BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RULEMAKING RE ELECTRIC	:	
DISTRIBUTION COMPANIES'	:	
OBLIGATION TO SERVE RETAIL	:	
CUSTOMERS AT THE CONCLUSION	:	**DOCKET NO. L-00040169**
OF THE TRANSITION PERIOD	:	
PURSUANT TO 66 PA. C.S. §2807(e)(2)	:	

COMMENTS OF THE EXELON COMPANIES TO THE DECEMBER 16, 2004 PROPOSED RULEMAKING ORDER

I. INTRODUCTION

On December 16, 2004, the Pennsylvania Public Utility Commission (the "Commission") issued a Proposed Rulemaking Order (the "December 16 Order") defining the obligations of electric distribution companies ("EDCs") and, where applicable, their successors to serve retail customers at the conclusion of their respective transition periods. The December 16 Order and attached regulations (Appendix A) were published in the *Pennsylvania Bulletin* on February 26, 2005 (35 Pa. B.1421) and interested parties were given sixty days, or until April 27, 2005, to file written comments.

PECO Energy Company ("PECO"), the Commonwealth's largest EDC, and Exelon Generating Company, LLC ("ExGen"), an active participant in regional wholesale power markets (collectively, the "Exelon Companies"), have a keen interest in this proceeding and believe that the rules which emerge from this process will be critically important to the economic well-being of Pennsylvania and Pennsylvanians in the years to come. For that reason, both PECO and ExGen submitted comments and made oral presentations as part of last spring's

Provider of Last Resort Roundtable at Docket No. M-00041792, which served as a precursor to the formulation of the proposed rules.

The Exelon Companies have carefully reviewed the December 16 Order and, with rare exception, support the approach that the Commission has taken. In particular, the Exelon Companies concur that, at this stage in the evolution of competitive electric markets, the Commission should allow individual EDCs to fashion default service implementation plans appropriate to their specific circumstances and the market conditions that exist at the time their transition periods come to an end. As discussed below, the Exelon Companies support the use of a reverse descending-clock auction, such as the one implemented in New Jersey. Furthermore, we believe that the proposed regulations are generally consistent with such a procurement process. At the same time, PECO and ExGen believe that the proposed regulations can be further clarified and strengthened in a number of important respects. The following comments are submitted with these objectives in mind.

II. SUMMARY OF KEY ISSUES

In the comments that follow and attached Appendix A, we suggest various revisions to the proposed regulations, many of which are primarily editorial in nature and designed to add clarity without altering the intended meaning. The substantive changes that we recommend may be grouped under three broad headings:

A. Definitions and Procedures

We believe that the success of the default service program is dependent, in part, on the use of unambiguous terms as well as rules and procedures that are fully understood by all stakeholders. To that end, we propose revisions to the definitions of "default service provider" (to establish its obligation to provide customer care functions) and to "prevailing market price"

(to simplify the draft language). We also have added a new defined term - - "term of service" - - to eliminate any confusion between the period of time default service rates will be in effect and the duration of the implementation plan itself.

In terms of procedures, we suggest that language be added to ensure that default service providers are accorded due process before being voluntarily or involuntarily removed from their default service obligations under Section 54.183(b). We further urge the Commission to develop procedures and appropriate timetables for the conduct of competitive procurements and the setting of default service rates in the years subsequent to initial review and approval of the default service implementation plans.

B. Competitive Procurement

As we noted in our POLR Roundtable comments last spring, the Exelon Companies fully support the so-called "wholesale" default service paradigm. The Exelon Companies also believe that there is considerable merit to an auction process for the procurement of full requirements supply, such as those in place in New Jersey and under consideration in Illinois.

There are many advantages to the auction model, if properly implemented, including: transparency, objectivity, and standardization. Soliciting full-requirements products draws upon the diverse skills and resources of the entire market to construct supply portfolios. Most importantly, the auction process is expected to create aggressive competition for such supplies, thereby subjecting suppliers to the disciplines of competitive market forces. As a result, the winning bid prices that result from an auction process, will reflect the market's overall assessment of the cost to supply load at competitive prices over the entire length of the supply contract.

Another advantage of an auction is price stability. The auction accommodates a "staggered" procurement process where a series of overlapping supply contract terms is employed such that only a portion of the utility's load obligation is bid out each year for multi-year periods. This results in rates that are subject to modest changes from year to year as actual market prices fluctuate. It also limits the risks associated with purchasing all power supplies when the market prices may be high. Moreover, by providing for regulatory oversight at the front end in the development of needed auction systems and procedures, the uncertainty associated with ex post facto regulatory review is minimized.

Although we agree conceptually with the approach taken by the proposed regulations, we recommend several revisions to the procurement procedures outlined therein. First, we do not believe that the Commission should be able to **require** two or more default service providers to bind together and file a joint procurement plan. Second, we suggest that competitive bids should be evaluated solely on the basis of price and that the "non-price criteria" alluded to by the Commission are more appropriately utilized in the bidder qualification process than the bid evaluation process. Third, it is critically important that the Commission make clear that it does not intend to review the **reasonableness** of the prevailing market price outcomes that emerge from a competitive procurement process, but rather will confirm that the **process** itself was carried out in accordance with the default service provider's previously approved implementation plan.

C. Cost Recovery And Rates

The Exelon Companies understand the need for the Commission to provide general guidance on the development of default service rates. However, we do not favor a one-size-fits-all approach, and instead encourage the Commission to accord default service providers

discretion in fashioning retail cost recovery mechanisms suitable to their particular facts and circumstances. For example, we believe that there is no need for a further unbundling of customer costs or demand side management charges where the EDC remains the default service provider and has already unbundled those costs. Similarly, we are firmly of the view that fundamental principles of cost causation require that any return or risk component be recovered through volumetric generation charges and not fixed customer charges.

The Exelon Companies also believe that the proposed regulations should to be revised to permit default service rates that are subject to reconciliation, and not, as the Commission proposes, to require that they be non-reconcilable. The use of a reconcilable model for default service rates would avoid the conflict and complexity that could arise from the reconcilable provision of the Alternative Energy Portfolio Standards (AEPS) Act, No. 213 of 2004. More specifically, we believe that the reconcilable model should be optional and that each default service provider should be allowed to propose such a model, if it so chooses, in its default service implementation plan.

We also urge the Commission to recognize the potential overlap of this proceeding with other ongoing initiatives involving universal service, demand side management, and compliance with the AEPS Act.We note in that regard that the Legislature has already determined that universal service costs are to be recovered through a "nonbypassable competitively neutral cost recovery mechanism" (66 Pa. C.S. §2804(9)) and that the recovery of AEPS costs is to be subject to reconciliation. With this interplay noted, the Commission should remain flexible in terms of how it views a Company’s alternative energy compliance and universal services in connection with a plan filed to implement the Commission’s default service provider regulations.

III. SECTION-BY-SECTION ANALYSIS

Attached hereto as Appendix A is a redlined version of the proposed regulations setting forth the revisions that the Exelon Companies submit for the Commission's consideration. In the section-by-section narrative that follows, we explain why we believe those specific language changes are necessary and appropriate. Additional issues and areas needing further clarification are also identified.

A. Purpose (§54.181)

Revisions to the final sentence of Section 54.181 are proposed to make clear that alternative default service providers, to the extent designated by the Commission under Section 54.183(b), are similarly entitled to fully recover all reasonable costs of providing default service, and to eliminate references to "certificated distribution" territory. The latter change is required because (1) alternative default service providers (if they are not incumbent EDCs) will not have certificated distribution territory, and (2) an incumbent EDC conceivably could become the default service provider in another EDC's certificated distribution territory.

B. Definitions (§54.182)

The Exelon Companies recommend several changes and additions to the proposed regulations' list of definitions. We believe these revisions are needed to eliminate confusion and/or avoid potential controversy down the road.

Customer Charge. The definition set forth in Section 54.187(a)(2) is cross-referenced.

Default Service. Subparts (i) and (ii) have been combined with no change in meaning or scope.

Default Service Implementation Plan. Minor editorial changes are proposed to make clear that the "plan" is not merely a "filing," but rather a document that has been approved by the Commission.

Default Service Provider. Additional language is recommended to further clarify the role of the default service provider to include required customer care functions.

Fixed Rate Service Option. We propose that this term be restated as "Fixed Priced Service" to more closely align it with the term "Hourly Priced Service." The word "option" is deleted because, for residential and commercial customers, it may be the only default service offering. In addition, we recommend deletion of the phrase "for the entire term of the default service implementation plan" to remove any implication that a particular fixed price will remain in place indefinitely.[1]

Generation Supply Charge. The definition set forth in Section 54.187(a)(1) is cross-referenced.

Prevailing Market Price. The Exelon Companies believe that the proposed regulations need to be very clear that the term "prevailing market price" describes the cost to the default service provider of acquiring electric energy either through a Commission-certified competitive procurement process or through purchases in the RTO's or ISO's administered energy markets pursuant to Sections 54.186(g), 54.187(i) or 54.188(e), and does **not** refer to the price or rate to be charged the default service customer. In other words, the "prevailing market price" is but one component of the "generation supply charge." The suggested revisions are intended to further clarify that point. In addition, we recommend that the analogy drawn between the "prevailing

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1 To the best of our knowledge, there is no defined "term" for the implementation plans themselves. *See also* comments, *infra.*

market price" and the "just and reasonable" standard at page 7 of the December 16 Order be deleted in any final Order to avoid potential confusion.

Term of Service. This is a newly defined term that the Exelon Companies believe should be added to describe the period of time (*e.g.,* one year) during which specific fixed and hourly priced default service rates will be in effect. Conforming changes may need to be made elsewhere to ensure consistency of terminology. We note, for example, that at several points the phrase "term of service" could be construed in terms of the anticipated duration of the implementation plan, not the rates for service (*see, e.g.,* §§54.182 (definition of "fixed rate option"), 54.185(c), 54.185(f), 54.187(g)).

C. Default Service Provider (§54.183)

The Exelon Companies agree that the incumbent EDC should be the default service provider in its certificated service territory in the first instance and that incumbent EDCs, should they so choose, should be allowed to petition the Commission to be relieved of that obligation.

The revisions that we propose are designed to address a variety of concerns. First, the Exelon Companies believe that Sections 54.183(b) and (c) should be restated to ensure symmetrical treatment of incumbent EDCs and EGSs that step into their shoes as default service providers. Second, the eviction of an incumbent EDC or substitute EGS from the role of default service provider upon the Commission's motion presumably will be an extraordinary and potentially disruptive event. We therefore suggest that language be added to (1) establish standards (or at least broad parameters) against which the default service provider's performance is to be evaluated and (2) assure that a default service provider facing eviction is accorded due process and an opportunity to be heard.

Third, the proposed regulations should make clear that an EDC or EGS that is evicted under Section 54.183(b) is under no continuing obligation to provide default service (as a backstop or otherwise) and cannot be required to reassume the default service provider role unless it is willing and able to do so.

Fourth, an EGS that is selected to serve as a default service provider and that also wishes to sell electricity at competitive rates in the default service territory should be required to functionally separate its operations to ensure that the same personnel, systems, customer interfaces, and customer information are not utilized to provide both default and competitive service.

Finally, the Exelon Companies suggest that further analysis may be desirable to identify and debate the various implications of according EGSs "public utility" status under Section 102 of the Public Utility Code (66 Pa. C.S. §102) when they become default service providers. Would such a designation entitle EGSs to exercise the power of eminent domain? Would they incur any obligation to construct facilities to serve new customers? What tax obligations would they be subject to? How would the code of conduct that currently governs the interactions between an EDC and its generating affiliate (§54.122) apply to an alternative default service provider? All of these issues need to be carefully explored.

D. Default Service Provider Obligations (§54.184)

The Exelon Companies submit that the obligations of default service providers need to be more clearly defined. Section 54.184(b) states only that default service providers shall comply with "all applicable Commission regulations and orders to the extent that such obligations are not modified by this subchapter." For example, will EGSs be subject to the Commission's

regulations at 52 Pa. Code §§56.1 *et seq.* ("Standards and Billing Practices for Residential Utility Service") and/or §§57.1 *et seq.* ("Electric Service")?

We also believe that Section 54.184(c) raises difficult questions regarding the provision of universal service in the post-transition era that might better be addressed in a separate rulemaking proceeding or other collaborative process. Where the incumbent EDC remains the default service provider, there would seem to be no need to tinker with existing procedures.[2] The situation could become more complicated, however, if an alternative EGS were handed over default service responsibilities and if the universal service function were somehow bifurcated. In addition, we note that the Electric Competition Act provides for the recovery of universal service costs through "nonbypassable, competitively neutral cost-recovery mechanisms," suggesting that such costs should not be unbundled.

E. Default Service Implementation Plans And Terms of Service (§54.185)

The Exelon Companies concur with the Commission's judgment that "each default service provider should have the option of proposing a default service implementation plan best suited to its service territory" (December 16 Order, p. 10). Moreover, because the procurement of wholesale electric supply is but one of many components of a default service implementation plan, this provision should remain in place even if, at some future date, the Commission is inclined to explore the possible use of a statewide procurement process.

In commenting on the draft "definitions" (*see* discussion, *supra*), we noted that the phrase "term of service" needed to be pinned down to avoid confusion between the duration of the

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[2] We have proposed, however, that the word "similar" be deleted from Section 54.184(c) to remove any implication that default service providers may not develop new or alternative customer assistance programs that otherwise comply with the requirements of the Electricity Generation Customer Choice and Competition Act.

implementation plan itself and the period for which a specific default service rate was going to remain in effect. That same concern presents itself here because the proposed regulations appear silent on the procedures to be put in place after the initial implementation plan is approved. For example, when and how does the default service provider update its initial plan? If minor plan changes or enhancements are to be proposed what timeframe should apply? On the other hand, if major or significant changes to the procurement process are proposed what would this timeline look like? When are subsequent procurement bids to be taken and reviewed by the Commission (e.g., six months before the next plan year, three months, etc.)? Are these types of details to be left to the initial implementation plan?

Section 54.185(a). A minor revision is proposed to add clarity in regards to the timing for filing default service implementation plans.

Section 54.185(c). Minor revisions are proposed to add clarity around implementation plans term of service and alignment with an RTO's planning year.

Section 54.185(d). In its current form, Section 54.185(d) speaks to procuring electric generation supply to meet the "demand" of default service customers. Because the word "demand" is frequently used to describe a customer's "load" or power requirements at a given point in time, the Exelon Companies recommend that this Section be more explicit in spelling out the various electric supply components that a default service provider will be obligated to procure for its customers.

On a related matter, we have no objection to the implementation plan identifying, for information purposes, "its method of compliance with the Alternative Energy Portfolio Standards Act." We note, however, that the implementation of AEPS is now the subject of a separate proceeding and that potentially difficult issues are presented by the different rate treatment to be

accorded non-AEPS generation costs (which the proposed regulations state are non-reconcilable) and AEPS generation costs (which are required by statute to be reconciled).

Section 54.185(e). The Exelon Companies are concerned over the possible interpretation and application of this provision to the extent that it purports to allow the Commission to mandate joint procurement plans. We respectfully submit that it should be left up to default service providers, and not the Commission, to determine whether a pooling of buyer interests is desirable. Our proposed revisions are designed to incorporate that principle.

Sections 54.185(g) and (h). These provisions require that the implementation plan, which must be filed at least fifteen months prior to the first plan year, "include a schedule of rates" and "identify the costs . . . that will be recovered." We propose that this language be revised to clarify that rate descriptions and/or a listing of the types of costs to be recovered, rather than actual charges (e.g., cents per kilowatt-hour), is what is intended.

Section 54.185(i). A "financial integrity" standard has been substituted for the "ability to perform" test in the discussion of credit standards.

Section 54.185(j). The proposed language should be revised to make clear that the requested information need be submitted only as to long-term generation contracts that will remain in effect after the end of the EDC's transition period and to provide that such information is accorded the same protections as the data submitted in compliance with Section 54.185(k) regarding confidentiality agreements.

Section 54.185(m). A provision is added requiring that default service providers include draft forms of supplier agreements to be entered into with winning bidders.

Section 54.185(n). Language is added to former Section 54.185(m) requiring that any Commission orders that revise the requirements of default service implementation plans be issued at least 90 days before the plans are due to be filed so that default service providers have sufficient opportunity to review such changes and to incorporate them in their plans.

F. Default Service Supply Procurement (Section 54.186)

This section of the proposed regulations presents two major issues. The first concerns the role of "non-price criteria" in the procurement process. The second has to do with the Commission's bid evaluation and/or oversight function. The revisions recommended by the Exelon Companies, as discussed below, are intended to streamline the procurement process, to minimize controversy and to make sure that the focus of any after-the-fact evaluation is on the process implementation and not the process outcomes.

Section 54.186(b)(1). More neutral language is proposed to eliminate any perceived bias against generation affiliates.

Section 54.186(b)(2)(vii). This subsection requires that default service implementation plans include "bid evaluation criteria." Section 54.186(e) further notes that a default service provider shall evaluate and select winning bids on the basis of such criteria. At page 13 of its Order, the Commission observes that such criteria might include both price and non-price factors and, as examples of the latter, cites (1) firm transmission reservation requirements, (2) credit quality/bond rating and (3) alternative energy standard portfolio components (December 16 Order, p. 14).

The Exelon Companies believe that these non-price factors are more appropriately utilized to define and/or set the ground rules for a bid solicitation -- i.e., as bidder qualification criteria rather than bid evaluation criteria. For example, if reasonable credit requirements have

been established and all bidders satisfy those requirements, which may require the posting of collateral by bidders with lower credit quality, we do not believe a default service provider should be allowed to favor one over another on the basis of bond rating. Similarly, if the default service provider wishes supply bids to include an alternative energy component, then that should be established up front as part of the implementation plan or request for proposal. Stated simply, bids which otherwise comply with the requirements of the competitive bidding process should be evaluated solely on the basis of price of a uniformly defined product. The changes to Section 54.186(b)(2)(vi) and (vii) reflect these principles. In addition, and consistent with changes proposed to Section 54.185(m), we propose adding language requiring the submission of draft supplier agreements.

Section 54.186(c). Minor revisions are proposed to add clarity to the role of the default service provider's procurement "manager".

Section 54.186(d). The Exelon Companies support the use of an independent third party, retained by the Commission, to monitor the competitive procurement process and report its findings to the Commission. The cost of such an independent third party should be considered part of the procurement costs and fully recovered as proposed in our comments to Section 54.187(a)(1)(vi).

Section 54.186(e). As previously discussed, the Exelon Companies believe that qualifying bids should be evaluated and accepted only on the basis of price.

Section 54.186(f). The Exelon Companies propose language in this section that provides clarity on the Commission's role in reviewing implementation plans and procurement processes. The Commission, in its review and approval of a default service provider's implementation plan, will ensure that such plans are fair, transparent, and non-discriminatory. Once that process is

completed, and the default service provider has solicited bids via a competitive procurement process, there should not be a need for the Commission to review the bids based on "price and non-price criteria" as stated on page 14 of the December 16 Order. Rather, in its review of the **execution** of the approved competitive procurement process, the Commission, with the assistance of the independent third-party monitor, needs only to evaluate whether the procurement **process** was carried out in a manner consistent with the approved plan.

Subsections 54.186(f)(1) and (2) appear to give the default service provider discretion to propose a review period, subject to a requirement that the Commission must be given not less than three business days. The Exelon Companies believe it would be helpful for the Commission to affirmatively commit to review and certify compliance in writing within **no more** than two business days of receipt of the results of the procurement process. As the Commission is aware, any delay in certifying the results of a competitive procurement will add uncertainty and risk to the process that, in turn, will be built into the bid price, and could decrease the extent of bidder participation. Also since the Commission will only be confirming that the procurement process was carried out in a manner consistent with the approved plan and not reviewing bids based on price or other non-price criteria, two days should be more than adequate for Commission review.

Section 54.186(g). This subsection addresses the situation where execution of the competitive procurement plan fails to yield sufficient electric supply to meet all of the default service provider's supply requirements (i.e., under-subscription). The Exelon Companies disagree that the appropriate response in that situation is to simply repeat the competitive procurement process. Indeed, we believe that to do so is inconsistent with competitive procurement processes, such as a NJ-style auction. We have provided proposed language that

will allow the default service provider to address this under-subscription situation through its implementation plan.

We also seek further clarification as to how default service providers will "fully recover all reasonable costs" if and when they must obtain generation outside of the normal competitive procurement process, i.e., through "the RTO or ISO's administered energy markets."

G. Default Service Rates And The Recovery Of Reasonable Costs (§54.187)

This section identifies the costs to be recovered through default service rates and proposes various mechanisms for their recovery. It also identifies default service charges, both generation supply charge and customer charge, as being non-reconcilable. As discussed below, the Exelon Companies recommend a number of revisions to simplify the process where the incumbent EDC remains the default service provider and has already unbundled the various cost components in question. In addition, while we recognize that use of a non-reconcilable model may be viable under certain circumstances, particularly if coupled with switching rules and risk/return adders, we nonetheless believe that default service providers should be permitted to propose, for the Commission's consideration, a mechanism that would provide for the reconciliation of default service rates similar to what the Legislature has mandated for AEPS costs. One benefit of having both the default service supply and the AEPS supply subject to reconciliation appears to be a less complex competitive procurement process.

We therefore ask the Commission to adopt a reconcilable default service charge model and to allow for the option for default providers to propose non-reconcilable charges in their individual default service implementation plans.

Section 54.187(a) and (b). With respect to the proposed generation supply charge, language has been added to make explicit our understanding that line losses and the cost of

designing, implementing, managing and/or monitoring the results of a competitive procurement process, as well as the cost of under-subscription and the cost associated with a generation supplier failing to deliver generation supply to a default service provider, will be deemed "reasonable, identifiable generation supply acquisition costs." Consistent with our previous comments, we have removed the non-reconciliation provision from the supply charge to allow for reconciliation of these costs. We have also added language indicating that costs determined through an approved competitive procurement process shall be deemed to satisfy the "prevailing market price" standard. Further, we recommend that any "return or risk component" approved by the Commission be fully recoverable through the generation supply charge, and not the customer charge. The risk associated with default generation service is attributable to variations in generation usage. To recover a return or risk component as part of a fixed customer charge would not track cost causation and would unfairly burden smaller users. In a similar manner as above, we have removed the non-reconciliation provision from the customer charge to allow for reconciliation of these costs. Finally, the Exelon Companies believe that there is no need to create a new or separate customer charge where the EDC remains the default service provider and has previously unbundled the costs in question.

Section 54.187(c) and (d). These provisions establish a 500 kilowatt breakpoint between fixed priced and hourly priced default service rates. PECO would prefer that the breakpoint be set no lower than 750 kw so that it can avoid the need to change out meters and upgrade its automatic meter reading system, both of which would be required if it were to offer hourly pricing to customers with peak loads below 750 kw. We also have proposed language to clarify the period over which the customer's peak demand is to be measured. We further recommend

that Section 54.187(d) be revised to make clear that the fixed rate option for customers with peak demands in excess of 750 kW is in addition to, and not in lieu of, hourly pricing.

Section 54.187(f). PECO Energy does not believe there is any need to establish a new set of rates that "correspond" to its existing demand side response and/or demand side management programs as part of its default service implementation plan. We recognize, however, that this may be a concern where an entity other than the incumbent EDC becomes the default service provider and we have revised the draft language accordingly. We also note that a Commission working group is currently developing a policy statement on demand side response programs that will need to be taken into account.

Sections 54.187(g) and (h). These provisions address the possible interim adjustment to and after-the-fact reconciliation of default service rates. As presently drafted, they express a strong bias against both by establishing a threshold test in Section 54.187(g) that could prove exceedingly difficult to satisfy ("material prejudice") and by stating directly in Section 54.187(h) that, with the exception of AEPS costs (whose treatment is dictated by statute), reconciliation will be considered only in "extraordinary circumstances."[3] The Exelon Companies have added proposed language to Section 54.187(h) to allow reconciliation of default service provider's costs of providing default service. Indeed New Jersey employs a reconciliation algorithm in its full-requirements procurement process to translate wholesale winning bid prices into retail rates.

H. Commission Review of Default Service Implementation Plans (§54.188)

The Exelon Companies believe that adequate time needs to be allotted to a default service provider for implementing its default service plan for the first time. As such, we have added

[3] It is also unclear how the "extraordinary circumstances" exception is to be interpreted in light of the description of both the generation supply charge and customer charge as "non-reconcilable" (*see* §§54.187(a)(1) and (2)).

language that requires that default service providers have at least 9 months for implementing the new processes and systems for soliciting, awarding, and obtaining default supply.

I. Default Service Customers (§54.189)

The Exelon Companies submit that the method, by which retail customers are assigned to the Commission approved default service provider at the conclusion of the generation rate cap, needs to be clarified. We have proposed language in Section 54.189(a) that specifies that the assignment of customers will be done in accordance with the meter cycles of the default service provider and the Commission's "rolling switching" regulations adopted during the implementation of the Electricity Generation Customer Choice and Competition Act.

We also propose an additional requirement, Section 54.189(f), to address the issue of default service "gaming". In our view, the proposed regulation does not provide adequate protection against seasonal gaming. The Exelon Companies therefore recommend that default service providers be allowed to either (1) require fixed rate service customers to remain on that service for at least 12 months or (2) implement another appropriate mechanism to prevent gaming. The absence of switching rules will create an incentive for gaming by EGSs and the need for higher risk premiums by wholesale suppliers in their competitive bids.

The Exelon Companies appreciate the opportunity to provide comments to the proposed rulemaking and we look forward to continuing to work with the Commission and other stakeholders on these critical issues. We respectfully request that the Commission incorporate our suggestions into the proposed regulations.

APPENDIX A

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ANNEX A

TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 54. ELECTRICITY GENERATION CUSTOMER CHOICE
Subchapter A. CUSTOMER INFORMATION

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§54.4. Bill format for residential and small business customers.

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(b) The following requirements apply only to the extent to which an entity has responsibility for billing customers, to the extent that the charges are applicable. The [provider of last resort] <u>default service provider</u> will be considered to be an EGS for the purposes of this section. Duplication of billing for the same or identical charges by both the EDC and EGS is not permitted.

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§ 54.5. Disclosure statement for residential and small business customers

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(b) The EGS shall provide the customer written disclosure of the terms of service at no charge whenever:

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(3) Service commences from a [provider of last resort] <u>default service provider</u>.

(c) The contract's terms of service shall be disclosed, including the following terms and conditions, if applicable:

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(9) The name and telephone number of the [provider of last resort] default service provider.

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(h) If the [provider of last resort] default service provider changes, the new [provider of last resort] default service provider shall notify customers of that change, and shall provide customers with their name, address, telephone number and Internet address, if available.

§54.6. Request for information about generation supply.

(a) EGSs shall respond to reasonable requests made by consumers for information concerning generation energy sources.

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(2) The [provider of last resort] default service provider shall file at the Commission the annual licensing report as required by the Commission's licensing regulations in this chapter and shall otherwise comply with paragraph (1).

Subchapter B. ELECTRIC GENERATION SUPPLIER LICENSING

§54.31. Definitions.

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[Provider of last resort] Default service provider – [A supplier approved by the Commission under section 2807(e)(3) of the code (relating to duties of electric distribution companies) to provide generation service to customers who contracted for electricity that was not delivered, or who did not select an alternative electric generation supplier, or who are not eligible to obtain competitive energy supply, or who return to the provider of last resort after having obtained competitive energy supply] The incumbent EDC within a certificated service territory or a Commission approved alternative default service provider.

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§54.32. Application process.

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(h) An EDC acting within its certificated service territory as a [provider of last resort] default service provider is not required to obtain a license.

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§54.41. Transfer or abandonment of license.

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(b) A licensee may not abandon service without providing 90 days prior written notice to the Commission, the licensee's customers, the affected distribution utilities and [providers of last resort] default service providers prior to the abandonment of service.

The licensee shall provide individual notice to its customers with each billing, in each of the three billing cycles preceding the effective date of the abandonment.

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Subchapter E. COMPETITIVE SAFEGUARDS

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§54.123. Transfer of customers to default service.

The following standards shall apply to the transfer of a retail customer's electric generation service from an EGS to a default service provider within the meaning of §54.182:

(a) An EGS shall not transfer a retail customer from its electric generation service to the default service provider without the consent of the default service provider, except in the following situations:

(1) Upon Commission approval of the abandonment, suspension or revocation of an EGS license, consistent with §§54.41 and 54.42 (relating to transfer or abandonment of license and license suspension; license revocation).

(2) Upon nonpayment by a retail customer for services rendered by the EGS.

(3) To correct an unauthorized or inadvertent switch of a retail customer's account from default service to an alternative EGS's service.

(4) Upon the normal expiration of contracts that are not structured in a way to exploit seasonal variations in market prices for electric generation service

(b) An EGS may initiate transfers in the above situations through standard electronic data interchange protocols.

(c) An EGS may not initiate or encourage transfers of service to a default service provider from the EGS to exploit seasonal variations in market prices for electric generation service.

(d) The Commission may impose a penalty for every retail customer transferred to default service in violation of §54.123, consistent with 66 Pa. C.S. §§3301-3316 (relating to violations and penalties).

Subchapter G. DEFAULT SERVICE

§54.181. Purpose.

This subchapter implements §2807(e) of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§2801-2812, pertaining to an EDC's obligation to serve retail customers at the conclusion of the restructuring transition period. These regulations ensure that all retail customers who do not choose an alternative EGS, or who contract for electric energy that is not delivered, have access to generation supply at prevailing market prices. The EDC or Commission approved alternative default service provider shall fully recover all reasonable costs for acting as a default service provider of electricity to all retail customers in its service territory.

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§54.182. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Alternative energy portfolio standards – A requirement that a certain percentage of electric energy sold to retail customers in the Commonwealth of Pennsylvania be derived from alternative energy sources, as defined in the Alternative Energy Portfolio Standards Act, No. 213 of 2004.

Commission – The Pennsylvania Public Utility Commission.

Competitive procurement process – A fair, transparent, and non-discriminatory process by which a default service provider acquires electric generation supply to serve its default service customers through a bid solicitation process.

Customer Charge – This term shall have the same meaning as defined in §54.187(a)(2).

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Default service –

(i) Electric generation service provided by a default service provider to a retail electric customer who does not choose an alternative EGS or who contracts for electric energy and it is not delivered.

(ii) Electric generation service provided pursuant to a Commission approved default service plan.

Default service implementation plan – A plan submitted by a default service provider, and approved by the Commission, that identifies the means for procuring generation supply for default service customers at prevailing market rates, the reasonable costs associated with default service, and all other necessary terms and conditions of service.

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Default service provider – The incumbent EDC within a certificated service territory or a Commission approved alternative default service provider, which procures generation supply for default service customers and provides all of the required customer care functions.

EDC – Electric Distribution Company – This term shall have the same meaning as defined in 66 Pa. C.S. §2803.

EGS – Electric Generation Supplier – This term shall have the same meaning as defined in 66 Pa. C.S. §2803.

FERC – The Federal Energy Regulatory Commission.

Fixed rate service – A default service price that is set in advance, specified for a defined term of service, that may include seasonal differences.

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Generation Supply Charge – This term shall have the same meaning as defined in §54.187(a)(1).

Hourly priced service – A default service price where the energy component of the generation supply charge is based on the RTO or ISO's LMP for energy, or other similar, mechanism.

ISO – A FERC approved independent transmission system operator.

LMP – Locational marginal pricing – A pricing mechanism used by some RTOs and ISOs, as defined in their FERC approved tariffs.

Prevailing market price – The price of electric generation supply for a term of service realized through a default service provider's implementation of and compliance with a Commission approved default service implementation plan including the conditions specified in §54.186(g), §54.187(i), or §54.188(e).

Replacement procurement process – A Commission approved process, submitted as part of the default service implementation plan, which provides for the acquisition of generation supply in the event that a supplier fails to deliver generation contracted for under the conditions of a competitive procurement process.

Retail customer or retail electric customer – These terms shall have the same meaning as defined in 66 Pa. C.S. §2803.

RTO - A FERC approved regional transmission organization.

Term of Service – the time period during which the fixed rate service and the hourly priced service options of a default service implementation plan are made available to default service customers.

§54.183. Default service provider.

(a) The default service provider shall be the incumbent EDC in each certificated service territory, except as provided for pursuant to §54.183(b).

(b) An EDC or alternative default service provider may petition the Commission to be relieved from the default service obligation, which request may be granted if the Commission concludes that replacement of the EDC is in the public interest. In the alternative, the Commission may propose, through its own motion, that an EDC be relieved from the default service obligation if the EDC or alternative default service provider has failed to perform its default service obligations or is unlikely to do so in the future. An EDC or alternative default service provider may be relieved of its default service obligations only after having been provided notice and an opportunity to

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Deleted: (ii) The price of electric generation supply in the RTO or ISO administered energy markets in whose control area default service is being provided, acquired pursuant to the conditions specified in §§54.186(g), 54.187(i) or 54.188(e).¶

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be heard. In such circumstances, the Commission will announce through an order a competitive process to determine the alternative default service provider, which may be either an EDC or a licensed EGS.

(c) When the Commission finds that an EDC or alternative default service provider should be relieved of the default service obligation, the competitive process for the replacement of the default service provider shall be as follows:

1. Any EDC or EGS that wishes to be considered for the role of the alternative default service provider shall apply for a certificate of public convenience, consistent with 66 Pa. C.S. §§1101-1103 (relating to certificates of public convenience).

2. Applicants shall demonstrate their operational and financial fitness to serve and their ability to comply with all Commission regulations, orders and applicable laws pertaining to public utility service.

3. If no applicant can meet this standard, the incumbent EDC shall be required to continue the provision of default service

4. If one or more applicants meet the standard provided in §54.183(c)(2), the Commission shall grant a certificate of public convenience to act as a default service provider to the applicant best able to fulfill the obligation

5. An EGS that is selected as a default service provider shall functionally separate its operations if it chooses to also provide service at competitive rates in its default service territory.

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6. An EGS that is granted a certificate of public convenience to act as an alternative default service provider shall be considered a public utility within the meaning of 66 Pa. C.S. §102.

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(d) In the event that the incumbent EDC has been previously relieved of the default service obligation pursuant to §54.183 (b), the then current default service provider shall also be subject to the conditions of §54.183 (b). In addition, the incumbent

EDC is under no obligation to participate in the replacement process set forth in §54.183 (c) unless it wishes to do so.

§54.184. Default service provider obligations.

(a) A default service provider shall be responsible for the reliable provision of default service to all retail customers who are not receiving generation services from an alternative EGS within the certificated territory of the EDC that it serves.

(b) A default service provider shall comply with all applicable Commission regulations and orders to the extent that such obligations are not modified by this subchapter.

(c) A default service provider shall continue the universal service program in effect in the EDC's certificated service territory or implement, subject to Commission approval, a customer assistance program consistent with the provisions of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§2801-2812.

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§54.185. Default service implementation plans and terms of service.

(a) A default service provider shall file a default service implementation plan with the Commission's Secretary's Bureau at least fifteen months prior to the conclusion of the currently effective default service plan or Commission approved generation rate cap for that particular EDC service territory, unless the Commission authorizes another filing date.

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(b) Default service implementation plans shall comply with all Commission regulations pertaining to documentary filings, except when modified by this subchapter. The default service provider shall serve copies of the default service implementation plan on the Pennsylvania Office of Consumer Advocate, Pennsylvania Office of Small Business Advocate, the Commission's Office of Trial Staff, and the RTO or ISO in whose control area the default service provider is operating.

(c) A default service implementation plan shall propose a minimum term of service of at least twelve months, or multiples thereof, recognizing however that the

initial plan should include transition provisions to reflect the RTO planning year and as needed to comply with §54.185(f).

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(d) A default service implementation plan shall propose a fair, transparent and non-discriminatory competitive procurement process consistent with §54.186 for the acquisition of sufficient electric generation supply, at prevailing market prices, to meet the total wholesale electric energy (including that required to satisfy line losses), capacity, transmission and ancillary service requirements of all of the default service provider's retail electric customers for the term of service. The default service plan shall identify its method of compliance with the Alternative Energy Portfolio Standards Act, No. 213 of 2004.

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(e) Some or all default service providers may jointly file default service plans that propose a competitive procurement process to procure electric generation for all of their default service customers. A multi-service territory competitive procurement process shall comply with §54.186.

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(f) A default service provider shall document that its proposal is consistent with the legal and technical requirements pertaining to the generation, sale and transmission of electricity of the RTO or ISO in whose control area it is providing service. The default service plan's term of service and generation supply acquisition processes shall align with the planning period of that RTO or ISO.

(g) The default service implementation plan shall include a description of the rates, rules and conditions of default service in the form of proposed revisions to its tariff. The default service provider may use the already effective retail customer classes in the EDC's service territory, or may propose a reclassification of retail customers.

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(h) The default service implementation plan shall identify the categories of costs, consistent with §54.187, that will be recovered through a schedule of rates for the provision of default service.

(i) The default service implementation plan shall include reasonable credit requirements, or other reasonable assurances of the financial integrity of any supplier that

wishes to participate in the competitive procurement process, as approved by the Commission.

(j) The default service implementation plan shall identify the load size and end date of all existing long-term generation contracts that are in effect between the EDC and a retail customer within its service territory and that are not scheduled to expire until after the end of the transition period. This information shall be subject to the provisions contained in §§54.185(k) and 54.186(h).

(k) The default service implementation plan shall include copies of any proposed confidentiality agreements for the protection of proprietary information of the default service provider and generation suppliers. The Commission will approve reasonable confidentiality agreements, including expiration provisions, that will be binding on the default service provider, generation suppliers and any third party involved in the administration, review or monitoring of a default service supply procurement process.

(l) The default service provider shall include in its implementation plan a replacement procurement process to ensure the reliable provision of default service in the event a supplier fails to deliver electric generation supply it has agreed to provide pursuant to the terms of a Commission approved competitive procurement process.

(m) The default service provider shall include in its implementation plan draft forms of all supplier agreements proposed to be entered into with the winning bidders of the competitive procurement process.

(n) The Commission may issue orders further specifying the form and content of default service implementation plans when necessary to enforce or carry out the provisions of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§2801-2812, and other applicable law. Such orders will be issued at least 90 days in advance of any filing deadlines for the affected implementation plans.

§54.186. Default service supply procurement.

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(a) A default service provider shall procure the electricity needed to provide default service only through a competitive procurement process or replacement procurement process approved by the Commission, with the following exceptions:

(1) Hourly priced service provided pursuant to §54.187(e).

(2) Supply procured through RTO or ISO administered energy markets consistent with §§54.186(g), 54.187(i) or 54.188(e).

(b) A default service provider's competitive procurement process shall adhere to the following standards:

(1) A default service provider's supplier affiliate may participate in any competitive procurement process. The default service provider shall propose and implement protocols to ensure that its supplier affiliate is treated equally to all other suppliers to both the solicitation and evaluation of competitive bids, and any other aspect of the competitive procurement process. The process shall comply with the codes of conduct promulgated by the Commission at §54.122 (relating to code of conduct).

(2) A default service provider's proposed competitive procurement process shall include:

(i) A bidding schedule.

(ii) A definition and description of the power supply products on which potential suppliers shall bid.

(iii) Bid price formats.

(iv) The time period during which the power will need to be supplied for each power supply product.

(v) Bid submission instructions and format.

(vi) Bidder qualifications.

(vii) Bid price evaluation criteria

(viii) Draft forms of proposed supplier agreements.

(ix) Relevant load data, including but not limited to the following:

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(A) Aggregated customer hourly usage data for all retail customers.

(B) Number of retail customers.

(C) Capacity peak load contribution figures by rate schedule.

(D) Historical monthly retention figures by rate schedule.

(E) Estimated loss factors by rate schedule.

(F) Customer size distribution by rate schedule.

(c) A default service provider may employ a third-party to design, implement, and/or manage all or some part of the competitive procurement process.

(d) The competitive procurement process may be subject to direct oversight by the Commission and/or an independent third party retained by the Commission. Any third party shall report to the Commission. Commission staff and any third party involved in oversight of the procurement process shall have full access to all information pertaining to the competitive procurement process, and may monitor the process either remotely or where the process is administered. Any third party retained for purposes of monitoring the competitive procurement process shall be subject to confidentiality agreements identified in §54.185(k).

(e) The default service provider shall evaluate and select winning bids in a non-discriminatory manner based on bid price evaluation criteria set forth consistent with §54.186(b)(2)(vii).

(f) The Commission shall review the acquisition of generation supply and, within 2 business days of receipt of the results of the procurement process, shall verify in writing, compliance with the approved default service implementation plan. The Commission's verification of compliance with an approved competitive procurement process shall constitute its certification of the default service provider's compliance with the approved default service implementation plan.

(g) The default service implementation plan shall address the actions to be taken in the event the competitive procurement process does not result in sufficient

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(1) The Commission's review shall occur within a time period as specified in the approved competitive procurement process. ¶
(2) The review period may not be less than 3 business days. ¶
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electric supply to meet the default service provider's full load requirements. The default service provider may petition for necessary changes to the previously approved competitive procurement process to ensure the acquisition of sufficient supply. When necessary to procure electric generation supply before the completion of another competitive procurement process, a default service provider shall acquire supply at prevailing market prices and shall fully recover all reasonable costs associated with this activity. In this circumstance, the prevailing market price shall be the price of electricity in the RTO or ISO's administered energy markets in whose control area that service is being provided. The default service provider shall follow acquisition strategies that reflect the incurrence of reasonable costs, consistent with 66 Pa. C.S. §2807(e)(3), when selecting from the various options available in these energy markets.

(h) The bids submitted by a supplier under the competitive procurement process shall be treated as confidential through the expiration date identified in the confidentiality agreement approved by Commission pursuant to §54.185(k). The default service provider, the Commission, and any third parties involved in the administration, review or monitoring of the procurement process, and generation suppliers shall be subject to this confidentiality provision.

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§54.187. Default service rates and the recovery of reasonable costs.

(a) The costs incurred for providing default service shall be recovered through the following mechanisms or charges:

(1) Generation supply charge – the generation supply charge is a reconcilable charge that includes all reasonable costs associated with the acquisition of generation supply, inclusive of the costs of generation supply recovered through §54.187(a)(3), to meet the default service obligation . In lieu of a reconcilable supply charge, default service providers may employ a non-reconcilable generation charge, by including such in their competitive default service implementation plans. Costs determined through an approved

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procurement process are deemed to satisfy the prevailing market price standards set forth in 66 Pa. C.S. §2807(e)(3) of the Electricity Generation Customer Choice and Competition Act. The associated costs with this charge include:

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(i) The prevailing market price of energy.

(ii) The prevailing market price of RTO or ISO capacity or any similar obligation.

(iii) FERC approved ancillary services and transmission charges.

(iv) Required RTO or ISO charges.

(v) Applicable taxes.

(vi) Other reasonable, identifiable generation supply acquisition costs including but not limited to the costs of designing, implementing, managing, and/or monitoring the procurement process.

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(vii) A reasonable return or risk component of the default service provider.

(viii) Line losses.

(ix) Under-subscription and supplier default costs identified in §54.186(g) and §54.187(i).

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(2) Customer charge – The customer charge is a reconcilable, fixed charge, set on a per customer class basis, that includes all identifiable, reasonable costs associated with providing default service to an average member of that class, inclusive of generation supply costs and costs recovered through §54.187(a)(3). In lieu of a reconcilable customer charge, default service providers may employ a non-reconcilable customer charge, by including such in their competitive default service implementation plans. The customer charge is only applicable in the event that the default service provider is not the EDC or if the

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EDC has not yet unbundled these charges. The associated costs with this charge include:

(i) Default service related costs for customer billing, collections, customer service, meter reading, and uncollectible debt.

(ii) Applicable taxes.

(iii) Other reasonable and identifiable administrative or regulatory expenses.

(3) A default service provider shall use an automatic energy adjustment clause, consistent with 66 Pa. C.S. §1307 to recover reasonable costs incurred through compliance with the Alternative Energy Portfolio Standards Act, No. 213 of 2004.

(b) A default service plan shall include a fixed rate service option for all residential customers.

(c) A default service implementation plan shall include a fixed rate service option for non-residential default service customers whose load test, or other method acceptable to the default service provider, indicates a registered peak demand of 750 or less kilowatts in at least two of the four months of June through September in the immediately preceding calendar year.

(d) The default service provider shall include an hourly rate in its implementation plan for all default service customers whose load test, or other method acceptable to the default service provider, indicates a registered peak demand of greater than 750 kilowatts in at least two of the four months of June through September in the immediately preceding calendar year. The default service provider may also propose a fixed rate service option in addition to hourly pricing for these customers in its default service implementation plan.

(e) The rate for hourly priced service shall include:

(1) The RTO's or ISO's LMP or the equivalent pricing mechanism.

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(2) The prevailing market price of RTO or ISO capacity or any similar obligation.

(3) FERC approved ancillary services and transmission charges.

(4) Required RTO or ISO charges.

(5) Applicable taxes.

(6) Other FERC approved or reasonable, identifiable RTO or ISO charges and costs directly related to the hourly priced service.

(7) Other reasonable and identifiable administrative or regulatory expenses.

(8) Line losses

(f) In the event the default service provider is not the EDC, the default service implementation plan shall include demand side response and demand side management programs consistent with Commission requirements for EDCs and proposed rates to recover the costs associated with those programs.

(g) The default service implementation plan may include mechanisms that allow default service providers to adjust their prices during the term of service to recover reasonable, incremental costs of significant changes in the number of default service customers or reasonable, incremental costs of other events. The default service provider shall define significant changes in its default service implementation plan.

(h) The default service provider's projected and actual incurred costs for providing service will be subject to Commission review and reconciliation including extraordinary circumstances, and as provided in §54.187(a)(3).

(i) When a generation supplier fails to deliver generation supply to a default service provider, the default service provider shall be responsible for acquiring replacement generation supply consistent with its Commission approved replacement procurement process. When necessary to procure electric generation supply before the completion of the replacement procurement process, a default service provider shall acquire supply at prevailing market prices and shall fully recover all reasonable costs

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associated with this activity. In this circumstance, the prevailing market price will be the price of electricity in the RTO or ISO's administered energy markets in whose control area the default service is being provided. The default service provider shall follow acquisition strategies that reflect the incurrence of reasonable costs, consistent with 66 Pa. C.S. §2807(e)(3), when selecting from the various options available in these energy markets.

§54.188. Commission review of default service implementation plans.

(a) A default service implementation plan shall initially be referred to the Office of Administrative Law Judge for further proceedings as may be required.

(b) The Commission shall issue an order within six months of a plan's filing with the Commission on whether the default service implementation plan demonstrates compliance with this subchapter and the provisions of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§2801-2812. The Commission may order modification of the conditions of the proposed plan to ensure that a default service plan is compliant. The default service provider will be given at least 9 months lead time to implement the default service implementation plan.

(c) The Commission will evaluate the default service implementation plan to ensure that it includes a fair, transparent and non-discriminatory competitive procurement process for all potential suppliers provided under §54.186.

(d) Upon entry of the Commission's final order, the default service provider shall acquire generation supply for the term of service in a manner consistent with the conditions of the approved competitive procurement process provided under §54.186, and report the bids submitted by EGSs in writing to the Commission.

(e) The Commission will certify the results of a competitive procurement process in their entirety or reject them due to non-compliance with the approved implementation plan in accordance with the requirements of §54.186(f). If the

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Commission rejects the results due to non-compliance, the default service provider shall repeat the approved competitive procurement process. When necessary to procure electric generation supply before the completion of the subsequent competitive procurement process, a default service provider shall acquire supply at prevailing market prices and shall fully recover all reasonable costs associated with this activity. In this circumstance, the prevailing market price will be the price of electricity in the RTO or ISO's administered energy markets in whose control area that service is being provided. The default service provider shall follow acquisition strategies that reflect the incurrence of reasonable costs, consistent with 66 Pa. C.S. §2807(e)(3), when selecting from the various options available in these energy markets.

(f) Upon completion of the competitive procurement process, the default service provider shall provide written notice to all default service customers and the named parties identified in §54.185(b) of the Commission certified default service prices and terms and conditions of service no later than 60 days before their effective date, unless another time period is approved by the Commission. The default service provider shall also provide written notice to the named parties identified in §54.185(b) containing an explanation of the methodology used to calculate the price for electric service.

(g) A default service provider may petition for a waiver of any part of these regulations, in a manner consistent with 52 Pa. Code §5.43 (relating to petitions for issuance, amendment or waiver of regulations). The Commission may grant waivers of these regulations to ensure the reliable provision of default service and to enforce and carry out the provisions of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§2801-2812 and any other applicable laws.

§54.189. Default service customers.

(a) At the conclusion of an EDC's Commission approved generation rate cap, all retail customers who are not receiving generation service from an EGS shall be

assigned to the Commission approved default service provider. Customers will be assigned to the default service provider in accordance with the default service provider's meter cycles and Commission regulations.

(b) A default service provider shall accept all applications for default service from new retail customers and retail customers who switch from an EGS, if the customers comply with all Commission regulations pertaining to applications for service.

(c) A default service provider shall treat a customer who leaves an EGS and applies for default service as it would a new applicant for default service.

(d) A default service customer may choose to receive its generation service from an EGS at any time, if the customer complies with all Commission regulations pertaining to changing generation service providers.

(e) A default service provider may not charge a fee to a retail customer that changes its generation service provider in a manner consistent with Commission regulations.

(f) For customers taking default service under a fixed rate option, there will be a minimum contract term of 12 months or other appropriate mechanism to prevent gaming of default service.

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CHAPTER 57. ELECTRIC SERVICE
Subchapter M: STANDARDS FOR CHANGING A CUSTOMER'S ELECTRIC GENERATION SUPPLIER

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§57.178. [Provider of Last Resort] <u>Default service provider.</u>

This subchapter does not apply when the customer's service is discontinued by the EGS and subsequently provided by the [provider of last resort] <u>default service provider</u> because no other EGS is willing to provide service to the customer.

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