



**Office of the People's Counsel
District of Columbia**

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December 16, 2008

Elizabeth A. Noël
People's Counsel

VIA ELECTRONIC FILING

Dorothy Wideman
Commission Secretary
Public Service Commission
of the District of Columbia
1333 H Street, N.W.
Second Floor West
Washington, D.C. 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. Wideman:

Enclosed for filing in the above-referenced proceeding are an original and three (3) copies of the "Errata to Pages 6 and 7 of the Reply Comments of the Office of the People's Counsel." No substantive changes were made to the pleading filed on December 15, 2008. Only formatting changes were made to include the heading for paragraph C(2).

If there are any questions regarding this matter, please contact me at (202) 727-3071.

Sincerely,

Brian O. Edmonds
Assistant People's Counsel

Enclosure

cc: Parties of record

**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**

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Formal Case No. 1017

**ERRATA TO REPLY COMMENTS OF THE
OFFICE OF THE PEOPLE’S COUNSEL**

The Office of the People’s Counsel of the District of Columbia (“Office” or “OPC”), the statutory representative of utility customers and ratepayers in the District of Columbia,¹ submits the following reply comments on the District of Columbia Standard Offer Service (“SOS”) Rules proposed by the Public Service Commission of the District of Columbia (“PSC” or “Commission”) published in the *D.C. Register* on October 31, 2008.²

After reviewing the SOS NOPR and the initial comments filed, the Office recommends the PSC defer adoption of final wholesale rules at this time. Specifically, the PSC should: (1) fully investigate and analyze the effectiveness of the wholesale SOS rules in place since July 30, 2004 and complete its investigation in Formal Case No. 1047 before adopting final wholesale SOS rules and (2) reconsider the adoption of retail SOS rules.

Should the Commission decide to consider proceeding with the adoption of final wholesale SOS rules, the Office recommends the PSC modify any SOS rules to ensure a review of the SOS program annually rather than ever two years; reflect the PSC’s recent adoption of the new Chapter 3 of Title 15 of the District of Columbia Municipal Regulations, also known as the Utility Consumer Bill of Rights and other minor corrections; and, delete a duplicate provision.

¹ D.C. Code § 34-804(d).

² *Formal Case No. 1017, In the Matter of the Development and Designation of Standard Offer Service in the District of Columbia*, Notice of Proposed Rulemaking, 55 *D.C. Register* 11333-11353 (Oct. 31, 2008) (“SOS NOPR”).

I. BACKGROUND

Initial comments on the SOS NOPR were submitted by the Retail Energy Supply Association (“RESA”) and Washington Gas Energy Services (“WGES”).³ RESA contends the proposed SOS rules keep in place a SOS procurement structure that is unlikely to lead to a competitive market because the wholesale SOS contracts are too long; the PSC should define commercial customers by peak load contribution rather than by PEPCO rate schedules; and, the PSC should delete the proposed minimum stay rule that subjects non-residential customers to a 12-month minimum stay after returning to PEPCO from a retail energy supplier.⁴ WGES contends the Commission should re-examine the retail SOS procurement model, which the PSC has put on hold; delete the proposed minimum stay rule that subjects non-residential customers to a 12-month minimum stay after returning to PEPCO from a retail energy supplier; and, reduce the maximum supply contract length to no more than one year for residential and commercial customers and provide for hourly price service as default service for large commercial customers.⁵)

II. DISCUSSION

A. **The Commission should fully investigate and analyze the effectiveness of the wholesale SOS rules in place since July 30, 2004.**

The issues raised by RESA and WGES (i.e., definition of commercial customers, minimum stay and length of contracts) suggest the Commission should first consider whether the District’s wholesale SOS rules are effective and in the public interest. At the time the rules were adopted four years ago, many of the parties in this proceeding expressed concerns about the impact the proposed SOS rules would have on retail consumers. Since that time, there have been

³ *Formal Case No. 1017*, Initial Comments of the Retail Energy Supply Associations, filed Dec. 1, 2008 and *Formal Case No. 1017*, Initial Comments of Washington Gas Energy Services, Inc., filed Dec. 1, 2008.

⁴ *Formal Case No. 1017*, Initial Comments of the Retail Energy Supply Associations.

⁵ *Formal Case No. 1017*, Initial Comments of Washington Gas Energy Services, Inc.

a number of SOS auctions conducted which have produced data from which an assessment of the effectiveness of the rules for the District of Columbia can be drawn.⁶ Neither RESA nor WGES have provided empirical data to support their assertions in this proceeding., OPC submits these assertions should be supported by record evidence before the final adoption of the wholesale SOS rules, particularly inasmuch as they are not part of the Commission's deliberations in Formal Case No. 1047, the proceeding OPC urged the PSC to initiate for the purpose of investigating the structure of the District's SOS procurement process. Indeed, the Commission may find that after completing its investigation in Formal Case No. 1047, further modifications to the rules may be necessary and in the public interest.

Accordingly, given that the Commission has not acted on comments submitted by the parties in Formal Case No. 1047 between October and December 2007, it is both practical and judicious for the PSC to postpone any action on wholesale SOS rules and complete its investigation in Formal Case No. 1047, where these matters are also being considered. The Office acknowledges that the PSC has not concluded its investigation in Formal Case No. 1047, as noted in footnote 3 of the SOS NOPR, however, it has been nearly a year since any action has been taken in that proceeding. Postponing action on adopting final SOS rules will not otherwise prejudice the parties or hamper the SOS process while the critically needed investigation progresses toward completion.

⁶ The most recent SOS tranche was held on December 8, 2008.

B. The Commission should reconsider the adoption of retail SOS rules.

In January 2004, OPC and WGES recommended that the Commission consider adopting retail SOS rules.⁷ In Order No. 13118, the Commission considered comments filed by OPC and WGES and other parties regarding the appropriate SOS model rules that were appropriate for the District of Columbia.⁸ The Commission determined that the implementation of a wholesale SOS process “will result in the lowest priced, reliable electricity supply in the District.”⁹ In Order No. 13228, the PSC postponed further consideration of retail SOS rules until after it decided whether to “move forward with the retail SOS model in the future.”¹⁰

OPC agrees with WGES that now is the time for the Commission to consider adopting retail SOS rules. OPC and WGES have submitted comments recommending the adoption of retail rules, which the PSC has rejected those recommendations in favor of adopting wholesale SOS rules. The PSC indicated it would consider the comments and applications filed before issuing an order addressing the issues raised in such filings.¹¹ OPC requests the Commission not confine its future reconsideration of adopting retail SOS rules to the comments and applications of OPC, WGES and others, submitted in this proceeding.¹² Rather, the review OPC requests as outlined in II (A) above should encompass a review of all available data that will provide the Commission with empirical data that can ensure the Commission makes an informed decision as to whether either wholesale or retail SOS rules are in the District’s public interest and whether necessary modifications need to be made to the District’s SOS procurement program.

⁷ *Formal Case No. 1017*, Comments of the Office of the People’s Counsel, filed Jan. 29, 2004 and *Formal Case No. 1017*, Comments of Washington Gas Energy Services, Inc., Jan. 29, 2004.

⁸ *Formal Case No. 1017*, Order No. 13118, rel. Mar. 1, 2004.

⁹ *Id.* at ¶ 21.

¹⁰ *Formal Case No. 1017*, Order No. 13228 at ¶ 11, June 29, 2004.

¹¹ *Id.*

¹² *See, Id.*

Four years has elapsed since the adoption of wholesale SOS rules. District consumers have seen SOS rates increased significantly since electricity generation rate caps have been removed. Given the impact that rising electricity rates are having on all District consumers, the Office submits it is appropriate for the Commission to take the time to exercise its plenary authority over the District's retail electricity markets and fully consider whether other alternative options would better serve the public interest.

- C. **The Commission should modify any SOS rules to ensure a review of the SOS program annually rather than ever two years, reflect the PSC's recent adoption of the new Chapter 3 of Title 15 of the District of Columbia Municipal Regulations, also known as the Utility Consumer Bill of Rights, and delete duplicate provisions.**

Should the Commission decide to proceed with the adoption of final wholesale SOS rules, OPC offers the following comments on the proposal published in the *D.C. Register*.

1. **The Commission should review the Electric Company's SOS program annually rather than every two years.**

Proposed rule 4102.2 would allow the PSC to evaluate the Electric Company's review every other year, beginning in 2010, for the purpose of making "appropriate adjustments to SOS as competitive developments in the District of Columbia change." OPC believes such review should not be relegated to a review every other year.

The Office submits that because competitive developments change more frequently than once every two years and the public interest is better served by a Commission that is engaged in an aggressive review of the significance of market impact on the District of Columbia, an annual review of the SOS program is more appropriate and best serves the public interest. Indeed, an annual review would provide District consumers with confidence that its regulatory authority

takes seriously the potential impact of markets on the procurement of the District's electricity supply, which makes up over 70% of a consumers total electricity bill.

2. The Commission should reflect the PSC's recent adoption of the new Chapter 3 of Title 15 of the District of Columbia Municipal Regulations, also known as the Utility Consumer Bill of Rights.

On September 26, 2008, the Commission adopted final rules that encompassed not only service provided by traditionally regulated utility companies, but also made final amendments to interim rules applicable to competitive retail electricity suppliers(that were adopted in Order No. 11796.¹³. These final rules are commonly referred to as the Utility Consumer Bill of Rights, and are codified in Chapter 3 of Title 15 of the District of Columbia Municipal Regulations.

Proposed rule 4105.9(c) reads:

Notice of Transfer out of SOS: Notice that a SOS customer will terminate SOS and obtain service from a competitive electricity supplier shall be provided to the Electric Company by the customer's competitive electricity retail supplier pursuant to provisions in the Interim Consumer Protection Standards adopted by the Commission by Order No. 11796; and

OPC submits that with the adoption of final consumer protection rules, the language in this section should be modified to refer to the appropriate provision of the Utility Consumer Bill of Rights, as follows:

Notice of Transfer out of SOS: Notice that a SOS customer will terminate SOS and obtain service from a competitive electricity supplier shall be provided to the Electric Company by the customer's competitive electricity retail supplier pursuant to ~~provisions in the Interim Consumer Protection Standards adopted by the Commission by Order No. 11796~~ **Chapter 3 of Title 15 of the District of Columbia Municipal Regulations**; and

¹³ See, *Formal Case No. 712, In the Matter of the Investigation of the Public Service Commission's Rules of Practice and Procedure*, Order No. 15075, rel. Sept. 26, 2008.

3. The Commission should delete duplicate provisions.

Proposed rule 4100.4 reads:

All Electric Company retail distribution customers (“SOS Customers” are eligible for SOS, subject to the general terms and conditions of the Electric Company’s tariffs and the Commission’s regulations, as they may change from time to time subject to Commission approval.

Proposed rule 4203.8 reads:

All customers eligible for SOS from the Electric Company are subject to the general terms and conditions of the Electric Company’s tariffs and the Commission’s regulations, as they may change from time to time subject to the Commission’s approval or adoption of new regulations.

It appears that these provisions, while worded differently, essentially indicate that all District of Columbia electric distribution customers are eligible for SOS and are subject to the Electric Company’s general terms and conditions and the Commission’s regulations as approved and adopted by the Commission. One of these provisions should be deleted in favor of a provision that makes the intent of both provisions explicit. OPC submits the language can be modified as follows:

All Electric Company distribution customers are eligible for SOS from the Electric Company and are subject to the general terms and conditions of the Electric Company’s tariffs and the Commission’s regulations, as they may change from time to time subject to the Commission’s approval or adoption of new regulations.

III. CONCLUSION

For the reasons set forth above, the Commission should defer adoption of final wholesale rules at this time. Specifically, the PSC should: (1) fully investigate and analyze the effectiveness of the wholesale SOS rules in place since July 30, 2004 and complete its investigation in Formal Case No. 1047 before adopting final wholesale SOS rules and reconsider the adoption of retail SOS rules. Should the Commission decide to consider proceeding with the adoption of final wholesale SOS rules, the Office recommends the PSC modify any SOS rules to ensure a review of the SOS program annually rather than ever two years, reflect the PSC's recent adoption of the new Chapter 3 of Title 15 of the District of Columbia Municipal Regulations, also known as the Utility Consumer Bill of Rights and other minor corrections, and, delete a duplicate provision.

Respectfully submitted,

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Dated: December 16, 2008

CERTIFICATE OF SERVICE

Formal Case No. 1017, In the Matter of the Development and Designation of Standard Offer Service in the District of Columbia

I hereby certify that on this 16th day of December 2008, a copy of the “Errata to Pages 6 and 7 of the Reply Comments of the Office of the People’s Counsel” was served on the following parties of record by hand delivery; first class mail, postage prepaid, or electronic mail:

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