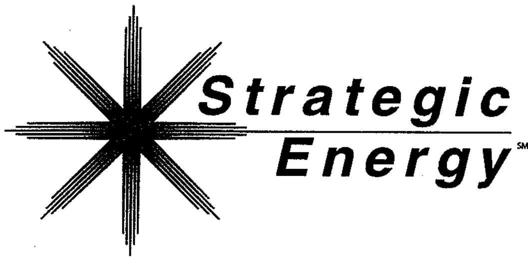


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June 27, 2005

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

**Re: Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant To 66 Pa. C.S. §2807(e)(2) Docket No. L-00040169 Comments of Strategic Energy, LLC**

Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and fifteen (15) copies of Strategic Energy LLC's Reply Comments in the above-captioned matter. If you have any questions concerning the submittal, please direct them to the undersigned.

Very truly yours,

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**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| **Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant To 66 Pa. C.S. §2807(e)(2)** | **Docket No. L-00040169** |

# REPLY COMMENTS OF STRATEGIC ENERGY, LLC

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To aid in the consideration of the Pennsylvania Public Utility Commission's ("Commission") Proposed Rulemaking Order on Dec. 16, 2004 requesting comments and reply comments on the proposed regulations for implementation of Default Service at the conclusion of the utilities' transition periods, Strategic Energy, LLC ("Strategic") respectfully submits these reply comments to comments submitted on April 27, 2005 by the Exelon Companies ("Exelon"), PPL Electric Utilities Corporation and PPL EnergyPlus LLC ("PPL"), Allegheny Power ("Allegheny"), Duquesne Light Company ("Duquesne"), UGI Utilities, Inc. ("UGI") and The Energy Association of Pennsylvania ("EAPA").

## I. Background

Strategic's initial comments addressed eight topics: (I) competitive procurement model, (II) customer switching and new customers, (III) prevailing market price, (IV) retail service cost recovery charge, (V) uniform standards, (VI) access to customer

information, (VII) Alternative Energy Portfolio Standards and (VIII) Affiliate Code of Conduct. Strategic also offered revisions to the proposed regulations in a separate Annex. In general, Strategic's initial comments focused on promoting retail competition through strengthening the affiliate code of conduct; requiring market-responsive pricing; the elimination of switching restrictions (including exit fees, or minimum stay requirements); and uniformity of rules across all of Pennsylvania Electric Distribution Company ("EDC") territories.

The initial comments submitted by Exelon, PPL, Allegheny, Duquesne, UGI and the EAPA could be organized into discrete categories. A number of the comments addressed the basic structure of default service with recommendations that the incumbent EDC remain the default service provider following the end of the transition periods; switching rules; the threshold for C&I customers on hourly priced service; the Commission's proposal to establish fixed rate default service for all residential customers and non-residential customers with a demand of 500 KW or less; among other issues.

Strategic, in these reply comments, would specifically like to address the comments that focus on the incumbent EDC remaining the default service provider following the end of the transition periods; switching rules; the threshold for C&I customers on hourly priced service; and the proposed establishment of fixed rate default service to all residential customers and non-residential customers.

## II. Comments that the incumbent EDC should remain the default service provider following the end of transition periods

In this section, Strategic addresses comments on the issue of whether the EDC should remain the default service provider following the conclusion of the transition periods. As set forth more fully below, the Commission's default service regulations must reflect the Choice Act's statutory mandate that at the end of the transition period, the default service provider will be either the EDC or the Commission-approved alternative supplier. In addition to leaving this statutory mandate in place, it is imperative that the Commission implements a more rigorous code of conduct and other protections from abuses if the incumbent EDC is to remain as the default service provider.

The Commission's default service regulations must reflect the Choice Act's statutory mandate that at the end of the transition period, the default service provider will be either the EDC or the Commission-approved alternative supplier. Various parties submitted comments on this issue, which recognize this. For example, in comments filed by Exelon, Exelon states "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." Exelon comments at 8. PPL states in its comments, "At the end of the Transition Period, the Customer Choice Act provides that the default service provider will be either the EDC or Commission-approved alternative supplier. Similarly, the Commission's draft default service regulations track this provision … [and] PPL believes this obligation should remain with the incumbent EDC." PPL comments at 3-4. Comments from Allegheny state, "AP supports the role of default

service provider being reserved to the incumbent EDC within each service territory." Allegheny comments at 3-4. While several comments support the EDC as default service provider, there is no reason to deviate from the Choice Act's statutory mandate that either the EDC or another Commission-approved supplier can fill the role.

If the EDC acts as the default service provider, it is imperative that the Commission put in place appropriate rules to protect the development of competitive markets and the consumers in Pennsylvania. As most utilities in Pennsylvania either own generation or have a merchant affiliate (or both), and since most may be bidding on "tranches" if a wholesale auction is mandated, Strategic believes that the Commission should do a careful analysis of existing regulations to address "ring-fencing" and rules should be initiated before embarking on default service regulations. Activities of unregulated affiliates should not expose anyone to potential harms from failed ventures of those unregulated affiliates. In fact, on February 18, 2005, the Maryland Public Service Commission ("Maryland PSC") staff put out a report titled "COMMISSION STAFF ANALYSIS OF RING-FENCING MEASURES FOR INVESTOR-OWNED ELECTRIC AND GAS UTILITIES". As noted in this report, "Ring-fencing is defined as the legal walling off of certain assets or liabilities within a corporation, as in a company forming a new subsidiary to protect (ring-fence) specific assets from creditors[1]." Additionally, as Dr. Fred Grygiel and John Garvey[2] explain in an article on the subject:

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[1] Fetter, Steve. *Don't Fence Me Out*, Public Utilities Fortnightly, October 2004, pages 20-22.

[2] At the time of the article, Fred Grygiel was chief economist and John Garvey was an economic analyst with the New Jersey Board of Public Utilities.

> "In recent years a persistent battle has developed between state public utility commissions (PUCs) and holding companies over the negative financial and operational impacts on regulated utilities of failed diversification investments. Ratepayers expect to compensate companies for the costs of providing utility service—not those costs associated with the unregulated activities of affiliated companies." [3]

At the federal level, provisions in the 1935 Public Utility Holding Companies Act ("PUHCA") prevents cross-subsidization of unregulated businesses by utilities. In addition, FERC policies address affiliates cross-subsidization issues. With the on-going debate of the repeal of PUHCA, it is increasingly important that the Commission enact regulations for the supervision of holding companies and affiliates.

As part of the Maryland PSC staff report noted above, (Appendix D of that report), ten suggested items were included as contents for an annual ring-fencing report to be filed by each utility with the Maryland PSC. The ten suggested items are listed below.

1. Provide a complete, detailed organizational chart that identifies the regulated company and each affiliate. Please state the business purpose of each business unit of the organization.
2. Provide a complete description of all ring-fencing measures in effect between the regulated company and its affiliates and statement as to how each measure operates.
3. Provide a list of shared corporate officers and other key personnel between the regulated company and any affiliate, along with a description of each person's duties and responsibilities to each entity.
4. Provide a corporate risk assessment profile indicating the financial exposure that each unregulated affiliate poses to the regulated company based on routine and extraordinary business activities.

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[3] *http://www.state.nj.us/bpu/tmp/BusinessMoney.pdf*

5. Provide a description of the regulated company's and each affiliated company's capital structure. Describe specific steps or measures taken to maintain an investment quality capital structure by the public service company.

6. What limitations, if any, are placed on non-utility asset investments by the regulated company?

7. Provide a summary of financing secured by the assets of, or guaranteed by, the regulated company on behalf of a non-regulated entity.

8. Identify all assets shared by the regulated company and any of its affiliates.

9. Indicate whether any affiliate of the regulated company has experienced a default of a material obligation or a default that triggers a cross default, or has filed for bankruptcy.

10. Describe any specific protections that exist between the regulated company and nonregulated affiliated companies that mitigate exposure of the regulated company in the event of bankruptcy proceedings by any affiliate.

Strategic suggests, at a minimum, the Commission immediately adopt a similar mechanism of annual reporting and include regulations that enhance affiliate code of conduct issues within the Commonwealth. Additionally, as indicated in Strategic's initial filing in this proceeding, Strategic believes the Commission should re-examine all affiliate code of conduct issues. The Commission needs to ensure a level playing field with non-discrimination policies and where no cross-subsidization of costs occur.

## III. <u>Comments that suggest restrictions on customers switching</u>

In this section, Strategic addresses comments on the issue of customer switching restrictions. As set forth more fully below, the Commission's default service regulations must allow customers to move freely between competitive supply and default service without restrictions such as minimum stay provisions and/or exit fees. Strategic believes

that market based price signals, in the form of hourly-priced default service for large customers and market adjustable prices for small commercial and residential customers will achieve this goal.

Many of the comments continue to address the issue of "gaming", and some of the comments suggest remedies for gaming such as minimum stays, switching fees or Generation Rate Adjustments ("GRAs"). Exelon recommends 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. Exelon comments at 19. However, Exelon never suggests what "another appropriate mechanism to prevent gaming" might be. PPL, in its comments, referenced switching fees, seasonal pricing, minimum stay provisions and GRAs to prevent seasonal gaming. PPL comments at 17. Duquesne referenced mechanisms such as minimum stay provisions and GRAs under certain circumstances. Duquesne comments at 20-24. Duquesne also stated that customer shopping increased in the Duquesne territory after the minimum stay and GRA rules were adopted during POLR II. However, Duquesne presented no evidence stating that the increase in shopping and the imposition of a minimum stay and GRAs had a one to one correlation. Duquesne failed to recognize that other factors could have influenced shopping during that time, such as the 300 kW threshold for default hourly priced service. UGI suggests that the Commission should not prohibit the consideration of reasonable customer switching rules such as those currently available on UGI's system (such as minimum stays). UGI comments at 14-15.

While a minimum stay provision may appear simple to implement, it is not. Moreover, it places undue and unnecessary burdens on customers, as it requires them to keep track of the date when they last received default or competitive service, and it also requires the default supplier to keep a record of such dates. In addition to imposing confusing burdens on customers (especially smaller customers), such restrictions impose administrative burdens and costs on the EDC or Default Service Provider ("DSP") customer care centers. Strategic believes the imposition of a minimum stay term would be unreasonably burdensome to customers and would have a stifling effect on the competitive market. Strategic also believes that default service should be designed to encourage minimum stays, and that requiring a minimum term would negate that principle. Strategic also observes that the purpose of default service is to be a "safety net" for customers whose EGS defaults or for customers that are not offered competitive service. A safety net is transitional by nature and placing minimum term requirements on the "safety net" would not be logical.

When a GRA or "exit fee" is added into the mix, customers must first understand the mechanism's concepts, remember their return dates and anniversary dates for each of their accounts, understand the GRAs method of calculation, and determine how to internally account for any payments for the GRA upon exiting default service. Most GRAs involve onerous equations that are not easily understood by customers. Thus, consumers are asked to make their switching decisions without having a full understanding of the exit fee mechanism that the default supplier would impose on them. For example, in reviewing the equations involved in calculating the GRAs for

Metropolitan Edison Company and Pennsylvania Electric Company in Docket Nos. R-00016219, R-00016219C001, R-00016220, R-00016220C001, there are four GRAs that only serve to confuse all the parties. Some of the complex options included: (i) a Standard Pricing Adjustment" ("SPA"), which will allow customers to shop for Generation Supply before the end of their standard 12-month supply contract if they are willing to pay a "pricing adjustment" that may increase their otherwise applicable tariff rate to reflect any higher market price for Generation Supply when they were taking POLR service; (ii) a Monthly Pricing Option ("MPO") where customers will be billed their applicable C&I retail tariff rates for the period October to May. For the months of June through September, MPO customers will pay the higher of (a) their applicable C&I retail tariff pricing for Generation Supply or (b) the MPO pricing, which is a forecast price for Generation Supply published by the Company on the previous May 1st and which shall be applicable for the four month period June through September. MPO customers may shop for electric service from an EGS at any time without regard to the remaining time on their supply contract and without paying the SPA or other compensation to the Company; (iii) an Alternative Monthly Pricing Option ("AMPO") that would allow C&I customers to shop for generation supply at any time without paying the SPA if they pay an after-the-fact market price for such supply during the months of June through September; and (iv) Standard Pricing – Market ("SPM") which will allow C&I customers to shop for generation supply at any time without paying the SPA (which includes an administration fee) in return for paying prevailing market prices upon their later return to POLR service. There have been numerous filings and litigation on these mechanisms and Strategic believes onerous devices such as these will prevent consumers

from shopping, increase utility costs (which may be embedded in distribution rates or may be part of the "customer charge"), increase customer costs and instill confusion and fear into the entire default service process.

The Commission in the provision for Default Service Proposed Rulemaking Order did address Default Service Customers and the Standards for Transferring Customer Accounts to Default Service Providers. Specifically, Section 54.189 identifies the standards governing customer choice in the context of default service. The Commission in its Proposed Rulemaking Order opined:

> These regulations do not provide for restrictions on the ability of customers to move from default to competitive service, and vice versa. Given the Act's clear policy preference for customer choice, and the express language of Section 2807(e)(4) regarding the treatment of customers, we decline to endorse restrictions such as minimum stay provisions or switching fees at this time. We conclude that these proposed regulations give default service providers the flexibility to effectively manage the risks associated with customer migration without restricting choice. In an effort to limit potential abuse of default service by the competitive marketplace, we do include restrictions on the transfer of retail customers' accounts to default service by electric generation suppliers. We are addressing this issue through an amendment to the competitive safeguards found at 52 Pa. Code §54.122-123. The new section provides that the transfer of customer accounts to default service may not be initiated without the consent of the default service provider, except for the non-payment by a retail customer for services rendered by an EGS, to remedy unauthorized or inadvertent transfers of a customer's account away from the default service provider, upon the normal expiration of a contract not designed to exploit seasonal price variations, and when the Commission has approved the abandonment, cancellation or suspension of an EGS license.

Additionally, pursuant to the Commission's Order entered August 23, 2004 in the Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service at docket number P-00032071, as a threshold matter, the

Commission found that the POLR II switching restrictions "improperly discriminate between new and returning customers" in violation of Section 2807(e)(4) of the Electricity Generation Customer Choice and Competition Act ("Electric Choice Act"). 66 PA. C.S. 2807(e)(4). Section 2807(e)(4) requires the local distribution company to treat a customer who is returning to the local distribution company for generation service exactly the same as it would any new applicant for energy service. Order at 26. The Commission noted that competitive generation markets can only develop and mature if consumers have free and direct access to the competitive market as contemplated by section 2802(3) of the Electric Choice Act. Order at 27. In addition, the Commission found that "the record before us establishes that there are seasonal contracting risks faced by the POLR provider, commonly referred to as the "beach phenomenon – i.e., EGSs switch customers back to POLR service in the summer when market prices are high then switch them back to competitive service when market prices are low." Order at 26. To address this concern, the Commission directed Duquesne to alter the POLR III Plan to provide that only customers can initiate a switch back to POLR service. Order at 28. Duquesne also has the ability to seek relief from the Commission in the event it believes that an EGS is exploiting the seasonal variations of the market. Order at 28. In the Commission's Order on reconsideration the Commission noted that the Rule is designed to address the behavior of the EGS not the customer and that remedies for seasonal gaming have as little impact on the customer as possible. Order on Reconsideration at 14.

Strategic believes that minimum stay-out provisions and/or GRAs or exit fees violate Sections 2807(e)(4) and 2804(6) of the Electric Choice Act in two ways. First,

the switching restrictions violate the Electric Choice Act by failing to treat shopping customers returning to default service the same as new customers. 66 Pa. C.S. § 2807(e)(4). Second, the restrictions violate the requirement that EDCs provide comparable access to their transmission and distribution systems. 66 Pa. C.S. § 2804(6). Strategic believes if any protection is necessary, it should take the form of seasonal rates for residential and small commercial customers and hourly priced service for other non-residential customers, and should not restrict a customer's access to the competitive market. Strategic has acknowledged the need for switching rules that promote competition while providing reasonable protection for default suppliers from potentially increased default service costs due to seasonal switching activity. Strategic acknowledges that the absence of switching restrictions may impose higher costs on a default supplier, but believes that those costs are legitimate and should be factored into the auction bid during the procurement process for the provision of default supply. Strategic fully believes that the risk of market fluctuations should be built into the bid, if wholesale auctions are the standard, and once this risk is built into the bid, the "gaming" problem is solved. The bidder should strive to reflect in the rate the risk that a customer can leave default service at any time. Market-pricing flexibility such as the use of seasonal prices, which the proposed rule allows, will encourage bidders because they will be able to match their pricing more closely to the risks inherent with default service. If migration does take place and the risk is built into the bid, the winning bidder should immediately be relieved of that obligation and be allowed to sell that energy elsewhere. Customers must be free to choose between default service and competitive retail service. Switching restrictions that limit a customer's ability to choose freely between default and

competitive service should be eliminated in favor of seasonal rates, hourly rates or other customer migration risk mitigation methodologies like Maryland's volumetric risk mechanism for Standard Offer Service ("SOS") that does not deter competition.

## IV. Comments that promote raising the threshold for hourly priced default service

In this section, Strategic addresses comments that request the Commission to raise the threshold for hourly priced default service. The Commission, in this proposed rulemaking, suggested an hourly priced threshold of peak annual demand of 500 kW. In response, the EDCs requested that this threshold be raised because of the need for the their metering and billing systems to be updated to accommodate a minimum 500 kW hourly priced default service threshold. As set forth more fully below, and contrary to many of the EDC comments on this issue, Strategic believes there is credible evidence to support even a lower threshold of 300 kW. A lower threshold will allow more customers to enjoy the benefits that competitive EGSs provide and allow substantial levels of competition. Strategic also believes the EDC's should be required to update billing and metering systems to accommodate lower threshold levels.

Exelon, in its initial comments, suggests that the breakpoint between fixed price and hourly priced default service should be set at no lower than 750 kW. Exelon comments at 17. Exelon reasons that a threshold set at 750 kW would allow them to avoid the need to change out its meters and upgrade its automatic meter reading system. Allegheny suggests a fixed rate option be available to all non-residential customers with a demand of 1,000 kW or less. Allegheny suggests customers of 1,000 kW or less do not

necessarily have the level of sophistication or resources available to effectively manage an hourly priced default service. Allegheny comments at 10. UGI suggests a one-megawatt threshold because the costs of modifying their automated billing systems to accommodate hourly rates would not be justified by customer demands and such bills would need to be calculated manually. UGI comments at 15-16. EAPA suggests a one-megawatt threshold because the sophistication and existing metering capabilities do not support a 500 kW level. EAPA comments at 9.

Strategic envisions a market place where hourly priced default customers will receive multiple offers from EGSs, offers that will allow those customers to select an energy product and service that best meets their needs and risk profile, unlike the homogenous default service product. A typical 500 kW customer in Pennsylvania has an annual retail electric bill of $150,000 or more. These are supermarkets, anchor department stores and smaller versions of private colleges and secondary schools, hospitals, corporate headquarters, manufacturing facilities, and government complexes. Clearly, these customers have the business acumen and bottom-line incentives to select the electricity products and services that best suit their needs. They have the size, flexibility and expertise to use hourly pricing to their full advantage. Moreover, even though many of these customers may not have previously chosen a competitive electricity supplier, these customers have long been in the competitive energy market, choosing among natural gas suppliers since 1999. Strategic proposes that the Commission provide customer education and outreach for hourly priced default service customers well in advance of implementation date of default service plans. Additional time for customer

education and outreach will serve several purposes. The additional time will allow customers to learn about the products and services available in the competitive market. Equally important, the additional time will give EGSs a greater opportunity to meet with new customers, develop a deeper understanding of their energy needs, and thus, create new products that are responsive to those needs. As the competitive market in Pennsylvania grows, more and more EGSs will enter the State, investing in the business functions that are necessary to serve Pennsylvania customers. Revising the hourly priced default service class upwards, however, as the current EDCs have advocated, would have lasting negative consequences for the competitive energy market and its customers. This would force EGSs to decide whether to remain active in the Pennsylvania retail electric market. If suppliers exit the market, customers who have relied on choice will have fewer alternatives. Rather than create an uncertain future, Strategic asks the Commission instead to set a clear course, bringing some predictability and certainty to the competitive market.

Several of the comments suggest that their metering and billing systems will need to be updated to accommodate a minimum 500 kW hourly priced default service. However, just because something is "difficult" or time consuming should not necessarily preclude one from doing it. As Strategic proposed in its initial comments, interval metering should be available to all customers and mandated for customers with a minimum PJM capacity peak load contribution ("PLC") of 500 kW. If the EDC is made responsible for the installation and maintenance of metering, the EDC should recover all costs through distribution rates. Strategic also requests that the customer (or the

customer's agent) be allowed to have read-only access to the metering equipment and EGSs should also be granted access to the interval meters that are approved for service so that they would have the opportunity to create and more effectively provide services such as load management products. EDCs would benefit because the end result would be a more-informed customer and reduced meter-reading expenses with remotely read meters. C&I customers would benefit since they could be more proactive in managing their energy consumption, identifying areas for efficiency improvements and controlling costs. Also, with PJM making numerous enhancements to current demand response programs, and the implementation of AEPS, benefits will accrue to customers with interval meters in the form of revenue streams as well as the grid will benefit with enhanced reliability and less costly generation additions.

The evidence to date provides ample and credible evidence to support a minimum 500 kW threshold. Maryland, for example utilizes a 600 kW threshold for C&I customers and has experienced a great deal of customer switching. Additionally, beginning January 1, 2005 all customers in the Duquesne Light service territory where demand is not less than 300 kW default to hourly priced service. Of course other factors may have played a role, but statistics provided by the Pennsylvania Office of Consumer Advocate on April 8, 2005, shows that 20.1 % of commercial customers and 43.5 % of industrial customers have chosen an alternate supplier in the Duquesne Light service territory, by and large the most significant amount of shopping in Pennsylvania.[4]

[4] http://www.oca.state.pa.us/cinfo/Stats0405.pdf

Strategic believes, as evidenced above, the 300 kW threshold the Commission set in Duquesne's POLR III case, and the dynamic competition that has resulted, provides credible evidence for even lowering the threshold below 500 kW (to 300 kW) at the onset of default service provisions. Competitive service C&I customers in Pennsylvania have reliable power sources, are dealing with financially stable suppliers, are reducing their generation costs and are receiving energy management services. The Commission's signaling of their support for a minimum 500 kW threshold (and even a 300 kW threshold) will maintain a sustainable and robust competitive marketplace and attract even more retail marketers to serve Pennsylvania's C&I customers. Strategic, in its initial comments suggest the Commission incrementally, each year, adjust the level of fixed-price-service downward as the benefits of demand response become more evident and metering technology more fully develops. Strategic also suggested the Commission undertake a metering study sometime around January 1, 2007, and if the results indicate that metering the technology has advanced and is cost effective, the Commission mandate that all or a portion of customers under 500 kW (or 300 kW as proposed by Strategic) including all customers with peak load of at least 25 kW move to default hourly pricing beginning January 1, 2009 (or upon the conclusion of stranded costs, whichever is longer).

## V. Comments on the establishment of a fixed rate default service for all non-residential customers

In this section, Strategic addresses comments that request the Commission to a fixed rate "option" for all non-residential customers. Many of the EDCs request that a fixed rate option be put in place for all non-residential customers due to the lack of

sophistication by customers and the need to avoid the complexities and negative impacts of hourly priced service. As set forth more fully below, Strategic believes that customers at or below 500 kW have the business acumen, bottom-line incentives and expertise to use hourly pricing to their full advantage. In addition, allowing the DSP to offer more than one service to customers would, in effect, become a competitive service offering. The EGS should be the one extending the fixed price competitive offering, not the DSP. By not allowing the DSP to compete directly with the EGS, customers would receive what is in effect truly "Default Service". Customers would pay actual market prices and those who wish a fixed price could obtain one from an EGS.

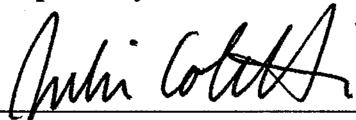
PPL states that it supports the Commission's proposal to establish fixed rate default service to all residential customers and non-residential customers with a demand of 500 KW or less and hourly rate default service to all other customers. PPL further states "at this time, hourly pricing is not an appropriate option for residential customers or small commercial customers. Many of these customers are relatively unsophisticated regarding the competitive electricity market. Many do not have the resources to manage their electricity use or shop for electricity. For these customers, a fixed rate option for default service is preferable at this time." PPL comments at 11-12. Allegheny suggests that "due to the complexities associated with hourly priced service, and the potential negative impact to those customers, AP suggests a fixed rate option be made available to all non-residential customers with a demand of 1,000 kW or less." Allegheny comments at 9-10.

As noted in Strategic's initial comments, we believe that utilities should not be given regulatory tools that hinder competition and the structure proposed by the Commission in which the price of energy for non-residential customers over 500 kW can be fixed for a term, even say one-year, leaves little incentive for an EGS to enter or remain in the market. Additionally, allowing the DSP to offer more than one service to customers would, in effect, become a competitive service offering. The EGS should be the one extending the fixed price competitive offering, not the DSP. Strategic further believes non-residential customers (especially those with peak loads over 300 kW, as evidenced in the Duquesne territory) have both the sophistication and the bottom-line incentive necessary to respond to hourly price signals. If a DSP is provided with a tool that competes directly with an EGS, in effect that creates a dominant regulatory practice, which produces thoroughly perverse incentives. The result is lost opportunities to reduce energy costs and improve reliability and diminished innovative EGS offerings. Among the casualties are effective resources such as energy efficiency, demand-side management, and distributed generation, which can effectively avoid many costly capacity additions and greatly enhance grid reliability. This antiquated design must be eliminated such that there is a reward for consumers making more economically and environmentally efficient decisions based on a transparent, real-time market. One of the premises of hourly rates is that customers will act rationally in response to more precise price signals such that customers will shift load from high price periods to low price periods or otherwise reduce load whenever it makes economic sense to do so. Such actions by hourly customers will benefit all customers by making the market place more efficient and will improve reliability.

## VI. Conclusion

In conclusion, Strategic urges the Commission to adopt regulations regarding "ring-fencing", to eliminate any switching restrictions, to maintain or even lower the threshold for hourly priced service to 300 kW, to eliminate the fixed-price option for non-residential customers, and to reject the modifications advanced by Exelon, PPL, Allegheny, Duquesne, UGI and the EAPA, respectively, on switching restrictions, the threshold for hourly priced service and the fixed-price option. Strategic believes that adhering to these key policies will result in a robust, competitive retail marketplace in Pennsylvania.

Respectfully submitted



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Dated: June 27, 2005