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December 21, 2018

By Electronic Filing

Ms. Brinda Westbrook
Commission Secretary
Public Service Commission of the District of Columbia
1333 H Street, NW, 2nd Floor, West Tower
Washington, DC 20005

Re: FC1017

Dear Ms. Westbrook:

Attached for electronic filing in the referenced matter please find the Reply Comments of the Retail Energy Supply Association.

Should you have any questions, please contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brian R. Greene", enclosed in a light blue rectangular box.

Brian R. Greene

Enclosure

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA**

**IN THE MATTER OF THE
DEVELOPMENT AND
DESIGNATION OF STANDARD
OFFER SERVICE IN THE
DISTRICT OF COLUMBIA**

Formal Case No. 1017

REPLY COMMENTS OF THE RETAIL ENERGY SUPPLY ASSOCIATION

I. Introduction

The Retail Energy Supply Association (“RESA”),¹ by counsel, submits the following Reply Comments in response to the comments filed by other stakeholders on November 9, 2018, in the Public Service Commission of the District of Columbia’s (“Commission’s”) docket for Formal Case No. 1017.

Pursuant to Order No. 19431, interested parties were invited to comment on four issues: (1) Potomac Electric Power Company’s (“Pepco’s”) margin or return as the Standard Offer Service (“SOS”) Administrator and the relationship between this return and Pepco’s cash working capital; (2) whether to eliminate Pepco’s SOS adder; (3) whether to eliminate the 12-month minimum stay provision for commercial customers switching from a competitive supplier to SOS; and (4) whether long-term Power

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

Purchase Agreements (“PPAs”) should be used in the SOS procurement process.²

RESA’s reply comments address the last two issues, recommending that the Commission:

(1) eliminate the minimum stay provision and (2) refrain from using PPAs in the SOS procurement process.

II. Reply Comments

Initial comments were submitted on November 9, 2018, by Exelon Generation Company, LLC (“ExGen”),³ Sierra Club,⁴ Pepco,⁵ the Office of the People’s Counsel for the District of Columbia (“OPC”),⁶ the National Energy Marketers Association (“NEM”),⁷ and the District of Columbia Government (“D.C. Government”).⁸ Below, RESA addresses each party’s comments as they related to avoiding use of long-term PPAs in the SOS procurement portfolio and elimination of the minimum stay provision.

A. Long-term PPAs should *not* be used in the SOS procurement process.

1. PPAs would increase risk to SOS customers and increase costs to ratepayers through risk premiums.

Pepco. Pepco confirms that “procuring SOS through long-term contracts – or PPAs – is not in the best interest of customers.”⁹ Under the existing SOS structure, one-

² *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 (Aug. 9, 2018).

³ *Formal Case No. 1017,* Initial Comments of Exelon Generation Company, LLC (Nov. 9, 2018) (the “ExGen Comments”).

⁴ *Formal Case No. 1017,* Initial Comments of the Sierra Club (Nov. 9, 2018) (the “Sierra Club Comments”).

⁵ *Formal Case No. 1017,* Comments of the Potomac Electric Power Company (Nov. 9, 2018) (the “Pepco Comments”).

⁶ *Formal Case No. 1017,* Office of the People’s Counsel for the District of Columbia’s Initial Comments Pursuant to Order No. 19431 (Nov. 9, 2018) (the “OPC Comments”).

⁷ *Formal Case No. 1017,* Comments of the National Energy Marketers Association (Nov. 9, 2018) (the “NEM Comments”).

⁸ *Formal Case No. 1017,* Comments of the Department of Energy and Environment on behalf of the District of Columbia Government (Nov. 9, 2018) (the “D.C. Government Comments”).

⁹ Pepco Comments at 5.

third of Pepco's total SOS load is contracted for each year using three-year full requirements contracts. While RESA has long advocated for shorter SOS procurement contracts, the existing SOS procurements structure is better – for both SOS customers and shopping customers – than one that would include long-term PPAs.

Pepco raises serious concerns about the prospect of injecting long-term PPAs into the SOS procurement structure. First, Pepco explains the very real risks that long-term PPAs place on customers when wholesale market prices deviate from the contract price, as they are certain to do. Pepco tells the cautionary tale of Atlantic City Electric, which entered into two statutorily-mandated PPAs in the mid-1990s, under which default service customers pay “tens of millions of dollars per year in above-market costs to support these PPAs.”¹⁰ The District can and should learn the lesson of Atlantic City Electric and avoid long-term PPAs that can subject SOS customers to significant above-market costs if wholesale electricity market prices decline.

Conversely, Pepco shares the lesson of Delmarva Power's long-term below-market contracts. While one might think that locking in below-market prices would be a boon for SOS customers, Delmarva Power SOS customers in 2006 faced a *59% increase in SOS prices* when the long-term contracts expired. Not only did customers suffer rate shock, but also the below-market SOS rates in the Delmarva Power territory were anticompetitive, deterring retail suppliers from entering the service territory. With few, if any, retail suppliers from which to choose, customers had limited options to procure energy from the competitive market. So, customers enjoyed lower-than-market rates for a period of time, but then paid for it later as SOS rates spiked and the competitive market

¹⁰ Pepco Comments at 8.

had not developed. That is an example of an improperly-structured retail electricity market.

Pepco also explains how the existing SOS structure protects customers from volumetric risk because SOS suppliers must provide “load-following” full-requirements service, protecting customers from fluctuations in the real-time market.¹¹ By contrast, if a portion of SOS is procured through long-term PPAs, the volumetric risk is borne by SOS customers through increased risk premiums.¹² Long-term PPAs present a greater risk to suppliers and will necessarily include risk premiums, which “tend to significantly increase SOS prices for customers.”¹³ Pepco also raises the concern that if it is required to enter into long-term PPAs for SOS, then the risks involved with those contracts will be viewed as debt on Pepco’s balance sheet, driving up costs to customers through increased rates.¹⁴ Therefore, long-term PPAs should not be included in the SOS procurement portfolio.

OPC. OPC discusses the “major risk” of the “limited opportunity to renegotiate a PPA, which could cause problems if market prices fall lower than those of the PPA.”¹⁵ Indeed, that is the scenario Pepco addressed in its Atlantic City Electric case study discussed above. OPC also recognizes the risk that if PPA prices differ from market prices, it could “create market distortion and improper cost accounting, and therefore should be avoided.”¹⁶ OPC notes that there is “a real risk” that PPA prices may exceed

¹¹ Pepco Comments at 9.

¹² *Id.*

¹³ *Id.* at 10.

¹⁴ *Id.* at 10.

¹⁵ OPC Comments at 9.

¹⁶ *Id.* at 15.

market prices in out years, resulting in customer migration and excess generation being sold at a loss.

OPC's suggested options to mitigate this risk including staggering the PPAs, entering into shorter-term PPAs, and limiting the amount of energy procured under PPAs. However, OPC concedes that these suggestions are "at odds with long-term contracts, and therefore following [them] would dilute the benefits of contract cost reduction associated with long-term PPAs and of additional renewable resources that would not exist but for the contract."¹⁷ RESA agrees that an outcome in which PPA rates that do not reflect current wholesale prices are included in the SOS procurement portfolio should be avoided. Because future market prices cannot be accurately predicted, the best away to avoid this negative outcome for District ratepayers and the competitive market is to avoid including any long-term PPAs in the SOS procurement portfolio.

D.C. Government. The D.C. Government's comments include a report on the feasibility of increasing the renewable energy content of SOS. However, the D.C. Government's position is that "further analysis is needed before the Commission should make any change to the current SOS program such as shifting to long term renewable generation PPAs for SOS."¹⁸ RESA agrees that the Commission should not shift to long-term renewable generation PPAs for SOS. Moreover, as discussed in these reply comments, the risks to customers and to the competitive market from such a transition would outweigh any purported benefits. Therefore, RESA recommends that the Commission avoid including any long-term PPAs in the SOS procurement portfolio.

¹⁷ *Id.* at 15.

¹⁸ D.C. Government Comments at 2.

2. Long-term PPAs embedded within the SOS wholesale procurement portfolio would cripple the development of the District’s competitive retail electricity market and should be rejected.

Multi-year SOS supply contracts, including the 3-year contracts in effect today, result in SOS prices that do not reflect underlying wholesale market pricing. The resulting SOS prices in the District are higher or lower than wholesale market prices for extended periods of time, creating a retail supply market in which competitive suppliers have only intermittent opportunities to compete against SOS. This model has discouraged retail suppliers from entering or remaining in the District, hindering the development of the competitive market and the wide array of innovative products and services that a robust competitive market could provide to District consumers. The introduction of long-term PPAs into the SOS procurement process would significantly exacerbate this problem, harming competition in the District, to the detriment of District retail energy consumers. This outcome would directly contradict the statutory mandate that the Commission: **“Shall ensure that the price for standard offer service will not hinder the development of a competitive electricity supply market in the District of Columbia.”**¹⁹

Retail suppliers participate in wholesale energy markets every day to serve their customers’ needs. If – as happened in Delmarva Power in 2006 – SOS prices no longer resemble wholesale prices, then retail suppliers are unlikely to solicit customers in that particular retail market. The opportunity to make offers only when the SOS rate is above wholesale prices – i.e., “intermittent competition” – discourages many retail suppliers

¹⁹ D.C. Code § 34-1509(d)(1)(A) (emphasis added).

from making the large upfront investment to enter that retail market. SOS prices that are lower than wholesale market prices may be a good thing for customers in the very short-term, but this scenario is not the backbone of a successful SOS structure that encourages retail competition. In Delmarva Power's territory in 2006, the long-term PPAs expired and SOS prices spiked by 59% as the utility purchased power in the market.

Unfortunately, customers had few, if any, competitive options from which to choose because retail suppliers had avoided the service territory. Thus, customers were stuck with SOS and the 59% increases.

Shorter-term SOS wholesale contracts encourage retail suppliers to enter markets and mitigate the type of price shock that Delmarva Power customers incurred in 2006. Pepco agrees that shorter-term contracts would have reduced the 2006 price shock and that below-market SOS prices "may eliminate competitive retail suppliers from the market because they cannot compete with the prices resulting from the long-term contract."²⁰

Importantly, Pepco raises the important point that "long-term SOS supply contracts run counter to another important goal of this Commission—creating and maintaining a healthy retail electric choice market."²¹ While RESA and Pepco have different positions regarding the proper market structure and the role of SOS, RESA and Pepco agree that long-term PPAs in the SOS portfolio would harm the District's competitive retail energy market. Moving forward with long-term PPAs would drive suppliers out of the market, limit customer options, and subject customers to the risks of

²⁰ Pepco Comments at 8.

²¹ *Id.* at 11.

terrible outcomes like those experienced by Atlantic City Electric and Delmarva Power customers.

NEM also expresses significant concerns about incorporating long-term PPAs for renewable energy into the SOS procurement process.²² NEM explains that one of the primary reasons for retail competition is to “shift the risk of generation investments away from captive ratepayers and on to private competitive entities.”²³ Requiring long-term PPAs in the SOS procurement portfolio will have the opposite effect, shifting investment risks back on to SOS ratepayers.²⁴ Importantly, NEM explains how the existing three-year SOS contracts for residential and small commercial customer load is a barrier to competition by locking in prices for an extended period of time, “creating artificial boom and bust cycles for mass market customer shopping.”²⁵ This structure is anticompetitive, inhibiting the availability of energy choice options to consumers, as reflected in the current 16% residential shopping rate.²⁶ NEM and RESA agree that adding long-term PPAs for renewable energy to the SOS procurement portfolio “will only exacerbate the problem, further divorcing the SOS price from current market conditions, and inhibiting robust retail competition even further.”²⁷

3. Long-term PPAs are not necessary to achieve the District’s renewable energy goals.

²² NEM Comments at 4-5.

²³ *Id.* at 4.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 4-5 (citing Status of Electric Retail Choice in the District of Columbia, *available at* https://dcpssc.org/PSCDC/media/PDFFiles/Electric/electric_sumstats_cust_energyuse.pdf) (showing that only 16.1% of residential customers are served by competitive suppliers as of September 2018).

²⁷ *Id.* at 5.

Sierra Club argues that PPAs should be used in the SOS procurement process. More specifically, Sierra Club argues that symmetrical PPA obligations should be imposed on SOS for all customer classes and on competitive retail electric supply.²⁸ RESA does not agree with Sierra Club's argument that long-term SOS PPAs are the correct tool to increase renewable energy usage. As discussed in these reply comments, forcing competitive suppliers to enter into certain types of supply contracts for certain periods of time stifles competition, restricts innovation, and undermines the District's competitive retail electricity market.

OPC raises the possibility that long-term renewable PPAs could result in ratepayer savings *if the PPAs result in new solar PV projects within the District that result in solar renewable energy credit ("SREC") prices below the \$500 per MWh alternative compliance payment.*²⁹ However, OPC also recognizes the risk that PPA purchases could result in acquisition of more SRECs than necessary, subjecting ratepayers to the pricing risks of reselling the SRECs.³⁰ What OPC fails to mention is that these risks can be avoided by using the existing renewable portfolio standard mechanism to ensure that both SOS suppliers and competitive retail suppliers procure sufficient quantities of renewable energy to meet the District's renewable energy goals.

Moreover, Sierra Club's goal of 100% clean energy can be more efficiently achieved through less-restrictive alternatives. Indeed, Pepco correctly explains that the current RPS mandates in the District drive efficient, market-based growth in renewable

²⁸ See Sierra Club Comments at 4.

²⁹ OPC Comments at 7.

³⁰ *Id.* at 7, 9-10.

generation by requiring suppliers to procure a percentage of their supply through renewable resources.³¹

Because the District can achieve its desired renewable energy outcome most effectively and efficiently through the demonstrated, existing tool of renewable portfolio standards, long-term renewable energy PPAs are unnecessary and should be avoided.

B. The minimum stay provision should be eliminated.

ExGen and NEM explain that the minimum stay should be eliminated. RESA agrees. Pepco's explains why "*the minimum stay restrictions for non-residential customers could be eliminated.*"³² OPC recommends further investigation. As discussed below, considering the detailed initial comments that were filed, further investigation is not necessary to eliminate the minimum stay provision.

1. Elimination of the minimum stay will not increase the price of SOS wholesale bids.

The Commission questioned whether eliminating the minimum stay provision would "create more uncertainty for SOS suppliers which could result in higher prices being bid."³³ ExGen and NEM explain why the minimum stay provision does not serve its purported purpose – it does not help SOS customers avoid risk premiums in SOS supply bids.³⁴ ExGen explains three reasons why the minimum stay does not mitigate migration risk premiums: (1) the District's retail electricity market has matured and experiences minimal migration; (2) the minimum stay provision has no meaningful effect on migration risk; and (3) migration risk and switching rates correlate with maturity of

³¹ Pepco Comments at 12.

³² *Id.* at 4-5 (emphasis added).

³³ Order No. 19431, ¶ 8 (citing Order No. 18829 ¶ 281).

³⁴ ExGen Comments at 2-5.

the competitive retail electricity market, not the presence of a minimum stay provision.³⁵

NEM cites the 85.4% commercial shopping rate as a key figure demonstrating the significant amount of commercial customer migration, which mitigates the risk associated with eliminating the minimum stay provision.³⁶

Pepco also expresses an interest in “hearing the wholesale suppliers’ view on extra risk due to the elimination of the minimum stay provision before fully supporting it.” Fortunately, ExGen provides that perspective in its comments, explaining that there is no such risk and confirming that, from a wholesale supplier’s perspective, the minimum stay provision should be eliminated.³⁷

OPC suggests two possible effects of the minimum stay provision. First, OPC questions whether the minimum-stay provision “may provide some reduction in the risk of excess procurement.”³⁸ As discussed above, ExGen and Pepco explained that the minimum stay provision does not reduce risk. Second, OPC queries whether the minimum stay provision “may deter” shopping non-residential customers from returning to SOS if they will be locked in for a year before being able to shop again.³⁹ That, however, is a reason to get rid of the minimum stay, not to keep it. Customers should be allowed to return to SOS at the conclusion of their contract with a supplier, and then leave SOS to enter into a contract with a supplier when they want. In any event, OPC is

³⁵ ExGen Comments at 5-8.

³⁶ NEM Comments at 3 (citing Status of Electric Retail Choice in the District of Columbia, available at https://dcpdc.org/PSCDC/media/PDFFiles/Electric/electric_sumstats_cust_energyuse.pdf) (showing that 85.4% of non-residential customers are served by competitive suppliers as of September 2018).

³⁷ ExGen Comments at 5-8.

³⁸ OPC Comments at 6.

³⁹ *Id.* at 6.

unable to provide any data to support its assertions and concedes that it is “not aware of any studies of the effectiveness of minimum stay provisions at reducing risk.”⁴⁰

Rather than offer any evidence, OPC recommends “further investigation” to secure “verifiable evidence” regarding the effect of the minimum stay on risk.⁴¹ However, as discussed above in response to Pepco’s and ExGen’s comments, the minimum stay does not mitigate risk and serves only as a barrier to customer shopping. Therefore, the minimum stay should be eliminated now.

2. With the implementation of accelerated switching, the minimum stay will punish customers that do not immediately enroll with another supplier.

Pepco explains that with a large majority of commercial customers served by retail suppliers, and the forthcoming implementation of accelerated switching, these commercial customers will only have three days to secure a new supplier before “being locked into SOS for 12 months.”⁴² RESA agrees that this interpretation of existing law could be an unintended consequence of accelerated switching under the current tariffs and rules. Not only would this be unfair to non-residential customers, but RESA agrees with Pepco that this scenario could increase customer complaints to Pepco and the Commission.⁴³

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Pepco Comments at 5.

⁴³ *Id.*

III. Conclusion

RESA appreciates the opportunity to present these comments and requests that the Commission both (1) refrain from including PPAs in the SOS procurement process and (2) eliminate the commercial customer minimum stay provision.

Respectfully submitted,

RETAIL ENERGY SUPPLY ASSOCIATION

By Counsel

/s/ Brian R. Greene

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Dated: December 21, 2018

Certificate of Service

I certify that true copies of the foregoing Reply Comments of the Retail Energy Supply Association were served on December 21, 2018 to all those on the service list for Formal Case No. 1017.

/s/ Brian R. Greene

Brian R. Greene