

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

AND

Default Service and Retail Electric : Docket No. M-00072009  
Markets Proposed Policy Statement :

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**Comments of  
Energy Association of Pennsylvania**

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TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. Introduction

In February 2007, the Pennsylvania Public Utility Commission ("PUC" or the "Commission") entered the following three major orders addressing Provider of Last Resort ("POLR") issues in Pennsylvania:

1. 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; Advance Notice of Final Rulemaking Order entered February 9, 2007 ("Rulemaking")

2. Default Service and Retail Electric Markets; Docket No. M-00072009; Proposed Policy Statement entered February 9, 2007 (“Policy Statement”)
  
3. Policies to Mitigate Potential Electricity Price Increases; Docket No. M-00061957; Tentative Order entered February 13, 2007 (“Mitigation Order”).

The Energy Association of Pennsylvania (“Association”) offers comments to the Rulemaking and the Policy Statement which are due March 2.

In the Policy Statement (at p. 2), the Commission explains that the three orders constitute a comprehensive strategy and should be reviewed together.

“This policy statement, coupled with the default service regulations, and the order on electricity price mitigation, represents a comprehensive strategy for addressing retail rates in the context of expiring rate caps. We recommend that interested parties review all three documents in formulating their comments.”

The Rulemaking and the Policy Statement generally address the same issues, but provide different approaches. Due to the interrelationship between these dockets, the Association has combined its comments.

The Association appreciates the opportunity to provide comments on the Commission’s two orders. The comments herein seek clarifications of inconsistencies between the proposed Rulemaking and the Policy Statement. Generally, the Association’s member EDC’s view the Rulemaking as a reasonable approach to a complex set of issues. The Association further recognizes that the decisions involving

the purchase of future power supply are complicated, and attempt to resolve seemingly conflicting public policy objectives. Clearly, the Commission's recognition that flexibility is warranted and that the understanding of issues related to default service is a continuing process inures to the benefit of all stakeholders.

## II Definitions, Procedures and Policies

The Association believes that the success of the Pennsylvania default service process is directly tied to the use of unambiguous terms, clear and consistent definitions and rules, as well as procedures and policies that are fully and completely understood by all major stakeholders. The Association would urge the Commission to use identical definitions in all orders, regulations and policy statements.

We believe that the definitions offered by the Commission represent a major step towards the establishment of definitive energy policy surrounding the difficult issues related to default service provision. The Association's proposed changes are offered to strengthen consistency and to minimize debate in the future. Our efforts are designed to complement the significant effort undertaken by the Commission. The various revisions are offered for purposes of clarity and consistency.

The Association has noticed slightly different definitions between the Policy Statement and the Rulemaking. We are endeavoring to minimize or ideally eliminate inconsistency.

§54.181. Purpose.

The Association agrees with the Commission's statement of purpose. However, the proper interpretation of the term "prevailing market prices" is critical.

In evaluating the comments of all parties, the Commission can recognize the success that the Commission, the industry and other stakeholders have experienced to date in the transition process. It is clear that wholesale competition in the PJM markets has far exceeded expectations, as well as activity in other markets.

§54.182. Definitions.

As noted earlier, the Association contends that identical definitions need to be utilized in both the Rulemaking and the Policy Statement. Essential to our contention is a request that the Commission modify the definitions of: (1) competitive bid solicitation process, (2) default service, (3) default service provider, and (4) prevailing market prices.

*Competitive Bid Solicitation Process* – In the definition of this term, the Policy Statement adds "lowest" before bids at the end of the definition. This adjective does not appear in the definition set forth in the Rulemaking. The Association would suggest that the definition set forth in the Rulemaking is more accurate and that the Policy Statement be amended to eliminate the term "lowest".

*Default Service* – As written, this definition appears to set forth two separate independent definitions of default service. The Association would suggest that default service must meet both criteria set forth in the definition. Accordingly, the Association

recommends that the two subparagraphs of this definition be combined into a single definition.

*Default Service Provider* – The definition in the Rulemaking uses the phrase “Commission approved alternative supplier of electric generation service” to define the DSP if it is not the incumbent EDC. The definition in the Policy Statement defines this entity as a “Commission approved alternative default service provider.” Regulatory definitions should not be self defining as they are in the Policy Statement. There the Commission defines default service provider using the term default service provider. The definition in the Rulemaking avoids this problem and more closely tracks the language used in Section 2807(e)(3) of the Competition Act, i.e., “Commission-approved alternative supplier.” Accordingly, the Association recommends that the Commission modify the definition in the Policy Statement to be consistent with the definition in the Rulemaking.

*Prevailing Market Prices* – This critical definition should be expanded to recognize that, at any point in time, the wholesale market includes many electric generation supply products (e.g., capacity, load following energy, full requirements service) available over many time periods (e.g., short-term, medium-term and long-term). The price for each of these different products over the agreed-upon term is a prevailing market price at the time the generation supply is purchased.

#### §54.183. Default Service Provider

The Association strongly supports the Commission’s identification of the incumbent Electric Distribution Company (“EDC”) as the Default Service Provider

("DSP"). This approach will minimize customer confusion and disruption. As a practical matter, the incumbent EDC will remain the "last resort" DSP if an alternative DSP defaults on its obligations. Finally, approving a non-EDC as the DSP risks "stranding" the EDC's investment and personnel in various functions and would require a mechanism for recovery of standard costs.

While the Association agrees that the Commission should have the option to reassign the default service obligation to an alternative DSP "if it finds it to be necessary for the accommodation, safety and convenience of the public", it is essential to recognize that reassignment of the default service obligation is an extremely significant matter with the potential to disrupt default service to customers throughout the EDC's certificated service territory. Before reassigning the default service obligation, the PUC must find that the incumbent DSP is either completely incapable of meeting its default service obligations or has proposed to relinquish its role and that the alternate DSP can fully satisfy all of those obligations, including compliance with all requirements of the Public Utility Code and the Commission's regulations.

§54.184. Default Service Provider Obligations.

The Association generally agrees with this specific enumeration of the DSP's legal and regulatory obligations. The Association believes that it is critically important to hold all DSPs to these standards, both incumbent EDCs and Commission-approved alternative DSPs, if any.

Finally, this section states that the Commission will determine the allocation of universal service and energy conservation responsibilities between an EDC and an

alternative DSP when an EDC is relieved of its DSP obligation. The Association would counter that in such a situation, where an EDC is no longer the DSP, the new non-EDC DSP should assume those responsibilities.

§ 54.185. Default Service Programs and Periods of Service.

The Commission has changed paragraph (a) to require the DSP to file a “default service program” instead of an implementation plan. The default service program must be filed no later than fifteen months prior to the conclusion of the Commission-approved generation rate cap or existing default service program for the EDC’s service territory. The Association agrees with this change.

Paragraph (c) indicates that the initial default service plan should be for a period of two to three years or for a period necessary to comply with § 54.185(d)(4). That section provides that the default service procurement plan’s period of service “shall align with the planning period of that RTO or other entity.” The Association agrees with the proposed approach. Because many elements of a default service procurement plan will be based on criteria derived from the various RTO data, (e.g., registered maximum peak, load) it makes sense to coordinate these schedules. Many Pennsylvania EDC’s are members of PJM which is relevant because the PJM planning period begins June 1 each year. However, the various remaining generation rate caps expire in 2009 and 2010. To align service procurement plans with the PJM planning period, an EDC’s initial term for its plan may need to be one that includes a partial year.

The Commission revised section 54.185(d) to specify the elements that should be included in a default service program. The first element, a procurement plan, should

identify the DSP's generation supply acquisition strategy and identify the means of satisfying the minimum portfolio requirements of the AEPS Act for the period of service. As discussed above, the Commission proposes that the period of service for the procurement plan should align with the planning period of the RTO. The proposed regulations also require contingency plans to ensure reliable default service continues in the event a wholesale generation supplier fails to meet its contractual obligations. The second element, an implementation plan, identifies the schedules and technical requirements of the competitive bid solicitations and spot market energy purchases. The third element, a rate design plan, recovers all reasonable costs of default service, including a schedule of rates, rules and conditions of default service in the form of proposed revision to the retail tariff. The Association agrees with the Commission that the default service program should include all these elements.

#### § 54.188 Commission Review of Default Service Programs and Rates

This is a critical section of the proposed rules. The Association would agree with the Commission's conclusion that it needs to retain the right to investigate violations of laws or regulations and that the Commission must guard against fraud, collusion, bid rigging and price fixing. However, the Association would contend that the Commission should not re-examine the reasonableness of purchases properly and accurately disclosed and approved by the Commission. If a DSP is going to retain confidence in its ability to recover costs, and the wholesale market participants are to retain confidence in a well defined and consistent competitive procurement market, then there needs to be proper assurance against subsequent denial of recovery.



### § 54.189 Default Service Customers Switching Rules need to be in Place

The Rulemaking (54.189(d)) states “A default service customers may choose to receive its generation service from an EGS at any time”. The Commission needs to realize that if customers have the ability to switch to an EGS at any time, the cost of providing default service will increase. When developing a supply portfolio, any uncertainties over the amount of energy, capacity and transmission related products that will be required, increases the supplier’s risks. An absence of switching rules will lead to higher business risks and thus higher electric rates. The Association would urge the Commission to recognize that in the market place additional risk will result in higher prices bid by suppliers.

### III. Changing Rate Design without Analysis May Have Unintended Consequences

Both the Policy Statement and the Rulemaking suggest that the Commission prefers a rate design which eliminates both a declining block rate structure and demand charges.

In indicating a preference or mandating a particular rate design, the Association respectfully requests that the Commission consider the impact on various rate classes or customers within a rate class. It is possible that the proposed rate design changes may cause a major rate increase to high load factor customers as well as high use residential and commercial electric heating customers. While Stakeholders may presume that consumers will respond to appropriate price signals, the Association is concerned that even with PUC approved consumer education and programming, not all consumers will act to lower consumption. At that point, it would be beneficial if the

Commission had considered these possible unintended consequences so as to prepare consumers.

#### IV. Honor Prior Commission Approved Default Service Settlements and Orders

The Commission's default service regulations state that they are responsive to §2897(e) of the Electric Generation and Competition Act, as amended, 66 Pa. C.S. A. §2801-2812 with respect to issues surrounding the obligation to serve retail customers at the conclusion of the restructuring transition period. For some EDC's, this will be in 2010 or 2011.

There are EDC's however, which have already completed their transition periods and are currently providing the requisite default service pursuant to either Commission approved settlements or Orders. The Association requests that the proposed default service regulations not be enforced until the conclusion of the existing Commission approved Orders and/or default service settlements. Given that wholesale power purchase decisions have been undertaken pursuant to such Orders or settlements, it would be unfair, risky and potentially expensive to apply different rules prior to the end of a settlement term or the conclusion of said Orders.

#### V. Conclusion

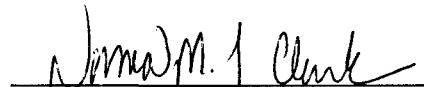
The Association commends the Commission for its ambitious undertaking to better define energy policy in the Commonwealth. By this Rulemaking and the Policy Statement, the Commission has provided significantly greater clarity to the role and obligations of a default service provider.

The Association seeks consideration of the above enumerated changes and suggestions so as to provide additional certainty in the final procurement process as the rate caps expire. The Association and its EDC members recognize that this process is evolving as markets mature and anticipate a continuing dialog with the Commission and other Stakeholders.

Respectfully submitted,



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Dated: March 2, 2007