

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

ORDER

April 12, 2019

FORMAL CASE NO. 1017, IN THE MATTER OF THE DEVELOPMENT AND DESIGNATION OF STANDARD OFFER SERVICE IN THE DISTRICT OF COLUMBIA, Order No. 19897

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) concludes the Biennial Review of the provision of Standard Offer Service (“SOS”) in the District of Columbia initiated in 2018 and establishes a pilot program to procure renewable energy through long-term purchase power agreements (“PPA”) for electricity generated by solar or wind power facilities located within the PJM Interconnection region (“PJM”) with a target quantity of five (5) percent of the SOS load. In addition, the Commission eliminates the minimum stay provision.

II. BACKGROUND

2. By Order No. 19431 issued on August 9, 2018, the Commission initiated the 2018 Biennial Review by inviting comments on the three issues previously identified by the Commission for further consideration, as well as the issue of whether to include long-term PPAs for renewable energy in the SOS procurement process.¹ On August 20, 2018, the Office of the People’s Counsel’s (“OPC” or “Office”) filed its Motion for Enlargement of Time to File Initial and Reply Comments Pursuant to Order No. 19431 asking that the comment period be extended from September 10, 2018, and September 24, 2018, to November 9, 2018, and December 21, 2018, respectively.² The Commission granted OPC’s Motion for Enlargement of Time on September 6, 2018.³

3. On November 9, 2018, the Commission received comments from the District of Columbia Department of Energy & Environment (“DOEE”) on behalf of the District of Columbia Government, Exelon Generation Company, LLC, the National Energy Marketers Association (“NEM”), OPC, the Potomac Electric Power Company (“Pepco”), and the Sierra Club.⁴ On

¹ *Formal Case No. 1017, In the Matter of the Development and Designation of Standard Offer Service in the District of Columbia (“Formal Case No. 1017”), Order No. 19431, rel. August 9, 2018 (“Order No. 19431”).*

² *Formal Case No. 1017, Office of the People’s Counsel’s Motion for Enlargement of Time to File Initial and Reply Comments Pursuant to Order No. 19431, filed August 20, 2018.*

³ *Formal Case No. 1017, Order No. 19665, rel. September 6, 2018.*

⁴ *Formal Case No. 1017, Comments of the District of Columbia Department of Energy & Environment (“DOEE”), filed November 9, 2018 (“DOEE’s Comments”); Comments of Exelon Generation Company, LLC (“ExGen”), filed November 9, 2018 (“ExGen’s Comments”); Comments of the National Energy Marketers Association (“NEM”), filed November 9, 2018 (“NEM’s Comments”); Comments of the Office of the People’s*

December 21, 2018, OPC, Pepco, the Retail Energy Supply Association (“RESA”), the Sierra Club, and WGL Energy Services, Inc. (“WGL Energy”) each filed reply comments.⁵

III. DISCUSSION

A. **What is a Reasonable Margin or Return for Pepco as the SOS Administrator and What is the Relationship Between this Return and Cash Working Capital?**

4. The Commission established the margin as the mechanism to compensate Pepco for the risks associated with serving as the SOS administrator⁶ and “for the opportunity costs associated with its investment dollars needed to provide SOS.”⁷ The Commission further determined that Pepco’s cash working capital and capital investment costs should be recoverable through SOS rates because they are “direct costs that will increase as a result of Pepco’s obligation to serve as SOS provider.”⁸ The Commission decided that the determination of the appropriate level of the margin should be guided by statute including our obligation to “ensure that the price for standard offer service will not hinder the development of a competitive electricity supply market in the District of Columbia.”⁹ After considering the comparison of the return margins of electric utilities and other industries, the Commission then established the SOS margin.¹⁰ The Commission clarified that the margin is Pepco’s return on equity and is not based on actual costs incurred by Pepco.¹¹

5. The Commission specifically directed that any commenter advocating a change in the margin should provide evidence in support of its position.¹² Although OPC argues that the margin should be limited to no more than Pepco’s prudently incurred costs that is calculated as a percentage of Pepco’s incremental costs, the Office provides little rationale for why the Commission’s determination of the margin should be disturbed.¹³ Therefore, the Commission

Counsel (“OPC”), filed November 9, 2018 (“OPC’s Comments”); Comments of the Potomac Electric Power Company (“Pepco”) filed November 9, 2018 (“Pepco’s Comments”); Comments of the Sierra Club, filed November 9, 2018 (“The Sierra Club’s Comments”). On October 30, 2018, in *Formal Case No. 1017*, the Sierra Club filed a Petition to Intervene. The Sierra Club’s Motion to Intervene was granted and its comments accepted into the record by Order issued December 5, 2018. *Formal Case No. 1017*, Order No. 19758, rel. December 5, 2018.

⁵ *Formal Case No. 1017*, Reply Comments of OPC, filed December 21, 2018 (“OPC’s Reply Comments”); Reply Comments of Pepco, filed December 21, 2018 (“Pepco’s Reply Comments”); Reply Comments of the Retail Energy Supply Association (“RESA”), filed December 21, 2018 (“RESA’s Reply Comments”); Reply Comments of The Sierra Club, filed December 21, 2018 (“The Sierra Club’s Reply Comments”); and Reply Comment of WGL Energy Services, Inc., (“WGL Energy”) filed December 21, 2018 (“WGL Energy’s Reply Comments”).

⁶ *See Formal Case No. 1017*, Order No. 13268, ¶¶ 62-63, rel. August 19, 2004 (“Order No. 13268”).

⁷ *Formal Case No. 1017*, Order No. 13407, ¶ 37, rel. October 20, 2004 (“Order No. 13407”).

⁸ Order No. 13268, ¶ 63.

⁹ D.C. Code § 34-1509(d)(1)(A) (2012 Repl.); *See* Order No. 13268, ¶¶ 66-67.

¹⁰ *See* Order No. 13268, ¶¶ 68-70.

¹¹ Order No. 13407, ¶ 30.

¹² *Formal Case No. 1017*, Order No. 19106, ¶ 5, rel. September 13, 2017.

¹³ OPC’s Comments at 4 (citation omitted).

declines, at this time, to modify the current method of calculating the margin that Pepco receives as SOS administrator or the manner in which working capital is treated.

B. Whether to and Why Eliminate the Adder?

6. The original purpose of the adder was to reflect the retail electricity suppliers' marketing costs in SOS rates in order to ensure that the suppliers are not placed at a competitive disadvantage.¹⁴ The adder equals the fixed overall Administrative Charge minus Pepco's incremental costs to conduct the SOS bidding, uncollectible expenses, cash working capital, the margin, and any true-ups.¹⁵ Thus, the adder is a residual item. Any revenue collected from the adder is returned to all distribution customers as a credit to their distribution rate. This credit is known as the Administrative Credit.¹⁶ The adder is collected from SOS customers but distributed back to all distribution customers on the distribution portion of their bills through the Administrative Credit.¹⁷

7. NEM and Pepco favor retaining the adder as it increases the price of SOS which, they assert, helps level the competitive playing field by making it easier for retail electricity suppliers to compete.¹⁸ Pepco also states that it would like the adder to be a standalone rate, but Pepco does not elaborate on the level at which the adder should be set.¹⁹ OPC recommends removing the adder arguing that it adds unnecessary costs to SOS.²⁰

8. We note that, while the Order initiating this Biennial Review specifically asked those commenting on the issue of whether to maintain the adder "to support their positions . . . with a numerical analysis and/or other empirical evidence,"²¹ commenters provided neither numerical analysis nor empirical evidence in support of their positions despite this directive. Thus, in the absence of such support, the Commission declines to eliminate the adder at this time.

C. Whether to and Why Eliminate the Minimum Stay Provision?

9. The purpose of the minimum stay provision is to help SOS suppliers by managing migration between the SOS service and third-party suppliers. SOS suppliers are responsible for a fixed percentage of SOS load at any hour, no matter how large or how small the load may be. The minimum stay provision was established to address the concern that larger customers might switch back and forth between competitive electricity suppliers and SOS depending on which service was less expensive at the time, resulting in large fluctuations in SOS load, which in turn would increase

¹⁴ *Formal Case No. 1017*, Order No. 18829, ¶ 125, rel. July 7, 2017 ("Order No. 18829").

¹⁵ Order No. 18829, n.141 (citations omitted).

¹⁶ Order No. 18829, ¶ 125.

¹⁷ Order No. 18829, ¶ 125.

¹⁸ NEM's Comments at 2; Pepco's Comments at 4; Pepco's Reply Comments at 4.

¹⁹ Pepco's Reply Comments at 2.

²⁰ OPC's Reply Comments at 5.

²¹ Order No. 19431, ¶ 7.

the risks for SOS wholesale electricity suppliers, and ultimately result in higher prices being bid by SOS suppliers to insure against this risk.²²

10. The minimum stay provision requires that a commercial customer who leaves SOS, then procures service from a competitive electricity supplier, and subsequently returns to SOS must then stay on SOS service for a minimum of 12 months.²³ Residential customers, by contrast, are free to switch from SOS as they please.²⁴ There is a “grace period” for commercial customers whose competitive electricity suppliers default, which gives the customer three full billing cycles to choose another third-party supplier or change to Market Price Service (“MPS”) rates in order to avoid the minimum stay.²⁵ In addition, commercial customers can switch from service provided by competitive electricity suppliers to MPS at any time.²⁶ There is no minimum stay requirement with MPS as Pepco, rather than the wholesale suppliers of SOS, buys the energy from the spot market and provides this service to customers at cost.²⁷

11. Commenters unanimously support eliminating the minimum stay provision²⁸ and the elimination of the minimum stay will provide commercial customers with the same customer choice flexibility as residential customers. Having no evidence before it to the contrary, the Commission finds that there is no reason to retain the minimum stay provision. Therefore, the Commission will publish a NOPR revising the Commission’s SOS rules to eliminate the minimum stay provision.²⁹

D. Should Power Purchase Agreements be used in the SOS Procurement Process?

12. Commenters are generally split on whether or how to include long-term renewable energy PPAs in the SOS procurement process and only OPC, in its initial comments, addressed all 11 questions posed in Order No. 19431. NEM, Pepco, RESA, and WGL Energy do not support including PPAs in the SOS procurement portfolio.³⁰ Although DOEE submitted a study produced by the Center for Renewables Integration (“CRI”) with its comments which concluded that integration of long-term renewable energy PPAs into SOS is feasible, DOEE declined to fully endorse including PPAs in the SOS procurement portfolio until further analysis is conducted.³¹

²² See generally *Formal Case No. 1017*, Order No. 13415, ¶, rel. October 27, 2004 (citations omitted).

²³ 15 DCMR § 4105.6 (2015).

²⁴ See 15 DCMR § 4105.5 (2015).

²⁵ 15 DCMR § 4105.6 (2015).

²⁶ 15 DCMR § 4105.7 (2015).

²⁷ See generally 15 DCMR § 4105.7 (2015).

²⁸ ExGen’s Comments at 4-5, 7; NEM’s Comments at 3 (citations omitted); Pepco’s Comments at 4-5; OPC’s Reply Comments at 6; RESA’s Reply Comments at 10-12; WGL Energy’s Reply Comments at 3, 5; Pepco’s Reply Comments at 2.

²⁹ See 15 DCMR §§ 4100 *et. seq.* (2009, 2015, 2019).

³⁰ NEM’s Comments at 4-5 (citation omitted); Pepco’s Comments at 6-13; Pepco’s Comments at 3-5 (citations omitted); RESA’s Reply Comments at 8-9; WGL Energy’s Reply Comments at 7-8.

³¹ Center for Renewables Integration, *Feasibility Study: Increasing the Renewable Energy Content of Standard Offer Service*, at 2 (September 28, 2019) (“CRI Feasibility Study”); DOEE’s Comments at 2.

OPC is not opposed to “properly structured PPAs” but agrees with DOEE that the District should not incorporate PPAs for SOS at this time without further investigation.³² The Sierra Club advocates for the incorporation of PPAs into SOS.³³

13. In opposing the prospect of the incorporation of long-term renewable energy PPAs into the SOS procurement portfolio, NEM, RESA, WGL Energy, and Pepco identify a number of risks that they believe are inherent in this option. NEM asserts that one of the primary goals of competitive electricity markets is “to shift the risk of generation investments away from captive ratepayers and onto private competitive entities.”³⁴ Requiring long-term PPAs for renewable energy would instead, in NEM’s view, “shift the risk of those investments squarely back to SOS ratepayers and possibly lead to stranded costs.”³⁵ Pepco concurs with NEM on this point.³⁶

14. NEM further argues that the current three-year SOS residential contracts already constitute “a barrier to competition by locking in prices for extended periods that do not align with current market conditions, creating artificial boom bust cycles for mass market customer shopping” which in turn prevents competitive electricity suppliers “from having sustained opportunities to serve customers, discourages competition, and thereby inhibits the availability of energy choice options to consumers.”³⁷ NEM asserts that “[a]dding in long-term PPAs for renewable energy to the [SOS] procurement process” will simply “exacerbate the problem, further divorcing the SOS price from current market conditions.”³⁸ RESA, Pepco, and WGL Energy agree with NEM on this point. In addition, RESA asserts that the result of PPAs incorporated into the SOS process that NEM describes “would directly contradict” the Commission’s statutory mandate to ensure that the price for SOS not hinder the development of the competitive electricity supply market in the District.³⁹

15. Pepco is concerned that, while long-term PPAs would provide price stability, they would reduce the ability to achieve the best price for consumers. Pepco notes that the current three-year laddered contracts for residential customers allow for price stability, are less risky, have been well-priced, and should, therefore, be maintained. Specifically, Pepco argues that “long-term, fixed-quantity contracts would shift significant risks to Pepco’s SOS customers”, as these contracts are subject to uncertainty, because forward pricing curves are difficult to predict beyond three years resulting in risk premiums for the out years which would likely significantly increase

³² OPC’s Reply Comments at 7.

³³ The Sierra Club’s Comments at 1-8 (citations omitted); The Sierra Club’s Reply Comments at 1-5 (citations omitted).

³⁴ NEM’s Comments at 4.

³⁵ NEM’s Comments at 4.

³⁶ Pepco’s Comments at 7-8.

³⁷ NEM’s Comments at 4-5.

³⁸ NEM’s Comments at 5.

³⁹ RESA’s Reply Comments at 6 (citation omitted).

the cost of SOS service.⁴⁰ RESA concurs with Pepco on this point and OPC raises similar concerns.⁴¹

16. As examples of this dynamic, Pepco notes that, in Delaware, Delmarva Power executed three long-term wind PPAs for RECs and energy. According to Pepco, while the contract prices at the time that these PPAs were executed were deemed to be at or close to the market prices, they are now all above market prices as the per kWh price of electricity has dropped. Similarly, Pepco observes that Atlantic City Electric in New Jersey executed two long-term contracts in the mid-90's, resulting in consumers paying tens of millions per year above the current market price of electricity. Pepco also notes that an inverse scenario can also result in adverse consequences, as when Delmarva Power executed long-term contracts in 1999 that turned out to beat the prevailing market prices so handily, that when these contracts expired in 2006, customers faced a 59 percent rate increase, and the below-market contracts made it impossible for competitive electricity suppliers to compete with the SOS price.⁴² RESA agrees with Pepco that the Delmarva Power and Atlantic City Power scenarios are cautionary tales which adversely affected the competitive electricity market.⁴³

17. In addition to the price risk that Pepco warns against, Pepco is also concerned about volumetric risk associated with the introduction of PPAs into SOS. Pepco notes that volumetric risk occurs when more load is needed, as during the 2014 Polar Vortex, and the additional load must be purchased at higher prices, and when load must be reduced, as when customers leave SOS or due to mild weather, resulting in excess load having to be sold at a loss. The beauty of the current SOS regime, in Pepco's view, is that it is a Full Requirements Service ("FRS") which is load following. As Pepco observes, the wholesale electricity suppliers of SOS must provide all the demand of all SOS customers at all times at a fixed-price per kWh. Thus, with the current SOS design, Pepco notes that there is no volumetric risk for SOS customers. By contrast, Pepco notes that renewable energy PPAs are for a fixed-price per kWh and for a fixed amount of electricity. Thus, if the SOS load dramatically increases due to extreme weather with SOS power being supplied through renewable energy PPAs, in Pepco's view, SOS customers will, rather than the SOS suppliers, bear the volumetric risk potentially resulting in higher prices for SOS customers. OPC shares Pepco's concerns regarding volumetric risk.⁴⁴

18. OPC states that it is not opposed to properly structured PPAs; however, customer protections must be put in place to ensure the risks do not outweigh the benefits as SOS customers would bear all costs associated with the acquisition.⁴⁵ OPC also agrees that D.C. should not shift to a renewable energy PPA procurement for SOS at this time without further investigation.⁴⁶ In addition, according to OPC, the Commission must look at the range of risks placed upon ratepayers

⁴⁰ Pepco's Comments at 6-7,

⁴¹ RESA's Reply Comments at 3; OPC's Reply Comments at 7-8.

⁴² Pepco's Comments at 7-8.

⁴³ RESA's Reply Comments at 3 (citation omitted and citation omitted in original).

⁴⁴ Pepco's Comments at 8-9.

⁴⁵ OPC's Comments at 4.

⁴⁶ OPC's Reply Comments at 7.

by such a drastic market shift, which inherently imposes financial risks that would be placed solely upon ratepayers. However, OPC states that should the District “procure a relatively small fraction of its SOS energy needs with long-term PPAs, it could still impose the quantity risk on the full-service power provider now charged with meeting load net of the PPAs on each hour.”⁴⁷ OPC cautions that increasing the quantity of renewable energy procured through PPAs is probably best done gradually, such as five (5) percent per year for several years followed by an evaluation.⁴⁸

19. DOEE asserts that there is an inherent lack of flexibility in long-term renewable energy PPAs and urges flexibility in the SOS program, while noting that the inflexibility in renewable energy PPAs may result in higher costs for SOS ratepayers. DOEE asserts that further analysis is needed before the Commission modifies the SOS procurement portfolio to include long-term PPAs, while the CRI Feasibility Study that DOEE commissioned concluded that the use of renewable energy PPAs is feasible.⁴⁹ The CRI Feasibility Study provided three scenarios for providing SOS service through the use of renewable energy PPAs to supply from 70 to 90 percent of SOS load. All three scenarios project lower prices for SOS when PPAs are added to the SOS procurement portfolio, based on the assumption that SOS prices would increase in the future if the SOS load continued to be procured from conventional power sources under the current SOS regime.⁵⁰ The CRI Feasibility Study also concludes that sufficient supplies of wind and solar are under development within PJM to provide the renewable energy needed to supply SOS in the District.⁵¹

20. The Sierra Club favors the use of long-term renewable energy PPAs to supply SOS as a method of transitioning to carbon-free renewable generation in the District and as a method of developing new renewable generation at low cost.⁵² To these ends, the Sierra Club advocates for the exclusive use of zero carbon renewable sources such as wind and solar in such PPAs.⁵³

21. With respect to the argument by opponents that the introduction of PPAs would somehow adversely affect the competitive electricity market in the District, RESA advanced a similar argument during the previous Biennial Review in opposing the use of three-year laddered contracts in the procurement of residential and small commercial SOS. RESA asserted at that time that these three-year contracts are not reflective of the “market” and impede the competitive electricity suppliers’ ability to compete in the District because the SOS price is significantly higher or lower than “the market price.”⁵⁴ We noted in the Order on the last Biennial Review that RESA provided no credible evidence to support its position. We also observed that “it is a fallacy to

⁴⁷ OPC’s Reply Comments at 9.

⁴⁸ OPC’s Comments at 10.

⁴⁹ DOEE’s Comments at 2.

⁵⁰ CRI Feasibility Study at 8.

⁵¹ CRI Feasibility Study at 47.

⁵² The Sierra Club’s Comments at 1.

⁵³ The Sierra Club’s Comments at 4.

⁵⁴ *Formal Case No. 1017*, Comments of the Retail Energy Supply Association at 20-21, filed August 23, 2016.

assume that the short-term market price is *the* market price.”⁵⁵ RESA argues that “[t]he introduction of long-term PPAs into the SOS procurement process would significantly exacerbate this problem [caused by three-year SOS contracts], harming competition in the District, to the detriment of District retail energy consumers.”⁵⁶ NEM makes essentially the same point. RESA and NEM do not, however, offer evidence in support of their positions, other than NEM’s observation that the “16% shopping rate of residential and small commercial load is symptomatic of this problem.”⁵⁷

22. The risks identified by the opponents of long-term renewable energy PPAs cannot be ignored. The challenge for the Commission is to determine whether a well-designed introduction of long-term renewable energy PPAs into the SOS procurement portfolio can mitigate or eliminate these risks and thereby ensure that SOS ratepayers pay reasonable rates, while preserving the environmental quality, including effects on global climate change and the District’s public climate commitments.⁵⁸ Utilizing PPAs in this manner, as indicated in the CRI Feasibility Study, is consistent with the Clean Energy DC, the District of Columbia Climate and Energy Action Plan’s goal of a 50 percent reduction in greenhouse gas (“GHG”) emissions by 2032.⁵⁹

23. First, it is necessary to provide some historical background regarding the Commission’s success in providing reasonable SOS rates. The Commission currently procures SOS as an FRS which is bid out annually in two tranches or rounds in early December and early January for a delivery year beginning June 1 and ending May 31. The entire large commercial load is bid out each year. The small commercial and residential load is by contrast bid out in one-third increments through three-year “laddered” contracts.⁶⁰

24. The Commission is particularly concerned about small commercial and residential customers as the majority of these customers choose SOS rather than shopping for service with competitive electricity suppliers.⁶¹ In addition, residential customers of SOS include a substantial proportion of low- and moderate-income customers who are particularly vulnerable to the effects

⁵⁵ Order No. 18829, ¶ 194 (emphasis in original).

⁵⁶ RESA’s Reply Comments at 6.

⁵⁷ NEM’s Comments at 5 (citation omitted).

⁵⁸ “In supervising and regulating utility or energy companies, the Commission shall consider the public safety, the economy of the District, the conservation of natural resources, and the preservation of environmental quality, including its effects on global climate change and the District’s public climate commitments.” D.C. Code § 34-808.02 (and as amended by D.C. Law 22-257, *CleanEnergy DC Omnibus Amendment Act of 2018* (March 22, 2019) (“*CleanEnergy Act*”).

⁵⁹ CRI Feasibility Study at 3 (citation omitted in original); *See also* Sec. 301(B)(1)(c)(i) of D.C. Law 22-257, *CleanEnergy Act* (March 22, 2019); *See* DOEE and District of Columbia Office of the Mayor, *Clean Energy DC, The District of Columbia Climate and Energy Action Plan*, at v (August 2018), available at https://doee.dc.gov/sites/default/files/dc/sites/ddoe/page_content/attachments/Clean%20Energy%20DC%20-%20Full%20Report_0.pdf.

⁶⁰ *See generally* *Formal Case No. 1017*, Standard Offer Service (“SOS”) Working Group’s Wholesale Full Requirements Service Agreement (“WFRSA”) and Request for Proposals (“RFP”), filed October 1, 2018.

⁶¹ *See generally* *PEPEMMR2019-01*, Pepco’s January 2019 Monthly Market Monitor Report, Number of Customers and Market Shares, filed February 14, 2019.

of SOS rate increases, especially dramatic increases. In the fourteen-year history of the Commission's regulation of SOS in the District, through the use of the three-year laddered approach to SOS procurement, the Commission has approved reasonable rates for residential and small commercial customers while avoiding rate shocks.

25. The current SOS regime has worked well at providing customers with reasonable rates over a long timeframe. The Commission, therefore, with Pepco functioning as the SOS Administrator, has a proven track record in managing market risks for SOS customers. The Commission is, accordingly, in an excellent position to consider incorporating long-term renewable energy PPAs into the SOS procurement portfolio, provided that the Commission, working together with the SOS Administrator and stakeholders through a Working Group process, can manage the potential risks associated with renewable energy PPAs.

26. The CRI Feasibility Study commissioned by DOEE confirmed the feasibility of using PPAs to satisfy part of the SOS procurement. The CRI Feasibility Study assumes prices for SOS will increase over the long-term and cited to a recent projection from the U.S. Energy Information Agency ("EIA") which "forecasts that nominal electricity generation prices in the U.S. will rise at an average rate of 1.9% between 2019 and 2033."⁶² Based on this assumption, the CRI Feasibility Study's scenarios show that using a mix of long-term renewable energy PPAs for SOS in the future will achieve lower prices for SOS customers as compared to continuing to use the FRS SOS model to procure conventional power. Similarly, the Sierra Club notes that "data compiled by Bloomberg New Energy Finance" indicates that "long-term utility [renewable energy] PPAs in PJM . . . are already cost competitive with SOS in the District."⁶³

27. According to the CRI Feasibility Study, in 2015 and 2016, the District Government signed PPAs for both wind and solar power to supply part of the electricity needs for District Government buildings and that significant savings are expected from these 20-year contracts as compared with prices from conventional sources of electricity. The CRI Feasibility Study also noted that "the attractively priced Virginia solar projects are creating the opportunity for an SOS strategy based on PPAs to potentially be cheaper than conventional power."⁶⁴

28. In addition, Massachusetts has successfully procured PPAs while maintaining a SOS procurement process. Massachusetts first required renewable energy PPAs to serve up to three (3) percent of *total energy demand*, not solely SOS, starting in 2008.⁶⁵ Subsequently, Massachusetts increased the three (3) percent standard by an additional four (4) percent, which equals up to seven (7) percent of the total energy demand.⁶⁶ Currently, long-term contracts for an additional 800 MW of offshore wind power are pending the approval of the Massachusetts

⁶² CRI Feasibility Study at 30.

⁶³ The Sierra Club's Comments at 2-3 (citation omitted).

⁶⁴ CRI Feasibility Study at 18.

⁶⁵ See Green Communities Act of 2008, Mass. Gen. Laws, Ch. 169, § 83 (2008). Thus, the total base of the three percent is the entire distribution kWh of the utility, not just the SOS load. See also 220 CMR § 17.08(5).

⁶⁶ See 220 CMR § 21.08(4). These procurements were staggered and thus, during overlapping years, up to 7 percent of the load in Massachusetts was being served by the clean energy PPAs.

Department of Public Utilities,⁶⁷ and the prices negotiated in these PPAs have been competitive with prices from conventional power sources.⁶⁸

29. The experiences of the District Government in procuring power through long-term renewable energy PPAs, the Massachusetts PPA experience, the proven viability of solar projects next door in Virginia, the EIA's projections of future electricity generation rates, the analysis in the CRI Feasibility Study, and the data provided by Bloomberg indicates that long-term renewable energy PPAs for SOS can potentially provide per kilowatt electricity prices at or below conventional power for the District's SOS customers.

30. With respect to volumetric risk, the surplus or shortfall of generation due to the non-load following and intermittent nature of renewable energy PPAs, could be managed through spot sales or purchases by Pepco, as the SOS Administrator, or by wholesale electricity suppliers of SOS. These strategies could potentially reduce the volumetric risk associated with PPAs. We note that Pepco has experience buying power in the PJM spot market through its management of Market Price Service in the District.⁶⁹ The SOS Working Group should also consider adding availability requirements and penalties in the PPA to reduce unit outages.

31. OPC has suggested that the Commission could increase the quantity of renewable energy procured through PPAs with a five percent increase per year for several years, followed by an evaluation.⁷⁰ This suggestion raises the possibility that the Commission could start small in introducing PPAs into the SOS procurement portfolio with a small threshold of SOS load being procured through long-term renewable energy PPAs. Five (5) percent of the District's SOS load represents a rather small procurement. Pepco reported SOS sales in 2018 of roughly 3.15 million MWh.⁷¹ For reference, according to the EIA, total retail sales of electricity in the District in 2018 were roughly 11.4 million MWh.⁷² A renewable energy PPA procurement of five (5) percent of Pepco's SOS load would amount to approximately 158,000 MWh a year or 18 MW in every hour of the day.⁷³ This MWh level is roughly 1.4 percent of the District's total annual retail energy load. While the Commission recognizes that the Sierra Club advocates for 70 percent of SOS load to be served by long-term PPAs within three (3) years and OPC suggests five (5) percent per year, the Commission must balance all possible risks involved in both scenarios to ensure that consumers continue to pay reasonable SOS rates.

⁶⁷ See generally Initial Brief of the Office of the Attorney General of Massachusetts, *Massachusetts DPU, Cases 18-76, 18-77, and 19-78*, filed January 30, 2019.

⁶⁸ The Sierra Club's Comments at 5-6 (citation omitted).

⁶⁹ See generally *Formal Case No. 1017*, Pepco's Retail Rates for Standard Offer Service, Attachments B, D, and E, filed January 25, 2019 ("Pepco's Retail Rates for Standard Offer Service").

⁷⁰ OPC's Comments at 10.

⁷¹ See Pepco's Retail Rates for Standard Offer Service, Attachment D, at 8.

⁷² See U.S. Energy Information Administration Electricity Data Browser, available at <https://www.eia.gov/electricity/data/browser/>.

⁷³ In terms of nameplate capacity, this translates to a solar or wind facility of roughly 50-70 MW in size.

32. Starting small in this manner would help minimize risks to ratepayers associated with PPAs that have been identified by commenters. Price risk would be significantly reduced as the impact of procuring five (5) percent of SOS load in this manner on SOS prices is very slight, especially as the CRI Feasibility Study and EIA are projecting lower prices with PPAs. Similarly, procuring five (5) percent of SOS load (which would be 1.4 percent of total load) may not lead to stranded costs of any significant magnitude or adversely affect the retail electricity market. As previously indicated, Pepco could manage the volumetric risk through spot market purchases and sales where necessary and/or SOS wholesale suppliers could manage the volumetric risk. In addition, the Commission could perform a cost-effectiveness review as part of the procurement process for the long-term renewable energy PPAs, including both economic and environmental benefits and costs, to ensure that the winning contractor(s)' prices are reasonable.⁷⁴ In the event that the Commission is unable to solicit PPAs with reasonable prices, we could simply cancel the solicitation and resolicit new bids.

33. Based on the above, the Commission believes that it is possible to manage the risks associated with long-term renewable energy PPAs provided that the initial procurement targets a small quantity, five (5) percent of SOS load being procured through such PPAs with a June 1, 2023, projected delivery date. The District's SOS contracts run on a service year beginning June 1, so these PPAs could likely be executed by mid-2020 to meet the June 2023 in service date. While the Commission is starting small, we are also taking direct action to reduce GHG emissions by promoting the construction of new renewable energy generation within PJM. Nonetheless, this is just a start and, as indicated later in this Order, we are directing the SOS Working Group to consider the feasibility of increasing the percentage of long-term renewable energy PPAs to a target quantity of up to 10 percent of the SOS load in the future, after the initial contract with a target quantity of five (5) percent of SOS load is executed.

34. Consistent with the District's goal to reduce GHG emissions, we believe that currently operational generation facilities cannot be the subject of these PPAs as it is the Commission's goal to facilitate the development of new renewable energy generation within PJM.⁷⁵ We concur with the Sierra Club that the renewable energy sources for these PPAs should be non-GHG producing, zero-carbon solar or wind facilities.⁷⁶ The Commission believes the June 1, 2023, projected delivery date will allow developers of the renewable energy generation projects that will be the subject of these PPAs, three years to construct them. As noted previously, five (5)

⁷⁴ Environmental benefits can be measured by the greenhouse gas ("GHG") emissions reductions associated with the renewable energy purchase power agreements.

⁷⁵ The Council of the District of Columbia ("DC Council") recently limited the area within which D.C. Renewable Energy Portfolio Standard compliance eligible Renewable Energy Credits ("REC") can be certified to the PJM Interconnection region ("PJM"). Previously, RECs could be certified within PJM and PJM adjacent states. The DC Council noted that "[t]he District has previously reduced the GHG-reduction potential of its RPS law by allowing RECs to be purchased from outside of PJM. The reason for this is that in [PJM-adjacent] states like Iowa, revenue from RECs is much less important to incentivizing the construction of renewable generation than in the Mid-Atlantic and Northeast regions." "CleanEnergy Act", Committee Report, Committee on Transportation and the Environment, Council of the District of Columbia, at 8 (November 20, 2018).

⁷⁶ See The Sierra Club's Comments at 4. A generation scenario where some or all the generation is produced by batteries that have been charged by wind or solar generators would also be considered.

percent of the SOS load is approximately 158,000 MWh, and the Commission considers it possible that one utility-scale renewable energy generating facility could provide the entire five (5) percent.

35. Accordingly, we direct the SOS Working Group to be led by Pepco, as the SOS Administrator, to produce, by July 31, 2019, a draft request for proposals (“RFP”) for long-term renewable energy PPAs, including the RECs associated with the energy, for solar or wind power generating facilities located within PJM and draft revised SOS rules, if required, to accommodate this change in the SOS procurement portfolio.⁷⁷ Pepco will be responsible for submitting the draft RFP and revised draft SOS rules on behalf of the Working Group. As the first step in this process, a planning meeting for the SOS Working Group, including Commission staff, will be convened within 30 days of the date of this Order in the Commission’s Hearing Room to discuss and plan the introduction of long-term renewable energy PPAs into the District’s SOS procurement portfolio. Commission staff will chair the planning meeting of the SOS Working Group.

36. The Working Group in designing the RFP for renewable energy PPAs should also consider how to mitigate the risks associated with long-term renewable energy PPAs which commenters have identified. In addition, while the target percentage of five (5) percent is a percentage of SOS load, the Commission would consider a renewable energy PPA option adopted by Massachusetts where all District distribution ratepayers would support the PPAs, if that option produces lower prices or further reduces risk. Under this alternative scenario, the energy generated by the PPAs would be sold in the wholesale market with the net proceeds (either positive or negative) credited back to all distribution customers through a surcharge or sur-credits.⁷⁸ The SOS Working Group may want to consider this option and how it could be implemented. Consistent with paragraph 30, the SOS Working Group should also discuss and consider availability requirements and penalties in the PPA to reduce unit outages.

37. Pepco also identified a concern about the possibility of long-term PPA obligations representing imputed debt, and the resultant effects on the regulated utility’s capital structure, credit metrics, and credit ratings.⁷⁹ Accordingly, within 45 days of the date of this Order, Pepco shall file: a) additional information regarding how the major credit rating agencies determine such imputed debt and the related effects on credit metrics; b) copies of any credit rating agency formal reports on this generic industry issue; c) any analysis which indicates the general level at which long-term PPAs represent a material credit and capital structure issue for Pepco; and d) any suggested PPA contract terms which could mitigate the extent to which such long-term PPA obligations would be characterized as imputed debt. While the issue of imputed debt is not likely to pose a significant risk starting with target quantity of five (5) percent of SOS load being served by PPAs, nonetheless, the Commission needs additional information to better assess any risk

⁷⁷ The SOS Working Group should decide whether the components of such PPAs should also include capacity, ancillary service, congestion, losses, load shaping, etc. The Working Group should suggest the term of the contract. The Working Group will also have to determine whether and how the current SOS WFRSA and RFP for conventional power would need to be revised to accommodate the introduction of renewable energy PPAs into the SOS procurement portfolio. If the SOS Working Group determines that these documents do need to be revised, Pepco will be responsible for submitting the revised WFRSA and RFP on behalf of the Working Group.

⁷⁸ See generally 220 CMR § 21.06(2).

⁷⁹ Pepco’s Comments at 10.

imputed debt might represent, especially if the Commission chooses to add more renewable energy PPAs to the SOS procurement portfolio in the future.

38. In addition, according to Merger Commitment Nos. 128 and 128(a)-128(e) in *Formal Case No. 1119*, Exelon will issue an RFP to solicit 100 MWs of wind from the PJM territory within five (5) years of the merger close.⁸⁰ Part of the output of the 100 MWs wind facility promised by Exelon could be used to satisfy a portion of the District's SOS load. The SOS Working Group should consider whether using the wind energy from this project to satisfy some or all of the five (5) percent renewable energy PPA commitment is feasible and consistent with the goal of preserving the environmental quality, including effects on global climate change and the District's public climate commitments by facilitating the development of new renewable energy generation within PJM. In addition, the SOS Working Group should determine whether this renewable generation could otherwise be used to provide additional SOS load beyond the five (5) percent threshold in the future and report its findings on this matter to the Commission by July 31, 2019. Finally, the SOS Working Group shall consider the feasibility of increasing the percentage of long-term renewable energy PPAs to a target quantity of up to 10 percent in the future, after the initial contract with a target quantity of five (5) percent of SOS load is executed, consistent with this Order, and report its findings on this matter to the Commission by July 31, 2019.

39. No intervention in *Formal Case No. 1017* is required to become a member of the SOS Working Group and participate in the planning session. On the contrary, the Commission encourages increased participation in this matter, especially by trade associations and developers of renewable energy generators given their expertise and experience in long-term renewable energy PPAs.

40. The issuance of this Order marks the close of this Biennial Review. The next Biennial Review will commence in 2020 and the subject matter of the next Biennial Review will be determined at that time.

THEREFORE, IT IS ORDERED THAT:

41. The Biennial Review of the provision of Standard Offer Service in the District of Columbia initiated in 2018 is hereby **CONCLUDED**;

42. The minimum stay provision is hereby **ELIMINATED**;

43. The Commission will publish a Notice of Proposed Rulemaking, revising the Commission's Standard Offer Service rules to eliminate the minimum stay provision;

44. The Commission will convene a meeting of the Standard Offer Service Working Group within 30 days from the date of this Order, in the Commission's Hearing Room, located at

⁸⁰ See *Formal Case No. 1119, In the Matter of the Joint Application of Exelon Corporation, Pepco Holdings, Inc., Potomac Electric Power Company, Exelon Energy Delivery Company, LLC and New Special Purpose Entity, LLC for Authorization and Approval of Proposed Merger Transaction*, Order No. 18148, rel. March 23, 2016, as modified by Errata Order No. 18160, rel. April 4, 2016.

1325 G Street, NW, Suite 800, Washington, D.C. 20005 for the purposes described in paragraphs 33 through 36, 38, and 39 of this Order;

45. The Potomac Electric Power Company is **DIRECTED**, to file an analysis regarding the impact of long-term renewable energy purchase power agreement obligations on imputed debt, consistent with paragraph 37, within 45 days of the date of this Order; and

46. The Potomac Electric Power Company is **DIRECTED**, consistent with this Order, to file, on behalf of the Standard Offer Service Working Group, by July 31, 2019:

- (a) A draft request for proposals for long-term renewable energy purchase power agreements for electricity generated by solar or wind power facilities located within the PJM Interconnection region;
- (b) Draft revised Standard Offer Service rules, if required;
- (c) A report regarding the feasibility of increasing the percentage of Standard Offer Service load served by long-term renewable energy purchase power agreements to up to 10 percent in the future; and
- (d) A report of the feasibility of using some part of the 100 MWs wind facility Exelon is required to develop pursuant to the merger commitment in the Exelon-Pepco merger to satisfy some or all of the target quantity of five (5) percent of the Standard Offer Service load through long-term renewable energy purchase power agreements and whether this renewable generation could be used to provide additional Standard Offer Service load beyond five (5) percent in the future.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:



CHIEF CLERK:

**BRINDA WESTBROOK- SEDGWICK
COMMISSION SECRETARY**