**PENNSYLVANIA**
**PUBLIC UTILITY COMMISSION**
**Harrisburg, PA 17105-3265**

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| **Implementation of the Alternative Energy Portfolio Standards Act of 2004** | **Docket No. M-00051865** |
| **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** |

# INDEX TO COMMENTS OF RELIANT ENERGY, INC. ON PROPOSED DEFAULT SERVICE RULEMAKING

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## COMMENTS OF RELIANT ENERGY, INC. ON PROPOSED RULEMAKING ORDER

Reliant Energy, Inc., ("Reliant") is pleased to offer comments in the Pennsylvania Public Utility Commission's ("Commission") proposed rulemaking ("Rule") for default service in the Commonwealth. The default service rulemaking has been reopened for comments to consider the issue of electric distribution companies' ("EDC") cost recovery associated with the Alternative Energy Portfolio Standards Act of 2004 ("Act 213"), 73 P.S. §§ 1648.1 – 1648.8.

### Introduction

Reliant and numerous other parties representing the full market participant spectrum previously provided comments in this rulemaking. However, due to the timing of the Rule comment period and the passage of Act 213, specific commentary on Act 213 provisions was not included.

Thus, the Commission has reopened the Rule to specifically address a list of eight issues primarily related to Act 213.

Meeting the requirements of Act 213 is an important goal, as is meeting the goals of the Electric Generation Customer Choice and Competition Act ("Choice Act"). The rules adopted by the Commission in this proceeding should not sacrifice the goals of the Choice Act for the goals of Act 213, or vice-versa. It is important that any rules adopted by the Commission achieve the goals of both Acts to the benefit of all consumers in the Commonwealth.

**Comments on Issues List**

**1. Should Act 213 cost recovery be addressed in the Default Service regulations as opposed to a separate rulemaking? Is it necessary to consider Act 213 cost recovery regulations on a different time frame in order to encourage the development of alternative energy resources during the "cost recovery period?"**

Whether or not Act 213's cost recovery provisions are addressed in this Rulemaking or in a separate rulemaking is not what is important. What is important is that the default service rules be crafted in a manner that enables a competitive market to work effectively per the directives of the Choice Act, Section 2802. Act 213's requirement for EDCs to comply with alternative energy standards is simply one more aspect of default service

that the Commission must consider when crafting a Rule. The purpose of default service is to provide a backstop service to customers who do not choose an alternative provider or whose Electric Generation Supplier ("EGS") fails to deliver, while not inhibiting the development of retail access. Although Act 213 requires alternative energy development, it does not repeal the Choice Act. In crafting provisions to accommodate Act 213 requirements into default service, the Commission should bear in mind that EGSs must also meet the Act 213 requirements. The default service rules should be structured to allow EDCs to fulfill their purchase obligations under Act 213 and be fully compensated for those purchases, but not to the detriment of the competitive marketplace. A carefully crafted set of regulations can ensure a level playing field for all market participants. In fact, it is imperative for the goals of the Choice Act to be realized.

**2. Do the prevailing market conditions require long-term contracts to initiate development of alternative energy resources? May Default Service Providers employ long-term fixed price contracts to acquire alternative energy resources? What competitive procurement process may be employed if the Default Service Provider acquires alternative energy resources through a long-term fixed price contract?**

Long-term contracting is not necessary for the development of alternative energy resources. Act 213 established the level of alternative

compliance payments. Thus, other than the rules to comply with the statutory requirement and the means to account for compliance, regulating the terms and conditions of contractual arrangements in the competitive marketplace is unnecessary. In fact, there is market evidence that renewable contracting can occur without regulated procurement.[1]

With rules that clearly state the annual AEPS requirements for both EDCs and EGSs, these companies will procure in the manner that best fits their own procurement strategy. Assuming the correct incentives are provided for in the rules, meeting the standards will occur. This is no different than how car companies choose to meet their CAFE standards, coal plants to meet their SOx requirements, or construction companies to meet their OSHA requirements. Allowing companies to meet regulatory standards as they see fit, as long as they comply, is not a new concept.

As discussed in Reliant's Initial Comments filed on April 27, 2005, Reliant believes procurement should be a competitive-based activity at the discretion of the entity procuring power, both EDCs and EGSs. Allowing the EDCs freedom to procure supply without administratively-determined directives, will allow for both long and short term commercial-based contracting in the marketplace. Therefore, if the default service provider

[1] As part of its restructuring legislation passed in 1999, Texas did not require default service providers to procure any resources through long-term contracts, including renewable energy. Texas initially called for 2000 MWs by 2009, with the level raised to 5000 MWs by 2015 during a 2005 legislative session. Even without a requirement that default service providers procure resources through long-term contracts, Texas has met its annual renewable resource requirements. Since 1999, an influx of 2055 MWs of renewable resource capacity has been installed in Texas. https://www.texasrenewables.com/publicReports/rpt5.asp

wants to pursue long-term contracts with alternative energy resources to meet their Act 213 obligations, they can.

**3. Should the force majeure provisions of Act 213 be integrated into the Default Service procurement process? Should Default Service Providers be required to make force majeure claims in their Default Service implementation filing? What criteria should the Commission consider in evaluating a force majeure claim? How may the Commission resolve a claim of force majeure by an electric generation supplier?**

There is no need to specifically include provisions in the default service rule to accommodate the force majeure provisions of Act 213 because the Act allows both EDCs and EGSs to request Commission review of the availability of renewable resources to meet their obligations. Act 213 also grants the Commission the ability to review the adequacy of renewable resources in the Commonwealth. Thus, force majeure claims will most likely be filed on a case-by-case basis and not solely by EDCs. Therefore, the default service rule should not require any specific provisions to accommodate Act 213's force majeure provisions.

**4. Given that Act 213 includes a minimum solar photovoltaic requirement as part of Tier I, should these resources be treated**

**differently from other alternative energy resources in terms of procurement and cost recovery?**

Solar resources are part of Tier I requirements. As discussed fully in the answer to Question 2, default service rules should be crafted in such a manner as to allow the EDCs to fulfill their obligations under Act 213, but should not be detrimental to the development of a competitive retail market.

A recent example of competitive retailers entering into long-term contracts for solar can be found in New Jersey. Reliant entered into a long-term contract (5 years) to purchase solar renewable energy credits in May, 2005. The market-based contract was done through a bi-lateral arrangement, rather than an administratively-driven mandate.

**5. Should the Commission integrate the costs determined through a §1307 process for alternative energy resources with the energy costs identified through the Default Service Provider regulations? How could these costs be blended into the Default Service Providers Tariff rate schedules?**

In Initial Comments Reliant proposed a Market Responsive Pricing Model ("MRPM") that does not entail administratively-determined procurement processes. Under the MRPM, an initial retail price is established that would cover the costs of the default service provider's Act 213 obligations. Going forward, any changes associated with Act 213

would be made at the time that the default service provider came in for one of its allowed adjustments per a known index. Thus, under the MRPM to comply with the §1307 automatic adjustment mechanism to cover Act 213 costs, the formula adjustment to reflect changing market conditions should be designed to allow the EDC sufficient opportunity to recover the costs of Act 213 compliance.

Reliant also recognized in its Initial Comments that the Commission may choose an RFP or auction format for default service supply procurement. In that case, Reliant had recommended that the term be no more than one year. In this scenario, the Act 213 obligations should be part of the full requirements that are bid out. Since the supplier will be taking all of the Act 213 risk and bidding that into their price, the default provider would have no need for an automatic energy adjustment under §1307 to cover Act 213 costs.

**6. May a Default Service Provider enter into a long-term fixed price contract for the energy supplies produced by coal gasification based generation if the resulting energy costs reflected in the tariff rate schedules are limited to the prevailing market prices determined through a competitive procurement process approved by the Commission?**

Coal gasification is part of Tier II requirements. As discussed fully in the answer to Question 2, default service rules should be crafted in such a manner as to allow the EDCs to fulfill their obligation under Act 213, but not be detrimental to the development of a competitive retail market.

**7. Should the Commission delay the promulgation of default service regulations until a time near the end of the transition period, as suggested by the Independent Regulatory Review Commission in its comments on the proposed regulations?**

In its Initial Comments Reliant supported the Commission delaying implementation of default service rules for residential and small business customers. This would allow for further evidence to be obtained through observation of other states' direct access market models for residential and small business customers (e.g., Texas, and even states that do not have workable direct access programs for residential and small business customers like Maryland and New Jersey).

However, for larger customers the Commission should not delay the promulgation of default service regulations any further. There is clear evidence in Duquesne's service territory, as well as other markets (e.g., Texas, Maryland and New Jersey's CIEP class) that larger customers are able, and market designs exist, for an effective direct access program. Larger customers better understand the market and have the ability to shop

for products and services that meet their specific needs. These customers need little to no safety net and have been the first to take advantage of hourly-priced products.

**8. Does the Commission need to make any revisions to its proposed default service regulations to reflect the mandates of the Energy Policy Act of 2005?**

The Energy Policy Act of 2005 ("EPA") is an important piece of federal legislation that will impact the electricity business for years to come. Per the EPA, states are required to consider, after a public notice and hearing, five Public Utility Regulatory Policy Act ("PURPA") standards dealing with net metering, smart metering, interconnection, fuel source diversity, and fossil fuel plant efficiency. Until the Commission completes the standard reviews, Reliant does not believe that the Commission's proposed default service regulations need to be revised as a result of the EPA at this time.

**Summary**

Reliant appreciates the opportunity to once again offer comments in this Rulemaking regarding default service in the Commonwealth. The default service provisions put forth as a result of this Rulemaking will ultimately determine whether customers receive the benefits envisioned for

them by the Choice Act or be denied those benefits. It is imperative that the Commission not lose sight of the Choice Act goals when working to blend in the requirements of Act 213. A robust, sustainable competitive retail market must be allowed to develop so that customers have the ability to choose from a host of electric service offerings from numerous competitive retailers. Reliant looks forward to continuing to work in Pennsylvania to make a competitive market a reality for all customers.