

**FINAL REPORT OF THE  
TECHNICAL CONSULTANT ON THE 2005-2006  
RFPs FOR STANDARD OFFER SERVICE**

PRESENTED TO

THE MARYLAND  
PUBLIC SERVICE COMMISSION

BY

BOSTON PACIFIC COMPANY, INC.

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## **I. EXECUTIVE SUMMARY**

### **A. Assessment of the Solicitation**

In October 2003, Maryland's four investor-owned electric utilities, Potomac Edison Company, doing business as Allegheny Power (AP or Allegheny), Baltimore Gas and Electric Company (BGE), Delmarva Power & Light Company (Delmarva or DPL), and Potomac Electric Power Company (Pepeco) (collectively the Maryland Utilities) issued Requests for Proposals (RFPs) to solicit bids to provide Standard Offer Service (SOS) for a share of its customer's load (about 6,200 megawatts (MW) in total).<sup>1</sup> This load was successfully bid out, with each winning bidder pledging to provide full requirements wholesale supply service (full requirements service) for a percentage share of a customer class's electricity needs primarily from June 1, 2004, to May 31, 2005. Full requirements service includes all elements of wholesale electricity supply except network transmission – that is, it includes capacity, energy, ancillary services, renewable energy, congestion charges, and losses.

During the summer of 2004, the Maryland Public Service Commission (MPSC or the Commission) Staff held a series of meetings to discuss improvements to the RFP process. Subsequently in October 2004, the utilities released a second RFP to solicit one-year contracts that would replace existing one-year contracts from the first solicitation, adding up to approximately 3,600 MW. Again, that load was successfully bid out, and winning suppliers agreed to provide full requirements service from June 1, 2005 through May 31, 2006.

Between June and July 2005, MPSC Staff held five meetings as part of the Procurement Improvement Process to discuss changes to the RFP. Through this collaborative process, the parties reached consensus on several improvements or changes to the solicitation process. In general, these improvements include (a) establishing a minimum guaranty amount of \$500,000 for Performance Assurance, (b) requiring the PJM Declaration of Authority to be attached to the Full Requirements Service Agreement (FSA), (c) making explicit that suppliers will comply with the new renewable statute, (d) changing the language of the RFP to allow bidders to have their collateral reside with the utility during all tranches in the RFP, (e) revising the Binding Bid Agreement to cover all tranches, (f) changing the incremental collateral requests to be equal to or greater than \$100,000, (g) changing the volumetric risk mechanism to explicitly include the Renewable Premium in the incremental load pricing, and (h) modifying the confidentiality agreement to allow utilities to disclose supplier specific information if FERC so orders in a utilities' FERC Form 1 filings. On September 23, 2005, the Commission issued Order No. 80276, which approved the above changes from the Procurement Improvement Process.

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<sup>1</sup> Throughout this report, we refer to the utilities soliciting X number of megawatts (MW) of SOS. Please note that the actual number of MW served by the winning suppliers varies based upon customer migration to and from SOS.

In October 2005, the utilities released RFPs to solicit one-, two-, and three-year contracts for approximately 8,259 MW. While this was the third year in which the four Maryland Utilities solicited supply for SOS, it was the first year BGE solicited SOS supply for residential customers. (Pepco and DPL have solicited bids for residential customers in all three RFPs starting in 2003 for delivery in 2004, and AP will solicit bids in 2008 for delivery in 2009.) From December 2005 through February 2006, the utilities held three separate bid days, during which they received and ranked bids for three different classes of customers. Again, each bidder pledged to provide full requirements wholesale supply service for a percentage share of a customer class's electricity needs for either one-, two-, or three-year terms.

Once again this year, Boston Pacific Company, Inc. (Boston Pacific) served as the Technical Consultant to the Commission and was charged with monitoring the implementation of the RFPs. The Technical Consultant is required to provide this Final Report with the purpose of (a) summarizing its findings, (b) documenting the record of the RFPs, and (c) providing recommendations on how to improve the process in the future. While there are many detailed requirements for the Technical Consultant, Boston Pacific was guided by the Commission's single goal of ensuring that, given prevailing market conditions for fuel and other inputs, the RFPs led to the best deal possible for the Maryland electric consumer. Herein, as we have done for the past two years, we summarize our overall findings by answering the following questions:

**1. Did each utility run the RFPs in conformance with the Commission-approved Utility Bid Plans?**

Yes. We find that all four utilities conducted their RFPs in conformance with the Commission-approved Utility Bid Plans. Under the two Settlement Orders and subsequent related Orders, which established the competitive solicitation process (the RFPs), such conformance with the Utility Bid Plans is the primary criteria by which the Commission judges the RFPs. Conformance means that the utilities carried out the process correctly, from announcing and publicizing the RFPs to appropriately selecting winning bids through a price-only evaluation. Further, Boston Pacific independently verified the ranking and selection of winning bidders.

**2. Were the bid days secure?**

Yes. Based upon Boston Pacific's observations, it is reasonable to conclude that the process was fair and that no bidder was given an unfair advantage by knowing the bid prices of its competitors. In general, the utilities appropriately conducted the bid days in separate, secure locations, and all communication was monitored by the Technical Consultant.

### 3. How many entities participated in the process?

For the state, there were sixteen (16) eligible bidders of which thirteen (13) actually submitted bids.<sup>2</sup> Eleven (11) of these bidders won some portion of the load offered this year. Starting in June, twelve (12) different suppliers will be serving SOS customers. Table One below compares the number of bidders from the current RFP to last year's RFP. The table shows there were fewer eligible bidders in the current solicitation as compared to the previous solicitations. However, the number of winning bidders is comparable to neighboring jurisdictions. For example, Maryland had eleven (11) winners while New Jersey had twelve (12) winners, Delaware had six (6), and the District had seven (7) winning suppliers.

**Table One**

#### NUMBER OF ELIGIBLE AND ACTUAL BIDDERS BY UTILITY

Utility	2004 Solicitation		2005 Solicitation		Current Solicitation	
	Eligible Bidders	Actual Bidders	Eligible Bidders	Actual Bidders	Eligible Bidders	Actual Bidders
AP	13	2	7	5	8	4
BGE	22	12	17	14	11	9
DPL	21	8	18	11	14	7
PEPCO	22	14	18	16	12	8

On average, the Maryland Utilities received approximately twice as many MW bid as MW that were awarded. More detail is shown in Table Two below. The level of competition in this solicitation was not as robust as we have seen in years past. It should be noted, however, while this is a decrease compared to years past, there was still more than enough conforming bids, on average, to cover all bid blocks.

<sup>2</sup> For reference, an eligible and qualified bidder as defined within the RFP is a supplier that has submitted (i) an Expression of Interest Form, (ii) an executed Confidentiality Agreement, (iii) PJM membership and FERC authorization requirements, (iv) its, or its guarantor's, unsecured senior long-term debt rating, (v) the Credit Application and financial information, and (vi) an executed Binding Bid Agreement.

**Table Two**

## NUMBER OF MW OFFERED COMPARED TO MW AWARDED BY UTILITY

UTILITY	MW OFFERED	MW AWARDED	RATIO
AP	687.9	323.1	2.1
BGE	9,068.5	5,223.0	1.7
DPL	2,269.6	683.5	3.3
PEPCO	3,992.2	2,043.2	2.0

**4. Did winning bid prices vary across the four utilities and the three customer classes?**

Yes. The winning bid prices varied by utility and customer class, as shown below in Tables Three and Four. Note that the prices shown are the weighted Discounted Average Term Prices (DATP) in \$/MWh. Because of differences (e.g., transmission congestion levels, load curves, utility credit ratings, etc.), the prices may not be directly comparable. Also, note that Allegheny, as compared to the other utilities, saw significantly lower winning bid prices. The difference, while not directly comparable, is in line with a recent report by PJM to the Department of Energy which stated that locational marginal prices (LMPs), on average, were \$20/MWh higher on the east side (Baltimore-Washington) of the Allegheny Mountain path as compared to the west side.<sup>3</sup> The cause of the difference in regional prices appears to be limits on the transmission of less expensive power from the west into Maryland.

**Table Three**WEIGHTED DISCOUNTED AVERAGE TERM PRICE (\$/MWh)  
FOR RESIDENTIAL CUSTOMERS BY UTILITY

PRODUCT	AP	BGE	DPL	PEPCO
Average 2006-2007 DATP	NA	97.57	98.85	101.10

<sup>3</sup> See Request For Designation of Two "National Interest Electric Transmission Corridors." at p. 16. Available at <http://www.pjm.com/documents/doe-filing.html>. The Allegheny Mountain path is a high-voltage bulk power transmission pathway that serves load centers in the metropolitan areas of Washington, D.C., and Baltimore from generation resources located west of the Allegheny Mountains in Western Pennsylvania, West Virginia, the Ohio and Kanawha River Valleys, and points west.

**Table Four**

WEIGHTED DISCOUNTED AVERAGE TERM PRICE (\$/MWh)  
FOR NON-RESIDENTIAL CUSTOMERS BY UTILITY

PRODUCT	AP	BGE	DPL	PEPCO
Average 2006-2007 Type I	82.17	95.61	100.25	102.43
Type II-A	86.05	115.88	97.92	127.95
Type II-B	NA	94.72	NA	100.30

**5. Did any major procedural issues arise before or during the bid days?**

No. There were no major procedural issues. While some minor procedural issues arose we do not believe they harmed the process or were evidence of any improper behavior.

**6. Was there a diverse group of winners?**

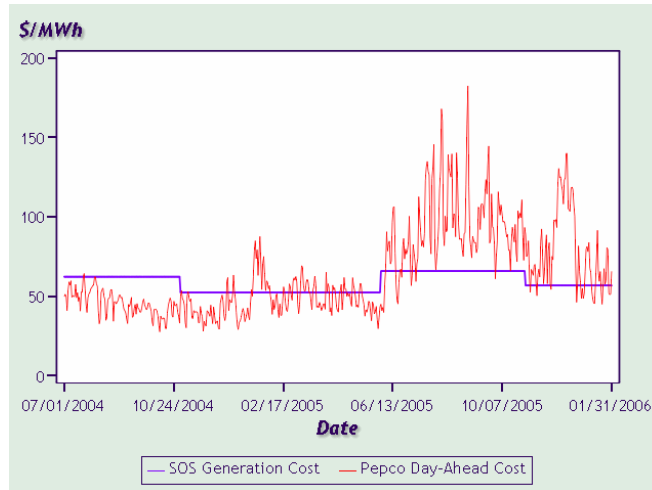
Yes. Starting in June, twelve (12) different suppliers will be serving some portion of Maryland's SOS load.

**7. How do historical SOS prices compare with the PJM wholesale market?**

As we have now completed our third year of bidding, we thought it would be beneficial to look historically at the SOS process compared to the PJM wholesale market to provide one indication of how the SOS process has done compared to the Day-Ahead market. Our comparison, though rough, is conservative as the retail prices include *all the costs* to provide full requirements service including capacity, energy, ancillary services, losses and congestion. In contrast, the PJM Day-Ahead energy market prices are for *just energy*. In our assessment, we examined the largest residential customer class ("R") compared to PJM zonal price in every hour for Pepco and DPL. (Recall BGE has only solicited for residential service for one year.) Charts One and Two below show the results of our initial analysis.

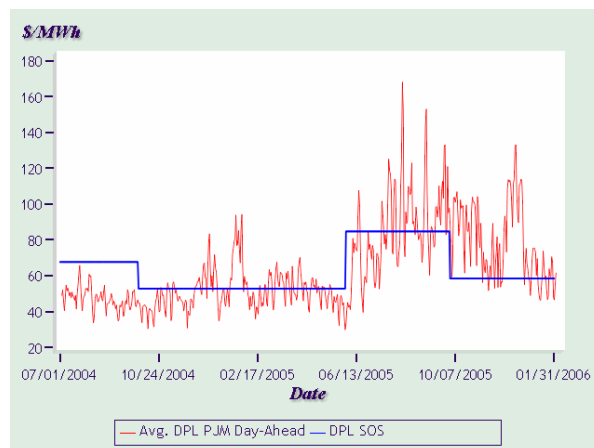
**Chart One**

**COMPARISON OF PEPCO SOS GENERATION RATES TO PJM DAY-AHEAD ENERGY MARKET**



**Chart Two**

**COMPARISON OF DELMARVA SOS GENERATION RATES TO PJM DAY-AHEAD ENERGY MARKET**



The above charts illustrate two points: (a) the SOS process has helped minimize volatility and (b) on average, customers have thus far paid less for SOS than they would have if they purchased from the PJM Day-Ahead market. Again, please note that the retail SOS rates include capacity, energy, ancillary services, losses, and the administrative adder, while the PJM Day-Ahead price for the utility zone incorporates only energy costs. In addition, the contracts signed in the SOS process are guaranteed



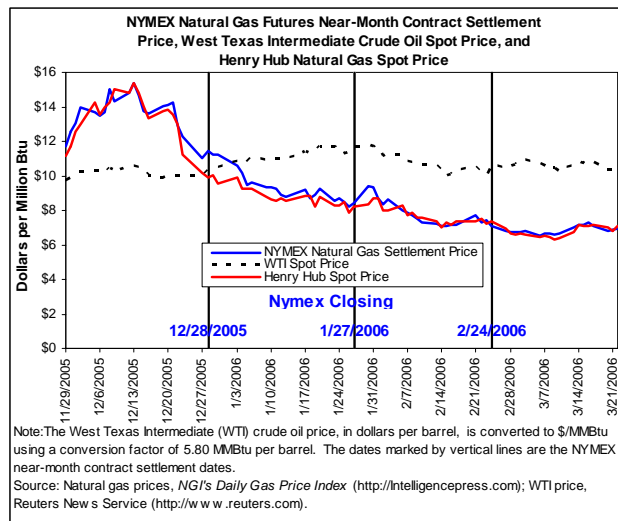
long-term contracts of one-, two-, and three-year durations and, as such, are not directly comparable.

### 8. Do the SOS prices reflect general energy market conditions?

During the time of the bidding, SOS prices appear to have reflected general energy market conditions. For example, the prices offered by suppliers are in a similar range to other competitive solicitations in neighboring states, mainly New Jersey, Delaware, and the District. (While not directly comparable, New Jersey's average auction price was \$102.13/MWh, and the District's was \$94.12/MWh.) Other jurisdictions appear to be seeing smaller bill impacts because (a) they have already seen rate increases over the last few years and/or (b) they had a smaller percentage of the customer load exposed to this year's market conditions. Also, the increase in electricity prices is consistent with increases in the prices for fuels used to generate electricity. For example, according to the MPSC Staff's report, natural gas prices have increased 127% since 1999, and heating oil prices are up 192%.

### 9. Do the SOS prices encourage retail customers to shop?

Yes, we want to point out an opportunity for consumers to mitigate increased SOS prices. That opportunity is to shop for a retail supplier and the opportunity is created by a change in market conditions. According to the Energy Information Association's website, natural gas prices have been trending downwards since the date on which the first tranche of the SOS RFPs was completed.<sup>4</sup>



As shown by the chart above, natural gas prices have fallen significantly since the first tranche of the RFPs was completed. One benefit of the Maryland process is that the SOS prices are meant as a backstop for those customers that do not choose an alternative

<sup>4</sup> See Natural Gas Weekly Update. Available at: <http://tonto.eia.doe.gov/oog/info/ngw/ngpf.asp>.

supplier. Falling natural gas prices may mean retail suppliers can offer lower prices than that for SOS services. We hope that the Commission, OPC and retailers are taking significant steps to promote awareness of retail shopping to residential consumers.

## **B. Recommendations Going Forward**

### **1. Process Specific Recommendations**

Based upon our experience, the Maryland competitive solicitation has several strengths:

- The RFP documents and Bid Form Spreadsheets eliminate all non-price factors. Using price-only evaluation factors in any bid solicitation fosters a transparent and fair evaluation process by eliminating the subjectivity that often leads to allegations of inequitable treatment and affiliate abuse. Such allegations can diminish supplier confidence in the wholesale market.
- The full requirements wholesale supply service solicited here is a sophisticated energy product backed by a replacement cost guarantee (Performance Assurance) and, in this sense, is a high value product for consumers. This product (a) provides the consumer with all the necessary components of electricity supply that ensure physical reliability and (b) transfers many financial risks from the consumer to the supplier. In addition, the full-requirements service product is used across the PJM region; New Jersey, the District of Columbia, Delaware and portions of Virginia use a similar product. Illinois is developing a similar solicitation.
- The RFP documents are the result of a collaborative process that resolved most of the non-price issues and allows for future improvements. The resulting product fits the needs of the consumer, the utility, and suppliers. Additionally, the Commission held multiple Procurement Improvement Processes to develop a better product for future solicitations.

While Boston Pacific believes that the Maryland process itself is a good one, in the sense that it (a) is an open and fair process and (b) allows for multiple entities to participate, we do have some recommendations that could further improve future solicitations. The recommendations are for improvements to the SOS process which may result in increased efficiency and increased competition. However, none of these recommendations, by themselves, will lower natural gas and coal prices since fuel prices reflect world-wide market conditions. That being said, we suggest the Commission examine the following process improvements:

- Poll potential suppliers to determine if there are any contract terms or conditions that, if included in future RFPs, would allow them to lower their bid prices without changing the risk-bargain to the consumer.

- In that same poll, discuss with suppliers whether the RFP process could be modified to encourage more robust competition. Why did some entities bid in previous solicitations and not this year's?
- For three of the four utilities, the blocks offered are spread over multiple tranches, but the fourth's entire load is solicited in a single tranche. It is recommended that suppliers be polled to determine how they would react to bidding on the load in multiple tranches. We believe multiple tranches would be beneficial as the SOS customers would not be subject to the price volatility in the futures market of a single day.
- This year Pepco/DPL solicited bids for five states (MD, DC, VA, NJ, and DE) all at about the same time. This overlap of jurisdictional RFP schedules could prevent some suppliers from bidding in all states. We recommend that this issue ('do near simultaneous RFPs reduce the number of bidders in Maryland?') be raised during the Procurement Improvement Process.
- Currently, the SOS process requests suppliers to sign one-, two-, or three-year contracts. If the goal is to minimize price volatility, the Commission could move toward a rolling three-year contract process. If the Commission chooses to minimize volatility by entering into three-year contracts, we would strongly recommend that the Commission initiate a fact-finding mission as to what can be done in PJM, NYMEX or the FSA contract to increase the bidding on longer-term contracts.
- However, the shift to three-year contracts may discourage those suppliers who do want to, or who are unable to, participate in longer-term contracts from bidding in the SOS process. So, as an alternative, and to balance the level of competition with the consumer exposure to volatility, we suggest the Commission discuss in the Procurement Improvement Process whether entities would prefer to bid on three consecutive one-year contracts rather than a single three-year contract. For example, if a Maryland Utility wanted to solicit 50 MW under a three-year contract, under the current rules it would offer one bid block and execute one contract for a 36-month period. Alternatively, the utility could offer three (3) bid blocks for 50 MW each (one bid block for each 12-month period).
- Given that all four Maryland Utilities require the same eligibility documents, we suggest that they streamline the eligibility process so that only one set of documents needs to be submitted by suppliers rather than a set for each utility. Suppliers would then become eligible to participate in all four utility solicitations with a single submission. If some entities are concerned with confidentiality, the process could be changed such that the Technical Consultant would be the entity responsible for receiving and processing the eligibility status.

- We recommend that the utilities post historical Q&As. This year, some responses to questions asked by suppliers were slow to develop. Posting historical Q&A responses could help minimize questions asked, reduce the time that suppliers wait for answers, and improve the dissemination of information.
- Each year suppliers request data describing the Maryland Utilities' load, including data for the most recent summer months, prior to the first day of bidding. Some of the Maryland Utilities, but not all, were able to provide the requested data. We suggest that all of the Maryland Utilities develop a procedure for ensuring that load data through the summer months can be posted and that this data is provided at least a week prior to the first tranche. Further, this year, we found several errors in some of the historical load data sets. Procedures should be in place to minimize errors.

## 2. Recommendations on Assessing Market Conditions

As you may be aware, the winning bid prices, and the resulting increase in consumer bills, are heavily influenced by factors well beyond the SOS procurement process itself. The primary factors are in the category of market conditions. While we are sure the Commission has already begun this to some extent, we suggest here an assessment in which four changes in market conditions are assessed to help explain the significant increase in electricity prices and to suggest what might be done to mitigate going forward: (a) increased prices for fuels used to generate electricity; (b) increased transmission congestion that limits Maryland's access to less expensive generation; (c) increased volatility; and (d) decreased level of wholesale competition.

**Increased Fuel Prices:** While the cost of most fuels has significantly increased in recent years, we believe the fuel having the biggest affect on Maryland electricity prices is natural gas. The Commission may want to assess natural gas market conditions, in general, and the prospects for liquefied natural gas (LNG), in particular. Many believe that expanded LNG imports are a way to bring natural gas prices down into more reasonable ranges.

In addition, the Commission may want to assess Maryland's prospects for new coal-fired power. PJM has suggested that it is most likely new coal generation will be built in the Western portion of PJM. If that new coal generation is built, will it be enough to reduce the amount of time natural gas is on the margin for Maryland? What role will new transmission lines be required to play? Would that coal-fired generation be expected to be bid directly into the SOS process with current rules? Would an alternative method of procurement be required? Is new in-state coal generation an option?

**Increased Transmission Congestion:** PJM recently filed a report with the Department of Energy stating a need to develop new transmission to relieve constraints into the Baltimore-Washington area. The Commission should assess this situation to

make sure all is being done to ensure adequate transmission capacity is developed into the region for the purposes of reliability and to bring lower-cost power in from the west.

**Increased Volatility:** Consumers were exposed to the unfortunate volatility of this year's market conditions caused, in part, by Hurricanes Katrina and Rita. If the goal is to minimize consumers' exposure to volatility, one method of doing so might be to use the electricity and natural-gas futures market. Just as suppliers can use futures to hedge their bids in the Maryland SOS process, we suggest that the utilities review the possibility of separately using electricity and natural gas futures and other tools to financially hedge the volatility of future SOS price increases.

Suppliers are also exposed to the volatility of the natural gas and electricity futures market when formulating their bid prices. As a result this volatility can affect prices paid by Maryland consumers. We suggest that the MPSC meet with the Commodities Futures Trading Commission to determine what is being done on a day-to-day basis to monitor the futures market for anomalies that could adversely affect the Maryland bidding process (i.e., could an entity artificially drive up the market price for electricity and/or natural gas futures.)

**Level of Competition:** Under the process specific recommendations, we have recommended two survey questions to assess wholesale supplier attitudes. Also, we have suggested that this summer may offer a unique opportunity for residential customers to shop and the Commission should ensure residential customers are aware of this opportunity.

In light of the recent electricity prices, it may be beneficial to look historically and compare how consumers have fared under Maryland's competitive process since 1999 as compared to other states that have not gone forward with such reform. Many states that have not moved to a competitive reform also have seen their electricity bills increase over the last decade. A quantitative assessment, adjusting for differences in regions, would be beneficial to assess how Maryland has fared compared to other states.

## II. BACKGROUND AND PURPOSE OF THIS REPORT

### A. Standard Offer Service (SOS) in Maryland

The Maryland Electric Customer Choice and Competition Act of 1999 (the Electric Act) restructured the electricity business in the State to foster an orderly transition to retail electric competition.<sup>5</sup> To protect Maryland consumers during that transition, the MPSC required the four electric utilities serving the State to continue providing electric service at capped or frozen rates to customers who wanted such service.<sup>6</sup>

Knowing that the requirement for the four utilities to provide electric service at these capped or fixed rates would expire in or around 2004, the Commission established a proceeding on December 18, 2001 to determine how to move forward. A central question was whether retail competition had advanced to such an extent that the Commission could end this obligation or must the Commission require the four utilities to provide some form of Standard Offer Service (SOS).

### B. Phase I and II Settlements and Orders

In the Order approving what is termed the “Phase I Settlement Agreement,” the Commission required the four utilities to provide SOS going forward and to competitively procure the SOS electric supply in order to secure the best deal possible for Maryland consumers. The Phase I Settlement Agreement specified that SOS would be required for four types of customers: the Residential customer class and three Non-Residential customer classes (Types I, II, and III).<sup>7</sup> SOS would be offered for periods that vary by the type of customer. Table Five below shows the year in which the SOS requirement for each of the four customer classes would end.

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<sup>5</sup> See *In the Matter of the Commission’s Inquiry into the Competitive Selection of Electricity Supplier/Standard Offer Service*. Before the Public Service Commission of Maryland. Case No. 8908. Order No. 78400. April 29, 2003. “Phase I Settlement Order.” At p. 1-2.

<sup>6</sup> *Id.* at p. 2.

<sup>7</sup> See *In the Competitive Selection of Electricity Supplier/Standard Offer Service*. Before the Public Service Commission of Maryland. Case No. 8908. Settlement Agreement. November 15, 2002. “Phase I Settlement Agreement.” At pp. 2, 14, 25, and 37.

**Table Five****YEAR IN WHICH REQUIREMENT TO PROVIDE SOS SERVICE ENDS**

UTILITY AND BY CUSTOMER TYPE				
	Residential	Type I	Type II <sup>8</sup>	Type III
Allegheny	2012	2008	2007	2005
BGE	2010	2008	2007	2005
Delmarva	2008	2008	2007	2005
Pepco	2008	2008	2007	2005

Source: Phase I Settlement Agreement at pp. 2, 14, 27, and 38

The Phase I Settlement Agreement also specified guidelines for the distribution of contract lengths for each type of service. For example, approximately 50% of the power supply solicited for Residential SOS is under one-year contracts, 25% under two-year contracts, and 25% under three-year contracts. Type I is solicited under one- and two-year contracts representing a minimum 50% and 30%, respectively. Type II and Type III contracts were solicited with only one-year term lengths.<sup>9</sup> Note that the requirement for Type III to be offered as SOS expired in June 2005, and Type III was no longer offered as a product in this solicitation process.

Another important element included in the Phase I Settlement was that SOS would be a full requirements service. That is, each supplier would take responsibility for a specified percentage share of the SOS load and for all components of SOS including, but not limited to, electric energy, energy losses, generation capacity, ancillary services, and all other PJM- or FERC-approved services except network integration transmission service.<sup>10</sup>

Most of the crucial details of the competitive procurement were determined in the Phase II Settlement. Most notably, the Phase II Settlement provided all documents that constituted the Utility Bid Plan:

- Attachment A contained the Model Request for Proposals (RFP) and its attachments (Expression of Interest (EOI) Form, Confidentiality Agreement, Credit Application, Bid Form Spreadsheets, Residential Price Anomaly Threshold (PAT) procedure, and the Binding Bid Agreement Form).
- Attachment B was the Model Full Requirements Service Agreement (FSA), which addressed key contract terms such as volumetric risk and default provisions.

<sup>8</sup> See Commission Order 80272 Case No. 9037.

<sup>9</sup> See Phase I Settlement Agreement at pp. 5, 16, 28, and 38.

<sup>10</sup> *Id.* at p. 5.

- Attachments C-1, C-2, C-3, and C-4 were the utility-specific parts of the Utility Bid Plans, which included most notably the number of megawatts (MW) expected to be solicited by customer type and contract length. Also provided were the estimated block sizes (generally 50 MW) on which suppliers would bid, indicating the share of SOS load that each supplier would commit to serve.<sup>11</sup> For example, if a 50 MW block were 10% of the expected SOS load for a customer type, any supplier with a winning bid would be committing to provide 10% of SOS for that customer type. A bidder could bid on as many blocks as it chose.

### C. Procurement Improvement Process

The Phase II Settlement agreement provides that the Commission will, at least annually, convene a meeting of the Parties to consider possible improvements to the procurement process.<sup>12</sup> Changes approved by the Commission for future solicitations will not (1) have any effect with respect to the FSAs that have already been executed, (2) harm any Settling Party's interests, or (3) be inconsistent with any provision of the Phase I and II Settlements, other than procurement procedures.<sup>13</sup>

Between June and July 2005, MPSC Staff held five meetings as part of the Procurement Improvement Process to discuss changes to the RFP. Through this collaborative process, the parties reached consensus on several improvements or changes to the solicitation process. In general, these improvements included (a) establishing a minimum guaranty amount of \$500,000 for Performance Assurance, (b) requiring the PJM Declaration of Authority to be attached to the FSA, (c) making explicit that suppliers will comply with the new renewable statute, (d) changing the language of the RFP to allow bidders to have their collateral reside with the utility during all tranches in the RFP, (e) revising the Binding Bid Agreement to cover all tranches, (f) changing the incremental collateral requests to be equal to or greater than \$100,000, (g) changing the volumetric risk mechanism to explicitly include the Renewable Premium in the incremental load pricing, and (h) modifying the Confidentiality Agreement to allow utilities to disclose supplier-specific information if FERC so orders in a utilities' FERC Form 1 filings. On September 23, 2005, the Commission issued Order No. 80276, which approved the above changes from the Procurement Improvement Process.

On February 2, 2006, the MPSC Staff filed documents through a Procurement Improvement Process to implement changes proposed by BGE and the OPC. The proposed changes (a) combined BGE's Residential "R & ES" and "RL" (time-of-use class) for SOS bidding purposes and (b) provided a remedy for a potential imbalance in load if one-year bid blocks were substituted for multi-year blocks. (Due to the size of the

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<sup>11</sup> See In the Competitive Selection of Electricity Supplier/Standard Offer Service. Before the Public Service Commission of Maryland. Case No. 8908. Phase II Settlement Agreement. June 30, 2003. "Phase II Settlement Agreement." At pp. 2 to 3.

<sup>12</sup> *Id.* at pp. 8 to 9.

<sup>13</sup> *Id.* at pp. 2 to 3.



load, the one-year bid blocks are slightly different in size than the multi-year blocks.) In a letter order dated February 10, 2006, the Commission approved the changes.

#### **D. Role of the Technical Consultant**

To assist the Commission and its Staff with the oversight of the competitive procurement, the Phase I and Phase II Settlements called for a Technical Consultant to be hired by the Commission and paid for by the four Maryland Utilities.<sup>14</sup> Boston Pacific has been chosen, as the result of a competitive procurement process, to serve as the Technical Consultant for the 2003-2004, 2004-2005, and the 2005-2006 solicitations.

Stated broadly, the Technical Consultant's role is to help the Commission and its Staff achieve the ultimate goal of the RFPs, which is to get the best possible deal for Maryland electric consumers given prevailing market conditions. More specifically, the role of the Technical Consultant can be broken into two functions.<sup>15</sup> The first is to monitor the four utilities to ensure that they conduct the RFPs in full compliance with the Commission-approved Utility Bid Plans. The second is to notify the Commission of our findings with respect to compliance with the Utility Bid Plans. With this notification in hand, the Commission decides whether to approve the results of the RFPs. These two roles are described in more detail below.

The Technical Consultant monitors compliance in all phases of the RFPs. The RFP process can be divided into four phases: (a) advertising the RFPs and establishing a website for communication with potential bidders, (b) conducting a Pre-Bid Conference and following up on issues raised in that conference, (c) pre-qualifying bidders through a financial credit application process, and (d) conducting the RFPs (choosing winning bidders, applying the PAT, and executing the FSAs).

The bottom line for the Technical Consultant is the notification it provides to the Commission within two days of the date on which the utilities choose the winning bids and execute the FSAs. At that time, the Technical Consultant notifies the Commission and its Staff whether the RFPs were conducted in compliance with the Commission-approved Utility Bid Plans. In briefings to the Commission and its Staff, the Technical Consultant documents and explains the basis for its conclusion on compliance. Given this notification, after each of the tranches the Commission decides whether to approve the results of the RFPs.

In addition, the Technical Consultant is to be available to consult with the Commission and its Staff as issues arise and to raise issues that it believes the Commission should address. Note that Boston Pacific kept the MPSC and Staff apprised of its work through written reports. The Technical Consultant also must provide a Report to the Commission on all tranches of the utility RFPs.

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<sup>14</sup> See Phase I Settlement Agreement at p. 55 and Phase II Settlement Agreement at p. 6.

<sup>15</sup> See Phase II Settlement Agreement, Attachment D. Standard Offer Service Procurement Monitoring Technical Consultant Services Scope of Work.

### **III. MONITORING THE UTILITY BUYERS' REQUESTS FOR PROPOSALS**

#### **A. Advertising the RFP and Establishing a Website**

On October 13, 2005, the Maryland Utilities' RFP websites went active with copies of the updated Full Requirements Service Agreement (FSA), RFP, related RFP documents including bidder application materials, the RFP schedule, and relevant load/customer data. In addition, on these websites, prospective bidders could fill out an Expression of Interest (EOI) form, which gave the prospective bidders access to the password-protected RFP materials.<sup>16</sup> As part of the notification process, the Maryland utilities sent out sixty-eight letters to roughly sixty companies notifying them of the RFP. In addition, the utilities issued a press release to several industry trade presses and posted a copy of the press release on their websites. In our review, we found the RFP announcement in a number of publications and websites.

#### **B. Pre-Bid Conference and Follow-up**

The RFP Pre-Bid Conference was held on Wednesday, October 19, 2005, at the Hyatt Regency in Baltimore, Maryland. Thirty-eight (38) people from multiple companies participated, including representatives of the MPSC, Maryland Utilities, OPC, and nineteen (19) potential suppliers. In addition, Boston Pacific had five people in attendance. During the conference, Boston Pacific personnel were able to introduce themselves to representatives from the utilities, the OPC, and several potential suppliers. The number of attendees was smaller than previous years which may indicate that suppliers are already familiar with the RFP process.<sup>17</sup> Recall that last year fewer potential suppliers attended the pre-bid conference than the year prior.

At the conference, participants were provided with a binder of materials outlining (i) the conference objectives, (ii) background on Case Nos. 8908 and 9037 which established and refined the SOS RFP process, (iii) the general RFP structure, (iv) each utility's RFP bid plan, and (v) the FSA.<sup>18</sup> The utilities then gave well-organized and informative presentations on the preceding subjects that provided a large amount of constructive information.<sup>19</sup>

Boston Pacific also took notes and later provided each utility and the Commission with a memorandum detailing the questions asked and responses given at the conference. The utilities felt that our Q&A was so detailed that it was primarily used in populating the

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<sup>16</sup> Note that BGE had technical difficulties with its EOI and Pre-Bid Conference Registration Form, but these were remedied shortly thereafter.

<sup>17</sup> In addition, the short notice of the Pre-Bid Conference due to the delay in launching the RFP websites caused by Case 9037 could have contributed to the number of attendees.

<sup>18</sup> The binders also contained generic copies of the FSA and RFP as well as the relevant MPSC Orders and Settlement Agreements. A copy of the presentation made to potential suppliers can be found at <http://www.alleghenypower.com/rfp/Maryland/MarylandHome.asp>.

<sup>19</sup> Presenting on behalf of the utilities were (a) Robert B. Reeping and Ray Valdez for Allegheny Power; (b) William B. Pino for BGE; and (c) Peter E. Schaub and Compton Ferrier for Delmarva and PEPCO.

Q&A section of the utility RFP websites. Each utility's website linked to the same Q&A document to ensure all bidders had access to the same information.<sup>20</sup>

This Q&A section was vital to ensuring all relevant information was made available to all bidders. The Q&A section of each website was (a) activated in the end of October, (b) periodically updated by the utilities, and (c) continually monitored by the Technical Consultant.

### **C. Pre-Qualifying Bidders**

Each supplier who wanted to participate in Maryland's full-requirements RFP was required to submit the following documents to become an eligible bidder by November 11, 2005: (a) Credit Application and financial information, (b) Confidentiality Agreement, (c) PJM certifications, (d) FERC certifications, and (e) an executed Binding Bid Agreement.<sup>21</sup> Bidders' eligibility status were determined and issued by November 18<sup>th</sup>. Boston Pacific reviewed and monitored each utility's eligibility process for completion of financial requirements and consistency in evaluating bidder eligibility.

This year Pepco and DPL used an online platform for both the submission of Bid Form Spreadsheets and supplier eligibility documents. As this is a new platform, we reviewed the system for problems. We found a number of issues with the platform that we thought could cause delays in receiving the eligibility documentation and Bid Form Spreadsheets. We alerted the utilities of these problems and remedies were implemented. Based on our observations, all entities that submitted eligibility documents became eligible to participate in the process.

### **D. Conducting the RFPs**

On each bid day, Boston Pacific had two or more team members at each site where bids were received. Boston Pacific (a) independently recorded each bid submitted, (b) independently ranked the bids, and (c) monitored all communication into and out of the bid rooms.

Within two days of the submittal of bids during each tranche, Boston Pacific provided the Commission with a briefing on bid results. Those briefings included detailed information on (i) bidders (number of eligible bidders, number of actual bidders, number of bids by product type); (ii) winners (name of winners, megawatts won, and percent of total won plus other information including percentage shares of affiliate and non-affiliate winners); and (iii) prices (discounted average term price for each winning bidder, comparison of winning prices to benchmarks (e.g., first losing bid)).

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<sup>20</sup> Please note that roughly 30 entities showed interest in the process either by attending the pre-bid conference or executing an Expression of Interest.

<sup>21</sup> Also due on November 11 were the proposed alternate forms of Performance Assurance and Letter of Credit should a supplier elect to not use the standard form.

#### **IV. NOTIFICATIONS, CONSULTATIONS, AND REPORTS TO THE COMMISSION**

##### **A. Chronology of Significant Meetings**

Boston Pacific worked closely with the utilities, the MPSC Staff, and the OPC to ensure that the RFP process was consistent with each Utility Bid Plan. As already noted, throughout the engagement Boston Pacific provided the MPSC with written reports on any issues and the status of the solicitation. Boston Pacific also met and worked with each of the four utilities. Boston Pacific's other significant meetings with and tasks for the MPSC and OPC include the following.

As previously mentioned, Pepco and DPL used a vendor to design their bidding platform. On November 10<sup>th</sup>, members of the Technical Consultant team met with the vendor. The purpose of the meeting was to gain a better understanding of the software design and discuss the security of the system. We had a number of concerns with the on-line platform that we felt needed to be resolved prior to our dry run and bid day. For example, prior to our meeting, the on-line platform would automatically reject bids that were not in a specified format. We requested that the system store a copy of those rejected bids in order to (i) fully document the process and (ii) enable Boston Pacific and the utilities to independently review the legitimacy of rejecting those bids. Pepco/DPL complied with our request, and this proved to be valuable in troubleshooting minor issues on bid day.

In addition, Boston Pacific held dry run simulations with each utility to go through the bidding process and troubleshoot issues prior to bid day. Allegheny Power's dry run was held on November 17<sup>th</sup> at their office in Greensburg, PA. On November 21, 2005, we held a dry run simulation with BGE at their office outside of Baltimore. On November 22<sup>nd</sup> and 29<sup>th</sup>, we held dry run simulations with Pepco and Delmarva.

Boston Pacific met with the OPC's consultant on November 29, 2005 to discuss the compilation of the PAT using the historical formula developed in previous solicitations. In addition, a number of conference calls and meetings were held throughout the tranche process to discuss the PAT.

##### **B. Calculating and Applying the PAT**

Developed out of concern for residential consumers, the Residential Price Anomaly Threshold Procedure (PAT) is a protection in case bid prices resulting from the RFP exceed expected market prices. Specifically, the Phase II Order states that the "purpose of pricing anomaly procedures is to protect against systemic problems that

produce above-market results in the aggregate in order to prevent residential ratepayers from being charged more than a competitive market price for electricity supply.”<sup>22</sup>

The non-confidential method, outlined in the RFP, states that there are eight general elements to the PAT: (1) PJM Western Hub On-Peak Energy Price, (2) PJM Western Hub Off-Peak Energy Price, (3) EDC-Specific Unhedged Congestion Adder, (4) EDC Rate Class-Specific Load Shape Adder, (5) Capacity Price, (6) Loss Adder, (7) Ancillary Service Adder, and (8) Transaction Cost and Risk Adder.<sup>23</sup>

In addition, the procedure for implementing the PAT is detailed in the RFP. Specifically, the Technical Consultant compiles and provides the Residential PAT to the utility after the close of bidding (after 5 p.m.). To apply this threshold, the utility first ranks the residential bids from lowest price (DATP) to highest and then selects the lowest bids to fill the blocks requested.

Next, the utility compares the PAT to the average DATP for the winning residential bids for each product. If the average price of the winning bids is lower than the PAT, there is no price anomaly. If the average price exceeds the PAT, there is an anomaly. To resolve the anomaly, the utility removes the highest-priced bid from the portfolio, recalculates the average price, and goes through the same process. The anomalous bids can be replaced with complying bids for shorter-term non-winning contracts. This continues until the average price is less than or equal to the PAT. Upon completion of this process, if less than 100% of the residential load is filled, the utility would solicit the balance in the subsequent tranche.<sup>24</sup>

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<sup>22</sup> See In the Matter of the Commission’s Inquiry into the Competitive Selection of Electricity Supplier/Standard Offer Service. Before the Public Service Commission of Maryland. Case No. 8908, Phase II. Order No. 78710. September 30, 2003. At p. 22.

<sup>23</sup> See Pepco/DPL RFP, Appendix Ten.

<sup>24</sup> *Id.*