

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PROVIDER OF LAST RESORT : Docket No. M-00041792
(POLR) ROUNDTABLE :

COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

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I. INTRODUCTION

The most critical question facing the Pennsylvania Public Utility Commission as it implements the provisions of the Electricity Generation Customer Choice and Competition Act (the Act) is the design of the Provider of Last Resort (POLR) service for electricity customers in Pennsylvania. Under the Act, at the end of the transition period, the Commission is to establish regulations that define the electric distribution company's (EDC) obligation to connect, deliver and acquire electricity for customers.

The Public Service Commission of the District of Columbia was required to address a similar set of issues in a March 1, 2004, Order regarding the design of what is called Standard Offer Service (SOS) in the District. The primary issue in that proceeding was whether to adopt a wholesale SOS model (in which the incumbent utility would be the SOS provider and acquire power through the competitive wholesale market) or a retail SOS model in which there would be competition among retail suppliers for determining who the SOS provider or providers should be. The D.C. Commission adopted the wholesale model, but of more importance here is the standard that the D.C. Commission applied in making that determination. As stated by the D.C. Commission:

The Commission's obligation is to implement the SOS model that is in the best interest of the District and its ratepayers. The Commission's focus is on implementing a process that is efficient, will result in the lowest priced, reliable electricity supply for the District, and that will not tax Commission resources unjustifiably.

In the Matter of the Development And Designation of Standard Offer Service in the District of Columbia, Formal Case No. 1017, Order No. 13118 (entered March 1, 2004), p. 8, ¶21.

The OCA submits that the task before this Commission is the one that was described by the D.C. Commission above. Specifically, "The Commission's obligation is to implement the

[POLR] model that is in the best interest of the [Commonwealth] and its ratepayers. The Commission’s focus is on implementing a process that ... will result in the lowest priced, reliable electricity supply.”

The fundamental goal of the Pennsylvania restructuring law was to provide reliable service to consumers at lower prices than they would pay under the prior regulatory model. The need for lower prices was considered essential for consumer welfare and economic development. As a means to achieving that goal, the 1996 Act sought to ensure that Pennsylvania electric consumers gained access to a competitive generation market. As stated in Section 2802(5), in the Act’s Declaration of Policy: “Competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.”

The underlying premise of the Act was that when competitive market forces are brought to bear on the generation of electricity, those competitive market forces will reduce the *cost* of generating that electricity and therefore the *price* of generation service to retail consumers. Significantly, however, under the Act, a customer does not have to leave his or her retail electric distribution company (EDC) in order to get access to competitive market generation. Rather, once the transition period under the Act is over (and all stranded costs are recovered), the customer can choose between purchasing generation at an unregulated market price from an alternative electric generation supplier (EGS), or purchasing unbundled generation from the EDC, or alternative POLR supplier, at a price that is designed to reflect the costs to the POLR provider of acquiring generation at prevailing market prices.

There is nothing in the Act to suggest that POLR service is supposed to be made so expensive, so volatile, or so “ugly”, that consumers would be forced to go to alternative EGS’s in

order to receive the benefits of competitive generation. On the contrary, customers can purchase unbundled generation service from their POLR provider under the Act, and the POLR provider is entitled to recover the reasonable costs of acquiring that generation at prevailing market prices. The important question now faced by the Commission is how to best bring the benefits of competitive generation markets to customers when designing the provider of last resort service so that the goal of the lowest priced, reliable service can be achieved. This issue is particularly important for residential customers, because the vast majority of residential customers in Pennsylvania and in other restructured states across the Nation have continued to obtain their generation supply from their POLR, SOS, or “default” supplier.

When considering the provider of last resort service, there are several provisions that bear on the Commission’s consideration. Section 2802(16) specifically addresses POLR service, and its purpose, as follows:

(16) Electric distribution companies should continue to be the provider of last resort in order to ensure the availability of universal electric service in this Commonwealth unless another provider of last resort is approved by the Commission.

66 Pa.C.S. §2802(16). Other declarations of policy that are important to the consideration of this service are as follows:

(9) Electric service is essential to the health and well-being of residents, to public safety and to orderly economic development, and electric service should be available to all customers on reasonable terms and conditions.

(7) This Commonwealth must begin the transition from regulation to greater competition in the electricity generation market to benefit all classes of customers and to protect this Commonwealth’s ability to compete in the national and international marketplace for industry and jobs.

(6) The cost of electricity is an important factor in decisions made by businesses concerning locating, expanding and retaining facilities in this Commonwealth.

66 Pa.C.S. §2802(6), (7) and (9).

Section 2807(e)(3) sets forth the basic structure of POLR service for the post-transition period as follows:

If a customer contracts for electric energy and it is not delivered or if a customer does not choose an alternative electric generation supplier, the electric distribution company or commission-approved alternative supplier shall acquire electric energy at prevailing market prices to serve that customer and shall recover fully all reasonable costs.

66 Pa.C.S. §2807(e)(3).

Based upon the statutory framework, it is the OCA's position that the goal of POLR service should be to provide basic generation service at a reasonable price and on reasonable terms and conditions. All customers should be able to rely upon this service if they either do not choose to select an alternative supplier or if their alternative supplier defaults in its service or terminates its service to the customer for any reason.

There may be several ways to achieve this goal, and the design of this service may be different for different customer classes, for example, based on the metering available to the different customers classes and their ability to respond to various price signals in meaningful, economically efficient ways. For the purposes of these Comments, however, the OCA will address POLR service for residential customers. Other customer representatives will be providing comments regarding the commercial and industrial customer classes, and the OCA will defer to their Comments for those classes.

It is critical that any POLR service model for residential customers recognize certain realities. Electricity is an essential life-sustaining service, necessary for both health and safety. For most residential customers, stable pricing is important in that the customer does not have the ability to respond to volatile prices, cannot do much to reduce certain levels of base usage, and needs price stability to manage household budgets, particularly in difficult economic times.

Moreover, it appears that residential customers have been and will continue to be slow to change to alternative suppliers for many reasons. There are customers who are unwilling or reluctant to make any change, and others who find that the savings on the bill will be too small to undertake complicated comparisons and choice. EGSs may find that these customers are difficult to serve for a myriad of reasons, including acquisition costs, load factors, credit risk, and other factors. This may be particularly problematic for low-income and payment troubled customers.

The limitations on competitive opportunities available to residential customers through the retail markets, coupled with the significant price volatility that exists in the wholesale markets, have led the OCA to support stability in rates for small customers. This perspective is shared by national consensus driven organizations such as the Consumer Energy Council of America (CECA), which concluded in a Report issued in 2003:

Electric industry restructuring should not expose residential and small business consumers to volatile prices. (p. VII)

Designing default service rates to be volatile or reflect short-term wholesale market conditions in order to spur customers to migrate to alternative providers creates the potential for hardship for customers who do not enter the competitive market or whose marketer fails to provide them with service. (p. VII)

One of the underlying attributes of an optimal electric power system is the provision of stable and predictable prices for electric service.

Residential and small business consumers who have historically been provided electric service at stable rates should not have to suffer price volatility and extreme increases in monthly electric bills as the "price" of adopting a competitive market. Such a result would be particularly harmful to residential and small commercial customers, especially since they generally have no way to respond to or protect themselves against such price volatility. (p. VI)

Positioning the Consumer For The Future: A Roadmap to an Optimal Electric Power Supply; A

Report of the Consumer Energy Council of America, April 2003, Executive Summary, pp. VII and VIII.¹

The OCA submits that the purpose of electric restructuring is to make consumers better off, not to deprive them of basic reasonably priced service options that may or may not be provided to all customers by competitive suppliers. See, e.g., 66 Pa.C.S. §2802(7). This is why the OCA supports a policy that all customers should be able to continue to be able to receive safe and adequate service at reasonable prices from the POLR. To the extent that retail competitors can provide service that is either lower in price or greater in value to consumers, such as green or renewable power, consumers will benefit even more.

The challenge then is to arrive at a model for residential POLR service that brings the benefits of the wholesale competitive generation markets to residential customers while recognizing the need of residential customers for affordability, price stability and certainty. The OCA recommends a framework below that meets this challenge while providing flexibility to the POLR provider to use a variety of means to competitively procure supply to meet its obligations and to be fairly compensated for that service.

¹ See, www.cecarf.org/Publications/MiscPub/RestExecSummary.pdf

Specifically, it is the OCA's position that the electric distribution companies should continue to serve as the providers of last resort for generation in their respective service territories. The EDC's should provide that service by acquiring a portfolio of resources through a competitive procurement process, but that process need not be identical for all utilities. The goal of the procurement process should be the provision of reliable service at a stable rate. The retail pricing for this service could be set in one of two ways: either by establishing a market-based price that the POLR provider would have to operate within for a fixed period of time; or by establishing a reconcilable clause that would provide dollar-for-dollar recovery of the actual costs incurred by the POLR provider to offer the service. A further discussion of this framework and the pros and cons of the different pricing models are set forth below.

II. POLR SERVICE FOR RESIDENTIAL CUSTOMERS

A. Introduction

It is the OCA's position that POLR service for residential customers should be provided by the incumbent EDC and should be a basic service that provides firm energy to customers, not subject to interruption, through a stable rate plan available to all residential customers.

When considering how this service should be offered in Pennsylvania, the OCA agrees with the previously-filed comments by PPL Electric Utilities that there are three essential questions that must be asked and answered. Those questions are: 1) who should serve as the POLR; 2) how should the POLR supply be obtained; and 3) how should the POLR service be priced to the residential customer.

B. Who Should Serve As POLR

The provider of last resort function is necessary to ensure that all retail customers have access to essential electric service on reasonable terms and conditions. For a number of reasons, the OCA submits that the POLR in Pennsylvania must be the Electric Distribution Company (EDC). As our own experience with the NewPower "competitive default service" for PECO customers demonstrated, as a practical matter, the EDC will always be required to step in as the "last resort" when other entities fail, particularly since the EDC will continue to have the obligation to connect all customers and deliver supply through its facilities. The EDC is the only entity that is properly situated to provide this service. The EDCs are also in the best situation to offer customer cares services, at least for residential customers, since they will have the necessary infrastructure to provide these services upon default of alternative providers due to the need to

maintain such infrastructure for their distribution service. Of critical importance, only the incumbent EDC as POLR should be permitted to terminate service to customers.

While generation is a competitive service, POLR service is not. By definition, there can only be one provider of *last* resort. There is no benefit to creating the fiction that an EGS can serve as a POLR, when in fact, the EDC must still serve as a “super-POLR” in the event that the EGS fails and, like NewPower, disappears from Pennsylvania. There is no point in consumers paying for two POLR providers; one is expensive enough.

The point is not that EDC’s have an inalienable right to be the POLR; nor that they are better corporate citizens. Nor are EDCs immune from bankruptcy and other financial strains, as one of our own Pennsylvania EDCs came painfully close to demonstrating in the last two years. Rather, the point is that even in the event of bankruptcy, the distribution utility will continue to provide service, even if that service must be under the supervision of a federal bankruptcy court, rather than the Commission. The EDC cannot simply close up shop and leave Pennsylvania, as occurred with NewPower. The lights will stay on.

While the OCA sees great benefit in competitive generation markets, the OCA does not see any efficiency or advantage to establishing an alternative retail POLR or multiple layers of retail POLR providers for residential customers at this time. Such duplication, when the EDC will still have to stand ready to serve, appears to provide little, if any, benefit at this time and entails potentially serious risks.

C. How Does POLR Obtain Supply

The POLR should obtain supply under a competitive procurement method that produces the lowest priced, reliable supply of electricity for POLR customers. The procurement

should be designed to maximize the benefit of the wholesale competitive market, particularly the PJM markets, which are the best in the Nation.

In the OCA's view, the POLR should serve the role of portfolio or procurement manager and acquire a portfolio of resources from the competitive wholesale markets to meet its load obligations. The procurement plan or portfolio should emphasize diversity of resources, a variety of contract terms, and any other state-mandated or Commission-mandated public policy requirements. These resources should include both short-term (one-to-three year) and longer-term (at least five-year) contracts and could be acquired through a range of processes that could include formal requests for proposals (RFPs), wholesale auctions, and bilateral contracts. The key is that the POLR provider should seek to maximize the benefits of the competitive wholesale generation markets in order to achieve the lowest cost reliable service for its POLR customers.

At this point, the OCA is reluctant to prescribe a specific acquisition method for POLR supply, or to conclude that the same method must be used by every POLR supplier. The acquisition method of a company the size of Citizens or Wellsboro, might not be the preferred approach for a company the size of PECO or PPL. The approach utilized by MISO member Penn Power may have to differ from that used by its fellow First Energy Companies Met Ed and Penelec that are part of PJM. In essence, the POLR should be provided some flexibility to acquire competitive supply in a manner that best reflects its service territory, its size, and its customers.²

The Commission can, however, establish principles if it wishes to do so, such as the need for a diverse supply portfolio, both in terms of the length of contract and the type of resources.

² A small EDC, for example, may elect to enter into a single full requirements wholesale contract for a specified term instead of managing a larger portfolio of resources. This is probably appropriate given the small size of the load and the limited number of employees.

Any regulations should also at least accommodate the development of a renewable portfolio standard at the state level. At a time when natural gas prices show no signs of dropping from their current high levels, and environmental regulation continues to evolve, the need to encourage alternative forms of generation through the use of longer-term contracts and some type of portfolio standards has become much more pressing. Use of a portfolio of resources also enhances security and reliability not obtained through reliance on a single type of contract, a single fuel or a single supplier. A variety of products, resources, contracts, and financial instruments should result in a long term, reasonable cost for the type of service being provided, mitigate the various risks of the service, and allow enough flexibility to respond to short-term developments in the markets or changes in load obligations.

To the extent that a POLR/EDC's own utility affiliates are permitted to participate in the competitive procurement process, the Commission also would have to establish rules that would prevent self-dealing and ensure a fair competitive process.

One of the benefits of a portfolio approach is that it allows the POLR to acquire its supply through a variety of methodologies and to utilize a variety of contract terms to meet its obligations. For example, under a portfolio approach, a POLR could utilize an RFP process for a portion of its supply, a wholesale auction for a portion of its supply, or it could enter into a longer term contract with a specific generation resource for a portion of its supply. The portfolio approach would also allow POLR providers in different situations to pursue the options that provide the lowest cost, reliable service to their customers and to respond to different market conditions at different times. This type of portfolio approach has been adopted in several states such as Connecticut and Montana.

One complication of this approach is that the pricing to be established for the POLR service is a more complex process and not as immediately transparent, for example, as would occur through the conduct of a single statewide auction. Each EDC may adopt a somewhat different approach to the management of their POLR portfolio with different contract terms and products that have different impacts on the resulting POLR price for residential customers. This contrasts with the approach used in New Jersey where there is a statewide auction held every year for the same product(s) for each utility, although it is important to note that even in New Jersey, the prices change only once per year and those prices reflect a blended result of various auction terms (one, two, and three year fixed price contracts). There is certainly a trade-off between the flexibility of a portfolio approach and a more narrowly prescribed set of products and auction or bid protocols established by the regulatory authority. Under the New Jersey and Maryland approaches, the Commission effectively serves as the portfolio manager and has prescribed the products and contract terms for residential customers.

The important principle that the Commission should establish regarding the POLR acquisition of supply is that the POLR should utilize a competitive resource acquisition method that secures the necessary resources from the wholesale competitive markets in a manner that is most likely to provide the lowest priced reliable service to customers.

D. How Should The POLR Service Be Priced to the Residential Customer

Section 2807(e)(3) provides that the POLR acquire electric energy at prevailing market prices and recover fully all reasonable costs. The OCA wishes to emphasize that there is no single price that can be pointed to as the prevailing market price for establishing the POLR rate. Within the PJM markets, there are a multitude of products, both capacity and energy, as well as a

multitude of prices for these products at any given point in time. Indeed, in PJM, there are thousands of real time prices in every single hour at the thousands of busses where energy is delivered, and there are day-ahead prices in the PJM energy markets as well as daily and seasonal prices in the capacity markets. Additionally, publications report a sampling of month-ahead, year-ahead, and multi-year ahead transactions and prices. There are multiple sources publishing these forward prices, and these prices can change daily. Most importantly, there are numerous bilateral transactions between market participants. The term "prevailing market prices" is therefore not limited to spot wholesale prices or short term prices. The term must encompass the variety of markets and the variety of time frames within which products in these markets can be purchased.

From the OCA's perspective, the POLR service for residential customers should reflect the fact that electricity is an essential service. The POLR service should be affordable, provided on reasonable terms and conditions, and provide for stable rates for customers. By stable rates, the OCA means rates that do not change frequently and that are not tied to short-term or spot wholesale market price. These rates should be in effect for a period of a year or longer and should not be subject to adjustment within that time period. The optimal length of a stable rate plan may vary as the markets and products to meet POLR service needs develop, but at this time, a rate that changes no more than once a year is the minimum acceptable length. A term of up to three years may be reasonable.

The POLR price to the residential customer must reflect an objective and transparent method of obtaining POLR resources at prevailing market prices. As discussed, there are many means of obtaining the products that form the POLR portfolio from the wholesale markets, and these

products will, by their nature, reflect the prevailing market prices for the products that are obtained by the EDC in the market for the time period that comprises the contract.

The OCA submits that there are two basic approaches to establishing the price of POLR service to residential customers--either a non-reconcilable POLR price established for a period of time, or a fully reconcilable dollar-for-dollar cost recovery rate. Under either approach, the actual price charged to consumers should not, and need not, be changed more frequently than on an annual basis. As noted above, longer term prices may be appropriate.

Under a pricing mechanism that reconciles to the actual costs of the POLR, the OCA expects that the POLR rate would be set on an annual basis to reflect the projected wholesale cost for the upcoming year blended with the previously acquired contracts. At the end of each year, there would be a reconciliation to the actual costs that the POLR incurred in meeting its obligations. This approach is similar to that used by the natural gas distribution companies for their gas supply costs and that was previously used by electric companies to recover their fuel costs.

While the recovery of actual supply costs on a dollar for dollar, fully reconcilable basis has the advantage of ensuring that the customer pays the actual cost of the supply to the POLR, no more and no less, a disadvantage of this model is that the after-the-fact reconciliation makes it extremely difficult for a residential customer to compare prices between reconcilable POLR service and non-reconcilable alternative retail supplier service. It is difficult for consumers to make informed shopping decisions when they see a price to compare that is not the actual cost they will eventually pay. Additionally, a reconcilable, dollar-for-dollar POLR supply recovery may not provide as much incentive for the POLR to keep the overall cost of its portfolio as low as possible.

Such an approach should include no risk premium or return for the EDC POLR, since it would be serving simply as a pass-through of wholesale contract prices to customers.

The alternative pricing approach would be for the Commission to establish a more performance-based, non-reconcilable fixed-price mechanism, in which the price would be established in advance and the POLR would be required to provide service at that price. The fixed price requires the POLR to manage its portfolio within the established price parameter for the POLR period. The price would likely include some premium reflecting the risk assumed by the POLR in managing the portfolio over the POLR period.

One advantage of a non-reconcilable, fixed price is that it provides the customer a known price to compare and allows the customer to shop for alternative supply in a manner consistent with the education that has been provided to customers throughout the transition period. The customer can make an informed choice about alternative suppliers by comparing offers to the known POLR rate (price to compare). This approach also provides an incentive to the POLR to manage its portfolio within the pricing parameters established, and it aligns the incentive for demand side response with the interests of the POLR provider. In other words, it is in the best interest of the POLR to pursue demand side response programs that reduce its costs as long as it shares in the benefits of cost reductions.

A possible complication of a fixed, non-reconcilable price to the residential customer is that it may prove difficult to establish the appropriate POLR rate. As noted above, different EDCs may use different portfolio approaches and the impact of those approaches may be difficult to project over the fixed POLR period. It may be possible to determine the price based on the projected portfolio costs of the POLR during the POLR period. One could also look to market data such as

auction results or published forward prices for the POLR period. It should be noted, however, that at this time, forward products are thinly traded, even in PJM, and are not a substantial part of the liquid market. Thus, their reliability for pricing purposes remains limited. The POLR might also be required to utilize an auction or an RFP for a portion of the POLR service so that the bid price could assist in establishing the POLR price.

In either a fixed price or reconcilable price method, however, the price to the customer should reflect the reasonable costs of POLR service, not the hypothetical additional costs that an EGS would incur to serve the customer. Experience has shown that POLR service is not the “low-hanging fruit” that all suppliers would be anxious to serve at low prices. It is difficult to be the POLR supplier and the POLR supplier incurs certain costs and obligations that are not incurred by competitive suppliers. There is no need – indeed it is entirely inappropriate – to increase POLR rates further by adding hypothetical costs, such as advertising and customer acquisition costs, that a POLR provider would not have to incur.

III. OTHER ISSUES

A. Switching Rules

Switching rules have been the subject of much discussion throughout the POLR Roundtable, with many EGSs arguing for the elimination of restrictive rules and the introduction of seasonal rates. The EDCs have generally supported some form of switching rules to ensure that the POLR provider is not used as a hedge by customers and marketers against short term price increases and to mitigate the cost and risk of serving returning customers.

At the beginning of the restructuring process, the OCA did not support any restrictions on the residential customer's right to switch to alternative suppliers or to return to POLR service. It was our view that individual residential customers would be unlikely to switch frequently or to "play" the market between their incumbent EDC POLR price and that offered by an EGS. The OCA does recognize that there have been some wide scale returns of residential customers to POLR service as EGSs depart the markets. It still appears, however, that restrictions on residential switching are not critically important, because there is no evidence that residential customers have switched back and forth to take advantage of seasonal cost differentials. Nevertheless, the OCA recognizes that, to the extent residential customers receive the benefit of stable prices over an annual period, it is not unreasonable to place some minimal restrictions on residential customers leaving, returning to, and leaving POLR service again during a 12-month period. At this time, the OCA has not identified any particular switching rules that are preferred or superior.

B. Seasonal Rates For Residential Customers

Many parties have suggested seasonal rates in lieu of the imposition of switching restrictions on customers. A move to seasonal prices for residential customers presents many public

policy issues that must be considered. For example, a move to seasonal rates from average rates increases the cost of electricity for the summer period when air conditioning use drives up customer usage. Although "sending the proper price signal" regarding this usage may sound appealing, it must be remembered that air conditioning use is an essential health requirement for many residential customers, particularly the elderly and the disabled. In addition, many low income customers could be faced with extraordinarily high and unaffordable bills if there are dramatic seasonal price differences. These customers may become payment troubled and face termination before the upcoming, lower priced winter season when they could catch up on their arrearages. Before any decision is made regarding seasonal pricing for residential customers, Customer Assistance Programs and LIURP programs must be evaluated to determine whether they are appropriate for addressing the impact of the seasonal rate on the bill. Such programs must also include a component addressing medically necessary air conditioning use. Additionally, termination practices and budget billing will need to be reviewed and addressed to ensure that customers have a fair chance to catch up on high bills during the lower priced periods before a termination ensues.

The OCA would also note that any move to seasonal rates will produce winners and losers among customers. The rate design may be revenue neutral to the POLR, but to the individual customer whose usage pattern varies from the class usage pattern used to design the seasonal rate, the customer could end up much worse off than before restructuring. The design of the seasonal price and its impact on customers would have to be thoroughly examined and understood before moving to such a pricing structure.³

³ The OCA is aware that PECO has a seasonal price for residential customers that has been in effect for many years. PECO has also developed components of its CAP and LIURP that address summer electricity usage and efficient air conditioning.

III. WHAT POLR SHOULD NOT BE

A. Introduction

As important as what POLR service should be in Pennsylvania is the question of what POLR service should *not* be. POLR service should not be the most expensive, "ugly" service available to customers; it should not be designed to try to force residential customers into the retail competitive market; it should not be simply a backstop or safety net service; and it should not be subjected to volatile, short term prices. As discussed earlier, it also should not be provided by an entity other than the incumbent EDC at this time.

B. Models That Produce Volatile Prices Or Simply Increase Prices To Residential Customers In An Attempt To Force Them Into A Retail Market Should Not Be Pursued.

Competitive retail generation markets for residential customers have been slow to develop. The level of shopping and the lack of multiple competitive energy suppliers marketing to residential customers suggests that the retail competitive markets may not develop for residential customers as expected when the Act was adopted. Pennsylvania's experience is typical of many other states. Retail shopping by residential customers is minimal in New Jersey, Maryland, Connecticut, Massachusetts, Rhode Island, New Hampshire, Maine and the District of Columbia. In New York and Texas, the level of retail customer shopping remains modest with 5.4% of residential customers in New York selecting an alternative provider and 14% of residential customers in Texas being served by alternative suppliers as of December 2003. See, March 2004 Report Card on Retail Competition.⁴

⁴ <http://www.puc.state.tx.us/electric/projects/25645/rptcrd/mar04rptcrd.pdf>

The success of electric restructuring, however, cannot be judged by the level of retail shopping by residential customers. The Commission should also not rely on a design for POLR service whose goal is to get residential customers to flee the service because it is so awful so that switching statistics can be improved. This was never the intent of the Act.

Moreover, POLR models for residential customers that subject residential customers to volatile prices or adders as a means of "encouraging" competition have not produced substantial benefits for residential customers. A prime example is the adjustment mechanism used in Texas. Under the Texas model, the "price to beat" can be adjusted up to two times per year based on the price of natural gas. The provider of the price to beat service elects when to adjust the price. Although the price to beat theoretically could go down if the gas cost dropped, the provider is not required to make that adjustment. Since the competitive market opened in 2002, increases in the fuel factor component of the price to beat have resulted in steady increases in the residential customer's monthly bill. The total monthly bill for the average residential customer using 1,000 kwh per month of Reliant Energy, for example, increased about 30% from January 2002 through January 2004, or by \$24.36 per month due to the fuel factor adjustment. For a customer of TXU Energy Services, the total monthly bill for a residential customer using 1,000 kwh/month increased about 23.5% or by \$18.00 per month. See, <http://www.puc.state.tx.us/electric/rates/RESbill.cfm> Thus, while about 14% of residential customers state-wide in Texas are being served by an alternative provider, the rest of the customers face significantly increased rates. See, March 2004 Report Card on Retail Competition.⁵

⁵ <http://www.puc.state.tx.us/electric/projects/25645/rptcrd/mar04rptcrd.pdf>

Models that include "retail adders" that are designed to "cover the costs" of EGSs, such as acquisition costs, back office costs, or a margin for savings so that EGSs can compete are equally flawed. These retail adders just make the POLR service expensive to all customers. Such adders do not foster genuine competition based on efficiencies in service. Artificially raising rates turns the notion of competitive markets on its head. The intent of the Act was never to create artificial competition through such subsidies at the expense of customers. The intent of the Act was to give all customers direct access to competitive generation markets, either through the POLR or an alternative provider that could serve more efficiently than the POLR, or offer a value added product.

The use of "retail adders" and frequent upward price adjustments is particularly burdensome for low income customers. Many low income customers will not be attractive to EGSs due to credit problems or payment history no matter how expensive the POLR service. It would be ironic indeed if the result of the Act was to impose additional costs on those least able to pay and least able to choose.

The OCA strongly urges the Commission to steer away from proposals for residential customers that increase the costs to the customer merely as a means of "encouraging" switching. These models offer little in the way of positive results for residential customers and treat switching as an end, rather than as a means to lower rates and reliable service.

IV. CONCLUSION

The Office of Consumer Advocate appreciates this opportunity to present these Comments to the Commission as it considers the post-transition provider of last resort service for residential customers. The OCA looks forward to continuing to work on this important issue with the Commission and all stakeholders. Attached to these Comments, and incorporated herein by reference is Appendix A, the OCA's response to the Commission's questions and issues.

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PROVIDER OF LAST RESORT : Docket No. M-00041792
(POLR) ROUNDTABLE :

APPENDIX A
OCA RESPONSES TO POLR
ROUNDTABLE ISSUES

POLR ROUNDTABLE ISSUES LIST

I. Scope of POLR Service: “[T]he commission shall promulgate regulations to define the electric distribution company’s obligation to connect and deliver and acquire electricity.” 66 Pa. C.S. §2807(e)(2) (emphasis added).

Please address the nature and scope of the POLR obligation in regards to each of the following topics. Further, parties may suggest priorities and policy goals for the Commission in regards to these topics.

- *Connection and Delivery: Including local transmission, distribution, interconnection and metering.*
- *Generation Acquisition/Supply Obligation*
- *Reliability*
- *Retail Market Support Functions: All activities currently required of electric distribution companies to support the function of competitive markets, including Demand Side Response and the maintenance of customer lists.*
- *Customer Care Functions: All retail customer care obligations currently assigned to electric distribution companies, including those found at Chapter 56 of the regulations.*
- *Environmental and Conservation: Including any potential Renewable Portfolio Standard requirements and Demand Side Response.*

OCA Response: It is the OCA’s position that the incumbent EDC should serve as the POLR. As the EDC/POLR, the EDC has the obligation to connect, deliver and acquire supply. The EDC also retains the obligation for reliability, all customer cares functions, including Chapter 56 procedures as well as the provision of low income programs, and retail market support functions. As POLR, the EDC would also have to comply with environmental requirements and any renewable portfolio standards included in legislation or the Commission regulations. If the POLR model is designed to provide the proper incentive, the EDC/POLR should engage in conservation, renewable purchases and demand response programs that mitigate the various risks of POLR service such as load risk, fuel price risk and market risk.

- *Customer Participation: Does POLR service extend to all customer classes?*

OCA Response: All customer classes must have POLR service available to them under the Act. The design of POLR service may differ for the different customer classes, but POLR service that provides electricity on reasonable terms and conditions must be available to all Pennsylvania consumers.

- *EDC Participation: Should the nature of POLR obligation be uniform for all existing EDCs?*

OCA Response: The nature of the POLR obligation must be uniform in that it is governed by the Act. The particular design, or procurement approach utilized by each POLR, may differ.

II. Qualifications for POLR: A POLR may be either an “electric distribution company or commission-approved alternative supplier.” 66 Pa. C.S. §2807(e)(3)

Please address the financial and other qualification standards for the POLR provider:

A. Reserved for Incumbent EDC

- *What should the requirements be for an EDC to qualify as a POLR provider?*
- *What are the risks and benefits of reserving this role to the incumbent EDC?*
- *Do any EDCs wish to be relieved from the obligation?*

OCA Response: If the POLR provider is the EDC, there is no reason to adopt additional financial or other qualifications beyond those required by the Commission for public utilities. The risk to the EDC is that of the default of any generation supplier that is providing energy to the EDC to meet the obligation as well as the load risk and switching risk. The Commission should require the EDC to obtain adequate assurance of creditworthiness from any generation provider and appropriate default remedies to mitigate any risk of supplier default.

B. Alternative Suppliers that may serve as POLR

- *What should the requirements be for a non-EDC to qualify as a POLR provider?*
- *What should the process be for an alternative supplier to qualify?*
- *Are there unreasonable barriers to this role, regulatory or otherwise, that the Commission should address?*

OCA Response: The OCA does not recommend that the Commission contemplate the provision of POLR service by an EGS (the retail POLR model) at this time. The risks of such an approach seem significant. Such a model could impose considerable costs on consumers if an EGS serving as POLR defaults. Regulatory issues that would have to be addressed include, among others, whether the alternative POLR has an obligation to serve or is subject to regulation like public utilities, how customer cares and Chapter 56 protections would be addressed, and standards for financial and technical fitness.

III. POLR Service Models

Please comment upon the form POLR Service should take.

OCA Response: Please see the OCA Comments for the OCA's recommended framework. By way of background, there are generally three POLR models that have been considered or utilized. Those models and a brief description are as follows:

EDC Portfolio Management of POLR Service: Under this approach, the EDC is identified as the entity that must plan, acquire, and price POLR service pursuant to the Commission regulations. The EDC remains responsible for customer care, billing, collection, and Chapter 56 compliance. POLR service is stated on the customer bill as the "price to compare" to allow customers to shop and move in and out of POLR service. The EDC is typically required to develop a procurement plan that reflects a 5-10 year planning horizon and is required to obtain generation service necessary to meet the POLR obligation through a variety of competitive and transparent means, including the use of bilateral contracts, competitive solicitations such as auctions or RFPs. The EDC would manage the portfolio through these contracts as well as financial hedging transactions. The overall intent of the portfolio of resources is to provide a long term, stable and affordable POLR service to residential customers. This approach has been adopted in Montana and Connecticut (post-2007). See, Montana HB 509, effective July 1, 2003, assigned Chapter Number 565 of 2003 Session Laws and Notice of Adoption of Rules Pertaining to Default Electricity Supply Procurement Guidelines, (Montana PSC, March 31, 2003). See also, Connecticut SB-733, An Act Concerning Revisions to the Electric Restructuring legislation, adopted May 27, 2003.

Competitive Wholesale POLR Service: Under this model, the EDC or the Commission holds an annual auction or RFP process to acquire a variety of fixed price contracts (1-3 years or more). The resulting prices for POLR service are then stated in the EDC's tariff and reflect the blended price of these contracts. The EDC passes through the price of the wholesale market contracts and the EDC retains all other functions, such as the customer care functions. This approach is used in New Jersey, Maryland, Maine and the District of Columbia. A variation of this approach is used in Massachusetts where the utilities obtain 12-month contracts for one-half of the customer load every six months. The contract prices are blended with utility-owned generation or QF contracts for the price charged to customers.

Retail POLR By Alternative Provider: Under this approach, an EGS provides POLR service and has the primary responsibility for billing and collection of the entire electric bill, including the regulated distribution service. This approach is often used for the short term and is based on short term market pricing. Rochester Electric Company in New York has experimented with this approach, but the New York PSC recently halted the program due to lack of interest from suppliers or customers. Variations of this approach

were also used in the Georgia Atlanta Gas Light natural gas competition programs and in Texas's retail electric program.

Please consider the following models and associated issues:

A. Direct Assignment to EDC or Alternative Supplier - The Commission selects the POLR from applications of one or more EDCs and/or alternative suppliers.

- *What process should be used for reviewing assignment proposals?*

OCA Response: It is the OCA's position that the incumbent EDC should be the POLR, so all customers within an EDC's service territory are directly assigned to the EDC as the POLR. The OCA does not support any assignment of customers to POLRs other than the EDC in whose service territory the customer resides.

- *What should be the standard for evaluating POLR proposals as to "the prevailing market price" of generation supply?*

OCA Response: The standard should be to assure procurement of a portfolio of resources from the competitive wholesale markets through objective and transparent methods. Some methods of acquisition are identified in the OCA's Comments.

- *What should be the standard of evaluating the POLR proposals as to the procurement strategy for their generation supply? For example, should there be limits or minimum requirements on self-generation, spot market purchases, bilateral contracts, etc?*

OCA Response: The Commission may wish to establish principles that call for a diverse portfolio of resources and the use of a variety of acquisition methods. The procurement strategy should be developed by the POLR with these principles in mind.

- *If this model is used, should the EDC be required to make use of competitive processes, such as wholesale energy auctions, for example, to obtain generation supply?*

OCA Response: Under this model, the EDC should make use of all available competitive procurement methods that are appropriate to meeting its customers' needs. The Commission may want to require that some portion of the obligation be met through an auction or RFP process, but the needs of different POLRs may make a single standard impractical.

- *How could this model impact the competitive retail market and customer choice, and if negative, what steps should be taken to mitigate any such effects?*

OCA Response: The competitive retail market should continue to develop under this model. An EGS with a value added product will be able to market its product to the customer, and with the known price to compare, the customer can make an informed choice. An EGS that can procure in a more efficient manner than the POLR, or with less risk premium, should be able to offer savings to the customer.

- *How would this model vary depending on the identity of the (EDC vs. Alternative provider)*

OCA Response: The OCA does not recommend the use of an alternative provider.

B. Competitive Assignment – The POLR is determined as the result of a competitive process which is open to incumbent EDCs and/or alternative suppliers.

- *What process should be implemented for a competitive assignment model?*

OCA Response: A competitive assignment process should not be considered by the Commission. The incumbent EDC is the only entity that is properly positioned to be the POLR and will, no matter what model the Commission adopts, be the ultimate POLR.

- *What would be the standard for determining the winner?*

OCA Response: If a competitive process to select an alternative POLR is utilized at all, the selection criteria should be defined as part of the bid process. All participants should be pre-qualified, and then selection should be done in accordance with the criteria established.

- *Would the competitive process capture all related POLR costs? For example, would the bid prices include both the “prevailing market price of supply” and all “reasonable costs” of POLR service?*

OCA Response: The competitive process should capture all related costs.

- *Would valid bids have to meet certain requirements as to procurement strategy for generation supply? For example, should there be limits or minimum requirements on self-generation, spot market purchases, bilateral contracts, etc?*

OCA Response: The Commission should ensure that any winning bidder has a reasonable plan to meet the obligations that it has undertaken at the price that it has bid.

- *What lessons can the Commission apply from the CDS and MST programs when considering a competitively assigned POLR service model?*

OCA Response: From the customer perspective, one lesson to be learned is that many residential customers did not react favorably to being assigned to alternative suppliers without their prior consent. Customers also often did not know or understand that they had been assigned to an alternative supplier for several billing cycles. Other lessons include the fact the alternative providers can default, causing problems for both customers and EDCs, and that, in the final analysis, there were few bidders for these types of services.

- *How could this model impact the competitive retail market and customer choice, and if negative, what steps should be taken to mitigate any such effects?*

OCA Response: The impact on the competitive retail market or customer choice could be negative if the alternative provider defaults or withdraws. Otherwise, little impact on the competitive retail market or customer choice has been seen through the PECO CDS or MST programs.

C. Other POLR Service Models

- *Please discuss existing models in states with similar regulatory frameworks that have been successful, with emphasis on rates, reliability, consumer protections, and administrative efficiency.*

OCA Response: Recent developments in Montana and Connecticut (post-2007) are worthy of review and consideration. These states have adopted a portfolio approach to the POLR service.

Montana was one of the first states to enact electric restructuring in 1997. In 1998, large customers were given choice, and all customers were to be phased in to choice over a four year period. Disruptions in the wholesale energy markets in 2000-2001 raised significant concerns about the ability to provide reasonably priced service to residential and small commercial customers. The Montana Commission adopted guidelines in March 2003 that required the default supplier to "plan and manage its resource portfolio in order to provide adequate, reliable and efficient annual and long-term default electricity supply at the lowest total cost." [Rule V

(38.5.8209)] The Montana legislature then enacted a law, effective July 1, 2003, that requires the incumbent electric distribution utility to serve as the default supplier pursuant to a portfolio of energy supply resources that provide "adequate and reliable default supply service at the lowest long-term total cost." [Section 5, amending 69-8-102 Montana Code Annotated].

In Connecticut, the Standard Offer service was to be provided from 2000-2003. By SB-733, An Act Concerning Revisions to the Electric Restructuring Legislation, adopted May 27, 2003, the Standard Offer was extended until January 1, 2007. Starting in 2007, customers with a maximum demand of less than 500 KW who do not choose an alternative supplier will be provided "Standard Service" pursuant to a DPUC-approved plan submitted by the EDC. The plan requires that a "portfolio of service contracts be procured in an overlapping pattern of fixed periods at such times and in such manner and duration as the department determines to be most likely to produce just, reasonable and reasonably stable retail rates while reflecting underlying wholesale market prices over time." [Section 4(c)] The portfolio must avoid "unusual, anomalous or excessive pricing."

- *Please identify any relevant POLR service models that have not been attempted that are worthy of consideration*

OCA Response: The OCA is not aware of any additional models that have not been attempted that are worthy of consideration.

- *Please identify any models that you deem a failure, and why.*

OCA Response: The OCA considers models that frequently adjust POLR rates based on some form of index, or add costs to the POLR rate to support market entrants, as inconsistent with the goals of the Pennsylvania Act. The goal of the Act is to provide electric service to all customers on reasonable terms and conditions. Such models improperly add costs that are unreasonable. The OCA also considers models that rely on spot or short term pricing for residential customers to be a failure. The prime example is the original California market design, particularly as it developed in San Diego. Residential customers require price stability since they cannot respond to volatile prices.

Two models that the OCA considers to be contrary to the interests of Pennsylvania residential customers are the Texas retail electric model and the Georgia natural gas competition model. Under the Texas model, customers obtain service from a retail electric provider (REP) who has the sole relationship with the customer. The REP obtains the necessary transmission and distribution services from the former public utilities on a wholesale basis and provides generation service. On January 1, 2002, all customers were switched to the "affiliate" REP (AREP), the retail arm of the former local electric utility. The AREP provides price to beat rates which can adjust up to two times per year based on the wholesale movement in natural gas. Residential

customers of TXU Energy Services, using an average of 1,000 kwh/month, have seen a 23.5% increase in their total electric bill from January 2002 to January 2004. Residential customers of Reliant Energy, using 1,000 kwh/month, have seen a 30% increase in their total electric bill from January 2002 to January 2004. Residential customer shopping for Reliant and TXU has been around 15% to 17%.

Georgia took a most unique approach in its move to retail competition for natural gas service. Georgia required all customers to choose an alternative retail natural gas supplier, and if they did not choose, the customer was assigned to an alternative supplier. The alternative supplier billed the customer for all charges and were permitted to disconnect service for nonpayment. There was no provider of last resort in the original market model. Many problems were encountered with Georgia's original model. First, marketers were required to obtain significant billing and collection services to serve their customers. This resulted in significant billing failures, billing errors and other glitches causing a large volume of complaints to the Commission. Second, there has been an increase in disconnection activity, even in the winter. The Commission was required to halt disconnections in the winter of 2000-2001 due to the cold temperatures. The legislature in Georgia has frequently enacted reforms to address the myriad of problems in the Georgia program. Recently, legislation imposing a Consumer Bill of Rights and a mandatory requirement for a Provider of Last Resort has been adopted.

IV. Terms and Conditions of POLR Service: A POLR shall treat a shopping customer who returns to POLR service “exactly as it would any new applicant for energy service.” 66 Pa. C.S. §2807(e)(4).

Please comment on the following items:

A. Length of POLR Service term: Is there a recommended length? Must it be uniform across service territories?

OCA Response: The OCA recommends a length of from 1-3 years of stable rates, but the procurement plans for POLR service should have a 5-10 year horizon. The POLR should also include some long term contracts in its portfolio, perhaps contracts for a portion of load in the 5 to 10 year range to encourage construction of new facilities.

B. Customer Migration: How should the Commission address issues surrounding customer switching, and what is the effect of the statutory language of Section 2807(e)(4)?

OCA Response: Some minimal switching restrictions for residential customers may be necessary to prevent gaming and to ensure that the cost and risk of switching is not improperly shifted to

non-shopping customers. The type of switching rule adopted will be determinative of how to implement the requirement of Section 2807(e)(4).

C. Customer Rate Classes and Design

- *What should they be?*

OCA Response: As we enter the post-transition POLR period, the Commission may wish to reconsider the block rate designs that some EDCs utilize for regular residential service. The block rates make it difficult for the customer to determine their price to compare since it is based on usage and will change over time. It also makes it difficult for the customer to determine if any savings have been achieved. However, as the Commission is aware, any change in rate design will produce winners and losers. There could be significant impacts on residential customer bills. Additionally, a change in rate design at the same time as other significant changes in the service could be confusing to customers and could increase potential negative effects of price increases in that time period. The OCA would recommend that the Commission proceed cautiously when considering any rate design changes. The OCA would recommend, though, that EDCs with time of day rates, heating rates and other such alternative rate schedules be permitted to retain those rate schedules.

- *Fixed Rates- Available to all, none or some?*

OCA Response: Fixed rates should be available to all residential customers as the basic POLR service. The POLR should be permitted to offer other rates, such as time-of-day rates or heating rates which would assist the POLR in controlling its costs or assist the customer in affording the bill. These offers should be voluntary on the part of the customer.

- *Variable Rates – Available to all, none or some. If available, what kinds?*

OCA Response: Variable rates could be made available on a voluntary basis to residential customers but should not be the basic POLR service. Beyond some time of day pricing or perhaps some seasonal pricing, the OCA does not anticipate that there would be much call for any other type of variable rate for residential customers.

D. Miscellaneous

- *Termination - May alternative suppliers terminate service to customers for nonpayment where it is acting as the POLR?*

OCA Response: An alternative supplier may *not* terminate a customer for nonpayment of service even when acting as the POLR. Only the incumbent EDC can terminate a customer. However, if an alternative supplier is acting as the POLR, which the OCA does not support, the alternative POLR may request that the EDC terminate a customer if all requirements of Chapter 56 have been met. This was the process utilized in the PECO CDS program.

- *Information Disclosure- What changes to Commission regulations are needed?*

OCA Response: The OCA has not identified any need for changes in the Commission's regulations regarding information disclosure in 52 Pa. Code Chapter 54.

- *Universal Service/Customer Assistance- How is this incorporated?*

OCA Response: The EDC should continue to provide all universal service and customer assistance programs. Since under the OCA's approach, the EDC also serves as POLR, there is no need for any change. Even with an alternative POLR, the OCA recommends that the EDC continue to provide these programs.

V. Full Recovery of Reasonable Costs: A POLR shall “recover fully all reasonable costs” for its POLR related service. 66 Pa. C.S. §2807(e)(3)

- *POLR Cost Categories: Categories for consideration include energy, capacity, congestion, transmission, balancing, scheduling, administrative, bad debt, ancillary, POLR assignment process costs. Others?*
- *Cost Category Definitions*

OCA Response: The POLR costs included in the POLR rate, or price to compare, should include the cost of energy, capacity, congestion, transmission, and ancillary services. Administrative costs, such as scheduling and POLR procurement costs could be included if there is a marginal component, or avoidable cost when a customer shops. Bad debt costs pose a particular problem when attempting to determine the level of bad debt that would be avoided by customer shopping. Inclusion of bad debt in the POLR cost would have to be thoroughly evaluated to determine how the billing and payment protocols affect the level of bad debt assumed by the EDC or the EGS and how much of the bad debt is truly avoidable by the POLR when a customer shops.

- *Standards and mechanisms for evaluating cost recovery.*

OCA Response: The costs of the energy products should reflect prevailing market prices for those products. As described by the OCA in its Comments, there are two mechanisms for recovery of those costs--a reconcilable, dollar-for-dollar recovery of actual costs or a performance-based, non-reconcilable fixed pricing plan.

- *Universal Service and Energy Conservation costs: If these are part of the POLR obligation, does the statutory language of Sections 2804(4) and 2804(9), regarding the mechanisms for recovering such costs, present any problems/issues?*

OCA Response: The OCA recommends that the universal service and energy conservation programs remain the obligation of the EDC under any model. These costs are to be collected through a non-bypassable mechanism so they should continue to be collected as part of the distribution charges so that all customers contribute. More work is needed on determining how to make the CAP discount portable so that these customers can participate in the competitive retail market if they so choose.

- *How can the Commission prevent the POLR rate from disrupting the competitive retail market?*

OCA Response: The Commission's obligation is to ensure that the POLR rate to customers is reasonable and affordable. Since the POLR will acquire its products from the market through a variety of means, the rate will reflect the market prices. If the retail market has something of value to offer the customer, such as a green product, or can provide more efficient service than the higher risk POLR service, the retail market will develop appropriately to provide these products.

VI. Adjustment and Reconciliation of POLR Rates

A. POLR Rate Adjustment – Please address whether a POLR provider can request adjustment in its rates, and if so, the following issues.

- *Grounds for Adjustment*
- *Frequency of Requests*
- *Procedure for requests and standard of Commission review*

OCA Response: If a performance-based, non-reconcilable POLR rate is established for an appropriate term, the rate should not be subject to adjustment during the POLR term, except for extraordinary circumstances after review of the Commission.

B. Reconciliation of POLR rates- Please address whether the POLR rate should be reconciled at the conclusion of the term of a POLR service plan, and if so, the following issues.

- *Grounds for Reconciliation – Is it automatic or triggered at certain levels?*
- *Reconciliation Process and Outcome – Should there be limits on transfers resulting from over or under-collection?*

OCA Response: If a reconcilable clause approach is utilized, the rate would be reconciled on an annual basis. The OCA does not support more frequent adjustments or reconciliations. A complex process for over and under collections, such as the migration riders of the natural gas companies, would be needed.

VII. Default of POLR Service Provider

- *Default Risk: What is the risk for potential default by alternative suppliers and EDCs?*
- *Preventing Default: What extra steps, if any, should be taken to avoid this, especially where alternative provider is the POLR?*
- *Reacting to Default: What process should be followed in the event of a default to ensure continued provision of service? Who is the replacement provider and what costs may be recovered?*

OCA Response: The OCA anticipates that there would be little risk of default of the entire obligation if the regulated EDC were the POLR. As a regulated public utility, the EDC makes regular filings with the Commission regarding its financial situation and the Commission could quickly address any deterioration in the financial condition. If there is a bankruptcy of an EDC, experience shows that the EDC would continue to serve even if under the supervision of the

bankruptcy court. If an alternative supplier provides POLR service, the risk of default is greater. This has already occurred in Pennsylvania. To mitigate this risk, sufficient financial security for the ultimate POLR, the EDC, would have to be obtained.

VIII. Implementing POLR Rules/ Transition Issues

- *Timing and Phase-in: Given the staggered schedule for the expiration of generation rate caps, should the Commission issue POLR regulations, issue interim guidelines that would be effective until the conclusion of every transition period, or address POLR plans on an EDC by EDC basis?*

OCA Response: The Commission should proceed with POLR regulations, but the OCA recommends that the regulations provide principles and parameters for the service that allow flexibility for the development of POLR service as the generation rate caps expire and the markets continue to develop. The Commission should establish procedures for the review of the POLR plan of each EDC as its generation rate cap expires. Sufficient lead time is necessary to consider the plans.

- *Market Power: What are the potentials for market power concentration as well as market abuse and should they be addressed by the Commission in the implementation of POLR service?*

OCA Response: The Commission should continue to work closely with the PJM Market Monitor, PJM and FERC to ensure that its design and proposals for POLR service do not create the potential for market power or market abuses. If EDC affiliates are permitted to participate in any competitive solicitations, or serve the POLR load, appropriate affiliate rules must be established.

- *Consumer Education: What efforts should the Commission or others undertake in regards to POLR prior to implementation of regulations?*

OCA Response: If the design of POLR, and the price to compare regime, will be different than what currently exists, substantial additional education may be necessary. If the basic price to compare regime is maintained, education will be necessary to inform customers of each POLR Plan, the term of the plan and the new rates or price to compare.

- *Existing/Pending POLR Plans: How should the Commission address POLR plans that may be in operation at the time regulations go into effect?*

OCA Response: POLR Plans that are in operation at the time of the regulations should continue to operate until the end of their term. EDCs may have relied upon these approved Plans to make purchasing decisions or engage in other procurement strategies. Disrupting these purchases could be costly to the EDC and consumers.

- *Other Commission Action: To what extent do existing tariffs, orders and regulations need to be changed, withdrawn, etc. as a part of any POLR rulemaking?*

OCA Response: The OCA is not aware of any existing residential tariffs, other orders, or regulations that should be changed or withdrawn as part of the rulemaking.