

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105**

**Petition of Duquesne Light Company For
Approval of Plan for Post-Transition Period
Provider of Last Resort (POLR) Service**

**PUBLIC MEETING
August 19, 2004
AUG-2004-OSA-0203
DOCKET NO. P-00032071**

MOTION OF COMMISSIONER GLEN R. THOMAS

On December 9, 2003, Duquesne Light Company (“DLC”) filed a Petition requesting approval of its plan for provider of last resort (“POLR”) service for the period of January 1, 2005 to December 31, 2010 (“POLR III Plan”). On April 13, 2004, the Office of Consumer Advocate (“OCA”) filed its Stipulation to the Plan. On April 16, 2004, the Office of Small Business Advocate (“OSBA”) and Duquesne Industrial Interveners (“DII”) filed their stipulations. The Administrative Law Judge (“ALJ”) recommended that the Commission approve the plan, as modified by the partial stipulations reached by DLC, the OCA, the OSBA, and DII. Several parties filed Exceptions.

The Office of Special Assistants (“OSA”) recommends that the Commission grant the Exceptions in part, and deny them in part. The significant conclusions contained in OSA recommendation include the following:

- Approves a three-year term for POLR service to small customers, and rejects the proposed six-year term on the basis that the longer term is too speculative, making it inconsistent with the statutory mandate that POLR supply must be acquired at *prevailing market prices*. 66 Pa.C.S. §2807(e)(3)
- Grants the OSBA proposal on rate re-design for Small Commercial & Industrial (“C&I”) Customers.
- Accepts the hourly price service (“HPS”) option as the default POLR service for Large C&I Customers.
- Limits the duration of the fixed price option for Large C&I Customers to seventeen months of the POLR III Plan in order to provide both Large C&I Customers and the Electric Generation Suppliers (“EGS”) with additional experience to prepare for an HPS only POLR offering. The fixed price option is terminated as a POLR product option on May 31, 2006.
- Rejects the universal application of the administrative adder and requires the adder to be applied only to Large C&I Customers on POLR service.
- Approves DLC membership into PJM Interconnection, LLC.

For the most part, I believe the Staff recommendation is consistent with the Electricity Generation Customer Choice and Competition Act (“Electric Choice Act”). I also believe it is a

step in the right direction of furthering competitive retail markets in the Commonwealth while the Commission completes the goal of promulgating regulations on POLR service. The Staff should be commended for a job well done.

However, I move to modify one aspect of the Staff proposal. The Small Customer Plan¹, as modified by the partial stipulations reached by DLC, the OCA, and the OSBA, proposes to maintain the switching restrictions currently in place in the DLC service territory. The OSA recommends adopting the switching restrictions as proposed in the Small Customer Plan. I respectfully disagree.

The current switching rules impose a 12-month minimum stay requirement on residential customers, requiring customers who return to POLR service to stay with POLR service for one year before being allowed to switch to an alternative supplier. Customers who have never switched to an alternative supplier are permitted to leave POLR service at any time with no restriction.²

Small commercial and industrial customers have an annually renewing 12-month minimum stay requirement as well, but with the opportunity to opt out of the minimum stay requirement upon paying a Generation Rate Adjustment (“GRA”). The GRA is anniversary based, meaning that, after the first 12 months that a customer is on POLR service, the GRA renews for another 12 months. The GRA is based on the difference in supply costs between the spot prices for supply and the POLR service rate during the period when the customer starts POLR service. The customer is only assessed a GRA fee when the spot price for supply service exceeds the POLR rate.³

The record before us establishes that there are seasonal contracting risks faced by the POLR provider, commonly referred to as the “beach” phenomenon – i.e., suppliers switch customers back to POLR service in the summer when market prices are high and then switch them back to competitive service in other months when market prices are low.⁴ For this reason, Dominion, Strategic, and Reliant acknowledge that some rules are necessary to prevent this type of gaming.⁵

The proposed minimum stay provisions and the GRA exit fee are not the appropriate solutions to the problem of seasonal gaming. For the reasons set forth below, I believe these rules are inconsistent with the intent of the Electric Choice Act and with the Commission policy to continue the development of retail competition.⁶

¹ The rate classes within the Small Customer Plan are RS, RH, RA, GS/GM, GMH, AL, SE, SM, SH, MTS, and PAL. DLC MB at 9.

² DLC MB at 27.

³ Constellation MB at 5.

⁴ DLC MB at 27.

⁵ DLC MB at 29.

⁶ The Large Customer Plan provides switching restrictions for customers affirmatively choosing the fixed price service option. Those restrictions include a stay-out provision as well as a GRA. Although I propose to revise the switching restrictions for the Small Customer Plan, I am willing to adopt the Large Customer Plan switching restrictions as recommended by Staff. As noted by Staff, the restrictions in place in the Large Customer Plan will be applied only to those customers who *choose* to be placed on fixed price service. Since the large customers will default to the hourly priced service, they can only be subject to switching restrictions upon a voluntary and affirmative choice.

First, in light of Section §2807(e)(4) of the Electric Choice Act, the proposed switching restrictions treat returning customers to POLR service differently than new applicants for service. Section §2807(e)(4) states:

If a customer that chooses an alternative supplier and subsequently desires to return to the local distribution company for generation service, the local distribution company shall treat that customer exactly as it would any new applicant for energy service.

As stated in DLC Main Brief, “it is only when the customer returns to POLR service, then seeks to leave again, that the switching rules come into play.”⁷ The minimum stay requirement imposed on small customers prohibits a customer returning to POLR service from freely accessing the market for an entire year. A new applicant, on the other hand, confronts no such restriction – he or she is able to freely switch to an alternative supplier at any time. In addition, the GRA mechanism treats customers returning to POLR service differently than new applicants by charging customers an exit fee for switching to an alternative supplier. Clearly, there is no basis upon which to discriminate against returning customers by requiring them to remain on POLR service for one year or charging them exit fees, while new customers are free to choose competitive suppliers.⁸

Second, competitive generation markets can only develop and mature if consumers have free and direct access to the competitive market, as contemplated by the Electricity Generation Customer Choice and Competition Act. Section §2802(3) states that it is, “...now in the public interest to permit retail customers to obtain direct access to a competitive generation market...” while Section §2804(2) states, “...the Commission shall allow customers to choose among electric generation suppliers in a competitive generation market through direct access...” Clearly, the Act contemplated that the essence of a competitive market is the ability to choose. Minimum stay provisions and exit fees do just the opposite – they act as barriers to the marketplace.

Additionally, the complexities involved with the proposed switching restrictions, particularly with the GRA exit fee, will impose additional costs to the shopping customer.⁹ The end result may be to potentially chill the development of the competitive retail marketplace. It also imposes additional costs to the utility in terms of customer service cost and to the EGS in terms of generation administration costs.¹⁰

Optimally, the Commission should seek market-based solutions to address the problem of seasonal gaming. The record demonstrates the existence of market-based solutions, including seasonal rates and volumetric risk mitigation measures. In fact, other states have adopted such market-based solutions to address this issue that should be considered in Pennsylvania.

⁷ DLC MB at 27.

⁸ Dominion MB at 17.

⁹ Constellation MB at 9-11.

¹⁰ Constellation MB at 8.

Nonetheless, the record is not sufficiently ripe to implement such market-based approaches at this time. Rather, these solutions shall be more fully considered and more appropriately addressed in the context of regulations for POLR service. As a result, for this proceeding I believe the Commission should adopt two new measures in order to protect against seasonal gaming.

1. **EGSs may not initiate a switch.** Strategic suggested that if the Commission provides that the *customer* is the only entity who can initiate a switch, then the EGSs cannot game POLR rates in the high-cost summer months. Strategic correctly argues that there is little likelihood that a large number of residential customers would engage in coordinated, timed switching.¹¹

2. **Duquesne shall be able to seek relief from the Commission in the event it believes that an EGS is exploiting the seasonal variations of the market.** Duquesne shall carefully monitor the migration of consumers between POLR service and competitive suppliers. In the event that Duquesne observes a significant migration of consumers from an EGS to POLR service, and has reason to believe that the EGS will seek to reacquire those consumers in an effort to exploit the seasonal variations in the market, then Duquesne may petition the Commission for any appropriate relief. In such a proceeding, the Commission shall reserve the right to prohibit the EGS from reacquiring those consumers for a period of up to 12 months from when they commenced POLR service.

I believe the addition of these rules is consistent with the intent of the Electric Choice Act as well as with Commission policy to further competitive retail markets. The combination of these proposals eliminates the financial incentive for an EGS to engage in seasonal gaming. At the same time, the proposals result in similar treatment for *all* customers, allowing returning customers, new applicants, and existing customers to have free access to the competitive market.

THEREFORE, I MOVE THAT:

1. The Commission reject the switching restrictions for the Small Customer Plan, in the form of 12-month minimum stay requirements and the GRA exit fee, as proposed by Duquesne Light Company.
2. The Commission approve the rules designed to prevent season gaming as discussed in this Motion.
3. The Office of Special Assistants prepare an Order consistent with this Motion.

DATE

**GLEN R. THOMAS
COMMISSIONER**

¹¹ Strategic Exc. at 10.