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March 8, 2006

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120

**VIA HAND DELIVERY**

**Re: 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**

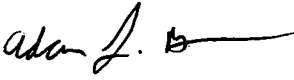
Dear Secretary McNulty:

Enclosed for filing with the Commission are an original and fifteen (15) copies of the Comments of Citizens' Electric Company of Lewisburg, PA, and Wellsboro Electric Company, concerning the above-referenced proceeding.

If you have any questions, please contact us. Please date stamp the extra copy of this transmittal letter and kindly return it to us for our filing purposes. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By   
Pamela C. Polacek  
Adam L. Benschhoff

Counsel to Citizens' Electric Company of  
Lewisburg, PA, and Wellsboro Electric  
Company

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Enclosures

c: Carrie Beale, Executive Secretary, CEEP (via E-Mail Only)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**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**  
:  
:

**IMPLEMENTATION OF THE ALTERNATE  
ENERGY PORTFOLIO STANDARDS  
ACT OF 2004** :  
: **DOCKET NO. M-00051865**  
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**SUPPLEMENTAL COMMENTS OF CITIZENS' ELECTRIC COMPANY  
AND WELLSBORO ELECTRIC COMPANY**

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Dated: March 8, 2006

## I. INTRODUCTION

On February 8, 2006, the Pennsylvania Public Utility Commission ("PUC" or "Commission") issued a Secretarial Letter requesting supplemental Comments regarding the Proposed Rulemaking to define the obligations of a Provider of Last Resort ("POLR") (or Default Service Provider ("DSP"), as the Commission now prefers to refer to the function) to serve retail customers at the conclusion of each Electric Distribution Company's ("EDC") transition period. Specifically, the Commission identified eight issues upon which it seeks additional input, dealing primarily with the impact of the Alternative Energy Portfolio Standards Act of 2004 ("Act 213") on the proposed rulemaking. The Commission also seeks comments on any other Act 213 cost recovery issues not included in the list. Pursuant to the schedule set forth in the Secretarial Letter, Citizens' Electric Company of Lewisburg, PA ("Citizens"), and Wellsboro Electric Company ("Wellsboro") (collectively, the "Companies") hereby provide these Comments.

The Companies appreciate this opportunity to provide comments regarding the Commission's proposed POLR regulations. Citizens' and Wellsboro are two of the smallest jurisdictional EDCs in Pennsylvania and are already procuring wholesale supply to meet their POLR load requirements in accordance with the post-transition period criteria set forth in Section 2807(e)(3) of the Competition Act, 66 Pa. C.S. §2807(e)(3). The current wholesale contracts for each company will expire on December 31, 2007. As a result, Citizens' and Wellsboro may be the first EDCs in Pennsylvania attempting to implement the new POLR regulations (if those regulations are finalized soon), or, in the alternative, will be implementing interim arrangements pending issuance of the final

regulations. Citizens' and Wellsboro are already in the process of planning the POLR offering and procurement process for the next period. In accordance with the proposed regulations, the Companies anticipate that it will take over eighteen months to develop and implement the plan. The final POLR regulations may significantly impact how Citizens' and Wellsboro must obtain the wholesale supply for POLR customers, and how the Companies can price the POLR product for retail customers. To the extent the solicitation of these additional comments delays the issuance of the final POLR regulations beyond May 2006, the Companies respectfully request confirmation that the next POLR plans that they will file will be considered "interim" plans or extensions of their current interim plans that are grandfathered for the duration of their upcoming wholesale contracts under the proposed regulations.<sup>1</sup>

Likewise, with the passage of Act 213, Citizens' and Wellsboro may be among the first EDCs complying with the alternative resource thresholds and proposing a cost recovery mechanism for those costs. In the alternative, the Companies may also be the first to submit *force majeure* claims if sufficient Tier 1, Tier 2 and/or solar photovoltaic resources do not exist in adequate quantities to supply the market requirements. To avoid the possibility where the filings made by Citizens' and Wellsboro to implement Act 213 are viewed as "precedent-setting" on these issues, Citizens' and Wellsboro may seek from the Commission an extension of their existing interim POLR plans or a waiver of the Act 213 requirements.

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<sup>1</sup> Under the proposed POLR regulations, the DSP must submit an implementation filing 15 months prior to the expiration of any current interim POLR plan. Because Citizens' and Wellsboro's current contracts end on December 31, 2007, for planning purposes the Companies have assumed that their current interim plans also expire on the same date. See Companies' Comments, pp. 9-10. Based on this assumption, the Companies' must submit their implementation filings by September 30, 2006, to comply with the 15-month period specified in the proposed regulations

Citizens' and Wellsboro support the Commission's careful approach to implementing the two statutory requirements at issue. The requirement under Act 213 for alternate energy resource costs to be reconciled may impact the Commission's initial decision in the proposed POLR regulations that default service costs should not be reconciled. Complying with the Act 213 thresholds (or claiming a *force majeure*) are also new elements that Citizens' and Wellsboro must incorporate into the competitive solicitation process for their wholesale supply. Until the Commission finalizes its regulations on both topics, Citizens' and Wellsboro are confident that the Commission will demonstrate flexibility in reviewing the attempts by smaller EDCs to implement both statutory provisions, including the confirmation of appropriate waivers or extensions of current interim POLR plans.<sup>2</sup>

## II. RESPONSES TO ISSUES

**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 development of alternative energy resources during the "cost recovery period"?**

Because Act 213 requires the reconciliation of AEPS costs, the Commission should ensure that the POLR regulations also allow the reconciliation of all other default service costs. See Companies' Comments, pp. 16-17. The Companies take no position regarding whether the Act 213 cost recovery issues should be addressed in the POLR regulations or in a separate rulemaking; however, to the extent the Commission further delays the POLR regulations, Citizens' and Wellsboro urge the Commission demonstrate

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<sup>2</sup> As set forth in the Companies' Comments, Citizens' and Wellsboro prefer to delay submission of their POLR implementation plans until after the major EDCs have filed and litigated, if necessary, the important and precedent-setting issues raised in the regulations. See Companies' Comments, pp. 10-12.

appropriate flexibility in reviewing the Companies' attempts to implement Section 2807(e)(3).

**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 Services Provider acquires alternative energy resources through a long-term fixed price contract?**

As set forth in the Companies' Comments, Citizens' and Wellsboro traditionally have entered into multi-year wholesale contracts to obtain the generation supply to serve their POLR load. It is unclear whether the final POLR regulations will allow DSPs to enter into multi-year contracts; however, due to the expense of implementing annual (or more frequent) solicitations, Citizens' and Wellsboro urge the Commission to authorize the Companies to continue their proven POLR procurement practice. The Companies are in the process of analyzing how the Act 213 requirements can be incorporated into the solicitation process. To the extent the Commission will continue to allow multi-year wholesale contracts for EDCs, then any Act 213 compliance obligation should also be capable of being addressed with multi-year contracts.

**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?**

Given the nascent development of the alternative energy marketplace at this time, Citizens' and Wellsboro are very concerned that sufficient renewable resources will not exist as of January 1, 2008, for the Companies to comply with the Act 213 thresholds. As part of the planning for their next POLR filings with the Commission, the Companies are

considering how to address this issue during the competitive solicitation process. Citizens' and Wellsboro suggest that the Commission permit *force majeure* claims to be submitted during the default service implementation filings, but also allow parties to make claims at other times (either before or after the initial implementation filings). Citizens' and Wellsboro have no position at this time regarding the criteria for a *force majeure* claim and reserve the right to comment further based on the criteria suggested by other parties.

**4. Given that Act 213 includes a minimum solar photovoltaic requirement as part of Tier 1, should these resources be treated differently from other alternative energy resources in terms of procurement and cost recovery?**

At this time, Citizens' and Wellsboro do not believe that distinctions in procurement or cost recovery for solar photovoltaic resources are necessary; however, the Companies will continue to evaluate this issue.

**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?**

As set forth in the Companies' Comments, Citizens' and Wellsboro currently anticipate that they will request for wholesale suppliers to provide a full requirements product for the POLR obligation, including any necessary Tier 1, Tier 2 and solar photovoltaic resources to meet the Act 213 thresholds. For EDCs that choose to procure the wholesale supply for the POLR product through a full requirements contract that places the obligation on the wholesale supplier to confirm Act 213 compliance, it is appropriate to allow default service costs and Act 213 costs to be recovered through a single, reconcilable charge.

**6. May a Default Service Provider enter into a long-term fixed 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?**

Citizens' and Wellsboro take no position on this issue at this time.

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

As set forth above, Citizens' and Wellsboro will be among the first EDCs that must implement the new POLR regulations (if finalized soon) and that must comply with the Act 213 thresholds. The Companies believe that the existence of a pre-approved POLR implementation plan (either permanent or interim) will greatly assist potential bidders in understanding the risks and obligations of the wholesale POLR product and may also reduce credit requirements that the wholesale supplier may attempt to place on the EDCs. To the extent the Commission does not finalize the POLR regulations by May 2006, the Companies intend to move forward with a process to extend their current interim POLR plans or to develop replacement interim POLR plans for the period starting January 1, 2008. If the default service regulations are not issued by that time, Citizens' and Wellsboro will continue their efforts to comply with the letter and spirit of the Competition Act and Act 213 (or request appropriate waivers).

**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?**

At this time, Citizens' and Wellsboro have no revisions to suggest.




### III. CONCLUSION

The Commission's issuance of regulations to implement the post-transition period POLR provisions is a critical step for this Commonwealth. In addition, Act 213 places additional obligations on EDCs in implementing POLR plans that the Commission must carefully consider to ensure that the Commonwealth achieves the intended benefits. For both statutory requirements, the appropriate implementation actions may differ based on the size and location of the utility. Wellsboro and Citizens' urge the Commission to continue its flexibility in addressing these issues.

Respectfully submitted,

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