

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG , PENNSYLVANIA 17105**

**Initiation of a fact finding
Investigation of the competitive market
conditions re:
Pike County Light & Power Company**

**Public Meeting January 27, 2006
JAN-2006-C-0001
Docket No. P-00052168**

MOTION OF COMMISSIONER BILL SHANE

On October 25, 2005, Pike County Light & Power Company (“Pike County Power” or the “Company”) submitted electronically the results of its Request for Proposals (“RFP”) auction process, including the impact on retail rates for customers receiving default service effective January 1, 2006, at Docket No. P-00052168. On October 27, 2005, Pike County Power filed the results of its RFP auction process with the Commission’s Secretary.

This filing was submitted pursuant to the RFP process and Default Service Implementation Plan (“Plan”) filed May 31, 2005 and approved by the Commission in its Order, entered September 23, 2005, at Docket No. P-00052168. The Commission approved the results of the auction on October 28, 2005.

Several prior Commission decisions have led us to the current situation. In attempting to implement the Electricity Generation Customer Choice and Competition Act and comply with certain Commonwealth Court rulings concerning purchase power costs, the Commission had shielded the customers from bearing the current energy costs. However, the 70 percent increase in rates caused by the new default service energy acquisitions exceeds any electric rate increases allowed by this Commission, even when a new nuclear generation station was added to rate base. The Restructuring Act states "This Commonwealth

must begin the transition from regulation to greater competition in the electricity generation market to benefit all classes of customers and to protect this Commonwealth's ability to compete in the national and international marketplace for industry and jobs." The Act also states "The cost of electricity is an important factor in decisions made by businesses concerning locating, expanding and retaining facilities in this Commonwealth."

Markets are an allocative tool, not an object of uncritical worship. Markets are usually the best tool for allocating resources, but markets can fail, be subject to manipulation, and even be tortured by criminal behavior. The California energy debacle comes to mind. A market has no conscience and no compassion. The market is not all-wise and all-knowing as its acolytes would have us believe. These thoughts come to mind while pondering the recent actions of Pike County Power.

I consider the Pike County Power predicament to be a significant test of the effectiveness of the Restructuring Act. The premise of the Restructuring Act was that consumers could rely on competitive market forces to provide them reliable service at costs below those resulting from traditional rate regulation. The Restructuring Act balanced exposing the customers to the realities of current market prices with the availability of competitive Electric Generation Suppliers (EGSs). Pike County's New York operating utility has been cited nationally for its success in fostering retail competition. If over 30 percent of Pike County Power's customers are shopping in New York, why are none of the Company's Commonwealth customers shopping? This is especially disconcerting given the fact that the Shopping Credits in Pennsylvania are significantly higher than the Prices to Compare in New York. Pike County Power contends that it is taking steps to encourage alternate EGSs to seek opportunities to provide electricity to Pike County residents. I believe that Pike County Power has the duty to advance

the goals of the Restructuring Act. This Commission should not only monitor Pike County Power's activities, but require a specific evaluation of their effectiveness. If necessary, this Commission may need to take additional corrective steps in order to assure that Pike County Power's Commonwealth customers have access to effective competition. In addition, if circumstances involved in the Pike County Power case preclude the successful implementation of the Restructuring Act, the Commission may be required to consider other initiatives. There is precedent, admittedly slender, to justify one such innovative action, as shown in the excerpt below of the action taken by The Public Utilities Commission of Ohio, to wit:

The Commission finds:

- (4) The Commission has general supervision over public utilities under Section 4905.06, Revised Code. Under the Ohio Certified Electric Territories Act, Sections 4933.81, et seq., Revised Code, the Commission may transfer a portion of one EDU's territory to another EDU where it determines that the public interest would be promoted in doing so. Since Mon Power is not willing to propose an RSP, the Commission will consider whether another EDU could acquire Mon Power's service territory and serve Mon Power's customers through an RSP. A logical candidate for doing so would be Columbus Southern Power (CSP), given its shared border with Mon Power.*
- (5) Based on advancing the public interest and promoting rate stabilization for Mon Power's existing customers, the Commission orders Mon Power and CSP to immediately pursue potential terms and conditions for transferring Mon Power's Ohio territory to CSP. Absent the filing of a proposed transaction to achieve this transfer, the companies shall file a report detailing the outcome of their discussions within 14 days of this order.*

In the Matter of the Certified Territory of Monongahela Power Company, Case No. 05-765-EL-UNC Public Utilities Commission of Ohio

I am not willing to abandon Pennsylvania customers of this multi-state utility to the forces of an imperfect or perhaps dysfunctional competitive marketplace. This service territory is an important growth area in the Commonwealth which produces multiple economic benefits. An ill-functioning or non-functioning competitive electric market will detrimentally affect the citizens and their future.

THEREFORE, I move:

1. That the Commission directs the Law Bureau to initiate a fact finding investigation into the competitive electric market in Pike County Power's service territory.
2. That this fact finding investigation shall address, at a minimum, the following issues:
 - a. What efforts has the Company taken to facilitate successful implementation of the Restructuring Act prior to January 1, 2006?
 - b. Has the Company initiated any new efforts to facilitate successful implementation of the Restructuring Act since January 1, 2006?
 - c. What barriers to implementation of the Restructuring Act exist in the Company's circumstances?
 - d. What additional steps should the Company undertake in order to improve the implementation of the Restructuring Act?
 - e. Does the Company's acquisition of electrical energy through the New York ISO hinder the potential for implementation of the Restructuring Act?

- f. What barriers exist today for Pennsylvania licensed EGSs to serve the Company's Pennsylvania customers?
 - g. Is it possible for Pennsylvania licensed EGSs to serve the Company's customers through its New Jersey affiliate which is a member of the PJM RTO?
 - h. What conditions would facilitate the New York Energy Suppliers to become licensed in the Commonwealth in order to serve the Company's Pennsylvania service territory?
 - i. Would the integration of this Company's energy requirements with either its New Jersey and/or New York affiliates result in more beneficial default service rates?
 - j. Would a direct interconnection between the Company and the PJM have impacted the bid offers associated with the Company's recent auction results?
 - k. Would it be reasonable for the Company to terminate its current hedging agreements?
3. That the Law Bureau complete this fact finding investigation within 60 days and issue a report to the Commission.
 4. That the Law Bureau prepare the necessary Order.
 5. That the Order shall be served on the parties at Docket No. P-00052168.

Date: January 27, 2006

Bill Shane
Commissioner