

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL**



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ATTORNEY GENERAL**

**Public Interest Division
Public Integrity Section**

E-Filed

November 12, 2019

Ms. Brinda Westbrook-Sedgwick, Secretary
Public Service Commission
of the District of Columbia
1325 G Street, N.W., Suite # 800
Washington, DC 20005

**Re: Formal Case No. 1017 – In the Matter of the Development and Designation of
Standard Offer Service in the District of Columbia**

Dear Ms. Westbrook-Sedgwick:

Enclosed, please find the Comments of the Department of Energy and Environment on Standard Offer Service Working Group's Request for Proposal. If you have any questions regarding this filing, please do not hesitate to contact the undersigned.

Sincerely,

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Attorney General

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

FORMAL CASE NO. 1017, IN THE MATTER OF THE DEVELOPMENT AND
DESIGNATION OF STANDARD OFFER SERVICE IN THE DISTRICT OF COLUMBIA;
RESPONSE TO ORDER NO. 20232

Comments by the Department of Energy and Environment
On Behalf of the District of Columbia Government

November 12, 2019

INTRODUCTION

On October 10, 2019, the Public Service Commission of the District of Columbia (Commission) issued Order No. 20232, inviting interested persons to submit comments on several issues raised in the Standard Offer Services (SOS) Working Group with respect to the Commission's directive to procure 5% of SOS supply via long-term power purchase agreements for renewable energy generation.

These issues are as follows:

- Strategies/Cost Recovery Models to Integrate the Long-Term Renewable Energy Purchase Power Agreement (PPA) Into the SOS Procurement Portfolio: 95/5, Massachusetts Model, Modified 95/5
- Margin or Return for Administering the PPA
- Treatment of RECs Generated by the PPA
- Imputed Debt and Related Matters
- Draft RFP

BACKGROUND

In its Order No. 19897, the Commission convened the SOS Working Group for purposes described in the Order.¹ The Commission also directed the Potomac Electric Power Company (Pepco) to file, on behalf of the SOS Working Group, the following:

- (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.²

The Department of Energy and Environment (DOEE) and its consultant, the Center for Renewables Integration, Inc. (CRI), participated in the SOS Working Group meetings and provided written comments and other input during the Working Group process. Written comments by CRI on a draft RFP provided by Pepco to the Working Group after its July 11, 2019 meeting are included in Pepco's July 31, 2019 filing. DOEE incorporates those comments by CRI into this Comment by reference.

COMMENTS

1. Procuring PPA supply

¹ Order No. 19897, p. 13

² Order 19897, p. 14

a. 95/5 and modified 95/5

Should the Commission find that its preferred path forward is for the PPA to be procured within SOS, with benefits and costs accruing only to SOS customers, DOEE would strongly support that approach. The study prepared for DOEE by CRI and filed as part of DOEE's earlier comments in FC1017³, supported the feasibility of an SOS PPA procurement program for much higher percentages of total SOS supply—between 70-90%--than the 5% contemplated in Order 19897. If the PPA were procured within SOS, the benefits of accelerating the District's renewable energy and carbon reduction goals would also be achieved.

Regarding the difference between the 95/5 approach and the modified 95/5 approach, DOEE supports the 95/5 approach. DOEE believes that the risks and benefits of PPAs procured to supply the SOS should be shared by SOS customers.

b. Massachusetts Model

In the Working Group meeting held on July 11, 2019, Commission Staff indicated that it had been advised by the Commissioners that the "Massachusetts Model"⁴ should be used in preparing the draft Request For Proposals (RFP).⁵

In its Response, Pepco states that under the Massachusetts Model the PPA, "would be a virtual transaction, operating exclusively outside the SOS process."⁶ Pepco goes on to state that

³ FC1017 – DCG Comments of DOEE, November 9, 2018

⁴ See Order 19897, p.12, paragraph 36

⁵ FC1017 - SOS PPA Minutes July 11, 2019

⁶ Potomac Electric Power Company's Response to Order No. 19897, July 31, 2019, p. 5

it is not clear, “that the Commission can require Pepco to buy and sell energy in the wholesale market that is not related to its role as SOS Administrator.”⁷

DOEE has raised concerns about the Massachusetts Model in the working group meetings that (1) it does not follow the Commission’s order of modifying the SOS product to include long-term PPAs for renewable energy, since the Model supply would be in addition to the traditional SOS supply, and (2) that the Model could not be a long-term solution to expand the purchase of renewable energy for SOS, because buying so much electricity in excess of the SOS load would be financially speculative and would not be prudent.⁸

The foregoing notwithstanding, DOEE submits that it can support the Massachusetts Model for the 5% of SOS load procurement, subject to the condition that the Commission should find another way to procure renewable electricity PPAs for the SOS load when it decides to procure more than 5% of the SOS load.

DOEE is also comfortable with the implication of the Massachusetts Model that an additional 5% of the District’s electricity supply would come solely from renewable energy sources. Pepco notes that “the MA Model would be procuring an additional 5% (or higher) renewable energy on top of the annual RPS percentage requirements.”⁹ DOEE views this issue

⁷ Ibid. p. 5. DOEE takes no position as to the Commission’s authority to conduct the PPA process outside of SOS, using the Massachusetts Model. That is clearly a determination for the Commission to make. However, DOEE did not question the Commission’s authority during the working group’s discussions, and for that matter, no other party including Pepco appeared to have raised the issue of authority.

⁸ DOEE noted during a Working Group meeting that increasing PPA purchasing beyond 5% using the Massachusetts Model presents a different, and potentially higher risk profile, in terms of electricity cost variability, than placing the PPA within the SOS procurement. FC1017 - SOS PPA Minutes July 11, 2019, pp. 2 – 3.

⁹ Potomac Electric Power Company’s Response to Order No. 19897, July 31, 2019, p. 6

differently. The policy purpose of the PPA is to offset the Greenhouse Gas (GHG) content of the SOS load, and the PPA procured under the Massachusetts Model would achieve precisely that goal. The Renewable Energy Credits (RECs) purchased and retired from new renewable energy resources will offset the GHG content of the SOS load.

2. Margin or Return for Administering the PPA

DOEE believes that Pepco should be compensated or rewarded for successfully procuring a cost-competitive PPA for renewable energy. Given that this activity is new for Pepco, DOEE would support a reward for a successful outcome as a Performance Incentive Mechanism, consistent with DOEE's filings in Formal Case 1130.

3. Treatment of RECs Generated by the PPA

DOEE believes that the RECs generated by the PPA should be retired, rather than being sold into the PJM market. One of the main purposes of procuring renewable energy through long-term PPA for SOS is to reduce GHG emissions attributable to the District's SOS supply. Reducing the GHG footprint of SOS supply through such PPA would require that the renewable energy attributes associated with the PPAs are retired. Selling RECs into the market means that the energy supply under the PPA would be no cleaner, in terms of GHG emissions, than the average emissions rate in PJM.

4. Imputed Debt and Related Matters

Pepco has recommended that it not be a party to the PPA,¹⁰ and provided a draft RFP in its Response that does not place Pepco in that role.¹¹ Pepco noted that in Working Group discussions it “suggested that the Commission or some District agency, like the District Department of Energy and the Environment (“DOEE”), could act as a counterparty to the PPA.”¹² As Pepco noted, DOEE presented to the Working Group a number of reasons why DOEE could not function as the counterparty to the PPA.¹³ Those reasons were set forth in a July 16, 2019 email to members of the Working Group from DOEE.¹⁴

DOEE takes no position as to whether the Commission or another District of Columbia government agency could serve as the purchaser in the PPA contract, but DOEE stands by the conclusions of the Office of the Attorney General that it cannot serve in that role.

Pepco contends that being a party to the PPA will impact its credit rating. As the working group minutes show, Pepco’s conclusion is far from certain or supported, and presupposes, without supporting evidence, that rating agencies will treat PPA obligations as debt.

¹⁰ Ibid. p. 7

¹¹ Ibid. Pepco’s Proposed RFP

¹² Ibid. p. 4 - 5

¹³ Ibid. p. 5, footnote 10

¹⁴ In significant part the email from Assistant Attorney General Brian Caldwell reads: “Even if Pepco were to fully reimburse DOEE (or even advance payments to DOEE), DOEE cannot perform this function for a number of reasons, including the following. First, and most obvious, it is Pepco’s legal obligation to procure its SOS from renewable generation sources, not DOEE’s. Second, even if DOEE were inclined to take on this role, it does not have the legislative authority to do so. Third, DOEE would be prohibited from doing so under the federal Anti-Deficiency Act, which prohibits the District, and its agencies, from incurring obligations without an appropriation for the purpose of the obligation. Because DOEE does not have the authority to engage in this transaction, its existing appropriations cannot be used for this purpose. Fourth, even if DOEE did have the program and budget authority to pursue this approach, District procurement rules require an enhanced (lengthy) competitive bidding process that could extend up to a year – i.e. well beyond the date by which such PPA would need to be in place. Finally, any long term, multi-year contract DOEE enters into would be subject to annual appropriations; absent such appropriation in a future fiscal year, DOEE would be forced to terminate the contract prior to its expiration.”

However, rating agencies have treated contracts such as PPAs as either operating expenses or debt depending on the circumstances.¹⁵ Further, even if PPA obligations were to be treated as debt, Pepco has not clearly demonstrated that it would have such material impact as to completely eliminate the viability of Pepco as a counterparty to the PPA. DOEE acknowledges Pepco's concerns citing examples from Hawaiian Electric Company and the Public Service Company of Colorado. These two anecdotes notwithstanding, DOEE notes that in the Formal Case of 1119, then-Exelon Corporation's Chief Sustainability Officer testified in the cross-examination, when asked about Exelon's commitment to support the District Government's pursuit of long-term PPAs, that it supports those efforts and that Exelon has experience with such efforts in Com-Ed and PECO.¹⁶

5. Draft RFP

As Pepco stated in its Response, the Working Group members provided proposed revisions to Pepco's draft RFP following the Working Group's July 11, 2019 meeting, and Pepco incorporated some of those revisions in the version attached to its Response.¹⁷ DOEE's

¹⁵ See p. 58, "Appendix H: Treatment of Power Purchase Agreements," Moody's Investors Service, Regulated Electric and Gas Utilities, as filed by Xcel Energy, <https://www.xcelenergy.com/staticfiles/xeresponsive/Company/Rates%20&%20Regulations/Rate%20Cases/Attachment-MPS-4.pdf>

¹⁶ The transcript shows the following exchange by Ms. Elefant cross-examining Exelon's witness Mr. Gould as follows: "If the District of Columbia were to make long-term contracts a requirement for standard offer service or require some sort of long-term contractual procurements, is that something that Exelon would oppose? A: No, we wouldn't oppose that. I think, as we've shown in examples from what we've done in Commonwealth Edison with some of the wind projects, that Commonwealth Edison has entered into direct contracts with wind developers. That was something that the IPA and the stakeholder process determined they wanted to do, and we did it. If -- the same thing was true in PECO in the early days with solar. PECO entered into a long-term contract with a solar facility. That was through discussion with the Commission and 13 stakeholders, and we did it." Cross examination by the Mid-Atlantic Renewable Energy Coalition, Formal Case 1119.

¹⁷ Potomac Electric Power Company's Response to Order No. 19897, July 31, 2019, p. 2

consultant, CRI, provided proposed revisions, a number of which were incorporated. DOEE has the following recommendations on Pepco's current submitted draft:

Section 3.5 Bidder Short-List and Final Selection

The process outlined does not include a Best and Final Offer (BAFO) stage to the process. If Pepco anticipates that a BAFO will be part of the process, it should be stated in this section.

Section 4.2 Eligible Proposal Size and Term

The final sentence in the first paragraph of this section states, "Additionally, solar Facilities must be at least 10 MW in size." DOEE suggests that the word "solar" should be dropped from this sentence. While wind projects tend to be larger than 10 MW, it would avoid any doubt to apply the threshold to both wind and solar projects.

Section 4.4 Geographic Location of Facilities

DOEE notes that the phrase "PJM region" could produce ambiguity. It can be interpreted that the PJM region is confined to the outline of member utility retail service territories, or it can be considered that the PJM region extends to areas where transmission lines operated by PJM are located. This difference in geographic definition is particularly notable in Illinois and Indiana, where PJM's transmission system extends throughout large portions of those states, while the franchised utility service territories of its members are small by comparison.

DOEE suggests that the wording of this section be revised to clarify that new wind and solar projects that directly connect to transmission lines operated by PJM are considered to be in the "PJM region".

It should be further clarified in this section that “delivery should occur at a PJM Generation Hub” means that the price for energy quoted in the PPA should be at that PJM Generation Hub. Physical delivery of power takes place at a particular “node” of interconnection with PJM’s transmission system, but it is the pricing point to which the generation hub is meaningful.

Section 4.7 Energy

It should be clarified, for the avoidance of doubt, that the PPA is only for energy and environmental attributes and expressly does not include installed capacity or any ancillary services that might be produced by the Facility.

Section 5.1 General

Since pricing can be offered for a 15-year or a 20-year term, per Section 4.2 and 5.5, it should be made clear that both price offers can be made in a single proposal.

Section 5.3 Proposal Pricing

For clarity, it should be noted that “fixed” pricing means a flat price for the entire contract term with no escalators.

Section 5.4 Proposal Content

Under “Financing Plan”, the second sentence should clarify that the identification of sources of capital and financing commitments should be provided to the extent available. It is probable, if not likely, that financing commitments will not be in place until after a project has secured a PPA.

Section 6.2 Proposal Fee

The existence of the proposal fee adds further import to the suggestion on Section 5.1 that offering 15-year and 20-year pricing alternatives are not considered separate proposals.

Section 7.1 Evaluation

Item (v) under non-price factors should be understood to mean that financial commitments, while they may not necessarily be available at the time of the bid, will be looked upon as favorable factors.

Section 9 Role of Independent Evaluator (IE)

Remove the redundant phrase “will be selected by the Commission” at the end of the first sentence. The RFP notes that “As part of its evaluation, the IE shall perform market benchmarking analyses for both energy and RECs which shall be included in the benchmarking report.” While this language is sufficient for the RFP, the Commission should set clear guidelines for this aspect of the IE evaluation. Benchmarking the PPA offers themselves to expectations of the IE may not be fruitful. The RFP process is designed reveal market pricing. IE benchmarking that involves projections of forward conventional power prices and forward REC prices, as a means of establishing whether PPA pricing will be attractive relative to those forecasts in the long term, are very sensitive to the data sources and methodology used by the IE.

Attachment B – Proposal Form

Item 14 implies, in its use of the term “annual reports”, that bidders will be publicly traded corporations. Submitting annual and quarterly financial statements should be allowed for other types of entities.

6. Form PPA Agreement

Pepco did not submit a form PPA agreement with this filing. Parties to this proceeding should have the opportunity to review and comment on that document before it is issued as part of the RFP.

CERTIFICATE OF SERVICE

I hereby certify on behalf of the District of Columbia Government that a copy of Comments of the Department of Energy and Environment on Standard Offer Service Working Group's Request for Proposal was electronically delivered on this 12th day of November 2018, on the following parties:

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