Status Report by the Public Service Commission of Maryland on Electricity Procurement and Restructuring In Maryland February 23, 2005

I. Introduction and Background

Electric restructuring was initiated in Maryland pursuant to the Electric Customer Choice and Competition Act of 1999 (Electric Choice Act). This law established the legal framework for the restructuring and revised regulation of the electric industry in Maryland. Among other items, the General Assembly determined that the *supply of electricity would be partially restructured*, and allowed customers to choose their electricity generation provider(s) from a list of qualified suppliers. The Electric Choice Act also created and provided for funding of an electric universal service program to help low-income customers pay their electricity bills.

Customers of Maryland's investor-owned utilities have had the ability to choose their electric supplier since July 1, 2000, and customers of Maryland's two large electric cooperatives (Southern Maryland Electric Cooperative (SMECO) and Choptank Electric Cooperative (Choptank)) have had that right since January 1, 2001 (SMECO) and July 1, 2001 (Choptank). The Electric Choice Act also allowed Maryland's electric companies to sell or transfer their generating stations to other entities, subject to the Public Service Commission's approval. The General Assembly also directed the Public Service Commission (Commission) to establish an appropriate code of conduct governing the relationship between the electric company and any affiliate it may have that provides generation and power supply services.[1]

[1] This portion of the Electric Choice Act supplemented and strengthened existing Commission affiliate requirements. For example, in early 1998, in Case No. 8747, the Commission established a code of conduct governing electric and gas company relationships with their affiliates. That code of conduct contained several provisions governing the relationship between a utility and an electric supply affiliate, including but not limited to requirements prohibiting the affiliate and utility from sharing inappropriate information, requiring the affiliate and utility to operate from physically separate locations to avoid even inadvertent sharing of information, and prohibiting the utility from giving preferences to its supply affiliate.

Additionally, the Electric Choice Act directed the Commission to review applications from electricity suppliers and authorize qualified suppliers to operate in Maryland.[2] Electricity suppliers can either own the generation facilities necessary to provide the electricity supply services, or they can purchase or broker electricity on behalf of customers. A supplier can also serve as an aggregator of customers, meaning that a supplier can combine the electric loads of two or more customers in an effort to achieve better pricing or terms and conditions of service that otherwise might be attained if the customers' loads were kept separate.

Importantly, the Electric Choice Act *does not restructure the transmission and distribution of electricity* in the State. The Electric Choice Act retained the authorized service territories of Maryland's electric utility companies, and within those territories Maryland's electric utility companies continue to provide regulated transmission and distribution services as they have for many decades. State and federal regulatory commissions, including the Public Service Commission, regulate the price and terms and conditions of electric distribution and transmission services of Maryland electric utility companies.

Another important aspect of the Electric Choice Act is its provisions mandating rate reductions, followed by rates freezes or rate caps, for the customers of all investor-owned utilities in the State. Residential customers of investor-owned utilities received rate reductions of approximately seven percent lasting into anywhere from 2004 to the end of 2008. Additionally, the customers of Maryland's two large electric cooperatives received rate benefits as well. SMECO's customers received an approximately six percent rate reduction and a rate freeze. Choptank froze its retail prices at the existing rate level, but did not reduce them.

Equally importantly, the Electric Choice Act only restructures, and does not completely deregulate, electricity supply services in the State. Instead, the Electric Choice Act directs the Commission to designate a supplier in each electric utility company's service territory to offer a supply service called *standard offer service.* Standard offer service is a generation supply service available to customers who do not choose a competitive electric supplier, or for those customers who choose a competitive electric supplier but then, for whatever reason, end up back on standard offer service. Pursuant to the Electric Choice Act, each investor-owned electric utility company acted as the standard offer service provider within its own service territory for a set period of time, and thereafter if the Commission extends the obligation. The Commission has extended those obligations for all investor-owned utility companies. Additionally, Maryland's two major electricity cooperatives also are designated as the standard offer service provider within their respective service territories.

[2] As of December 1, 2004, the Commission has issued 32 electric supplier licenses and 18 electric broker licenses. The Electric Choice Act requires a potential supplier to prove its financial qualifications before receiving a license from the Commission, and includes specific consumer protection provisions.

In 1998, the Commission established an Electricity Restructuring Roundtable to work through the many complicated issues associated with restructuring. The Roundtable formed six work groups and had representatives from dozens of stakeholders, including electric companies, suppliers, customer groups (including the Office of People's Counsel and the Maryland Industrial Group), governmental agencies and environmental groups. Their work continued into 1999 following enactment of the Electric Choice Act, and provided critical stakeholder input into, and consensus-building on, the implementation of the Act's provisions.

The Commission's efforts in building consensus through stakeholder processes continue to this day. As will be explained in more detail below, the Electric Choice Act provides the Commission with a framework for ensuring that the price of standard offer service is reasonable. With the completion of the Case No. 8738 Roundtable, the Commission initiated a new proceeding – Case No. 8908 – that adopts a competitive bidding process for the provision of standard offer services for customers of investor-owned utilities in the State.[3] This process has been effective, fair and efficient, and other states are considering it for their own wholesale SOS procurement.

The Electric Choice Act exempts Maryland's municipal electric utilities from the provisions of the Act unless the municipal electric utility initiates one of two actions. Those two actions are: (1) the municipal electric utility allows its customers to choose electric supply service from a competitive supplier; or (2) the municipal electric utility elects to provide customers outside of its service territory with electric supply service.

II. Movement to Retail Electric Choice in Maryland

As noted above, as of July 1, 2000, all retail electric customers of investor-owned utilities in the State of Maryland were given the opportunity to choose their electric supplier. Somewhat later, customers of Maryland's two largest electric cooperatives have had the right to choose suppliers. Beginning in 2002 and in earnest in 2004, the rate reductions, rate caps and freezes mandated by the Electric Choice Act began to expire. Frozen or capped generation rates ended or will be ending according to the following schedule:

[3] Maryland's two major electricity cooperatives are treated somewhat differently. Southern Maryland Electric Cooperative uses a broker to fulfill much of its competitive electricity procurement. That arrangement is in place through December 2008, and is subject to Commission review and possible change at that time. Choptank Electric Cooperative and 10 other cooperatives in Delaware and Virginia are cooperative owners of Old Dominion Electric Cooperative (ODEC) and all of these owner/members have a long-term full requirements service arrangement with ODEC.

Company Name	Customer Classification	Rate Freeze End Date
Baltimore Gas and Electric Co. (BGE)	Large Commercial and Industrial (C&I) Remaining C&I Residential	July 2002 July 2004 June 30, 2006
Choptank	All Customers	June 30, 2005
Delmarva Power & Light d/ba Conectiv Power Delivery (Conectiv)	All Customers	July 2004
Potomac Edison Company d/b/a Allegheny Power	Residential C&I	December 31, 2008 December 31, 2004
Potomac Electric Power Company (PEPCO)	All Customers	July 2004
SMECO	All Customers	December 31, 2004

Thus, as of January 1, 2005, the only customers of Maryland investor-owned utilities still receiving capped rate electric supply service are residential customers of BGE and Allegheny Power. BGE's residential customers can receive electric supply at reduced and frozen rates until June 30, 2006, while Allegheny Power's residential customers have reduced and frozen supply rates until December 31, 2008.

As in other states with electricity restructuring, the largest C&I customers moved most quickly into the retail electricity market. Competition has been slower in developing for residential and small commercial customers.[4] However, electric load percentages are beginning to reflect a sizable volume of business now served by competitive retail suppliers. Among other highlights are the following:

- A clear majority of large C&I load is served by retail suppliers;
- Over 40% of all C&I load is served by retail suppliers;
- 22% of load of Maryland investor-owned utilities for all customers is provided by competitive suppliers;
- The number of active retail suppliers is increasing rapidly with the ending of Maryland's rate freezes; and
- Numerous suppliers not affiliated with Maryland utilities are now active in the State's retail electric market

In anticipation of rate cap/freeze expirations, the Commission docketed Case No. 8908 to set the parameters for utility provision of standard offer service.

[4] That is also what happened in Maryland's restructured natural gas markets, which have since moved to significant portions of residential and small commercial customers choosing competitive natural gas supply.

Pursuant to that framework, the first competitively-bid electricity procurements were conducted during 2004. Each of Maryland's four investor-owned utilities – Allegheny Power, BGE, Conectiv, and PEPCO -- put out bids for their standard offer service loads that would soon no longer be subject to rate caps or freezes.

III. Case No. 8908

A. The Initial Standard Offer Service Procurement

The competitive supply auctions described above procured *wholesale* electricity: that is, electricity bought in bulk for resale by SOS providers to individual retail customers. While *retail* electric markets in Maryland vary widely in competitiveness by electric company service territory and customer class, *wholesale* electric markets in the mid-Atlantic region are very competitive, as will be discussed in more detail below.

In this regard, the SOS auctions were monitored by expert consultants under the Commission's supervision, and by all accounts were very competitive. Listed below is a summary of the initial round of standard offer service (SOS) bids for all four major electric distribution companies in Maryland. Electricity procured through the initial round of SOS bidding is for the periods described by the portfolio mix discussed below. The Commission currently is overseeing a second round of competitive bids for electricity supply for SOS for the period beginning June 1, 2005.

In Case No. 8908, the Commission determined that the following mixture of contract lengths would lead to the most appropriate sourcing and pricing of supply for the different classes of customers:

- Residential - 1, 2, and 3 years;
- Type I Non-residential (small commercial customers) - 1 and 2 years; and,
- Type II and III Non-residential (larger commercial customers) - 1 year.

The differing contract lengths for the assorted customer classes reflect variation in the number of suppliers offering services to the different customer classes, the load characteristics of customers within those classes, and the relative inclination of customers in those classes to actively shop for electricity supply.

The actual bid implementation process was lengthy and somewhat complicated. Once the Commission adopted the actual process, in itself a long and complex task, the bid process included the following steps:

- October 2003**:** The utilities held a joint pre-bid meeting in Baltimore; over 30 interested entities attended;

- November 2003: Commission's Technical Consultant met with distribution utilities to discuss its role, logistics and specific mechanics for the evaluation of bids and credit applications, and other issues;
- December 2003: "Dry runs" were made of the bid-day evaluation process;
- February-March 2004: Actual bidding. Utilities conducted bids in four rounds, or "tranches." Each utility's SOS load was divided into 50 megawatt blocks, a size chosen to allow smaller suppliers to participate while still keeping the process administratively manageable.

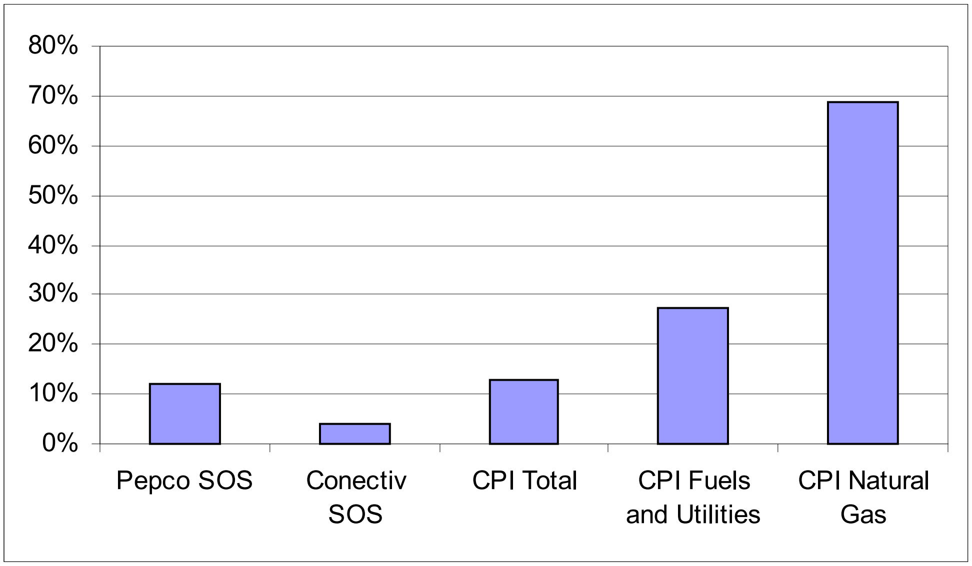
At the conclusion of the bidding process, each utility's SOS load blocks were fully "subscribed," meaning that no portion of a utility's SOS load went unwanted. Other features of the initial bid process include the following:

- The utilities conformed to their Bid Plans as required by Commission Orders, and there were appropriate security measures on all bid days.
- There was evidence of robust competition in terms of the number of bidders as well as the number of bids received.
- On average, the number of megawatts (MW) offered by bidders was nearly five times greater than the number of MWs up for bid. This demonstrates very robust wholesale competition in the bidding process.
- Of the 25 bidders in this process, 14 won some portion of the load.
- The bid prices reflected general economic conditions, and were comparable both between the Maryland utility companies involved and with the results obtained by companies in other states that bid for power in the same timeframe.

There are other indications that Maryland's initial SOS bid process was very successful. While the bids usually translated into retail rate increases over the previously-reduced and frozen rates,[5] the percentage increases ranged from 11% to 35% with residential and small commercial customers generally receiving the lower percentage increases and larger commercial and industrial customers receiving the larger increases. The residential bill increases over the pre-restructuring rate levels are less than consumer price index increases since 2000.[6] More specifically, the increases were less than the consumer price index increase for all goods and services and much less than the increases for fuels and utilities, and natural gas consumer price index increases. The following is a table showing comparative cost increases over the period January 1, 2000 to December 31, 2004:

[5] Delmarva Power & Light Company's small commercial customers actually realized a six- percent rate *decrease.*

[6] Reference the PJM Market Monitor Report?



Additionally, the Federal Energy Regulatory Commission (FERC), which is the federal regulatory agency that oversees portions of the electric generation and transmission industries, has commented very favorably on the competitiveness and even-handedness of Maryland's SOS bid process and affiliate safeguards. Speaking with respect to federal approvals necessary for Allegheny Power's generation affiliate's procurement of a portion of Allegheny Power's SOS load, FERC stated (Order issued July 29, 2004 in Docket No. ER04-730-000):

> The underlying principle when evaluating an RFP under the Edgar criteria is that no affiliate should receive undue preference during any stage of the RFP. The following four guidelines will help the Commission [FERC] determine if an RFP satisfies that underlying principle.
>
> a. Transparency: the competitive solicitation process should be open and fair.
> b. Definition: the product or products sought through the competitive solicitation should be precisely defined.
> c. Evaluation: evaluation criteria should be standardized and applied equally to all bids and bidders.
> d. Oversight: an independent third party should design the solicitation, administer bidding, and evaluate bids prior to the company's selection.
>
> Potomac's [Allegheny Power] RFP process is an example of an RFP process that would meet the foregoing guidelines. We believe that the design, administration, and bid evaluation phases of Potomac's RFP were transparent. Potomac achieved transparency in the design phase through

> a collaborative process involving informed parties with diverse interests and an on-the-record, public Maryland Commission proceeding….
>
> We believe that Potomac's RFP was clearly defined.…. By including information such as bidder qualification criteria and bid evaluation method in the RFP, Potomac helped ensure that the parameters of the RFP were clearly defined prior to the solicitation of bids….
>
> We believe Potomac evaluated bids based on standardized criteria and applied that criteria equally to all bids regardless of affiliation. By setting a minimum standard for non-price factors, Potomac was able to select bids based on price alone…. Selecting bids based only on price ensured that affiliates were not given preferential treatment during the selection phase of the process.
>
> We believe Potomac's RFP had sufficient independent oversight. As described above, Potomac's RFP was monitored by an independent consultant. The fact that this consultant was selected by the Maryland Commission and that the consultant's compensation was determined by the Maryland Commission before the issuance of the RFP helped ensure the consultant's lack of financial interest in the outcome of the RFP. This consultant reported its findings directly to the Maryland Commission. We believe the presence of this independent third party, as well as the involvement of the Maryland Commission, provided sufficient independent third-party oversight of the design, administration, and bid evaluation stages of Potomac's RFP.

Accordingly, the Commission is confident that the initial round of bids was competitive, robust and fair, and led to the best prices for electricity for SOS customers obtainable. The price increases for electricity were lower than what would have been expected under the former regulatory regime where utilities owning their own generators were allowed to recover fuel price increases on a dollar-for-dollar basis. Further, electricity costs for residential and small commercial customers in Maryland remain no higher, or are lower, on an inflation-adjusted basis, than they were prior to the implementation of the Electric Choice Act. Price comparisons are more difficult for larger commercial and industrial customers because usage characteristics differ significantly among such customers.

B. Standard Offer Service 2004 Residential Bill Impacts

As mentioned above, with the reduced and capped rates expiring during a time of rising fuel costs, the competitive procurement bids resulted in rates higher than the reduced and capped rates. The following bullet points show the increases for those customer classes whose reduced and frozen rates expired in 2004:

- RESIDENTIAL
  - PEPCO -All residential customers - including Time-of-Use ("TOU") Rate Schedule customers
  - Total annual bill increase 15%
  - Average annual dollar increase $151.44
  - SOS power supply increase 24%
  - Conectiv -All residential customers
  - Total annual bill increase 11%
  - Average annual dollar increase $117.60
  - SOS power supply increase 17%

- COMMERCIAL (Small)
  - PEPCO total average bill increase 14%, SOS power supply increase 24%
  - Conectiv total average bill DECREASE 6%, SOS power supply DECREASE 6%
  - BGE total average bill increase 15%, SOS power supply increase 26%
  - Allegheny Power total average bill increase 18%, SOS power supply increase 35%

- COMMERCIAL (Mid-Large)
  Medium and large commercial customers have widely differing service characteristics that make it difficult to calculate average bill impacts. With that caveat, the 2004 bid results led to the following estimated impacts. However, the percentage increases shown are averages, and actual individual customer bill impacts can and do vary in a fairly wide range around the numbers shown:

  - Allegheny Power – 26%
  - BGE – 20%
  - Conectiv – 12%
  - PEPCO – 35%

The percentage and dollar amounts shown above vary by customer class and utility due to differences in those rates that existed prior to the bidding process. In other words, Allegheny Power's results, which tend to show larger percentage increases, do so because Allegheny Power's rates were among the lowest in the State prior to the bidding. Despite regional differences that result in different power delivery points from utility to utility, bid results for the different companies were very similar when looking at the same customer classes.

LARGE C&I CUSTOMERS

These customers have fixed price utility service option for only one year. After one year, the default utility supply service will be priced at the hourly spot market.

C. Impact of Rate Freezes on Price Increases and Competition

Maryland consumers undoubtedly benefited from the rate reductions and subsequent rate freezes and caps, which saved customers millions of dollars on their collective electricity bills. However, the evidence suggests that the mandated rate reductions and freezes had some negative impacts as well. Since the reduced and frozen rates occurred during a period when fuel and other cost factors were increasing, the SOS rates had little relationship to the actual costs of providing retail generation service. This had several consequences, two of which are mentioned here. First, it led to the sharp jump in retail prices as the mandated reductions expired and customers were immediately exposed to higher prices driven by increased fuel costs.

Second, it chilled the development of retail electricity markets in the State, which only now, with the expiration of the rate reductions and freezes, are beginning to see appreciable development. In fact, only the PEPCO service territory had a significant level of competition during the reduced/frozen rate period. Conversely, as was seen when the rate caps expired for BGE's largest industrial customers in the summer of 2002, almost all of those customers immediately migrated to competitive sources of electricity supply.

IV. Shopping Statistics and Supplier Participation

Table 1 below shows the number of accounts and the percentage of peak load obligation served by electric suppliers in each of the major distribution utilities in Maryland. These numbers are current as of December 2004.

Table 1: Electric Choice Enrollment in Maryland

Number of Customers Served by Electric Suppliers

Utilities	Residential	Small C&I[7]	Mid C&I[8]	Large C&I[9]	ALL C&I	Total
AP	0	1	2	2	5	5
BG&E	54	713	1,816	443	2,972	3,026
Conectiv	188	1,638	227	72	1,937	2,125
Pepco	42,434	4,890	3,328	378	8,596	51,030

7 Small C&I customers are commercial or industrial customers with demands less than or equal to 50 kW for Allegheny Power, 60 kW for BGE and Conectiv and 25 kW for Pepco. These customers are eligible for "Type 1" fixed price utility Standard Offer Service if they do not switch to a supplier.

8 Mid-sized C&I customers are commercial or industrial customers with demands greater than the level for small C&I service (Type 1 SOS) for each utility but less than 600 kW. These customers are eligible for "Type 2" fixed price utility Standard Offer Service if they do not switch to a supplier.

9 Large C&I customers are commercial or industrial customers with demands equal to or greater than 600 kW, these customers have an option of either "Type 3" fixed price utility Standard Offer Service or hourly priced service (based on PJM hourly LMP) if they do not switch to a supplier.

Total	**42,676**	**7,242**	**5,373**	**895**	**13,510**	**56,186**

Percentage of Peak Load Obligation Served by Electric Suppliers

Utilities	Residential	Small C&I	Mid C&I	Large C&I	ALL C&I	Total
AP	0.0%	0.3%	0.1%	0.0%	0.1%	0.1%
BG&E	0.0%	1.5%	23.6%	86.8%	44.5%	23.3%
Conectiv	0.1%	9.4%	35.3%	91.5%	41.5%	18.6%
Pepco	11.0%	18.0%	30.0%	72.5%	48.6%	30.6%
Total	**2.9%**	**4.2%**	**24.6%**	**75.1%**	**41.2%**	**22.2%**

Source: Maryland Public Service Commission, *Electric Choice Enrollment Monthly Report*, **December 2004**. The Electric Choice Enrollment Report is updated monthly and can be obtained at: http://www.psc.state.md.us/psc/home.htm.

Table 2 below shows the number of retail suppliers actually serving customers in each IOU service territory and by customer class. These numbers are current as of December 2004.

Table 2: Electric Choice Enrollment in Maryland

Number of Active Suppliers Serving Customers

Distribution Utility	Residential	Small C & I	Mid C & I	Large C & I
AP	-	1	1	1
BGE	3	6	13	14
Conectiv	2	4	7	9
Pepco	4	5	9	12

V. Recent Standard Offer Service Developments

A. Procurement Improvement Process

Despite the success of the initial bid procurement, the Commission, customers, suppliers and electric companies remain committed to ensuring the best competitive bid process that can be devised. To this end, the Commission established a Procurement Improvement Process, led by the Commission's Staff and with participation by all segments of the industry, including customers. The Procurement Improvement Process met periodically during 2004 to study the initial procurement process and to propose improvements to the Commission. Recommendations adopted by the Commission after its review of the group's reports include the following: adjustment to the bid dates in the different bid tranches; inclusion of enhancements necessary for utility compliance with Maryland's new renewable portfolio standard legislation;[10] and enhancements to the credit procedures and certain other provisions allowing for wider supplier participation.

Pursuant to the bid process refinements, the second round of SOS bids will be for approximately 3,600 MW. This includes 290 MW for Allegheny Power, 1,420 MW for BGE, 510 MW for Conectiv, and 1,380 MW for Pepco. The RFP will again include up to four rounds, scheduled to begin in December 2004 and conclude in February 2005, for supply services to begin June 1, 2005. The joint-utility pre-bid conference was held on October 20, 2004, in Baltimore. In order not to distort the bid process, the Commission is precluded from discussing any particulars about this year's bidding until its conclusion.

B. Changes to Electric Supplier Information on the Commission's Website

In response to customers' inquiries regarding active licensed electricity suppliers in Maryland, the Commission sent out a notice on June 15, 2004 to all licensed electricity suppliers requesting that they indicate whether they are actively seeking new customers. The Commission recently approved changes to the Electricity and Natural Gas Supplier lists that appear on its website (www.psc.state.md.us). The revised website allows customers to search for suppliers by service, customer class, and service territory. These searches replace the current static lists that group all electricity and natural gas suppliers together in separate master lists. The Commission recognizes that a supplier's "Actively Seeking" status may change from time to time and wants to make the process as interactive and timely as possible.

The Commission has received responses from several electricity suppliers indicating that they are actively seeking new customers. As of November 10, 2004, the number of companies in Maryland that have voluntarily registered on the Commission's website as actively soliciting new customers in any service territory are as follow: one serving residential load, 13 serving industrial load, 13 serving commercial load, and 4 serving other types of load (such as government). Additionally, the website contains other information of use to customers interested in exploring their retail choice opportunities.

C. Electric Supplier Orientation Conference

In part to encourage more retail suppliers to serve residential customers, on September 9, 2004, the Commission sponsored its first Electric Supplier

[10] The General Assembly enacted HB 1308 in its 2004 session, requiring all electricity suppliers in the State to either procure certain fixed percentages of their loads from renewable resources, or to contribute to a renewable energy fund if unable or unwilling to procure renewable energy.

Orientation Conference. Its broader purpose was to continue to promote retail competition in Maryland. This event attracted nearly one hundred attendees representing more than 40 organizations including licensed and prospective Maryland suppliers, Commission Staff, other State agencies, customer groups, and PJM Interconnection, LLC (PJM), the mid-Atlantic states' regional transmission operator. The conference updated attendees on the status of Electric Choice, gave guidance on the steps needed to become a licensed supplier or broker, and informed them about consumer protections and other changes to the Code of Maryland Regulations.

As an aside, PJM's job is to facilitate and coordinate bulk power transfers and contracts in the mid-Atlantic region and beyond. It possesses immense computer and other technological resources allowing buyers and sellers of electricity, in both wholesale and retail markets, to conduct their business. This includes the coordination of wholesale electricity sales necessary to allow Maryland utilities to provide SOS, and in fact helps make Maryland's SOS competitive bid process as successful as it is. PJM has strict rules against utility/affiliate self-dealing, and employs market monitors to ensure compliance.

D. Supplier Authorization Procedures

By Order No. 75608 in Case No. 8738 issued September 10, 1999, the Commission approved the procedures developed by a stakeholder group to license electric suppliers and electric generation services providers in Maryland pursuant to §7-507 of the Public Utility Companies Article. The licensing process approved by the Commission requires an applicant to provide proof of:

- technical and managerial competence;
- compliance with applicable requirements of FERC, and any regional transmission operator to be used;
- compliance with applicable federal and state environmental laws and regulations that relate to the generation of electricity; and,
- financial integrity and qualification to do business in the State of Maryland.

On July 12, 2002 the Commission published in the *Maryland Register* regulations governing electric and gas supplier license requirements. Numerous comments were received by the public comment date of August 12, 2002, and final regulations were adopted in 2003.

VI. Other Developments Affecting Electric Restructuring

A. New Regulations: Customer Protection and Affiliate Safeguards

During 2004, the Commission considered regulations pertaining to consumer protections, including contracting practices, for use where commodity service is provided by a competitive supplier. Proposed Regulations were published in the *Maryland Register* on October 15, 2004, and are subject to a 30-day comment period. The proposed Consumer Protection Regulations represent an attempt to place into regulations requirements previously contained in Commission orders with adjustments, where appropriate, to accommodate development in the supplier markets that has occurred since the issuance of those orders. The Consumer Protection Regulations address the following issues: privacy policies, non-discrimination requirements, responsibility for enrollment and the problem of unauthorized enrollment, methods of advertising and contracting, minimum contract requirements, billing and payment posting priority, and contract cancellation. The Consumer Protection Regulations will become effective in 2005 and, as noted above, will replace consumer protection provisions currently in effect that were previously adopted by the Commission in an order.

During 2004, the Commission met with representatives of utility companies, their affiliates, consumers, and third party energy suppliers that are competitors of utility retail affiliates in a series of meetings to draft new regulations to regulate the relationship between utilities and their affiliates. The meetings led to significant, but not complete, consensus on the content of proposed regulations. These proposed regulations, which contain a code of conduct for utilities and affiliates, are designed to promote competitive markets and to ensure utilities do not subsidize their affiliates. The proposed regulations build on the Commission's existing affiliate conduct requirements, adopted by the Commission in Case No. 8747 in 1998 and still in effect today.

Among other provisions, the proposed regulations continue the Case No. 8747 prohibitions on utility sharing of information with supply affiliates, and restrictions on supply affiliate contact and space-sharing arrangements with utility companies. The proposed regulations also, among other requirements, accomplish the following: prohibit utilities from promoting their SOS offerings beyond basic information; require utilities to treat customers the same whether they buy SOS from the utility or not; allow all customers to move to or from SOS monthly with no utility fees or charges; and allow all customers returning to SOS to pay the same price as customers who stayed on SOS. However, a customer's ability to return to SOS does not remove any obligations a customer may have in their contract with a retail supplier.

As of this writing, the Commission had approved the proposed affiliate regulations for publication in the Maryland Register. However, the Joint Committee on Administrative, Executive and Legislative Review expressed views on the proposed regulations at a recent hearing that led the Commission, on February 9, 2005, to withdraw the publication of the proposed regulations to allow the Commission and the stakeholders further consideration of the regulations. The Commission expects to republish the proposed regulations at the conclusion of that review process. As stated in footnote 1, while consideration of the proposed regulations continues, Maryland's electric and gas utilities must comply with similar affiliate safeguards contained in the Commission's order issued in Case No. 8747.

In the Commission's opinion, governmental interest in and oversight of these matters are appropriate. Over the years, many Maryland public utilities and their parent holding companies diversified into a number of business activities that are not price-regulated by the Commission or other regulators. The holding companies owning Maryland utilities have competitive generation, and wholesale and retail energy supply firms, among other business lines. By law, these activities are outside the realm of traditional ratemaking and cost of service regulation. Of course, there is the potential for business risk to the corporations engaged in any business area.

Bond rating agencies, investors, companies and regulators are recognizing that unregulated business activities of utility holding companies or their subsidiaries can affect the credit quality of securities of the regulated entity, even when the unregulated activities are in wholly separate corporations from the utility. This is of concern to the Commission, because an increase in risk to the utility can increase the cost of capital to the utility. Accordingly, the Commission is beginning an effort to evaluate "ringfencing" strategies that utility holding companies are employing to protect the customers of the regulated utility from the business risk presented by unregulated business activities. Initially, we recently published, and are soliciting comment on, a ringfencing paper authored by members of our Staff.

B. Consumer Education and Electric Universal Service

The Electric Choice Act requires a program to educate consumers about retail electric supply choice, since prior to the enactment of the Electric Choice Act consumers had to take all of their electric service from their monopoly electric utility company. The Commission, as an unbiased source of information, serves as the fulcrum of that program, although the utilities, the Office of People's Counsel, and suppliers also provide the public with information concerning retail electric competition. With the expiration of the rate reduction/freeze periods, the Commission and industry stakeholders are taking new looks at all consumer education activities. The Consumer Education Advisory Board, comprised of consumer, utility and supplier representatives, advises the Commission on necessary educational activities. Among other items discussed by the Board and adopted by the Commission are the following:

- Printed Materials - 3 New Pamphlets in English and Spanish
- Updated PSC Website (www.md.electric-info.com)
- Toll Free Information Line (800-800-4491)

- Press Releases & Media Activities
- Links to utility Websites for tariffs, SOS bidding processes, and SOS prices
- Presentations to customer and industry groups
- Supplier Orientation Conference - one-day conference for suppliers on licensing, regulations, SOS and general market environment
- Update of PSC Website to allow customers to identify suppliers by service area and class
- Accelerated disclosure of wholesale bid prices and retail rate impacts - late March-early April 2005

The Electric Choice Act created an electric universal service program (EUSP) designed to help Maryland's low-income electric customers. The EUSP provides low-income customers with ongoing bill assistance, arrearage (past-due bills) retirement, and weatherization programs. The EUSP obtains its funds via surcharges on residential and non-residential customer bills. With more and more customers migrating to non-utility company electricity supply, the Commission recently adopted a proposal from its Universal Service Work Group to alter the surcharge structure to ensure it continues to collect the funds directed by the General Assembly.

C. Retail Competition Monitoring

In May 2004 the Commission initiated a new expanded monthly report on retail competition. The new format describes customer participation in choice consistent with the Case No. 8908 definitions of the different types of SOS service. The report also includes new information on residential time-of-use customer participation in choice, whether large commercial and industrial customers buying generation from the utility use the fixed rate or the hourly priced option, and information on the number of customers who have dropped and added suppliers. The aggregate number of customers or total load that is served by retail suppliers at the end of a month does not tell anything about the "churn" within a market. The last new element of the monthly report provides some insight into whether a significant number of customers are moving from one supplier to another. The new monthly report also includes confidential information on supplier market share. The Commission has become aware that retail marketers follow this monthly report very closely.

As part of its review of the new report format, the Commission also approved a periodic (perhaps twice a year) confidential survey of the types of products that suppliers are offering to customers. This survey will help the Commission continue to evaluate competition in different market segments in terms of whether suppliers are offering a variety of different products to customers. Because the Commission wanted the markets to stabilize somewhat following the end of frozen rates, the first survey has not yet been conducted.

D. Other Recent Commission Activities Fostering Competition

The Commission has been very active in PJM related to successful wholesale competition and service reliability. It is participating in regional workgroups to encourage cost-effective distributed generation and demand response programs. The Commission also has recently initiated a Competitive Technical Implementation Work Group to review and improve the many necessary interactions between retail suppliers and utilities, to ensure that customers can move freely between competing suppliers. It is also reviewing and revising procedures for retail market monitoring as Maryland moves away from the rate freeze periods.

The Commission also continues to monitor utility reliability issues and investigate generation resource adequacy. In this regard, the Commission recognizes that in a restructured environment, customers and utilities are relying upon market forces to attract new investment in generation and transmission and ensure reliability and resource adequacy. That said, the Commission is proactively working with FERC and PJM in evaluating the wholesale market structure and market rules to ensure that Maryland attracts adequate investment to maintain reliability in the restructured market. Also, the General Assembly gave the Commission the authority to assess generation resource adequacy, even after utility company divestiture of electric generating stations, in the Electric Choice Act. Parenthetically, in the Electric Choice Act the General Assembly also reiterated the Commission's long-standing authority to ensure the reliability of utility distribution services, a matter that has been and continues to be very important to the Commission. Maryland's electric utility companies have invested millions of dollars in electric system, outage reporting, and service restoration improvements in recent years. In the course of several proceedings the Commission has carefully reviewed those improvements and, in some instances, directed further changes, particularly in the area of outage reporting.

VII. Conclusion

In conclusion, retail competition is progressing well for larger C&I customers - particularly after rate freezes ended. As retail suppliers achieve success and build a base in Maryland, marketing is likely to expand to smaller C&I and residential customers. Market price based SOS continues to be available for customers who are not offered a competitive alternative or who choose to remain on utility SOS. The Commission is committed to identifying and removing unnecessary barriers to competition.