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**

REPLY COMMENTS OF THE INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA, THE MET-ED INDUSTRIAL USERS GROUP, THE PENELEC INDUSTRIAL CUSTOMER ALLIANCE, THE PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP, THE PP&L INDUSTRIAL CUSTOMER ALLIANCE, AND THE WEST PENN POWER INDUSTRIAL INTERVENORS

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I. INTRODUCTION

On November 18, 2005, the Pennsylvania Public Utility Commission ("PUC" or "Commission") entered an Order reopening the comment period for the Commission's proposed Default Service Provider ("DSP") regulations. The Commission took this action as part of its implementation of the Alternative Energy Portfolio Standards Act ("AEPS" or "Act 213"), its consideration of the mandates of the Energy Policy Act of 2005 ("EPACT"), and its intention to examine more fully the issues raised in the comments of the Independent Regulatory Review Commission ("IRRC"). On February 8, 2006, the PUC issued a Secretarial Letter requesting that interested parties provide Comments related to these issues.

The Industrial Energy Consumers of Pennsylvania ("IECPA"), the Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), the Philadelphia Area Industrial Energy Users Group ("PAIEUG"), the PP&L Industrial Customer Alliance ("PPLICA"), and the West Penn Power Industrial Intervenors ("WPPII") (hereinafter, "IECPA, et al.")[1] submitted Comments to: (1) request that the Commission integrate Act 213 cost recovery with any final DSP regulations; (2) clarify that the Electricity Generation Customer Choice and Competition Act ("Competition Act") does not prohibit a DSP from entering into long-term contracts for the procurement of electricity; (3) request that the Commission not delay the promulgation of final default service regulations, but rather, implement flexible regulations that allow for adjustments as the generation market evolves over time; (4) request that the PUC require DSPs to offer at least one fixed price option to large commercial and industrial customers in order to ensure that Electric Distribution Companies ("EDCs") can accurately track the

[1] IECPA et al.'s Comments included Appendix "A," which contained a list of the membership for all of these groups.

Alternative Energy Credits ("AECs") associated with these customers; (5) suggest that the PUC allow customers creating and registering their own AECs receive an exemption for the flow-through of costs related to the procurement of AECs by an EDC; and (6) require EDCs "contracting away" AECs to their generation affiliates must first receive PUC approval for any such contracts. See IECPA, et al., Comments, pp. 3-24.

IECPA, et al., obtained Comments filed by the following parties: Conservation Services Group, Inc. ("CSG"); PPM Energy ("PPM"); Retail Energy Supply Association ("RESA"); Dominion Retail, Inc. ("Dominion"); PPL Electric Utilities Corporation ("PPL"); Citizens for Pennsylvania's Future ("Penn Future"); Exelon Companies ("Exelon"); Office of Small Business Advocate ("OSBA"); BP Solar ("BP"); Clean Power Markets, Inc. ("CPM"); Department of Environmental Protection ("DEP"); Constellation Energy Group Companies ("Constellation"); DTE Energy Company ("DTE"); Duquesne Light Company ("Duquesne"); Energy Association of Pennsylvania ("EAPA"); Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company ("FirstEnergy"); Strategic Energy, LLC ("Strategic"); Mesa Environmental Sciences, Inc. ("Mesa"); US Wind Force, LLC ("Wind Force"); United States Steel Corporation ("US Steel"); Direct Energy Services, LLC ("Direct Energy"); UGI Utilities, Inc. ("UGI"); Reliant Energy, Inc. ("Reliant"); PV Now, the Solar Energy Industries Association, and the Mid-Atlantic Solar Energy Industries Association ("SEIA"); and, the Office of Consumer Advocate ("OCA").

IECPA, et al., submits these Reply Comments in order to respond to specific issues raised in the Comments of other parties.[2] As discussed more fully herein, IECPA, et al., submits that: (1) while the Commission must expedite resolution of final default service regulations, the interconnection between Act 213 cost recovery issues and the Provider of Last Resort ("POLR") rulemaking process require a combined consideration of these issues; (2) none of the parties have presented convincing arguments that the Competition Act prohibits a DSP from entering into long-term contracts, especially in light of the fact that AEPS requires encouragement of such contracts; (3) regardless of the fact that EDCs can flow-through the costs of procuring AECs to ratepayers, any review of force majeure claims must include an examination of both the physical and economical availability of AECs; and (4) in order to ensure just and reasonable POLR rates for all customers, as well as to limit the time and expenses related to litigation, the Commission must expedite the promulgation of final form default service regulations.

II. REPLY COMMENTS

A. Reply to Parties' Comments to Question No. 1: Because Alternative Energy Resources Will Be a Component of the Generation Procured by a Default Service Provider, the PUC Must Address Act 213 Cost Recovery as Part of the Expedited Consideration of Final Default Service Regulations.

Pursuant to the terms of the Competition Act, the rate caps of several EDCs have already expired, with other EDCs' rate caps following suit in the coming years. As a result, the need for regulations to address default service remains pressing; however, this need is compounded by the recent passage of AEPS, which requires EDCs and Electric Generation Suppliers ("EGSs") to

[2] IECPA, et al.'s Reply Comments will not respond to every argument contained in all of the parties' Comments, but only those issues necessitating additional response. IECPA, et al.'s decision not to respond to all arguments should not be construed as agreement with any party's position on any of the issues currently outstanding in this rulemaking proceeding.

include a specific percentage of electricity from alternative resources in the generation mix that they sell to Pennsylvania customers.

Act 213 is interconnected to the Competition Act because the generation portfolios of DSPs will need to conform to the alternative energy requirements of Act 213, and in order to ensure that the cost recovery related to this alternative energy component is adequately addressed, the Commission must consider this issue as part of its final POLR regulations. In doing so, however, the Commission cannot delay the issuance of final form default service regulations, as DSPs require immediate guidance with respect to POLR rules and regulations.

In order to ensure adequate time for DSPs to comply with all of these requirements, several parties in this proceeding (including IECPA, et al.) filed Comments strongly suggesting that the Commission consider AEPS cost recovery issues as part of any final default service regulations, while expediting the resolution of both AEPS and POLR regulations. See IECPA, et al., Comments, pp. 3-8; see also OCA Comments, p. A-1; CSG Comments, p. 2; US Steel Comments, p. 2.

While many of the parties agree that the PUC should combine AEPS cost recovery elements with the expedited promulgation of final DSP regulations, some parties submit that all AEPS regulations must be considered in a separate rulemaking. See, e.g., DEP Comments, pp. 3-4; see also OSBA Comments, p. 2. Interestingly, the basis for this suggestion stems not from a finding that alternative energy sources are unrelated to default service procurement, but rather, from a concern that combining these two rulemaking proceedings would delay the promulgation of final regulations under both Acts. Id.

For example, because of the significant time that is required to finance and develop alternative energy systems, DEP submits that a delay in issuing final AEPS regulations may result in a barrier to alternative energy development in the Commonwealth. DEP Comments, pp. 3-4. Because DSP regulations have not been forthcoming, even though the Competition Act was passed in 1996 and several EDCs' rate caps have already expired, DEP is concerned that combining AEPS regulations with the POLR rulemaking may delay any movement towards final AEPS regulations. Id.

Conversely, the OSBA notes that the lack of final default service regulations has resulted in the expenditure of significant resources with respect to several EDCs' interim POLR plans because the parties involved in these proceedings have had no guidance with respect to default service requirements.[3] See OSBA Comments, pp. 2-3; 9-10. Given the demonstrable need for final default service regulations, the OSBA cautions against further delay in the publication of such final form rules, which the OSBA believes could result if the PUC combines AEPS cost recovery issues as part of any final DSP rulemaking. Id. at 2.

The OSBA is correct that expedited consideration of default service regulations is necessary to provide EDCs with guidance in developing cost effective strategies for energy procurement, in addition to conserving the time and resources expended in implementing interim POLR plans. Similarly, DEP raises an important point that the development of alternative energy systems requires significant time for financing and contracting, and any delay in implementing these regulations would significantly affect the ability of the Commonwealth to adhere to the tenets of Act 213.

[3] For example, the OSBA notes that the parties have litigated the appropriate length for default service plans, the acceptable length of default service plans, the appropriate methods for acquiring default service, and the acceptable process for collecting the resulting costs. See OSBA Comments, p. 10.

While expedited consideration of Act 213 and POLR requirements is necessary, the Commission must also recognize that AEPS cost recovery is an integral part of any default service regulations. Thus, failure to address alternative energy cost recovery as part of any final POLR regulations may only result in the additional expenditure of time and resources by parties at a later date to ensure complete integration of these issues. IECPA, et al., Comments, pp. 5-6.

To provide for combined consideration of these regulations, while still ensuring expedited review, the Commission must address the majority of AEPS cost recovery issues in any DSP rulemaking, while establishing a separate proceeding to consider more complex issues. IECPA, et al., Comments, pp. 5-6. Implementing such a two-pronged process would enable the PUC to recognize the interconnection between AEPS cost recovery and default service regulations, expedite the final form rules required under both Acts, and allow a longer period for the review of more multifaceted issues. In doing so, the parties' request for expedited consideration of Act 213 and DSP regulations is accorded, while also ensuring that those issues requiring further consideration can be addressed on a more protracted basis.

B. *Reply to Parties' Comments to Question No. 2: The Competition Act Permits Electric Distribution Companies to Enter into Long-Term Contracts; however, the Mechanism Used by Default Service Providers to Recover the Resulting Costs Cannot Hinder the Ability of Customers to Obtain Competitive Supply.*

1. *Section 2807(e)(3) Permits Default Service Providers to Utilize All Available Market Tools in Procuring Default Service Supply, Including Long-Term Contracting.*

In order to ensure that DSPs are able to obtain electricity for POLR customers at just and reasonable rates, as well as to encourage the development of alternative energy systems within the Commonwealth, EDCs must be permitted to enter into long-term contracts for the procurement of default supply. See IECPA, et al., Comments, pp. 12-15. Although several EGSs comment that allowing DSPs to enter into long-term contracts would violate the terms of

the Competition Act and would fail to encourage alternative energy development,[4] the consensus among the parties recognizes that the EGSs' claims are nothing more than inappropriate attempts to artificially create a competitive market. Because long-term contracts are not prohibited by the Competition Act, and are necessary to assist in the development of alternative fuels, the Commission must allow, and even encourage, DSPs to enter into these contracts for the procurement of electricity, including energy from alternative systems.

Under the Competition Act, a DSP need only "acquire electric energy at prevailing market prices to serve the customer." 66 Pa. C.S. § 2807(e)(3). As correctly indicated by PPL, the term "prevailing market prices" cannot equate to a short-term or spot-market price because the electricity market is comprised of numerous markets and products, including long-term contracts.[5] PPL Comments, p. 5. Rather, in order to obtain electricity at prevailing market prices, the DSP need only prove that the price indicated in a long-term contract is the prevailing market price for similar long-term contracts at the time of execution. IECPA, et al., Comments, p. 14. In other words, as long as the price of the long-term contract reflects the prevailing market prices for the acquired products at the time of acquisition, the contract meets the requirements of the Competition Act. OCA Comments, p. A-2.

While the EGSs suggest that the term "prevailing market prices" only applies to short-term contracts, further review indicates that the EGSs' claims are nothing more than an attempt to eradicate any type of mechanism that would provide stable and reliable default service to ratepayers. See Constellation Comments, pp. 3-4; Strategic Comments, p. 2; Reliant Comments,

[4] See, e.g., Constellation Comments, pp. 3-9; Dominion Comments, p. 4; Reliant Comments, pp. 4-6.

[5] For example, markets and products can be characterized by the nature of service (e.g., firm load or interruptible load), the term of service (e.g., daily, monthly, or multi-year terms), the pricing of service (e.g., spot-market, day-ahead market, or indexed price), and other attributes (e.g., with or without capacity). PPL Comments, p. 5.

pp. 4-5; Dominion Comments, p. 4. By eliminating the ability of DSPs to enter into long-term contracts for the procurement of default supply, the EGSs seek to create an "ugly" POLR rate that would require customers to turn to the "competitive" market and, more importantly, EGSs for service. Id.

To ensure stable, cost-effective supply options, a DSP must create a portfolio of contracts of varying lengths, staggered start and end dates, and overlapping terms, and, by including long-term contracts within this assortment, DSPs should be able offer cost-effective supply options to customers. PPL Comments, p. 5; see also OCA Comments, p. A-2. Fortunately, the Competition Act allows DSPs to offer electricity to customers at just and reasonable rates by utilizing the range of tools available in the market to create an assortment of electricity procured from varied sources. Although the EGSs provide a skewed interpretation of Section 2807(e)(3), the PUC must reject this interpretation and allow EDCs to utilize long-term contracts to procure electricity for default service customers, including electricity stemming from alternative energy systems.[6]

In addition to arguing a biased interpretation of the Competition Act, several EGSs suggest that long-term contracts are not necessary to develop and encourage alternative energy systems;[7] however, those entities more familiar with this issue agree that only through the use of long-term contracts can alternative energy sources be developed.

For example, DEP notes that it has "met with many energy developers over the last several years…[and] one consistent theme has emerged: it is impossible to obtain project

[6] The term "prevailing market prices" contains no constraints with respect to the origin of the electricity. Accordingly, a DSP must be permitted to utilize long-term contracts regardless of whether the generation at issue is produced from an alternative energy source. IECPA, et al., Comments, p. 15.

[7] See Constellation Comments, pp. 3-4; Strategic Comments, p. 2; Reliant Comments, pp. 4-5; Dominion Comments, p. 4.

financing without long term contracts."[8] DEP Comments, p. 4. Similarly, DTE agrees that major banks and investment houses are unwilling to lend to generating projects that do not have long-term power purchase agreements covering a sufficient portion of the project's output to assure payment of debt service.[9] DTE Comments, p. 2. In addition, wind and solar projects often contain significant risks for the equity investors, and without long-term commitments, the necessary capital is not available. See Wind Force Comments, p. 1; PPM Comments, p. 2; BP Comments, p. 2; Penn Future Comments, pp. 3-4.

These risks, combined with the significant lead-time required to bring these projects to commercial operation, require long-term contracting for investment purposes. Id. While the EGSs suggest that the market allows for the creation of alternative energy sources on its own accord, those parties to this proceeding with the most concrete experience in this area indicate that only by allowing long-term contracts in a DSP's procurement portfolio can an alternative energy market grow in Pennsylvania. See id. Thus, to ensure that alternative energy systems are developed in the Commonwealth, the Commission must allow DSPs to enter into long-term contracts, rejecting any argument by the EGSs to the contrary.

2. The Commission Must Not Allow Default Service Providers to Use Non-Bypassable Mechanisms for the Collection of Costs Related to Long-Term Contracts.

Because the Competition Act permits a DSP to enter into long-term contracts for electricity, the PUC should allow and even encourage DSPs to utilize these contracts to create

[8] DEP also confirms that this is a market reality for all resources regardless of whether they are alternative energy based. Id.

[9] DTE suggests that these circumstances stem from the number of new generating facilities built in the 1990s on a "merchant" basis without long-term purchase power agreements. Many of these facilities were running at a fraction of their intended capacity, resulting in financial troubles, with many being sold or restructured in ways that were costly to the original investors. Id.

diverse portfolios. The Commission should not, however, require DSPs to enter into long-term contracts, but rather, provide DSPs the latitude to determine the market tools needed to serve customers at various times. To that end, assuming an EDC chooses to enter into a long-term contract, the EDC must not be permitted to utilize a non-bypassable mechanism for the collection of costs related to such long-term contracts.

Several EDCs in this proceeding have agreed that DSPs should be permitted to enter into long-term contracts for the procurement of electricity; however, these EDCs have also suggested that, if a DSP is required (or in some cases, voluntarily chooses) to enter into such contracts, the DSP should be permitted to recover the costs of these contracts via a non-bypassable mechanism. See Duquesne Comments, pp. 10-11; FirstEnergy Comments, p. 3; EAPA Comments, p. 4. Because a non-bypassable mechanism would detrimentally affect the ability of customers to obtain competitive supply, contrary to the intent of the Competition Act, DSPs should not be permitted to utilize a non-bypassable cost recovery mechanism for electricity procured under long-term contracts.

As noted by Duquesne, the various means by which a DSP may acquire electricity may result in the use of different mechanisms for purposes of cost recovery. See Duquesne Comments, pp. 10-11. While the Commission has discretion to review and approve, if appropriate, various mechanisms to ensure adequate cost recovery for DSPs, the PUC cannot allow for a process that would effectively prohibit customers from obtaining competitive supply. While a DSP should be permitted to procure electricity via long-term contracts, the resulting costs of these contracts cannot be recovered in a manner that would hinder competition for ratepayers within the Commonwealth.

Rather, in order to address the EDCs' concerns, while still recognizing the need and ability of customers to obtain least-cost electricity via the competitive market, the Commission should consider implementing switching rules to account for these costs.[10] Assuming that the use of such switching rules is just and reasonable in light of any POLR plans submitted to the Commission, implementation of such rules would ensure that customers are able to continue to obtain competitive supply at any time, while addressing any EDC concerns with respect to cost recovery stemming from long-term contracts.

The Competition Act permits a DSP to enter into long-term contracts for the procurement of electricity to meet the needs of its default service customers, and the PUC recognizing this ability provides an added incentive for the growth of alternative energy systems in the Commonwealth. Thus, in order to meet the requirements of the Competition Act and the goals of AEPS, the Commission must allow DSPs to enter into long-term contracts for the procurement of energy, as to do otherwise would result in even greater price volatility than customers are currently facing. In doing so, however, the Commission must ensure that any mechanisms applied for cost recovery purposes with respect to these contracts do not hinder the ability of ratepayers to obtain electricity at the lowest cost possible through the competitive shopping experience.

C. Reply to Parties' Comments to Question No. 3: In Determining "Reasonable Availability" for Force Majeure Claims, the Commission Must Consider Both Physical Availability and Reasonable Costs.

Act 213 provides EDCs and EGSs the ability to request a determination from the PUC that a force majeure event has occurred because AECs are not reasonably available in the

[10] UGI proposes the use of a switching mechanism in combination with a non-bypassable mechanism. UGI Comments, p. 3. Because the non-bypassable mechanism is inappropriate, UGI's proposal should only be evaluated for purposes of any switching mechanism.

marketplace in sufficient quantities to meet the necessary reporting period requirements. See IECPA, et al., Comments, pp. 9-11. While AEPS does not define the term "reasonably available," parties have advanced various definitions, one of which suggests that a force majeure claim must be denied as long as the EDC is able to allocate the costs of procuring AECs (regardless of any exorbitant prices) to ratepayers. See BP Comments, p. 3. Because such an interpretation would harm customers, the Commission must adopt a more reasonable and logical definition that examines both the physical availability of credits in the market and the costs of these credits. See OSBA Comments, pp. 4-5; OCA Comments, p. A-3; Duquesne Comments, pp. 11-12.

Under the Act's definition of force majeure, an EDC or an EGS may receive a waiver with respect to the obligation to provide power from alternative sources if the Commission determines that alternative energy resources are not reasonably available in sufficient quantities in the marketplace. As correctly noted by the OSBA, while Act 213 does not define "reasonably available," any interpretation should include an examination of the physical unavailability of a sufficient quantity of such energy, as well as whether the energy is only available at prices that are unreasonable. OSBA Comments, p. 5. In other words, the EDC's or EGS's obligation should be modified if electricity is physically unavailable or if electricity from such sources is available only at unreasonable prices. Id.

Conversely, BP suggests that because Act 213 allows for full recovery of all costs incurred through the procurement of electricity from alternative energy sources, a claim of force majeure would only be viable if the utilities were not allowed to recover their costs. BP Comments, p. 3. Under this definition, any argument that compliance was too expensive would be considered an unjustifiable claim. Id.

BP's interpretation of the force majeure provision would eliminate any consideration of the economic viability of compliance and fails to consider customer cost impact. While AEPS provides for cost recovery by EDCs, the intent of the Legislature in implementing Act 213 was not to unduly burden customers with uneconomic compliance, but rather, increase alternative energy sources within the Commonwealth. Under the Public Utility Code, customers must be charged just and reasonable rates, and procurement of AECs by EDCs should not be required if the resources cannot be acquired at prices that would ensure continuation of this standard. See 66 Pa. C.S. § 1301; see also OCA Comments, pp. A-3, A-4.

Since the General Assembly did not intend for resources to be procured no matter the cost to ratepayers, the Commission should not adopt BP's interpretation, which would require the PUC to dismiss a claim, irrespective of the cost of procurement of an AEC. In interpreting "reasonably available," the Commission must consider whether alternative resources can be procured in a reasonable, economical manner that would produce just and reasonable prices for all customers to pay for AECs.

In addition, IECPA, et al., in its initial Comments, indicated that the most appropriate means by which to examine force majeure claims would be by requiring an EDC to file any such claims as part of its default service implementation filing. IECPA, et al., Comments, p. 10. While setting forth the initial process for force majeure claims at the time of a DSP's implementation filing would be most expeditious, both the OCA and Duquesne correctly note that implementation plans may run for several years, during which time the market for AECs may change. OCA Comments, p. A-3; Duquesne Comments, pp. 11-12. Because a force majeure event may occur after the original implementation filing, the Commission should

consider allowing EDCs an opportunity to submit such a claim at one point during each compliance year in order to address any unexpected force majeures.

Moreover, the Commission should strongly consider Exelon's argument that in examining a force majeure claim, the Commission need not decide based on an "all or nothing" proposition, but rather, evaluate each AEC force majeure claim (Tier I Solar, Tier I Non-Solar, and Tier II) independently. Exelon Comments, p. 8. By reviewing the supply and demand for AECs on a Tier-by-Tier basis, the Commission can apply a more narrow focus in determining whether any AECs are reasonably available pursuant to a force majeure claim.

By interpreting and applying the force majeure section of Act 213 in the most reasonable and logical manner possible, the Commission can ensure that the General Assembly's intent with respect to AEPS is met. Thus, the Commission must review these claims by examining the physical and economical availability of AECs in each of the individual Tiers. Under such an implementation, any claims can be evaluated on a just, reasonable, and appropriate basis.

D. *Reply to Parties' Comments to Question No. 7: The Commission Should Not Delay Promulgation of Final Default Service Regulations, as the Timeframe for Default Service Implementation is Imminent for Many Electric Distribution Companies.*

In order to ensure that EDCs are able to begin implementing cost-effective compliance strategies, many of the parties to this proceeding agree that the Commission must promulgate final default service regulations as soon as possible; however, a few parties suggest that the Commission should delay as long as possible in providing guidance to EDCs desperately seeking direction with respect to implementing POLR plans. Because these parties have failed to provide any substantive basis for such a delay, in addition to the fact that such a proposal would detrimentally affect EDCs and ratepayers, the PUC should move forward in finalizing the POLR regulations as soon as possible, thereby rejecting any notions to the contrary.

Interestingly, while most of the EDCs commenting in this proceeding agree that the PUC should promulgate regulations immediately (e.g., Exelon, FirstEnergy, PPL), only two EDCs (i.e., Duquesne and UGI, both of whom are currently operating under interim POLR plans) suggest that the Commission should intentionally delay any rulemaking. See Exelon Comments, p. 11; FirstEnergy Comments, p. 5; PPL Comments, p. 13; Duquesne Comments, pp. 15-16; UGI Comments, pp. 4-5. According to UGI and Duquesne, the PUC should wait until all of the EDCs' transition periods are completed to finalize regulations. Over the next four years, as various EDC rate caps expire, Duquesne and UGI suggest that these EDCs should implement an interim POLR plan that would not hold any precedential weight in the future. Duquesne Comments, pp. 7-8; UGI Comments, pp. 4-5. In setting forth such a proposal, Duquesne and UGI imply that, if they could not benefit from final POLR regulations, no other EDCs should be able to benefit until 2011, at which time all EDCs will be subject to final POLR rules. While IECPA, et al., sympathizes with Duquesne's and UGI's plights, ratepayers throughout the Commonwealth should not be penalized merely to placate these two EDCs.

Although they suggest that a delay is necessary to account for any future developments in the wholesale market through 2011, Duquesne and UGI fail to consider that the market will continue to develop beyond 2011. To suggest that the Commission must await promulgation of regulations until the market's development is complete opposes the notion that a free market continually evolves. Rather, as noted by other EDCs who are currently facing the expiration of rate caps, DSPs must be provided the opportunity to begin strategizing their compliance with the necessary requirements in the most cost-effective manner possible. See, e.g., PPL Comments, p. 13.

To encourage the alternative energy market, as well as to consider pricing in the generation market, EDCs must have uniform regulations that identify the process and procedures for procuring electricity. US Steel Comments, p. 4. For example, while PECO Energy Company's ("PECO") rate cap does not expire until December 31, 2010, PECO recognizes that other EDCs must file their POLR plans by 2008, and these EDCs must begin to prepare and plan for any transition. Exelon Comments, p. 11. Only by providing final regulations governing POLR procurement can the PUC provide the necessary guidance.

Similarly, while Duquesne illogically suggests that EDCs can merely implement "interim" POLR plans that carry no precedential value until 2011, several parties, including FirstEnergy, OCA, and OSBA, correctly recognize that without a uniform procedure, the parties will continue to litigate identical issues in each of the interim POLR plans. OCA Comments, pp. 14-15; FirstEnergy Comments, pp. 5-6; OSBA Comments, p. 10. Already, several interim POLR proceedings have resulted in continual litigation over specific issues (e.g., implementation of fixed price services for large commercial and industrial customers), and this litigation will not cease until final POLR regulations are published. IECPA, et al., Comments, p. 15. Thus, in order to avoid the time and costs involved with such litigation, which affects the EDCs, the ratepayers, and the PUC, the Commission must promulgate final regulations as expeditiously as possible.

Finally, Direct Energy incorrectly submits that delaying the implementation of final regulations will allow the Commission to learn from interim POLR plans, and Direct Energy sets forth Duquesne's market as an example of such a "learning" tool. See Direct Energy Comments, p. 4. According to Direct Energy, Duquesne's market has proven that hourly pricing for larger customers is the most appropriate post-transition POLR design, because over 90% of Duquesne's

large customers are currently receiving service from an EGS, and, according to Direct Energy, the "EGSs and the competitive market have responded as the Commission anticipated." Id. at 10-11. IECPA, et al., could not disagree more.

Direct Energy fails to note that commercial and industrial customers have adamantly protested the application of hourly only POLR pricing because of the detrimental affect such pricing could have on large customers. For example, not all customers are able to utilize hourly priced service for various reasons, including the fact that not all manufacturing operations can modify production schedules to meet the requirements of this type of pricing. If the DSP is only permitted to offer hourly priced service, these customers will be forced to seek service from EGSs, who will have the ability to offer fixed price services. As a result, these EGSs may have the opportunity to significantly raise their fixed prices above what the market would otherwise bear because of the "monopoly" they will have over these customers. IECPA, et al., Comments, pp. 18-19.

Thus, while Direct Energy is correct that numerous customers are receiving service from EGSs in Duquesne's service territory, Direct Energy glosses over whether ratepayers are benefiting from this market design. Accordingly, Duquesne's current market does not serve as a "learning tool" for the Commission, but rather, an example of the harm that can come to customers who are required to enter an artificially created competitive market that benefits only the EGSs.

While several parties suggest that the Commission should delay implementation of final POLR regulations, further review of these requests reveal that the true motive behind this initiative is merely to provide consolation to EDCs who have already undergone a POLR proceeding without the assistance of final default service regulations or to provide benefits to

EGSs who hope to force ratepayers into the electricity market at any price. Rather than yielding to the requests of a small group, the Commission must instead focus on the process that is most likely to benefit ratepayers. In this instance, the PUC must chart a course that enables EDCs to prepare for the post-rate cap transition period, allows parties to limit the time and resources spent litigating such POLR plans, and ensures just and reasonable rates for ratepayers. The PUC must promulgate final default service regulations immediately.

III. CONCLUSION

WHEREFORE, the Industrial Energy Consumers of Pennsylvania, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Philadelphia Area Industrial Energy Users Group, the PP&L Industrial Customer Alliance, and the West Penn Power Industrial Intervenors respectfully request that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the foregoing Reply Comments.

Respectfully submitted,

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