

**BEFORE THE
PUBLIC SERVICE COMMISSION OF MARYLAND**

**In the Matter of the Commission's Inquiry)
Into the Competitive Selection of Electricity)
Supplier/Standard Offer Service)**

Case No. 8908

**INITIAL BRIEF OF THE
NATIONAL ENERGY MARKETERS ASSOCIATION**

This Initial Brief is filed by the National Energy Marketers Association (NEM) pursuant to the Notice issued March 4, 2002, in the above-referenced proceeding pertaining to competitive selection of standard offer service suppliers.

1. Can the Commission make a finding under PSC Article § 7-510(c)(3)(ii) that the electricity market is not competitive without first conducting a competitive bid process as described in § 7-510(c)(4)?

NEM submits that it will be difficult for a competitive market to flourish as long as the incumbent utility retains the merchant function. Any measure of whether the market is competitive, under current statutory and caselaw constraints and requirements, must recognize this fact. Levels of customer migration for the various customer classes have been impacted by the rate freezes and shopping credits instituted for the various utilities. So long as utility rates for bundled service are artificially low and consumer shopping credits do not reflect the full energy supply and commercial costs of serving retail load, customer migration will be inhibited. Taking a static picture of market penetration without examining these factors will not reveal whether a competitive market does in fact exist. NEM submits that if the competitive bid process is properly structured so that competitive provision of standard offer service is possible based not only on the wholesale price of commodity, but on all of the energy supply and commercial costs of rendering the service, that a truly competitive electricity market will be encouraged.

2. Whether the § 7-510(c)(4) power to delay implementation of the standard offer service selection process can be exercised for reasons other than and independent of the findings set forth in § 7-510(c)(3).

NEM submits that the Commission has broad statutory to implement measures within its mandate to ensure just and reasonable rates. However, the legislature has clearly and explicitly limited the Commission's authority to delay implementation of competitive provision of standard offer service. The statute provides that, "any obligation of an electric company to provide standard offer service shall cease on July 1, 2003,"¹ except the obligation can be extended for certain customers subject to a Commission finding that, "the electricity supply market is not competitive or that no acceptable competitive proposal has been received to supply electricity to [standard offer service] customers."² These are the only circumstances enunciated by the legislature that allow the Commission to delay standard offer service implementation. The plain language of the statute sets forth a limited number of circumstances within which delay is permissible, and accordingly the Commission is constrained to follow this legislative directive.

3. Whether the phrase "competitive selection of electricity suppliers" in § 7-510(c)(4) can be interpreted to mean a competitive selection for wholesale contracts to meet the needs of retail customers.

NEM submits that the language of section 7-510 (c)(4) provides a clear answer as to whether "competitive selection of electricity suppliers" can be interpreted to mean a competitive selection for wholesale contracts to meet the needs of retail customers. The text of the section states that, "[O]n or before July, 1, 2001, the Commission shall adopt regulations or issue orders to establish procedures for the competitive selection of electricity suppliers, including an affiliate of an electric company, to provide standard offer service to customers of electric companies under paragraph (2)

¹ Md. Code Annotated § 7-510(c)(3).

² Md. Code Annotated § 7-510(c)(3)(ii).

of this subsection. " (emphasis added). The section specifically includes the words "to customers" which means that competitive suppliers are to provide standard offer service directly to customers, not on a wholesale basis to the utility as an intermediary. Inclusion of the words "to customers" clearly contemplates that standard offer service is to be rendered directly to retail customers by competitive suppliers.

NEM is aware that an auction process was utilized in New Jersey to allow electric utilities to procure wholesale Basic Generation Service supplies for Year 4 of the state's restructuring transition period, running from August 1, 2002 through July 31, 2003. (See I/M/O The Provision of Basic Generation Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq., Docket Nos. EX01050303, EO01100654, EO01100655, EO01100656 and EO01100657, Order issued December 11, 2001). Although recognizing there may be value in this auction to the development of the New Jersey market, NEM submits that the NJ Board's decision to utilize competitive selection for wholesale contracts to meet the needs of retail customers was only an interim measure. The Board has not yet addressed competitive provision of Basic Generation Service after the transition period is over.

Accordingly, if this Commission determines that "competitive selection of electricity suppliers" encompasses competitive selection for wholesale contracts to meet the needs of retail customers, NEM urges the Commission to be cautious in its endorsement. Such a system does not contribute to the ultimate development of a competitive retail market because customers are unaware of the competitive suppliers serving their supply needs. The competitive suppliers have no direct conduit with customers and cannot establish themselves in customers' perception of reliable, low cost suppliers. Customers will not be receiving standard offer service on a truly competitive basis because

the utility will still be acting as an intermediary point of contact for supply. In the long term, competitive suppliers must be able to render standard offer service at the retail level.

NEM also recommends, if the Commission determines that a wholesale bidding option should be selected on an interim basis, that any resulting SOS retail price should include not only the fully embedded energy supply and commercial costs of serving retail load but also any bid costs associated with procurement of supply.

4. What is the energy supply obligation of an electric company to a customer without a supplier, if any?

NEM submits that when the utility exits the merchant function, its obligation to serve can be converted to an obligation to deliver. As mentioned, electric utilities obligation to provide standard offer service ends on July 1, 2003, except an extension of the obligation to provide standard offer service to residential and small commercial customers may be imposed by the Commission under limited circumstances and subject to review on at least an annual basis.³

5. After July 1, 2003, is SOS under PSC Article Section 7-510(c), to be provided for all customers, and if not, for which customers?

If the Commission were to delay implementation of competitive standard offer service, under the terms of the statute it could only extend the utilities obligation, "to provide standard offer service to residential and small commercial customers."⁴ Accordingly, utility-rendered SOS must cease for all other customers after July 1, 2003, under all circumstances.

Furthermore, the section 7-510(c)(2) of the statute delineates the circumstances under which a customer can take standard offer service.⁵ These circumstances include when a customer "contracts

³ Md. Code Annotated § 7-510(c)(3)(ii)(2)

⁴ Md. Code Annotated § 7-510(c)(3)(ii).

⁵ NEM notes that Md. Code Annotated section 7-510(c)(2)(i) also provides that a customer chooses standard offer service if, "not allowed to choose an electricity supplier under the phase in of customer choice." This provision clearly will not be

for electricity with an electricity supplier and it is not delivered," when a customer, "cannot arrange for electricity from an electricity supplier," when a customer, "does not choose an electricity supplier," when a customer, "chooses the standard offer service," or when a customer, "has been denied service or referred to the standard offer service by an electricity supplier." Customers in these defined circumstances are the only customers entitled to standard offer service.

NEM urges that the Commission implement competitive standard offer service consistent with the recommendations set forth herein.

Respectfully submitted,

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Dated: March 11, 2002.

applicable to the long term provision of standard offer service when phase-in limitations are removed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of March, 2002, a copy of the foregoing Initial Brief of the National Energy Marketers Association has been served by hand or mailed, first-class, postage prepaid upon all parties of record in Case No. 8908.

Stacey Rantala