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June 15, 2006

James McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
2nd Fl., 400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Policies to Mitigate Potential Electricity Price Increases;
Docket No. M-00061957

Dear Secretary McNulty:

Enclosed are the original and fifteen copies of the Retail Energy Supply Association's Comments for filing in the above-referenced matter. An electronic version has been emailed to Shane Rooney as required by the Commission's May 24, 2006 Order.

Sincerely,



Kevin J. Moody

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

KJM/jls
Enclosures

HAR:66474.1/MID051-236780

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

Policies to Mitigate Potential	:	
Electricity	:	Docket No. M-00061957
Price Increases	:	

COMMENTS OF THE RETAIL ENERGY SUPPLY ASSOCIATION

I. INTRODUCTION

The Retail Energy Supply Association (“RESA”)¹ submits these comments to the Pennsylvania Public Utility Commission (“Commission”) regarding the issues raised in the Commission's Order of May 24, 2006 and in Commissioner Bill Shane's statement with respect to policies to mitigate potential electricity price increases. RESA is thoroughly aware of the significant price increases in the states referenced by Commissioner Fitzpatrick. RESA members have experienced the negative effects of the market structures in those states. Not only have those structures allowed for the price increases mentioned in the Order to occur, but they have also limited the ability of RESA members to enter and remain in the market to serve residential and small commercial customers. As a result, consumers have been left with no competition, no choice, and the significant price increases identified by the Commission. RESA members have been able to compete only for large commercial and industrial load in those states because the default service design is conducive to sustained competition. To that end, RESA offers comments on the following topics: 1) should a price mitigation plan be adopted, it should

¹ RESA member companies include Consolidated Edison Solutions, Inc., Direct Energy Services, LLC, Hess Corporation, Reliant Energy Solutions, Sempra Energy Solutions, Strategic Energy, LLC, Suez Energy Resources NA, Inc., and U.S. Energy Savings Corporation. The opinions expressed in this filing may not represent the views of all members of RESA.

not disrupt the development of a viable competitive market; 2) default service must be reflective of market conditions on a timely basis; and 3) in a properly functioning and workable competitive market, customers will have many suppliers and many products from which to choose. In some cases, price alone may not be the most important consideration as other products and services might be sought by consumers.

II. Specific Comments

A. Should a Price Mitigation Plan be Adopted, It should not Disrupt the Development of a Viable Competitive Market

As the recent events cited by the Commission demonstrate, RESA believes that the Commission should be concerned about potential price shock at the time the Electric Distribution Companies' ("EDC") rate caps expire. These events are a result of both natural market forces and policy actions. One suggested approach is for electricity consumers to pay more money now and use the additional money to offset potential increases later. Neither RESA nor the Commission can dictate or accurately predict the natural market forces that will occur over the next several years when most consumers of electricity in Pennsylvania will transition off capped generation charges at the end of 2009 and 2010. Thus, RESA believes that implementing a plan that collects money now for events that might not even transpire is unnecessary. This would not serve anyone's interest, but most importantly would not benefit the consumers that would be funding the presumed mitigation need. Therefore, RESA believes the Commission should not allow the EDCs to begin increasing their capped prices simply because they "reasonably anticipate" that given current capped rate levels and current wholesale prices, customers will see large price increases at the end of the rate cap period. It was the failure to reasonably anticipate the current high commodity (primarily natural gas related) price

environment that caused the recent significant price increases. These events should teach all market participants a valuable lesson. Trying to guess the future price of a commodity and then having the state proceed in the procurement or collection/non-collection of money for future events will lead to failure.

RESA does believe that planning for the possibility of significant price increases is a prudent endeavor as long as any price mitigation plan does not override the goals of the Electricity Generation Customer Choice and Competition Act (“Choice Act”). It is the Commission’s responsibility to design default service that enables a competitive market, and any price mitigation methods must not hinder that directive. The Choice Act specifically set the standard for default service in the post-transition period as electricity being procured at “prevailing market prices.”² Thus, the legislature clearly understood that a competitive market will develop only if default service reflects market prices in a timely manner.

Another price mitigation method noted by the Commission is an increased price “phase-in” plan over a couple of years. This approach has recently been adopted in Maryland and Delaware and results in customers seeing only a portion of the required increase at a time. As long as a price mitigation phase-in plan is applicable to all distribution customers, does not harm the EDCs and does not impede the development of a competitive market, RESA is supportive of such a plan.

B. Default Service must be Reflective of Market Conditions on a Timely Basis

Following the rate cap periods, if default services are not allowed to reflect market prices on a timely basis and competition is stifled, RESA believes that customers

² 66 Pa.C.S. § 2807 (e)(3).

will continue to face on-going periods of large price swings and with no choices of alternative providers. It is no surprise that the states noted by the Commission that experienced the significant price increases were those with default service that was a product of administrative procurement models (auctions or RFPs). The auction models utilized in Maryland and New Jersey may on the surface appear to shield customers from potential price shock, but in fact they will not. This is because the auctions are only responsive to market prices at a single point in time. While it may appear that the New Jersey auctions, which include a multi-year procurement strategy, have currently lead to lower prices, this long-term approach is a double-edged sword. Under this model, there will also be times where customers are paying higher than market prices for up to three years or longer. But even in the current market under this model, New Jersey consumers are seeing prices increases of 12% to 14%.

At some point in the future, natural gas prices will fall.³ So too will electric prices. Dictating procurement terms and maintaining a regulated utility as the provider of retail electric service will not change those basic market tenets. As a result, what may on the surface appear to be a working model in the New Jersey BGS auction process with respect to maintaining low prices will ultimately fail to result in a competitive retail market that brings real benefits of competition as envisioned by the Choice Act. When prices fall, the inevitable consequence will be consumer and politician outrage that high prices were locked in for a multi-year period (in New Jersey, prices are locked in for rolling three-year periods).

³ In last week's report, the US Energy Information Administration said that US gas stockpiles were 2.32 trillion cubic feet the week ending June 2, 2006 (24% above last year and 41% higher than the five-year average), pushing gas prices lower - from a peak of \$15.38 per million Btu in December, gas for near-month delivery traded on the NYMEX has fallen 60% recently, to \$6.14.
<http://tonto.eia.doe.gov/oog/info/ngs/ngs.html>

Since the New Jersey model is not a retail market model, naturally, a competitive retail market has not developed for residential customers in New Jersey. The March 2006 switching statistics show that *only 26 residential customers* are served by competitive suppliers.⁴ Clearly, this default service design has not been successful in fostering a competitive market. Residential customers in New Jersey are not only faced with continual price increases in times of rapidly rising wholesale prices, but have no alternative but to remain on the utility provided default service and will be left with little ability to immediately receive the benefits of falling prices as they would if retail competition were allowed.

Indeed, in times of falling prices customers will be saddled with electricity prices that far exceed current market prices. Once again, because such a structure does not encourage competitors to enter and remain in the market to offer alternatives to customers, they are left with an over-priced utility-provided service for long periods of time.

RESA has continually lobbied for hourly priced default service for larger customers and for more market responsive pricing for smaller customers. Such a default service design would avoid the pitfalls of fixed-priced auction models that result in no competitive alternatives for smaller customers and also subjects them to large, immediate price swings that can last for longer periods than necessary.

To ensure development of a competitive retail market for all customers, the Commission must allow default service prices to adjust to wholesale market prices on a timely basis. The Choice Act envisions a competitive market bringing benefits to

⁴ New Jersey Electric Statistics, March, 2006. <http://www.state.nj.us/bpu/energy/elecSwitchData.shtml>

customers through the entry of competitive suppliers and product innovation. Default service must not be designed to be the only choice for electric service.

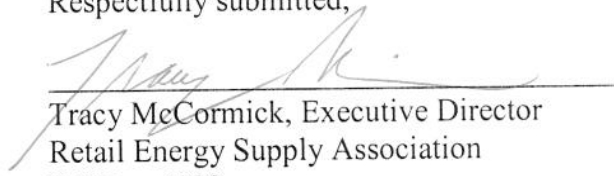
C. In a Properly Functioning and Workable Competitive Market, Customers Will Have Many Suppliers and Many Products to From Which to Choose. In Some Cases, Price Alone May Not Be the Most Important Consideration as Other Products and Services Might be Sought by Consumers.

While consumers are certainly concerned with the prices they pay for electricity, other factors contribute to their choice of electric services and suppliers if consumers are given opportunities to choose. The Choice Act envisions a vibrant competitive market that will allow consumers to select the electric service features they desire. Not all customers may desire a particular fixed priced product provided by their regulated utilities. Depending upon a customer's individual preferences, non-fixed price service such as hourly priced service or a combination of fixed and hourly priced service may be a better fit their electric service needs. Other customers may forgo a lower price to seek an environmentally friendly product. Still others may consider company reputation, billing features, or customer service to be more important driving factors in their choice of supplier. The beauty of a competitive market is that customers can seek products that are different from utility-provided SOS service. The focus of the Commission should be on establishing default service following the rate cap periods that permits competitive suppliers – and not the regulated utility default service providers – to provide the various products consumers desire, which will foster the development of the competitive market so that customers can obtain the electric service features they desire from the market.

III. Summary

RESA believes that the potential need for price mitigation is something to be concerned about as the EDCs' rate caps expire. Any method used to combat large retail price increases must be designed as a non-bypassable wires charge and be competitively neutral to maintain the directives set forth in the Choice Act to foster a vibrant, long-term competitive retail market. Default service is the cornerstone on which the foundation to competition will be laid. Default service must be designed to be a backstop service and not be allowed to impede competition. This can be accomplished by allowing for sufficient adjustment to changes in wholesale prices in order for customers to reap the benefits of competition and to avoid the potential for future significant price increases. RESA looks forward to continued participation in the design of competitive markets in Pennsylvania.

Respectfully submitted,



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