness Dillard testified that the Proposed Settlement was in the public interest and should be approved by the Commission. (Ex. 8 at 3.) Ms. Dillard identified in her pre-filed testimony and on the stand several specific aspects of the Proposed Settlement that benefited customers, wholesale marketers, and retail marketers. She noted that the RFP process in the Proposed Settlement was a "fairly low-cost way for a small state like Delaware to conduct the procurement process" and that a lot of time was spent "dealing with cost recovery because we wanted to make sure the company was able to recover all of its real costs of providing the SOS service, but wasn't going to be able to double recover any cost." (Tr. 521-22.) Ms. Dillard pointed out several specific provisions that benefited retail marketers including that there would be no minimum stay requirements that would restrict customers moving back-and-forth between shopping competitively and returning to SOS; that making hourly priced service mandatory for GS-T customers and optional for GS-P customers provides

an opportunity for retail marketers to offer a fixed price alternative; that by ensuring that all incremental costs are going to be in the shopping credit, retail suppliers will have some "head room to compete;" and that the power procured for the SOS provided to medium-sized non-residential customers would be done under one-year, rather than two-year, contracts. (Tr. 522-23.)

32. On the stand, Ms. Dillard explained at some length the process by which the Proposed Settlement was reached. She described the workshop process and Staff's efforts to develop a comprehensive settlement package, which would address the concerns raised by all parties, including the retail marketers. (Tr. 525.) She explained the efforts that Staff made to identify areas of common interest that could form the basis of a settlement and how those discussions started with DPA, then expanded to include the Company and then DEUG. (Tr. 523-24.) After noting various instances where she had had discussions with retail marketers, she concluded that retailers had a fair opportunity to participate in the process, testifying that:

[W]e talked to them through the workshops. We talked to them on May 31st. I talked to them in June. We had a lot of discussions in the week after the settlement was filed. So, I think they had an adequate opportunity to air their views. I think it was more just a disagreement on policy, the way that we thought Delaware should go on these issues.

(Tr. 531.)

33. Premcor submitted a letter (Ex. 9), adopted on the stand by witness Jay Fuess, in opposition to the Proposed Settlement. The letter stated that while Premcor participated in the workshop process, nothing discussed therein appeared to affect Premcor and that Premcor was surprised by the draft of a settlement sent to it on July 7, 2005,

which had the result of assigning a sizable portion of the costs of Delmarva's hourly billing system costs to Premcor. In Premcor's view, this was inappropriate because Premcor does not take its supply service from Delmarva and would never benefit from the use of the hourly billing system. (Ex. 9 at 2.) On the stand, Mr. Fuess also made an assertion that he thought that Premcor's bills were so complex that he thought it likely that even if Premcor were to take service from Delmarva, the bills would need to be done manually, and not through the hourly billing software. (Tr. 559.) Premcor also raised concerns regarding the process by which the July 7, 2005 draft settlement was developed, without input from Premcor. (Ex. 9 at 1-2.)

34. Select presented two witnesses as a panel, Messrs. Marc Hanks and Leonard Navitsky, who testified in opposition to the Proposed Settlement. Their pre-filed testimony stated that Select had not been consulted with during the settlement process, which they characterized as "private negotiations," and that "Select first became aware of the 'Proposed Settlement' when we were provided a copy on July 7 and were given a mere two days to provide comments." (Ex. 10 at 4.) Select's witnesses testified that the Proposed Settlement will hamper the development of a competitive market because it continues "to mask the true cost of electricity from consumers." (Id. at 5.) Select's witnesses then presented an alternative proposal. The alternative proposal would increase the number of customers for whom only the HPS form of SOS would be available, ultimately resulting in all customers with peak loads in excess of 600 kW being eligible for only the HPS form of SOS. (Ex. 10 at 6-7 and 9.)

35. Select also proposed that Delmarva procure power every quarter through an RFP process to serve customers with peak loads above 100 kW and that annual RFP's be used with contracts not to exceed a term of one year for residential and smaller non-residential customers. (*Id.* at 8.) In the third year of the program, Select would require a new proceeding be initiated to propose changes for implementation in the fourth year. (*Id.* at 9.) Select also proposed that the retail prices charged by Delmarva to its SOS customers include additional retail margins. (*Id.* at 10-12.) The bases for this proposal were that there are retail adders on some or all customer classes in surrounding states and that Delmarva's initial pre-filed testimony in this proceeding (*i.e.*, prior to the Proposed Settlement agreement was reached) proposed retail margins. (*Id.*)

36. On cross-examination, Mr. Navitsky agreed that Select did not review the underlying Delmarva records or documents that formed the basis for the pre-filed testimony, that the panel was unaware of the risks identified in that testimony with respect to the operations of Delmarva's New Jersey utility affiliate, and that they had not independently verified the data presented. (Tr. 610-11.)

V. DISCUSSION

37. In Stage 1 of this docket, the Commission selected Delmarva as the SOS provider for its service territory and decided that Delmarva would provide SOS service under the "wholesale" model. (Order No. 6598 (Mar. 22, 2005).) In this stage, the Commission will develop a procedure under which Delmarva will procure, provide, and price the SOS supply. In Stage 3, the Commission will select the wholesale providers and determine the post-May 2006 SOS prices, in

accordance with the procedures and pricing mechanisms developed in this stage.

38. After numerous workshops, written and oral comments, off-line discussions, and protracted negotiations, Staff, DPA, DP&L, CESI, and DEUG reached an agreement as to all Stage 2 issues, as outlined above. RESA, Select, and Strategic (collectively "Retail Marketers") and Premcor oppose the Proposed Settlement, despite Staff's attempts, both before and after the hearing, at reaching a full consensus. As outlined below, however, I recommend that the Commission approve the Proposed Settlement in this case because it complies with the Restructuring Act and its adoption would be in the public interest.

39. The Restructuring Act provides that the Commission shall determine who will provide SOS and that the Commission is permitted, but not required, to designate Delmarva as the SOS provider.¹¹ As noted above, the Commission has already selected Delmarva to continue as the SOS provider for its service territory. (Order No. 6598.) The Restructuring Act further provides¹² that:

If DP&L is a standard offer service supplier, the standard offer service price shall be revised by DP&L from time to time for each customer rate class to be representative of the regional wholesale electric market price, plus a reasonable allowance for retail margin to be determined by the Commission for providing such electric supply service. The standard offer service price may be reviewed from time to time by the Commission to determine whether it represents the regional wholesale electric market price, plus a reasonable allowance for retail margin.

¹¹ See 26 Del. C. § 1010(a)(2).

¹² See 26 Del. C. § 1006(a)(2)(C).

The Restructuring Act, therefore, directs the Commission to determine an SOS price that is "representative of the regional wholesale electric market price, plus a reasonable allowance for retail margin."

40. The Proposed Settlement meets each of these requirements. The power for SOS will be acquired at a price "representative of the regional wholesale electric market price" because Delmarva will obtain the power either through PJM's competitive markets (in the case of the HPS SOS) or through a process where wholesale bidders, acting in their own self interest, will bid competitively. Furthermore, the integrity of the procurement process is assured by the oversight of an outside consultant who will monitor the process and report to the Commission. (Delmarva Br. at 20-22.)

41. The Proposed Settlement also explicitly contains a "reasonable allowance for retail margin" ("RARM"), which includes Delmarva's incremental cost of providing SOS (to be determined in Delmarva's upcoming distribution rate case), plus a component for return, or profit. The RARM also contains a true-up provision to capture costs to the extent not identified or recovered in the first year's rates and further contains a "catch-all" provision to capture any category of cost that may have been overlooked.

42. In addition, the record amply supports a finding that adoption of the Proposed Settlement would be in the public interest. Pursuant to Section 512 of the Public Utilities Act, the Commission may approve a settlement where the Commission finds the settlement to be in the public interest, whether or not all parties have joined the settlement. More specifically:

Insofar as practicable, the Commission shall encourage the resolution of matters brought

before it through the use of stipulations and settlements.

The Commission's staff may be an active participant in the resolution of such matters.

The Commission may upon hearing approve the resolution of matters brought before it by stipulations or settlements whether or not such stipulations or settlements are agreed to or approved by all parties where the Commission finds such resolution to be in the public interest.

26 Del. C. §512 (a)-(c).

43. First, it is significant that the Settling Parties, all of whom maintain that the Proposed Settlement is in the public interest, represent a wide variety of interests. Staff represents the interests of ratepayers and regulated utilities. DPA represents all ratepayers, but focuses primarily on residential and small commercial customers. DEUG represents certain large industrial customers (including members of the GS-T class, which is the only class subject to the mandatory HPS form of SOS). CESI's interest in this proceeding is as a potential wholesale provider of service, i.e., a prospective bidder in the RFP process to supply Delmarva with power for the SOS. And, of course, Delmarva is the SOS provider and local distribution company for its territory.

44. The public interest argument in support of the Proposed Settlement would, of course, be stronger if the Retail Marketers joined the agreement. After all, one goal of the Restructuring Act is to encourage retail competition, and whether retail competition takes hold in Delaware will depend on the business decisions and future success of retail marketers in Delaware. On the other hand, the Commission should also consider that retail marketers will be

competing directly with the SOS provider and, therefore, have a direct interest in making the SOS service as unattractive as possible in order to increase their chances of gaining market share. Not surprisingly, their positions in this case, as discussed below, support changes to the Proposed Settlement that would raise the price of SOS and limit the options available to SOS customers.

45. In addition, the Retail Marketers' opposition to the Proposed Settlement should not be interpreted to mean that their interests were not considered. In fact, the Settling Parties included in the Proposed Settlement several terms that benefit retail marketers. (Ex. 8 (Dillard) at 14-15; Ex. 3 (Schaub) at 4, Tr. 522-23 (Dillard.)) Such terms include the annual resetting of rates (to better reflect current market prices), the elimination of returning customer rules (so that customers may leave SOS without fear of not being able to return to SOS), the addition of the RARM, which includes a profit margin, on top of wholesale prices (to provide "headroom" under which competitors can price their services), and restructuring how Delmarva charges for transmission and ancillary rates to correspond more closely with how PJM charges retail marketers for such services (to enhance a marketer's ability to match its price components with the SOS pricing).

46. The Retail Marketers argue, however, that the Proposed Settlement should not be adopted unless modified (1) to require HPS for all large commercial and industrial customers (rather than just the eleven GS-T customers) and (2) to increase the RARM to be more reflective of "actual" cost, which, according to the Retail Marketers,

is better reflected by Delmarva's initial, pre-settlement position.¹³ (RM Br. at 6-20.) According to the Retail Marketers, adoption of the Proposed Settlement without these modifications would run contrary to the public interest and to the Restructuring Act because the resulting SOS product and pricing would discourage shopping and would, therefore, prevent the development of retail competition in Delaware.¹⁴

47. Regarding the Retail Marketers' first point, the Proposed Settlement requires the eleven GS-T (transmission-level) industrial customers to take HPS, allows the larger GS-P customers (with interval meters) to choose HPS (or default to FPS), and requires all other SOS customers to take FPS. The Retail Marketers argue that more customers should be restricted to HPS because HPS is more responsive to market conditions than FPS and because such a restriction would benefit competition by forcing those customers who wanted a fixed price service to switch to a competitive supplier. (RM Br. at 7-8.) In response, the DPA makes the following pertinent observation:

Although Select argues that HPS provides better price signals to customers, Select admitted that it has no Delaware customers taking HPS. It is ironic that Select is promoting implementing HPS in Delaware, even though none of its customers in Delaware take HPS. (Tr. 592.) Clearly, Select does not need DP&L to offer an HPS so that it can be put on a level playing field with DP&L because Select itself has no customers on HPS. Select's proposal to increase mandatory HPS appears to be

¹³ In testimony (but not on brief), RESA also sought quarterly RFPs (rather than annual), which would raise the cost (and thus the price) of SOS, and which could discourage participation by wholesalers. (Tr. 401 (Schaub); Tr. 478 (Fisher).)

¹⁴ On brief, the Retail Marketers' also recommended that the Commission undertake a comprehensive review of the SOS process after one year to evaluate the competitive marketplace. (RM Br. at 20.) The other parties have not addressed this recommendation but I will note that such a quick review may discourage participation from retailers who decide to wait a year to see what changes are made at the end of the review period before entering the market.

simply a ploy to drive customers away from SOS. DPA witness Crane explained in her testimony that it would be Select, and not Delaware ratepayers, who would benefit under Select's proposal.

In addition, even if further restricting SOS FPS somehow benefited competition, any such benefit is outweighed by the interests of the affected customers who wish to remain on SOS but who seek the price stability of a fixed price service. After all, even the DEUG witness, who supports HPS for large sophisticated customers, noted that some large customers may not find HPS attractive "because of its volatility, which can create budgeting chaos and uncertainty..." (Ex. 4 (Rosenberg) at 14; Delmarva Br. at 26.)

48. Regarding the Retail Marketers' second point, the RARM consists of Delmarva's incremental cost of providing SOS, which will be determined in Delmarva's upcoming distribution rate case (and which will be subject to a true-up), plus a \$2.75 million return component. The Retail Marketers argue that without placing a number figure on the incremental costs in this proceeding, and without evidence to show that the \$2.75 million actually covers Delmarva's cost of capital associated with incremental SOS investment, adoption of these terms would not be legally sustainable, because they are not based on substantial evidence. (Retail Marketers Br. at 13-20.)

49. First, the Settling Parties' witnesses testified that the proposed RARM cost components will cover Delmarva's incremental costs and that the proposed return will satisfy the statutory requirement for a "reasonable" retail margin. (Ex. 3 (Schaub) at 4; Ex. 8 (Dillard) at 9; Ex. 6 (Crane) at 12; Tr. at 489 (Crane); Ex. 4 (Rosenberg) at 2-3.) This expert testimony certainly constitutes record evidence in support of these terms. Second, while it can shown

that Delmarva's litigation position (now espoused by the Retail Marketers) included somewhat larger profit margins, that is not the same as establishing that the profit margins reflected in the Proposed Settlement are not adequate or somehow fail a statutory requirement by not encouraging competition. Moreover, as argued by Delmarva, the parties contesting a settlement in Delaware do not have the right to a full trial on their issues.¹⁵ Instead, the adjudicator of a contested settlement need only know enough about the merits of the settled issues and the identity of the parties to the settlement to be able to evaluate the settlement.¹⁶ (Delmarva Br. at 29-30.)

50. Furthermore, even if the Commission fully litigated Delmarva's incremental cost of providing SOS and its associated cost of capital, complete with cost studies and cost of capital expert testimony, the parties' positions would still diverge substantially (consistent with their self-interests) and determination of the "correct" numbers would remain elusive. After all, the parties' litigated positions would depend largely on their views of cost allocation and risk valuation, over which experts often (and inevitably) disagree. As such, avoiding the considerable cost of a fully litigated proceeding, which would carry uncertain benefit, further supports a conclusion that adoption of the Proposed Settlement is in the public interest.

¹⁵ *Rome v. Archer*, Del. Supr., 197 A.2d 49, 53 (1964) (holding that "[i]n determining the fairness of a settlement...there is no requirement that opportunity be given the parties to hold a trial as to the issues. To do so would defeat the basic purpose of the settlement of litigation."

¹⁶ *In Re Amsted Industries, Inc. Litigation*, 521 A.2d 1104 (Del. Ch. 1986).

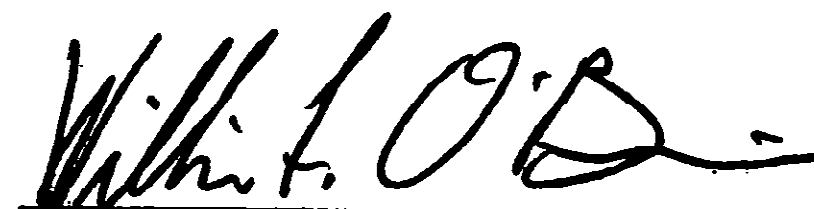
51. Premcor's objection is based primarily on the fact that it believes that Premcor should not pay for the cost of a system that it is not currently using. (Staff Br. at 23-24.) But as Mr. Fuess conceded at the evidentiary hearing, if in the future Premcor's load serving entity ("LSE") was no longer qualified as an LSE by PJM, it "would probably have to fall back to Delmarva." (Tr. at 567.) As explained by Delmarva witness Schaub, Delmarva is obligated to provide supply to Premcor under HPS at any time should Premcor request Delmarva to do so. (Tr. at 399.) The costs that Premcor will be responsible for are the costs of setting up the hourly billing system, which will exist whether or not Premcor takes the service initially or not. (Tr. at 399-400.) For these reasons, Premcor is responsible for such costs and the Commission should not reject the Proposed Settlement on the basis of Premcor's objection.

VI. RECOMMENDATIONS

52. In summary, and for the reasons discussed above, I propose and recommend to the Commission the following:

- A. That the Commission find the attached Proposed Settlement ("Attachment A") to be in the public interest and in compliance with state law and, therefore, adopt it as a resolution of the Stage 2 issues in this docket; and
- B. That the Commission initiate Stage 3 of this docket for the purpose of selecting the wholesale providers for SOS and determining the post-May 2006 SOS prices, in accordance with the procedures and pricing mechanisms set forth in the Proposed Settlement.

Respectfully submitted,



William F. O'Brien
Hearing Examiner

Dated: September 1, 2005

ATTACHMENT "A"

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE PROVISION OF)	
STANDARD OFFER SUPPLY TO RETAIL)	
CONSUMERS IN THE SERVICE TERRITORY)	PSC Docket No. 04-391
OF DELMARVA POWER & LIGHT COMPANY)	
AFTER MAY 1, 2006)	
(Opened October 19, 2004))	

PROPOSED SETTLEMENT

On this day, July 14, 2005, the undersigned, all of whom together are the "Parties" or "Settling Parties," hereby propose a complete settlement of all issues that were raised in this proceeding, except as specifically reserved for a subsequent proceeding or phase of this proceeding.

I. INTRODUCTION AND PROCEDURAL BACKGROUND

On October 19, 2004, this proceeding was initiated by Delaware Public Service Commission ("DPSC" or the "Commission") Order No. 6490. The Order discusses certain statutory requirements and prior cases involving the provision of standard offer service to customers of Delmarva Power & Light Company ("Delmarva"). The Order also established a process under which various major policy issues would be resolved in an initial phase of the proceeding, while other policy and technical issues would be resolved in one or more subsequent phases of the proceeding. On March 22, 2005, in Order No. 6598, the Commission reviewed a report and recommendation presented by the Staff of the Commission ("Staff"), which report and recommendation was the subject of written comments and oral argument presented by interested parties to the proceeding. As described more thoroughly therein, Order No. 6598 resolved

certain major policy issues. Order No. 6598 also outlines the history of this proceeding through March 22, 2005.

Subsequent to March 22, 2005, the parties to the proceeding have met on several occasions in informal workshops, open to the public, to discuss remaining issues in the proceeding. Various parties have also met privately to attempt to reach a settlement of some or all of those remaining issues.

A procedural schedule was approved by the Hearing Examiner, modified to provide more time for settlement discussions.

The Division of the Public Advocate ("DPA") made a timely notice to participate in the proceeding. In addition to the Company, Staff, and DPA, other parties to the proceeding as of July 7, 2005 are: the Delaware Energy Users Group ("DEUG"), PROPOSED SETTLEMENT Energy Resources & Trade LLC, Select Energy, Inc., Strategic Energy, LLC, Constellation Energy Commodity Group, Inc. and Constellation New Energy, Inc., Washington Gas Energy Services, Inc., PEPCO Energy Services, Inc., Conectiv Energy Supply, Inc., the Delaware Electric Cooperative, and PJM Interconnection, LLC.

II. SETTLEMENT PROVISIONS

A. Definitions.

"Actual incremental costs" are defined as additional costs incurred by Delmarva for reasons other than waste, bad faith, or an abuse of discretion, as a result of providing FP-SOS and HPS (including any "Inc" amounts) that are not included in distribution rates. For example, such actual incremental costs include: uncollectibles that are not being recovered in Delmarva's distribution rates; consultants; procurement processes; incremental system costs; bill inserts for education; and transactions costs; and the cash working capital revenue requirement.

"Customer" shall have the same meaning as in the Delmarva Delaware retail tariff.

"Customer group" or "customer grouping" is used herein to identify and group customer classes that will be treated similarly. For purposes of this settlement, customers within the R, R-TOU,

R-TOU-SOP, SGS-ND, OL, ORL, X classes and that portion of the load of customers with separately metered space heating and separately metered water heating comprise one customer group. Customers within the MGS-S class are a separate customer group. Customers within the LGS-S class are a separate customer group. Customers within the GS-P class are a separate customer group. Customers within the GS-T class are a separate customer group.

FP-SOS means fixed price standard offer service.

Full Requirements and Full Requirements Service shall have the meanings set forth in the form of Full-Requirements Service Agreement ("FSA").

Full Requirements Costs shall mean the total of all amounts paid to the supplying counterparties of FSAs.

HPS means hourly priced service, a form of standard offer service.

Inc, Inc load, Inc service and similar terms refer to the incremental service and loads to be supplied by Delmarva pursuant to a volumetric risk mitigation mechanism that operates with respect to customers in the LGS-S and GS-P class when there has been a defined threshold increase in load associated with customers from these classes beyond the obligations assumed by counterparties to FSAs.

R & Small C&I FP-SOS means the fixed price SOS that is available to customers served under service classifications R, R-TOU, R-TOU-SOP, SGS-ND, OL, ORL, or X, and separately metered space heating or water heating load.

SOS or Standard Offer Service is as defined in 26 Delmarva. C. § 1001 (15).

Year 1 means the thirteen month period of May 1, 2006 – May 31, 2007.

Year 2 means June 1, 2007 – May 31, 2008; subsequent Years are measured from June 1 of a given year through May 31 of the following year.

B. Standard Offer Service Availability.

1. Delmarva shall provide SOS to all classes of retail customers. As of May 1, 2006, an FP-SOS offering will be available for all customers other than customers served under the GS-T class. As of May 1, 2006, the form of SOS available to GS-T customers will be HPS.

2. In addition, GS-P customers will be eligible for HPS if: i) the GS-P customer makes an affirmative election to take HPS rather than FP-SOS; ii) such election is made by the

GS-P customer no later than 45 calendar days prior to the date on which the first bid round occurs to provide Delmarva with supply for its GS-P customers taking FP-SOS ; iii) the GS-P customer has an interval meter or will pay to have such a meter installed prior to the beginning of its HPS. No later than 30 calendar days prior to the deadline for making such an election, Delmarva shall send a letter to each GS-P customer informing such customers of the option to elect HPS and instructions as to how to make such an election. Such election shall be made annually and shall be effective for the entire year when made. The election shall be operative during any part of a Year during which the GS-P customer is receiving SOS, including a GS-P customer returning to SOS after previously receiving a supply service from a competitive retail supplier. An election or failure to make an election shall not affect the right of a GS-P customer to obtain its supply service from a competitive retail supplier. The failure to make an election in any given year will mean that a GS-P customer currently opting for HPS will be deemed to have elected HPS for the coming year, and a GS-P customer currently opting for FP-SOS will be deemed to have elected FP-SOS for the coming year.

C. Obtaining SOS Supply at Wholesale.

1. Request For Proposals Process.

Delmarva shall obtain the Full Requirements necessary to provide FP-SOS through a competitively bid, Request for Proposals ("RFP") process. The contemplated RFP process will be described more fully in a Bid Plan that will be developed by Delmarva and submitted separately for review by the parties to this proceeding and for Commission approval. The elements of the Bid Plan are described more fully in Appendix A, which is incorporated herein by reference and made a part of this Settlement. As set forth therein, the RFP process will include oversight by a consultant selected by the Commission and accountable to the

Commission, but paid by the Company, who will be permitted physical access during all portions of the process including the days that bids are received and evaluated. The DPA and its consultant will also be permitted such access. The Staff and DPA consultants will be required to execute a confidentiality agreement that is substantially similar to the form set forth in Appendix B. Such confidentiality agreement will not bar the consultant(s) from providing a report on a confidential basis to the Commission regarding the RFP process and evaluation of bids that includes the consultant's conclusions or recommendations to the Commission... The Settling Parties recognize that there may be minor modifications that occur with respect to dates or procedures described in Appendix A or the Bid Plan. The Company will inform the Staff and DPA consultants of such minor modifications prior to the date that the consultant(s) report(s) would be made to the Commission.

2. Length of Contracts.

In Year 1, contracts with wholesale suppliers to serve the R & Small C&I FP-SOS load shall be executed such that one-third ($1/3$) of the projected load for Year 1 will be served under a thirteen month contract, one-third of the projected load for Year 1 will be served under a twenty-five month contract, and one-third of the projected load for Year 1 will be served under a thirty-seven month contract. In Year 2, only three-year contracts will be bid to serve one-third of the projected Year 2 load. The other two-thirds of the Year 2 projected load (which includes $2/3$ of the load growth relative to Year 1), shall continue to be served pursuant to the second year of the Year 1 two-year contracts and the second year of the Year 1 three year contracts. In Year 3 and thereafter, only three-year contracts will be bid out.

In Year 1, thirteen-month contracts with wholesale suppliers to serve the FP-SOS load of customers within the MGS-S, LGS-S and GS-P classes shall be executed to serve 100% of the

projected load for Year 1. In Year 2 and thereafter, one-year contracts shall be executed.

Separate contracts shall apply with respect to each of the customer groups MGS-S, LGS-S and GS-P.

The supply for HPS and for the "Inc" service described below shall be obtained by Delmarva through PJM with energy procured at the Delmarva zonal real-time LMP as determined by PJM, capacity obtained through PJM's short-term capacity markets, short-term bilateral contracts, or at the capacity deficiency rate, or through any substitute capacity construct implemented by PJM, and ancillary charges as billed by PJM. The foregoing recognizes a degree of discretion on the Company's part with respect to how capacity is procured and the Company will exercise that discretion reasonably in an attempt to keep capacity costs in line with PJM prices for capacity available at the time a decision to procure capacity is made. Appendix C contains additional provisions relating to the HPS.

3. Pricing of Supply Contracts.

The Bid Plan shall include instruction that bidders are required to bid for FP-SOS with a flat per kwh bid, which may vary by season, but would not change over the length of the contract, including those contracts that are for terms greater than one year.

D. Computation of Retail Supply Rates Generally.

1. The rate components for retail supply rates shall be as follows: a) the Full Requirements Costs incurred pursuant to the Full Requirements contracts entered into to serve the FP-SOS load for the particular customer class or grouping or, alternatively, the costs of acquiring energy, capacity and ancillary services for those customers receiving HPS; and b) a reasonable allowance for retail margin ("RARM"). As detailed below, retail rates for customers receiving FP-SOS or HPS will also include retail charges designed to recover, on an aggregate

basis, FERC-approved transmission and ancillary charges and any other PJM charges and costs incurred by Delmarva associated with the SOS obligation. In addition, retail rates for customers receiving FP-SOS or HPS will be charged applicable taxes and any other cost element directly related to either the FP-SOS or the HPS that may be identified in a subsequent proceeding and approved by the Commission for recovery.

2. The Full Requirements Costs component of the Retail Supply rates for each customer grouping receiving FP-SOS shall be established to recover fully, but not overcollect, the costs of the Full Requirements contracts entered into to serve the FP-SOS load for such customers. The Full Requirements Costs component of the Retail Supply rates for FP-SOS load shall remain fixed during each Year, absent a Commission order finding that exceptional circumstances exist to warrant a rate change during a particular Year. Retail Supply rates for GS-T customers and those GS-P customers that have elected HPS, shall be charged monthly based on the changes in costs incurred hour-by-hour to serve such customers. These monthly charges are to recover fully, but not overcollect, the costs incurred to obtain capacity, energy, and ancillary services for HPS customers.

3. Algorithms for each customer grouping shall be developed by Delmarva and will be made available to prospective bidders. These algorithms will show how a per kwh bid price for FP-SOS will be translated into retail rates for each customer class or type of customer. Staff, DPA and the Commission will have an opportunity to review and comment on the algorithms prior to their being finalized. This rate translation process shall be performed to retain to the maximum extent feasible the currently-authorized rate design differences applied to a particular customer class or type of customer to reflect seasonality, time-of-use, or demand/commodity components. Nothing herein precludes a Settling Party from proposing in some future

proceeding rate design changes that would be implemented prospectively only. The Settling Parties agree, however, that even prospective rate design changes may need to be phased in so as not to significantly change the bases upon which a wholesale supplier may have bid for a three-year contract.

4. The RARM is comprised of the following components: a) incremental expenses incurred: i) to provide FP-SOS and HPS; ii) to administer the Volumetric Risk Mitigation (VRM) mechanism described below and applicable with respect to FP-SOS customer load; and iii) carrying costs on Cash Working Capital (CWC) for FP-SOS and HPS; b) \$2.75 million per 12 month period, which, for the Year 1 and 2 rates, is deemed to include any carrying costs on incremental capitalized costs associated with providing FP-SOS and the VRM mechanism, but does not include the separately calculated carrying costs for capitalized billing system software costs needed to bill and track HPS costs and revenues and also does not include any return on investment that is removed from distribution rates as supply related; and c) for GS-T customers and those in the GS-P class that have made an election for HPS, the allocable share of the above categories plus an amortized amount, including carrying costs on the unamortized balance of the capitalized billing system software costs and interface systems needed to bill and track HPS costs and revenues. For illustrative purposes only, Appendix D shows how an illustrative amount of such costs would be recovered through amortization with carrying costs at an illustrative level.

5. In the event that investment is removed from distribution rates in a future distribution base rate proceeding as supply related, the RARM shall include a fourth component comprised of the rate necessary to recover the same revenue requirement components as would have been applied if such investment were to have remained in distribution rates (e.g., depreciation expense, return on investment grossed-up for taxes, etc.) Such an RARM

adjustment shall be made without regard to any other cost component and no Settling Party shall take a position that this fourth cost component should be reduced or offset in any way by the \$2.75 million figure or some other RARM cost component. Nothing herein precludes a Settling Party from asserting that the supply-related costs as removed from distribution rates should not be recoverable in the supply component of rates because such costs were incurred in violation of the statutory standard for recovery.

E. Setting Year 1 Retail Rates.

1. The incremental costs of providing SOS shall be initially established as follows.

a) A lead lag study shall be performed by Delmarva and reviewed by the parties to determine the CWC requirements. The lead/lag study shall be performed in the following manner:

(1) Revenue lag will be calculated using the following components:

(i) mid-point of the service period to meter reading date;

(ii) meter-reading date to bill-rendered date; and

(iii) bill-rendered date to collection date.

(2) Lag in payment for electric supplier bills will be based upon the payment terms set forth in the FSA contained in the Bid Plan as approved by the Commission.

(3) Lag in payment of incremental costs will be determined separately for each category of cost.

(4) Lag in payment of all applicable taxes will be determined.

b) The calculation of cash working capital revenue requirement shall use the Delmarva's total weighted cost of capital grossed up for income taxes. The carrying costs

on CWC shall be set to equal the overall rate of return that is established in Delmarva's upcoming distribution base rate case.

c) Delmarva will apply its grossed-up cost of capital to the results of its lead/lag study to determine cash working capital revenue requirements, in mills per kWh, for each customer group.

2. Delmarva shall estimate its other incremental capital costs and its other incremental expenses (including the reasonable costs incurred to administer the Volumetric Risk Mitigation (VRM) mechanism) and will provide to the Settling Parties the workpapers and other documentation underlying such estimates, including listing cost centers or Internal Order numbers that are or will be used to collect and track costs. Depreciation expense for the incremental capital costs will be based on a five year life unless a longer life is warranted for the particular type of equipment or asset involved. To the extent not deemed to be included pursuant to paragraph D.4 above, a return on incremental capital costs shall be set to equal the overall rate of return grossed up for income taxes that is established in Delmarva's upcoming distribution base rate case. Notwithstanding any other provision herein and irrespective of whether or not included in Delmarva's estimate of incremental capital costs or other incremental expenses, the incremental costs of providing SOS shall include any costs that are removed from Delmarva's distribution rates case in a Delmarva base rate proceeding if the basis for such removal is that such costs are supply-related.

3. Except with respect to GS-T customers and those GS-P customers who make a timely election for HPS, a 0.6 mill per kwh charge for each customer class or type of customer will be established initially to collect the net of the \$2.75 million per 12 month period figure referenced in section D.4.b) minus the collections from GS-T customers and electing GS-P

customers as set forth in the next sentence. GS-T customers will be charged instead a per-month charge of \$400, which shall apply irrespective of whether the GS-T customer takes HPS or receives supply from a competitive retail supplier. GS-P customers who make a timely election for HPS will be charged instead a per-month charge of \$150, which shall apply irrespective of whether the electing GS-P takes HPS or receives supply from a competitive retail supplier.

4. A fixed annual amount of \$175,000 shall be established as the costs referenced in section D.4.c). For GS-T customers and for GS-P customers who opt into HPS service prior to the beginning of Year 1, a fixed rate per month based on kW of PJM Peak Load Capacity will apply irrespective of whether or not the customer takes HPS.

F. Retail Rates for Transmission, Ancillary Services, HPS Capacity and HPS Energy.

1. Effective June 1, 2006, and for each Year thereafter commencing on June 1, 2006, retail transmission rates shall be established such that, on an aggregated basis, such rates recover the same revenue as is charged by PJM to Delmarva for such transmission services. The Company shall endeavor to develop systems that will permit it to file and put into effect as early as June 1, 2006 and no later than June 1, 2007, retail transmission rates that are designed using the same formula rate structure, billing determinants, and other rate mechanisms as those reflected in the PJM transmission rates charged to Delmarva. The Parties recognize that a number of billing system and interface system modifications are already scheduled to accommodate regulatory requirements in other jurisdictions and to implement provisions in this Settlement. In the event that such system modifications are made, tested, and available for use prior to June 1, 2007, Delmarva shall notify the Commission and the Settling Parties and propose a prospective rate design change with an effective date prior to June 1, 2007.

2. Effective June 1, 2006, and for each Year thereafter commencing on June 1, 2006, retail ancillary rates shall be established such that, on an aggregated basis, such rates recover the difference, if any, between charges by PJM to Delmarva for ancillary services and the amounts paid by the wholesale suppliers on Delmarva's behalf or directly to PJM for ancillary services pursuant to the FSA.

3. Special Transition Rule for GS-T Customers. Effective June 1, 2006, GS-T transmission and ancillary service rates shall be redesigned as set forth above in sections F.1 and F.2. In the event that Delmarva has not at that time made the computerized system modifications necessary to implement such a rate design change, Delmarva shall implement procedures to bill GS-T customers manually.

4. To the extent not already recovered through PJM Network Integration Transmission Service charges and to the extent in effect when retail rates are reset pursuant to this Settlement, any existing PJM surcharges and any future surcharges assessed to network transmission customers for PJM-required transmission enhancements pursuant to the PJM Regional Transmission Expansion Plan, or for transition costs related to elimination of through-and-out transmission charges and other FERC-mandated changes in transmission rate design, will be included in the retail charges pursuant to this Settlement. Pursuant to the contemplated FSA, the wholesale suppliers shall bear the risk of any other changes in PJM products and pricing during the term of their FSAs, including changes in ancillary service charges or new ancillary service charges. In no event will Delmarva bear the risk of any changes in regulation or PJM rules related to such costs or charges.

5. In the event that there are any other new FERC-approved PJM transmission charges, or other new PJM charges and costs charged to network transmission customers, that

Delmarva or any wholesale supplier believes should be recovered through retail rates because they are directly related to Delmarva's SOS obligations, then:

a) Delmarva will file with the Commission, and provide notice to all Parties, a request for approval to recover such new charges through its retail rates. The wholesale supplier that brings the issue to Delmarva's attention will be required to intervene before the Commission. The Commission will resolve Delmarva's request on an expedited basis.

b) The wholesale supplier will bear the cost of all new PJM charges and costs that the Commission determines may not be recovered in rates by Delmarva. In no event will Delmarva bear the risk of any changes in regulation or PJM rules related to such costs or charges. Also, in no event shall any PJM charges to other than network transmission customers be recovered through the Utility's retail transmission rates for service under the Settlement, except to the extent (if any) provided therein.

6 Retail charges for capacity for HPS customers shall be charged based on each customer's annual capacity obligation in accordance with (i) PJM's method of calculation, and (ii) PJM's monthly capacity auction closing prices for the applicable month, unless it is impracticable to obtain the full amount of capacity needed through the monthly capacity auction, in which case, the costs of obtaining capacity or capacity deficiency amounts would be reflected in the retail price. As an illustrative example, it is recognized that in the event of an unexpected competitive retail supplier default, a customer may be returned to Delmarva for HPS at a time when it would be too late to obtain capacity in the monthly capacity auction. Additionally, while the parties contemplate the use of the monthly capacity auction as the source of capacity for HPS customers, the parties recognize that if PJM eliminates the monthly capacity auction or

significantly modifies the method by which capacity obligations are determined or met, this provision will be deemed to be modified as necessary to reflect those new PJM methods.

7. With the exception described in the next two sentences below, retail charges for energy for HPS customers and any "Inc." load shall be charged based on the PJM real time LMP for the Delmarva Zone. Customers taking HPS may elect, in accordance with PJM rules, to pay the nodal price for hourly energy; provided, however, that either PJM must charge Delmarva for such an electing customer's load at the nodal price for hour energy or that Delmarva will be permitted to recover any difference between the nodal price and the price charged to Delmarva via the annual true-up proceeding. The nodal price is determined by multiplying the customer's hourly load, adjusted for the applicable loss adjustment factor for the customer's service voltage level, with the hourly integrated LMP, or its successor, as determined and reported by PJM, at the specific bus or busses serving the customer's load.

G. Resetting of Retail Rates and True-Up Mechanisms For Year 2 and Thereafter.

1. As of the start of Year 2 and each Year thereafter, retail rates shall be reset to reflect:

- a) changes in projected Full Requirements Costs based on the Full Requirements Service Agreements that will be effective for such Year.
- b) an adjustment to the Full Requirements Costs component to collect or return over the subsequent Year any differences between amounts billed to customers for FP-SOS and HPS (including any "Inc." amounts) and amounts paid to wholesale suppliers and PJM to provide the Full Requirements of FP-SOS and HPS (including any "Inc." supply) plus interest on the differences at a rate equal to the overall return established in Delmarva's next distribution rate case. Such differences shall be tracked on a monthly basis by customer grouping and would

be subject to audit. The collection or return of differences plus interest shall be by customer grouping and thus, it is recognized that there may be circumstances in which one customer group is receiving a prospective downward adjustment while another group of customers is receiving a prospective upward adjustment. In each Year, the differences taken into account shall be based on the most recently available actual data. In the event that the estimated year-end balances become significant during a Year, Delmarva retains the right to request that the Commission approve an interim true-up to be effective prior to the end of the Year. It is the Settling Parties intent that HPS customers shall not be required to pay for costs that are related solely to the provision of FP-SOS.

c) Transmission and ancillary costs associated with providing SOS.

2. The Year 2 rates shall also include changes to the RARM amounts to remove non-recurring RARM costs reflected in the Year 1 rates, an annualized amount of RARM based on the then-known actual RARM costs incurred during Year 1, and known and measurable changes to RARM costs that will be incurred during Year 2.

3. Approximately four months after the start of Year 2, Delmarva shall submit documentation in this docket with copies to the Settling Parties, proposing revised rates to reflect a true-up of actual RARM costs incurred during the period between the start of this proceeding and the end of Year 1 and amounts billed to FP-SOS and HPS customers, i.e., a true-up of costs and volumes. The differences plus interest (at a rate equal to the overall return established in Delmarva's next distribution base rate case), shall be collected from or returned to FP-SOS and HPS customers through a prospective rate adjustment over a time period to be established in that proceeding. Additionally, the millage rate charged to FP-SOS customers to collect the \$2.75 million portion of the RARM, shall be reset in that proceeding based on actual annualized Year 1

(and known and measurable changes) of quantities of FP-SOS to be supplied annually. It is contemplated by the Settling Parties that the reset millage rate will be a single rate applied per kwh to all customers receiving FP-SOS in Year 2 and thereafter until changed. The fixed charge(s) for HPS customers designed to recover part of the \$2.75 million portion of the RARM shall not be reset in that proceeding.

4. In the Year 2 proceeding described in section G.3., all Parties reserve the right to propose alternative methods for resetting rates if the procedures outlined in this subsection G would otherwise result in an extraordinary burden or unduly discriminatory result on customers. The following examples are intended to be illustrative but not exclusive examples of such events. For example, if rates would otherwise be reset such that virtually all the \$2.75 million figure referenced above in section D. 4. b) were to be charged to residential customers because virtually all non-residential customers had chosen a competitive retail supplier in Year 1, parties could propose an alternative mechanism for Delmarva to recover the \$2.75 million. As another example, if significant annual expenses were incurred associated with software licensing or administering the HPS, but only one or no customers were taking HPS, parties could propose an alternative mechanism for Delmarva to recover those expenses.

5. After the conclusion of the proceeding described above, there would be no additional changes to rates to reflect true-ups of RARM costs and FP-SOS and HPS volumes in any prior period, or to reset the millage rate to collect the \$2.75 million portion of the RARM. Prospective changes in rates to reflect changes in RARM amounts and FP-SOS and HPS volumes, however, may be proposed at any time by any party. The proposed change in the RARM component of retail rates shall be considered by the Commission in a docketed proceeding that will be limited to a review of RARM components and collections of such

components. The proposed charge shall go into effect within 60 days of filing or thereafter if a later date is proposed by the Company. Any change in such component of retail rates that goes into effect prior to a final order of the Commission shall be effective subject to refund including interest. In such a proceeding, no Settling Party will raise and all Settling Parties participating in the proceeding will not support any positions taken that such a rate change is inappropriate due to changes in non-RARM costs, revenues, or other factors (including cost of capital), or any costs or revenues associated with transmission, ancillary, or distribution services.

6. Notwithstanding anything that could be read to the contrary in sections G. 4 or 5 above, to the extent that the FP-SOS volume for the R & Small C&I customer group drops by more than 40% relative to the period June 1, 2006- May 31, 2007, any party may petition for prospective changes with respect to the recovery of a share from that group of the \$2.75 million portion of the RARM. The form of such petition and the relief sought shall be in the discretion of the petitioning party and could, but is not required to, include proposals to reallocate to other customer groups the share of the \$2.75 million charged to the R & Small C&I customer group, to modify how that share as allocated to the R & Small C&I customer group is recovered from that group, or to reduce the overall \$2.75 million figure by some amount. Other parties may take any position with respect to such a petition in their sole discretion.

H. Volumetric Risk Mitigation Mechanism.

1. Subject to Delmarva's customer enrollment rules and tariffs and except as provided herein, effective May 1, 2006, there shall be no "minimum stay" requirements for customers in any customer class that precludes a customer from obtaining service from a competitive retail supplier and returning to FP-SOS service and then subsequently obtaining service again from the same or another competitive retail supplier. If a GS-P customer elects to

take HPS in a given Year and then takes service from a competitive retail supplier, any return to Delmarva's service shall be to the HPS during that Year. No volumetric risk mitigation mechanism is established herein with respect to customers other than those receiving FP-SOS that are within the MGS-S, LGS-S and GS-P customer classes.

2. Load Following Obligations and Exceptions.

a) As will be more specifically set forth in a Full Requirements Service Agreement ("FSA") that is currently under development, each winning bidder ("Seller") will be required to execute the FSA (a "Transaction") to supply FP-SOS and will be awarded a "Bid Block" based on the Capacity Peak Load Contribution ("Capacity PLC"). Delmarva shall determine the Capacity PLC, stated in megawatts, associated with each Bid Block in each Transaction ("Base PLC Per Bid Block") as of the date of execution of each FSA. Subsequent to the determination of the Base PLC Per Bid Block, and on each Business Day (as defined in the FSA) thereafter, Delmarva shall determine the Capacity PLC, stated in megawatts, associated with each Bid Block in each Transaction ("PLC Per Bid Block"). The obligations of each Seller will include providing the Full Requirements of that Bid Block, including load following obligations, except as provided below and more specifically in the FSA.

b) Each Seller shall be obligated to provide full requirements service that follows load up to five (5) megawatts above the Base PLC Per Bid Block. If, on any day, the Capacity PLC of a Bid Block is greater than the Base PLC plus 5 MW an Inc Load of Capacity PLC less Base PLC Per Bid Block shall be triggered. When an Inc Load is triggered, the Seller will supply the full requirements service that follows load up to the Base PLC Per Bid Block plus 5 MW and Delmarva will supply the full requirements service that follows the Inc Load above that level. If, on any subsequent day, the Capacity PLC is less than or equal to the Base PLC plus

5 MW, the Inc Load will be turned off, and the Seller will again be obligated to provide the full requirements service that follows load up to five (5) megawatts above the Base PLC Per Bid Block.

c) Each Seller's Base PLC Per Bid Block for FP-SOS supply to MGS-S, LGS-S and GS-P customers shall be reduced during the term of the FSA under the following circumstances: If on any Business Day when the PLC Per Bid Block is equal to or less than the Base PLC Per Bid Block minus three (3) megawatts, a new Base PLC Per Bid Block shall be established which shall be equal to the Base PLC Per Bid Block in effect on the day prior to such event, minus three (3) megawatts for each whole multiple of three (3) megawatts that the PLC Per Bid Block is below the prior day Base PLC Per Bid Block. Such new Base PLC Per Bid Block shall replace the prior Base PLC Per Bid Block from the date of such adjustment forward. The intent of this provision is as follows: To the extent that 3 or more MW of PLC Per Bid Block within any of the MGS-S, LGS-S or GS-P classes switch to a competitive retail supplier, the Seller's present and future obligation to provide supply to Delmarva for its FP-SOS to such customer class is correspondingly reduced and, thus, the Seller can, but is not required to, unwind any hedges or commitments that it may deem to be in excess of its present and future obligations.

d) Any Inc. load for MGS-S, LGS-S and GS-P customers shall be supplied by Delmarva and obtained through PJM. The energy shall be procured at Delmarva's zonal average LMP. Capacity shall be obtained through PJM's short-term capacity markets, short-term bilateral contracts, or at the PJM capacity deficiency rate, or through any substitute capacity construct implemented by PJM. Ancillary services costs will be as charged by PJM. A millage amount per kwh equal to that applied to the same type of customer taking FP-SOS will also be charged. The differences in costs relative to the Full Requirements Cost component of rates will

be recorded and tracked in a deferral account that will be returned or recovered through the annual adjustment to the Full Requirements cost component mechanism described in section G.

1. b) above; provided, however, if the accumulated differences exceed 5% of the monthly Full Requirements Costs, then the Company may make an early filing to adjust rates prior to the beginning of the next Year.

e) The reasonable costs of administering this volumetric risk mitigation mechanism shall be recoverable in the rates charged to MGS-S, LGS-S and GS-P customers taking FP-SOS as part of the RARM component.

f) As more specifically described in the form of FSA, if a winning bidder subsequently defaults on its obligations, non-defaulting signatories to an FSA will be offered the opportunity to assume such obligations. If such obligations are assumed, the obligations of the assuming signatory will be adjusted accordingly.

I. Reports and Information Regarding Bidding and Bid Results

In addition to any restrictions that may be set forth in a confidentiality agreement, information concerning the outcome of the supply procurement may be released by the Company, DPA, Staff, and the Commission subject to the following restrictions and in the following manner:

1. All customers eligible for FP-SOS will be informed of the retail prices and the price to compare for the service for Year 1 at least two (2) months prior to the beginning of that Year. If it is not practicable to provide such notice, Delmarva shall file with the Commission and serve upon the Settling Parties notice of that fact, the reasons for the delay, and the expected date for the provision of such information. For each Year thereafter, the customers will be notified of

the retail prices and price to compare as they are notified of any other rate change, i.e. in bill inserts within 60 days of the rate going into effect.

2. Any report concerning each year's supply procurement is not to be released until at least one month after the completion of bidding for the last tranche of that year's procurement cycle for Delmarva. Such report may list all the wholesale suppliers who were awarded supply contracts, but would not list individual bid prices or quantities. This list of winning wholesale suppliers will then be public information for all purposes.

3. If the Delaware Governor or a committee of the General Assembly requests that the Commission, Staff, the Company, or DPA release the names of the individual wholesale bidders that will be providing FP-SOS, that information shall be provided with notice that the information is confidential pursuant to this Settlement, provided however that no winning individual wholesale bidder's name will be released until at least one month after the final tranche is awarded and the Commission has approved the awards for that tranche.

4. Annually, a report may be issued by either Staff or Delmarva that shows, separate from all supplier-identifying information, the winning bid prices (expressed in dollars per MWh for the contract year) for each customer grouping. This list of winning bid prices will then be public information for all purposes.

5. If the Commission so orders, after notice and a hearing at which parties opposing release will be allowed to state the reasons for their opposition, a list which matches winning wholesale suppliers' names with their winning bid prices may be made public.

6. Any information about the supply procurement results that does not identify individual wholesale bidders, provide supplier-specific information, or disclose any individual bid prices may be made public, after all tranches of bidding for that year of FP-SOS service are

completed, by the Staff, the Commission, or DPA at their discretion. 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.

7. In the event that a FSA with a wholesale supplier is terminated, the Company, Staff, DPA, and/or the Commission may opt to disclose any confidential information previously provided by that supplier with respect to the terminated FSA. Any information so disclosed will no longer be treated as confidential pursuant to this Settlement.

8. To the extent any information regarding the names of winning bidders, quantities purchased, or prices paid is required by law or regulation to be provided on a non-confidential basis to a federal or state regulatory agency, including but not limited to FERC Form 1 reports or SEC reports, then such disclosure shall not be deemed to violate this Settlement.

III. MISCELLANEOUS

A. Delmarva shall provide Staff and the DPA monthly data by customer class showing number of customers and quantities (by peak load obligation) served by competitive retail suppliers in the aggregate. Staff shall, within a reasonable amount of time, post the data on the Commission's web page.

B. The Commission, or if Staff requests, the Company, will procure independent consultants, paid by the Company, who will be responsible for monitoring all aspects of the procurement of the FP-SOS services described in this Settlement.

1. These consultants will be selected by, will take their direction from, and will provide their consultation and work products to, the Commission or its Staff.

2. These consultant costs will be included in the incremental costs that Delmarva will recover through the RARM described in the Settlement.

3. The consultants will provide the Commission with a final report as to each supply procurement and award. Copies of each report with appropriate redactions will be forwarded to each Party who executes a confidentiality agreement approved by the Commission.

C. Provisions in this settlement that tie a return, a carrying cost, or interest to the overall return authorized in Delmarva's next distribution base rate case, shall be read to be modified to reflect any changes in overall return authorized in any subsequent distribution base rate proceeding that becomes effective while this Settlement is still in effect.

D. The FSA shall assign to the wholesale suppliers the responsibility to obtain and assume the risk and expenses of compliance of federal and state statutory or regulatory requirements that may be imposed with respect to renewable portfolio standards, green power initiatives, distributed generation, or new load control programs.

E. If at any time while FP-SOS, HPS, or "Inc" supply is being provided by Delmarva, any additional price or cost elements beyond those specifically addressed in this Settlement that are directly related to that service and would be incurred by Delmarva, then Delmarva may file a request with the Commission (with notice to all the Parties) for approval of recovery of those costs and, to the extent the costs are found to arise from provision of the service and are approved by the Commission, the costs will thereafter be included in the service price.

F. Notwithstanding any other provision of this Settlement, Delmarva may at any time request Commission approval to make changes in the non-price terms and conditions of its tariffs.

IV. RESERVATIONS

A. This Settlement represents a compromise for the purposes of settlement and shall not be regarded as a precedent with respect to any ratemaking or any other principle in any future case.

No Settling Party necessarily agrees or disagrees with the treatment of any particular item, any procedure followed, or the resolution of any particular issue in agreeing to this Settlement other than as specified herein, except that the Settling Parties agree that the resolution of the issues herein, taken as a whole, results in just and reasonable rates, that the disposition of all other matters set forth in the Settlement are in the public convenience, necessity and interest and that, with the disposition of all such matters as set forth herein, this proceeding should be terminated with an order approving the Settlement.

B. The various provisions of the Settlement are not severable. None of the provisions shall become operative unless and until the Commission issues an order approving the Settlement as to all of the terms and conditions set forth herein without modifications or conditions. The Settlement shall be subject to waiver only by the unanimous written agreement of the Settling Parties. If any portion of this Settlement is modified, conditioned, or rejected by the Commission, the Settlement shall be considered null and void and each Settling Party individually reserves the right to proceed with the filing of testimony, briefs and evidentiary hearings as contemplated in the Commission's Orders in this proceeding. If the Settlement is rendered null and void by operation of this section III.B., the Settling Parties agree to enter into good faith negotiations to reach a new settlement. Once the Settlement has become operative under the terms of this section III.B., its terms may be revised or waived only by the unanimous written agreement of the Settling Parties or a subsequent valid order of the Commission.

C. Nothing in the Settlement shall be used to abrogate any existing or future contract for competitive retail electricity supply.

D. The headings, titles and captions of the Settlement and its various sections shall have no legal import or precedential value.

E. This Settlement may be executed in any number of identical counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute but one and the same instrument. Delivery by any party or its respective representatives of telecopied (counterpart) signature pages shall be as binding an execution and delivery of this Settlement by such party as if the other parties had received the actual physical copy of the entire Settlement with an ink signature from such party.

V. CONCLUSION

IN WITNESS WHEREOF, intending to bind themselves and their successors and assigns, the undersigned parties have caused this Settlement to be signed by their duly-authorized representatives and the undersigned parties further recommend and urge the Commission to issue an order expeditiously approving this Settlement and making the requested findings and approvals set forth herein.


Delmarva Power & Light
Company

Delaware Public Service
Commission Staff

Division of the Public Advocate

Delaware Energy Users Group

Conectiv Energy Supply, Inc.

V. CONCLUSION

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Delaware Energy Users Group

V. CONCLUSION

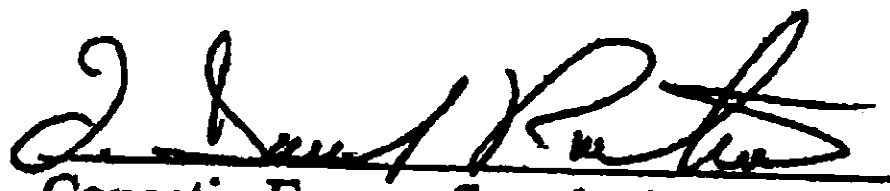
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APPENDIX A

DESCRIPTION OF BID PLAN AND REQUEST FOR PROPOSALS

1. Delmarva will develop and submit for approval by the Commission a form of the Full Requirements Service Agreement ("FSA"), including the volumetric risk mechanism and Request for Proposals ("RFP"). Copies will be provided to all parties to this proceeding. The RFP and FSA are collectively referred to as the "Bid Plan."
2. The Bid Plan will include, but not be limited to, the following features:
 - a) A description and timetable of how offers will be solicited for Full-Requirements Service.
 - b) The total load may be divided into load blocks of approximately 50MW each to promote diversity of supply and reliable supply contract performance. Each load block will be a percentage of the total SOS load for a Customer Group and, except as modified by a volumetric risk mitigation mechanism, each supplier will be obligated to supply that percentage of the load at all times regardless of the magnitude of the load. The size of the total load and commercial practice will be a guide toward a reasonable number of load blocks.
 - c) The first SOS year will end May 31, 2007 and the second year will begin June 1 of the same calendar year, in order to reset SOS periods to conform to the PJM planning period. Notwithstanding any other provision of this Settlement, this reset provision may be revisited if PJM changes its planning periods.

EXHIBIT "B"

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF DELAWARE

IN THE MATTER OF THE PROVISION OF)	
STANDARD OFFER SUPPLY TO RETAIL)	
CONSUMERS IN THE SERVICE TERRITORY)	PSC DOCKET NO. 04-391
OF DELMARVA POWER & LIGHT COMPANY)	
AFTER MAY 1, 2006)	
(Opened October 19, 2004))	

AMENDMENT

On this day, September 28, 2005, the undersigned hereby propose an amendment (the "Amendment") to a settlement dated July 14, 2005, (the "Original Settlement") that was recommended for approval by a Hearing Examiner in a report issued on September 1, 2005, and approved by voice vote of the Delaware Public Service Commission (the "Commission") at an administrative meeting of September 20, 2005. The purpose of the Amendment is to resolve issues raised by The Premcor Refining Group, Inc. ("Premcor") before the Hearing Examiner and the Commission. The Amendment does not resolve issues raised by any other party that took exception to the Hearing Examiner's report and recommendations. The Amendment has been executed by Premcor and all of the "Settling Parties" to the Original Settlement

I. AMENDMENT PROVISIONS

A. Section II.E.4 of the Original Settlement shall be struck and replaced with the following:

"4. A fixed annual amount of \$175,000 shall be established as the costs referenced in section D.4.c). For GS-T customers and for those GS-P customers who elect to have HPS as their SOS a fixed rate per month will apply irrespective of whether or not the customer takes HPS. The fixed rat shall be determined as follows: i) the total PJM PLC of all GS-T and electing GS-P customers shall be determined and a per kW rate established that will be charged to any such customer with PJM PLC of less than 600 kW; and (ii) the net remaining costs shall be assigned on a per capita basis to each GS-T

B. Premcor agrees that upon approval of this Amendment, it no longer opposes the Original Settlement as modified herein and withdraws its exceptions to the Hearing Examiner's report and recommendations.

II. RESERVATIONS

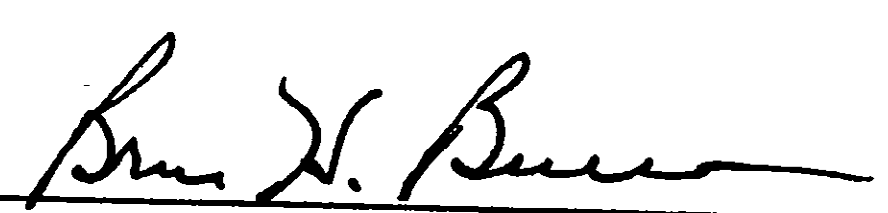
A. The Article IV "Reservations" of the Original Settlement shall apply to this Amendment.

B. This Amendment may be executed in any number of identical counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute but one and the same instrument. Delivery by any party or its respective representatives of telecopied (counterpart) signature pages shall be as binding an execution and delivery of this Amendment by such party as if the other parties had received the actual physical copy of the entire Amendment with an ink signature from such party.

III. CONCLUSION

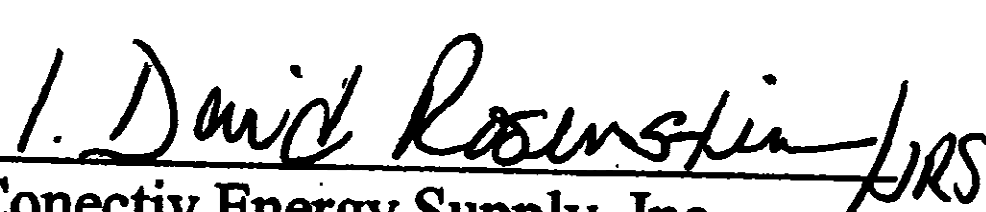
IN WITNESS WHEREOF, intending to bind themselves and their successors and assigns, the undersigned parties have caused this Amendment to be signed by their duly-authorized representatives and the undersigned parties further recommend and urge the Commission to issue an order expeditiously approving this Amendment.


Delmarva Power & Light
Company


Delaware Public Service
Commission Staff

Division of the Public Advocate

Delaware Energy Users Group


Conectiv Energy Supply, Inc.

The Premcor Refining Group, Inc.

B. Premcor agrees that upon approval of this Amendment, it no longer opposes the Original Settlement as modified herein and withdraws its exceptions to the Hearing Examiner's report and recommendations.

II. RESERVATIONS

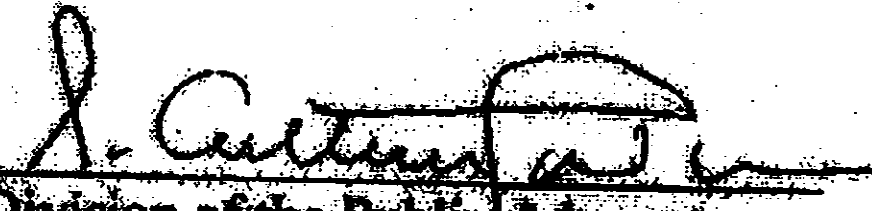
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III. CONCLUSION

IN WITNESS WHEREOF, intending to bind themselves and their successors and assigns, the undersigned parties have caused this Amendment to be signed by their duly-authorized representatives and the undersigned parties further recommend and urge the Commission to issue an order expeditiously approving this Amendment.

Delmarva Power & Light
Company


Division of the Public Advocate

Connectiv Energy Supply, Inc.

Delaware Public Service
Commission Staff

Delaware Energy Users Group

The Premcor Refining Group, Inc.

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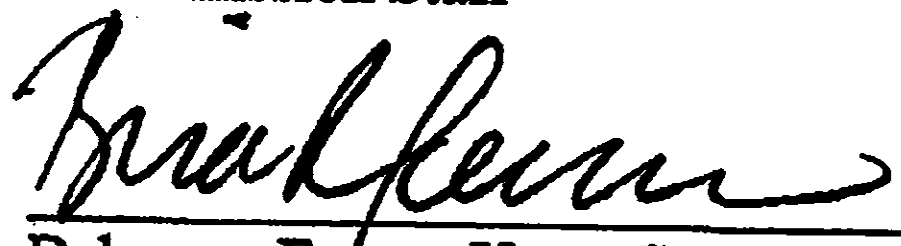
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Commission Staff



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B. Premcor agrees that upon approval of this Amendment, it no longer opposes the Original Settlement as modified herein and withdraws its exceptions to the Hearing Examiner's report and recommendations.

II. RESERVATIONS

A. The Article IV "Reservations" of the Original Settlement shall apply to this Amendment.

B. This Amendment may be executed in any number of identical counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute but one and the same instrument. Delivery by any party or its respective representatives of telecopied (counterpart) signature pages shall be as binding an execution and delivery of this Amendment by such party as if the other parties had received the actual physical copy of the entire Amendment with an ink signature from such party.

III. CONCLUSION

IN WITNESS WHEREOF, intending to bind themselves and their successors and assigns, the undersigned parties have caused this Amendment to be signed by their duly-authorized representatives and the undersigned parties further recommend and urge the Commission to issue an order expeditiously approving this Amendment.

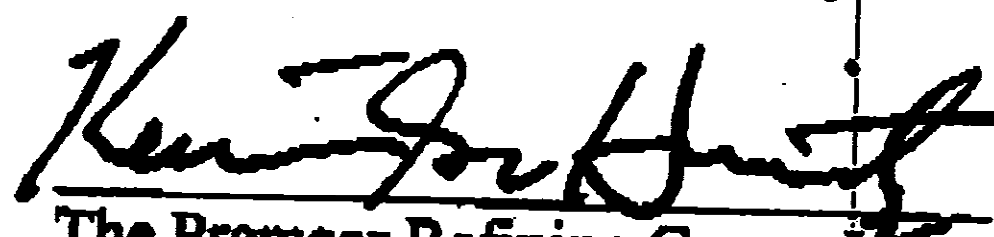
Delmarva Power & Light
Company

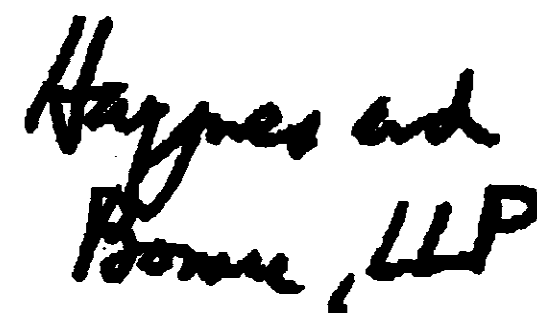
Division of the Public Advocate

Conectiv Energy Supply, Inc.

Delaware Public Service
Commission Staff

Delaware Energy Users Group


The Premcor Refining Group, Inc.
10/3/05


Haynes and
Boone, LLP