PENNSYLVANIA

PUBLIC UTILITY COMMISSION

**Harrisburg, PA 17105-3265**

Public Meeting held September 22, 2011

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

Wayne E. Gardner

James H. Cawley

Pamela A. Witmer, Statement

Proposed Policy Statement Regarding M-2009-2140580

Default Service and Retail Electric

Markets

# FINAL POLICY STATEMENT

**BY THE COMMISSION:**

On October 15, 2008, Governor Edward Rendell signed House Bill 2200, Act 129, into law. The Act became effective on November 14, 2008. Act 129 has several goals including reducing energy consumption and demand. Act 129 also revises the default service requirements contained in Chapter 28 of the Public Utility Code. By Order entered January 19, 2010, we issued a Proposed Policy Statement opening a proceeding to consider amendments to our current Policy Statement regarding Default Service and Retail Electric Markets at 52 Pa. Code §§ 69.1801, *et seq.*, as required by the enactment of Act 129 so that our Policy Statement will be consistent with the Act.

**Procedural History**

Historically, a local electric utility company was responsible for generating or purchasing and delivering electricity to a customer’s premises. However, the Electric Generation Customer Choice and Competition Act (Competition Act) of December 3, 1996 (P.L. 802, No. 138), codified at 66 Pa. C.S. §§ 2801, *et seq.*, required electric distribution companies (EDCs) to unbundle transmission, distribution and generation rates for retail customers. The Competition Act deregulated electricity generation and provided all customers in Pennsylvania the opportunity to choose their electric generation supplier (EGS). 66 Pa. C.S. § 2806(a). The EDC is responsible for delivering the electricity to those customers who choose to buy from an EGS. Additionally, the EDC is responsible for both acquiring and delivering electricity for those customers who do not shop or buy their electricity from an EGS or when the EGS fails to provide the promised electricity.

When an EDC acquires electricity for customers not served by an EGS, the EDC is functioning as the “default service provider” (DSP). The Competition Act provided that an EDC’s generation rates be capped until the EDC had completed its stranded cost recovery. Many of the larger EDCs agreed to extend rate caps as part of their electric restructuring settlements. For most of these companies, generation rate caps expired December 31, 2010. Other EDCs, most notably Duquesne Light Company (Duquesne) and several smaller EDCs had shorter stranded cost recovery periods that expired much sooner, as early as 1999 for Citizens Electric Company of Lewisburg, Inc.

Following the expiration of rate caps, the Competition Act provided that default suppliers “acquire electric energy at prevailing market prices” to serve default service customers and that default suppliers “recover fully all reasonable costs.” 66 Pa. C.S. § 2807(e)(3). There has been disagreement over what “prevailing market prices” mean as applied to default service rates.

**History of Default Service Regulations and Policy Statement**

On February 9, 2007, the Commission issued a Proposed Policy Statement Order regarding default service at Docket No. M-00072009. On May 10, 2007, the Commission entered a Final Rulemaking Order at Docket No. L-00040169. The default service regulations became effective on September 15, 2007. The Policy Statement contained guidelines for DSPs in the areas of procurement, rate design, and cost-recovery. The default service regulations set forth detailed requirements for default service plans. The regulations require DSPs to acquire default supply at prevailing market prices. The regulations further require that electric generation supply be acquired by competitive bid solicitations, spot market purchases or a combination of both. 52 Pa. Code § 54.186(b)(4). Competitive bid processes are subject to monitoring by the Commission. 52 Pa. Code § 54.186(c)(3). The regulations allow DSPs to use automatic adjustment clauses for recovery of non-alternative energy default service costs. 52 Pa. Code § 54.187(f). The default service Policy Statement provides additional guidance to EDCs regarding energy procurement, bid solicitation processes, default service cost elements, rate design, rate change mitigation, rate and bill ready billing, purchase of receivables programs, customer referral programs and supplier tariff uniformity.

**Act 129**

Even though the retail provision of electric generation service has been subject to competition for nearly a decade, the vast majority of residential customers continue to obtain their generation supplies from their “default” supplier, that is, their regulated electric distribution utility. Under the 1996 Pennsylvania electric restructuring law, the electric distribution companies (or alternative Commission-approved default suppliers) were required to serve non-shopping customers after rate caps ended by acquiring electric energy “at prevailing market prices.” Act 129 explicitly repealed the prevailing market prices standard and declared instead that the utilities’ generation purchases must be designed to ensure adequate and reliable service at the least cost to customers over time. 66 Pa. C.S. § 2807(e)(3.4).

In reviewing a utility’s default service plan, the Commission must consider “the default service provider’s obligation to provide adequate and reliable service to customers and that the default service provider has obtained a prudent mix of contracts to obtain least cost on a long-term, short-term and spot market basis…” 66 Pa. C.S. § 2807(e)(3.7).

Another substantive change is that contracts for supply formerly were defined as being up to three years in length. Now, under Act 129, a long-term purchase contract is generally defined as a contract “of more than four and not more than 20 years.” 66 Pa. C.S. § 2807(e)(3.2)(iii).

In summary, under Act 129, electric power shall be procured through competitive procurement processes and shall include one or more of the following: (1) auctions; (2) requests for proposals; or (3) bilateral agreements. 66 Pa. C.S. § 2807(e)(3.1). Additionally, the electric power that is procured shall include a prudent mix of: (1) spot market purchases; (2) short-term contracts; and (3) long-term purchase contracts of more than 4 and not more than 20 years. 66 Pa. C.S. § 2807(e)(3.2). Long-term contracts may not constitute more than 25% of projected load absent a Commission determination that good cause exists for a higher percentage to achieve least cost procurement. 66 Pa. C.S. § 2807(e)(3.2)(iii).

The “prudent mix” of contracts shall be designed to ensure: (1) adequate and reliable service; (2) the least cost to customers over time; (3) compliance with the procurement methodologies described above, i.e., through auctions, requests for proposals; or bilateral agreements. 66 Pa. C.S. § 2807(e)(3.1). “Bilateral contract” is a new term defined under 66 Pa. C.S. § 2803 (relating to definitions).

In terms of process, the DSP must file a plan for competitive procurement with the Commission and obtain Commission approval of the plan considering certain factors and standards under 66 Pa. C.S. § 2807(e) before the competitive process is implemented. The Commission shall hold hearings as necessary on the proposed plan. If the Commission fails to issue a final order on the plan within nine months of the date that the plan is filed, the plan is deemed to be approved and the default service provider may implement the plan as filed. 66 Pa. C.S. § 2807(e)(3.6).

When evaluating a default service plan, the Commission must consider the DSP’s obligation to provide adequate and reliable service to the customers and that the DSP has obtained a prudent mix of contracts to obtain the least cost on a long-term, short-term and spot market basis. The Commission is required to make specific findings that include: (1) the DSP’s plan includes prudent steps necessary to negotiate favorable generation supply contracts; (2) the DSP’s plan includes prudent steps necessary to obtain least cost generation contracts on a long-term, short-term and spot market basis; and (3) neither the DSP nor its affiliated interest has withheld generation supply from the market as a matter of federal law. 66 Pa. C.S. § 2807(e)(3.7).

Further, under Act 129, DSPs have a right to recover default service costs pursuant to a reconcilable automatic adjustment clause and residential and small commercial customers’ rates cannot change more frequently than quarterly. 66 Pa. C.S. § 2807(e)(7). Default service plans approved by the Commission prior to the effective date of Act 129 shall remain in effect through the approved term. However, the DSP may propose amendments to an approved plan. If the Commission fails to issue a final order within nine months, the amended plan shall be deemed to be approved and the default service provider may implement the amendments as filed. 66 Pa. C.S. § 2807 (e)(6).

As a result of the passage of Act 129, the Commission deemed it necessary to amend its existing Policy Statement regarding Default Service and Retail Electric Markets at 52 Pa. Code §§ 69.1801 *et seq.*  By Order entered January 19, 2010, the Commission issued a Proposed Policy Statement at this docket seeking comments within 30 days of entry. No opportunity for Reply Comments was provided. We are now issuing amendments to the Policy Statement at 52 Pa. Code §§ 69.1801 *et seq.*

**Parties Filing Comments**

Comments were filed by a number of parties. Those parties filing separate comments under Docket No. M-2009-2140580 include: PECO Energy Company (PECO), Duquesne Light Company (Duquesne), Citizens Electric Company/Wellsboro Electric Company (Citizens/Wellsboro), Office of Consumer Advocate (OCA), Office of Small Business Advocate (OSBA), Retail Electric Supply Association (RESA) and Industrial Customers Group (ICG). Energy Association of PA and Allegheny Power submitted letters endorsing the Proposed Policy Statement. A number of other parties filed comments under both Docket Nos. M-2009-2140580 (Policy Statement) and Docket No. L-2009-2095604 (Default Service Regulations) but did not expressly comment on the Proposed Policy Statement.

**Discussion**

Consistent with the language of Act 129,the Commission makes the following revisions to our Policy Statement regarding default service and retail electric markets.

**52 Pa. Code § 69.1802 (Purpose)**

OCA has proposed language to the Purpose section of the regulations to recognize the obligation of the default service provider to provide adequate and reliable service at the least cost over time. OCA contends this change is consistent with the intent of Act 129. The proposed language would retain the present language that states that the “goal of default service regulations is to bring competitive market discipline to historically regulated markets” but relocate this language to later in the “Purpose” provision. (See Annex A).

We have reviewed this proposed change and accept it. The OCA’s proposed language correctly recognizes the import of the new standard reflected in Act 129, specifically Section 2807(e)(3.4), that of ensuring “adequate and reliable service at the least cost to customers over time” while retaining the Commission’s parallel obligation to promote competitive market discipline.

**52 Pa. Code § 69.1803 (Definitions)**

We proposed adding definitions for “Bilateral contract” and amending the existing definition of “Default service provider” such that the definitions mirror 66 Pa. C.S. § 2803.

OCA proposes to remove the definition of “prevailing market prices” from the definition section as it contends the term is no longer relevant as the standard for procurement under Act 129. No other party has offered comment on this provision. We accept OCA’s suggested deletion of this definition coupled with removal of the term from later sections of the Policy Statement as we believe the term is no longer the relevant standard under Act 129. Since the standard for review of DSPs has now changed in light of Act 129, the retention of this term in our Policy Statement is unnecessary and potentially confusing.

Duquesne filed comments requesting that both the definitions for “Bilateral contract” and “Default service provider” contain the specific definitional language from Section 2803 of the Public Utility Code instead of simply incorporating the definition by reference. We decline to accept this suggested change as the convention utilized by the Commission has been to incorporate by reference the appropriate definitional language from Section 2803 in these definitions and elsewhere in the Commission’s regulations.

Citizens/Wellsboro suggests that the Commission confirm in its Policy Statement that the definition of “Bilateral contract” apply to both physical and financial transactions. These electric utilities have had default service plans approved that included financial products. No other party suggested this change. On review, we decline to adopt this change as it injects too much specificity into what is intended to be a general definition.

DSPs, such as Citizens/Wellsboro, have the opportunity to propose financial products as part of their default service plan filings and the Commission retains the discretion to review and approve these products.

The Commission herein adopts the Definitions for “Bilateral contract” and “Default service provider” pursuant to 52 Pa. Code § 69.1803 as modified herein and as these terms appear in final form in Annex A to this Order. We also delete the term “Prevailing market prices” from the current definitions.

**52 Pa. Code § 69.1805 (Electric Generation Supply Procurement)**

We proposed amending this section to define long-term contracts as being “neither less than 4 years nor greater than 20 years in length.” The section already states a prudent mix of arrangements should be included in a proposed procurement plan.

This amendment generated a number of comments. Because this provision is somewhat controversial, we recite the proposed changes suggested by the Commission in its Proposed Policy Statement herein by underscoring the relevant language:

#### § 69.1805.  Electric generation supply procurement.

 A proposed procurement plan should balance the goals of allowing the development of a competitive retail supply market and also including a prudent mix of arrangements to minimize the risk of over-reliance on any energy products at a particular point in time. In developing a proposed procurement plan, a DSP should consider including a prudent mix of supply-side and demand-side resources such as long-term, short-term, staggered-term and spot market purchases to minimize the risk of contracting for supply at times of peak prices. Short-term contracts are contracts up to and including 3 years in length. Long-term contracts are contracts neither less than 4 years nor greater than 20 years in length. Long-term contracts should only be used when necessary and required for DSP compliance with alternative energy requirements, and should be restricted to covering a relatively small portion of the default service load. An over-reliance on long-term contracts would mute demand response, create the potential for future default service customers to bear future above market costs and limit operational flexibility for DSPs to manage their default service supply. The plan should be tailored to the following customer groupings, but DSPs may propose alternative divisions of customers by registered peak load to preserve existing customer classes.

   (1)  *Residential customers and nonresidential customers with less than 25 kW in maximum registered peak load.* Initially, the DSP should acquire electric generation supply for these customers using a mix of resources as described in the introductory paragraph to this section. Consideration should be given to procuring most fixed-term supply through full requirements or block contracts of 1 to 3 years in duration. Contracts should be laddered to minimize risk, in which a portion of the portfolio changes at least annually, with a minimum of two competitive bid solicitations a year to further reduce the risk of acquisition at a time of peak prices. In subsequent programs, the percentage of supply acquired through shorter duration full requirements contracts and spot market purchases should be gradually increased, depending on developments in retail and wholesale energy markets.

   (2)  *Nonresidential customers with 25—500 kW in maximum registered peak load.* The DSP should acquire electric generation supply for these customers using a mix of resources as described in the introductory paragraph to this section. Fixed-term contracts should be 1 year in length and may be laddered to minimize risk, with a minimum of two competitive bid solicitations a year to further reduce the risk of acquisition at a time of peak prices. In subsequent programs, the percentage of supply acquired through shorter duration purchases and spot market purchases should gradually be increased, depending on developments in retail and wholesale energy markets.

   (3)  *Nonresidential customers with greater than 500 kW in maximum registered peak load.* Hourly priced or monthly-priced service should be available to these customers. The DSP may propose a fixed-price option for the Commission’s consideration.

In the introductory section, OCA proposes to extend the definition of short-term contracts to include contracts of 4 years in length instead of 3 years. OCA proposes to define long-term contracts as “more than 4 years and not more than 20 years.” OCA proposes to delete the next two sentences that define when long-term contracts should be used and insert some additional language which would limit the percentage of the default service provider’s percentage load that could be represented by long-term contracts to 25% which language parallels the language used in Act 129.

PECO also addresses this issue by suggesting language that defines short-term contracts as contracts of up to and including 4 years in length and long-term contracts as contracts greater than 4 years in length but not greater than 20 years. OSBA also suggests clarification of the definition of short-term contracts.

In contrast, ICG suggests that Act 129 and the Legislature intended a 4-year contract to be a long-term contract and the Commission should clarify the ambiguity in the language.

We agree that this is a point in need of clarification. Our proposed language does not clearly state whether a 4-year contract is a short-term or long-term contract. By adopting the language of Section 2703(e)(3.2)(iii), we only perpetuated the ambiguity.

We believe the Legislature’s intent was to define 4-year contracts as short-term contracts and contracts greater than 4 years but not greater than 20 years as long-term contracts. We accept the change suggested by OCA and PECO on this point and adopt PECO’s proposed language.

We also adopt OCA’s proposed change to the language of the introductory section of Section 1805 to delete language that appears to unduly restrict the use of long-term contracts to situations involving compliance with alternative energy requirements and adoption of language that conforms with the 25% limitation on long-term contracts contained in Section 2807(e)(3.2)(iii). Under OCA’s proposed change, long-term contracts would constitute no more that 25% of the DSP’s projected load unless the Commission determines a greater portion of load is necessary to achieve least cost procurement. These changes were also suggested by Citizens/Wellsboro and Duquesne.

The Commission continues to maintain the position that EDCs should have maximum flexibility to design their supply portfolios but should strive to utilize short duration full requirements contracts, spot market purchases, intermediate term and long-term contracts when market conditions dictate such an approach. The proposed language in Section 1805 appears to limit the use of long-term contracts only to meeting the requirements of the AEPS which is too restrictive. As Citizens/Wellsboro aptly notes in its comments, as long as a DSP’s procurement portfolio includes a “prudent mix” of contracts, the DSP should be permitted to use long-term contracts to procure all products in the procurement plan.

OCA additionally proposed changes in Section 69.1805(1) as follows: (1) deletion of language specifying procurement of fixed term supply through contracts of 1 to 3 years in duration; and (2) deletion of language encouraging the increase of spot market purchases over time and inserting language that encourages EDCs to obtain a “mix of supply through long-term, short-term and spot purchases to be adjusted depending on developments in the retail and wholesale energy markets to ensure least cost to customers.”

We adopt the both changes. First, deletion of the reference to procuring fixed supply of contracts of 1-3 years is appropriate as the Commission believes EDCs are best suited to design their portfolios of energy supply including fixed term purchases under contracts of varied duration. Additionally, this language unnecessarily contradicts our prior interpretation of short-term contracts as extending to 4 years.

OCA’s second change which removes the emphasis on increasing the percentage of supply from short-term and spot sources and substitutes language that gives DSPs the latitude to obtain a prudent mix of long-term, short-term and spot purchases is appropriate to correctly reflect the language of the Choice Act as modified by Act 129 in Section 2807(e)(3.2)(iii).

OSBA proposes to delete the language in Section 69.1805(2) requiring contracts for customers with 25kW-500kW peak load preferably be 1 year in length. OSBA argues this is inconsistent with the language in Section 69.1805(1) which recommends contracts of 1-3 years in length for fixed term supply. We have previously adopted OCA’s proposed deletion of this language specifying contract length in Section 69.1805(1) as unnecessary in light of our clarification of the definition of short-term contract. Similarly, we adopt OSBA’s suggested change as it appears unnecessary to specify a particular contract length. We will delete the language “should be one year in length and” while retaining the rest of the language. This parallels the deletion of the contract length language in Section 1805. In this section, we also insert the same language as in Section 1805(1) deleting that language expressing a preference for increases in short duration and spot purchases and inserting language that more clearly reflects the Act 129 language regarding “prudent mix” in Section 2807(3.2).

Citizens/ Wellsboro also suggest deleting the last sentence from Sections 69.1805(1) and (2) which recommends gradually increasing the percentage of supply obtained through short-term contracts and spot purchases. Citizens/Wellsboro suggests this change because it contends the required procurement approach has shifted from “prevailing market price” to “least cost procurement” using a “prudent mix of contracts.”

We have essentially adopted this change by virtue of the language changes to these sections discussed previously.

Duquesne is generally comfortable with the Commission’s proposed changes to Section 69.1805. However, Duquesne seeks to delete the language in Section 1805 that prescribes when long-term contracts should be used, e.g., when necessary to meet alternative compliance standards and be restricted to a small portion of default service load. Duquesne also proposes deleting entirely Sections 69. 1805 (1) through (3) entirely as they provide guidance for procurement by particular customer groups and are in conflict with the procurement requirements of Act 129.

We accept Duquesne’s first proposed change as it is the same change to Section 1805 discussed above request proposed by both the OCA and Citizens/Wellsboro.

We decline to accept Duquesne’s other proposed changes to delete Sections 69.1805(1)‑(3). We do not interpret Act 129 as limiting our ability to provide guidance to EDCs in their procurement practices for particular customer groups and will retain this language subject to other language modifications discussed previously.

ICG seeks revisions to Section 69.1805(3) (non-residential customers with greater than 500 kW peak load) to provide for language encouraging a more prudent mix of products. The current provision states that “Hourly priced or monthly priced serviced should be available to these customers. The DSP may propose a fixed price option for the Commission’s consideration.” ICG suggests adding language to provide for a more “prudent mix” of products and that the current language does not meet the “prudent mix” standard.”

We do not read the current language as limiting the types of products which the DSP may procure on behalf of large customers. The provision merely provides guidance as to the types of products to be considered. Moreover, ICG did not provide suggested language for our consideration. We decline to accept ICG’s proposed revision.

**52 Pa. Code § 69.1806 (Alternative energy portfolio standard compliance)**

We proposed updating this Section to reflect that the DSP should procure electric generation supply for default service customers in compliance with Act 129.

PECO suggests some minor language changes to better conform the regulation to Act 129. We adopt those changes as reflected in Annex A.

**52 Pa. Code § 69.1807 (Competitive bid solicitation processes)**

Both OCA and OSBA suggest that Section 69.1807 be amended to provide for the general release by DSPs of winning bid information and posting of this information on the Commission’s website. FirstEnergy and other parties oppose this unilateral change insofar as no other parties had an opportunity to comment on the revision.

We note that this suggested change was not part of our Proposed Policy Statement but represents a potentially useful modification which increases transparency for customers in making retail supply choices. We do not believe it is appropriate to institute this change in this Policy Statement as we are not fully aware of the proprietary concerns of the EDCs associated with release of this information. However, we believe this is an appropriate topic for consideration in either our current Investigation into the Operation of Retail Electric Markets or each individual EDC’s default service plan proceeding. Interested parties should provide input where appropriate on this proposal.

**52 Pa. Code § 69.1809**

Both OCA and OSBA recommend changing the language of Section 69.1809(a) to be consistent with the Act 129 language that rates to residential and small commercial business customers may change no more frequently than on a quarterly basis for residential and small business customers. Currently, Section 69.1809 (a) permits rate changes on quarterly basis for residential customers and a monthly basis for large business customers. OCA proposes to delete this provision and offers corrective language which provides for adjustment of default service rates “no more frequently than on a quarterly basis for residential and small business customers.” This change is needed, avers OCA, to accurately reflect the language of Act 129 at Section 2807(e)(7).

We have reviewed this proposed change and adopt it. OCA and OSBA are correct that an inconsistency exists with regard to rate change frequency between the current Policy Statement and Act 129 regarding the frequency when default service rate changes may occur and we have revised the language herein at Annex A to reflect that change.

OSBA suggests further changes to Section 1809(c) and Section 1810 which it purports are necessary to be consistent with Section 2807(e)(7) but offers no concrete language to support its modifications. We decline to accept OSBA’s proposed changes to Sections 1809 and 1810.

**Conclusion**

Accordingly,pursuant to its authority under Section 501 of the Public Utility Code, 66 Pa. C.S. § 501, the Commission proposes to adopt the attached policy statement; **THEREFORE,**

**IT IS ORDERED:**

1. That the proposed amendments to 52 Pa. Code §§ 69.1801, *et seq.*,as set forth in Annex A, are adopted.
2. That the Secretary submit this Order and Annex A to the Governor’s Budget Office for review of fiscal impact.
3. That the Secretary shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.
4. That this Final Policy Statement shall become effective upon publication in the Pennsylvania Bulletin.

5. That a copy of this Order and Annex A be filed at Docket No. M‑2009‑2140580 and Docket No. L-2009-2095604 and be served upon all parties of record and statutory advocates.

6. That the contact person for this matter is James P. Melia, Assistant Counsel, Law Bureau (717)787-1859.

**By the Commission**,

Rosemary Chiavetta

Secretary

(SEAL)

Order Adopted: September 22, 2011

ORDER ENTERED: September 23, 2011

# ANNEX A

# TITLE 52. PUBLIC UTILITIES

# PART I. PUBLIC UTILITY COMMISSION

# Subpart C. FIXED SERVICE UTILITIES

### CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

### DEFAULT SERVICE AND RETAIL ELECTRIC MARKETS

#### § 69.1801. Scope.

Sections 69.1802—69.1817 provide guidelines to default service providers regarding the acquisition of electric generation supply, the recovery of associated costs and the integration of default service with competitive retail electric markets.

\* \* \* \* \*

**§ 69.1802. Purpose.**

1. The Commission has adopted regulations governing the default service obligation in §§ 54.181-54.189 (relating to default service), as required by 66 Pa. C. S. § 2807(e) (relating to the duties of electric distribution companies). The regulations address the elements of a default service regulatory framework. The goal of the default service regulations is to ENSURE THAT EACH DSP PROVIDES DEFAULT SERVICE CUSTOMERS WITH ADEQUATE AND RELIABLE SERVICE AT THE LEAST COST TO CUSTOMERS OVER TIME ~~bring competitive market discipline to historically regulated markets~~. This GOAL can be accomplished by structuring default service in a way that BRINGS COMPETITIVE MARKET DISCIPLINE TO HISTORICALLY REGULATED MARKETS AND BY ENCOURAGING ~~encourages~~ the entry of new retail and wholesale suppliers. Greater diversity of suppliers will benefit ratepayers and the Commonwealth. However, those rules are not designed to resolve every possible issue relating to the acquisition of electric generation supply, the recovery of reasonable costs, the conditions of service and the relationship with the competitive retail market.

\* \* \* \* \*

#### § 69.1803. Definitions.

The following words and terms, when used in this section and § §  69.1801, 69.1802 and 69.1804—69.1817, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

      *Bilateral contract –* The term has the same meaning as defined in 66 Pa. C. S. § 2803 (relating to definitions).

\* \* \* \* \*

   *DSP—Default service provider-* The [incumbent EDC within a certificated service territory or a Commission approved alternative supplier of electric generation service.] term has the same meaning as defined in 66 Pa.C.S. § 2803 (relating to definitions).

\* \* \* \* \*

*~~Prevailing market prices-~~* ~~Prices that are available in the wholesale market at particular points in time for electric generation supply.~~

\* \* \* \* \*

#### § 69.1805. Electric generation supply procurement.

 A proposed procurement plan should balance the goals of allowing the development of a competitive retail supply market and also including a prudent mix of arrangements to minimize the risk of over-reliance on any energy products at a particular point in time. In developing a proposed procurement plan, a DSP should consider including a prudent mix of supply-side and demand-side resources such as long-term, short-term, staggered-term and spot market purchases to minimize the risk of contracting for supply at times of peak prices. Short-term contracts are contracts up to and including ~~3~~ 4 years in length. Long-term contracts are contracts ~~neither less~~ GREATER than 4 years ~~nor~~ IN LENGTH BUT NOT greater than 20 years ~~in length~~. ~~Long-term contracts should only be used when necessary and required for DSP compliance with alternative energy requirements, and should be restricted to covering a relatively small portion of the default service load. An over-reliance on long-term contracts would mute demand response, create the potential for future default service customers to bear future above market costs and limit operational flexibility for DSPs to manage their default service supply.~~  LONG-TERM CONTRACTS OF GREATER THAN 4 YEARS IN LENGTH BUT NOT GREATER THAN 20 YEARS SHOULD NOT CONSTITUTE MORE THAN 25% OF THE DEFAULT SERVICE PROVIDER’S PROJECTED LOAD UNLESS THE COMMISSION DETERMINES THAT A GREATER PORTION OF LOAD IS NECESSARY TO ACHIEVE LEAST COST PROCUREMENT. The plan should be tailored to the following customer groupings, but DSPs may propose alternative divisions of customers by registered peak load to preserve existing customer classes.

1. *Residential customers and nonresidential customers with less than 25 kW in maximum registered peak load.* Initially, the DSP should acquire electric generation supply for these customers using a PRUDENT mix of resources as described in the introductory paragraph to this section. ~~Consideration should be given to procuring most fixed term supply through full requirements or block contracts of 1 to 3 years in duration.~~ Contracts should be laddered to minimize risk, in which a portion of the portfolio changes at least annually, with a minimum of two competitive bid solicitations a year to further reduce the risk of acquisition at a time of peak prices. In subsequent programs, the MIX percentage of supply acquired through LONG‑TERM AND SHORT-TERM ~~shorter duration full requirements~~ contracts and spot market purchases should be ADJUSTED ~~gradually increased~~, depending on developments in retail and wholesale energy markets TO ENSURE LEAST COST TO CUSTOMERS.
2. *Nonresidential customers with 25—500 kW in maximum registered peak load.* The DSP should acquire electric generation supply for these customers using a mix of resources as described in the introductory paragraph to this section. Fixed-term contracts ~~should be 1 year in length and~~ may be laddered to minimize risk, with a minimum of two competitive bid solicitations a year to further reduce the risk of acquisition at a time of peak prices. In subsequent programs, the MIX percentage of supply acquired through LONG-TERM AND SHORT-TERM CONTRACTS ~~shorter duration purchases~~ and spot market purchases should ~~gradually~~ be ADJUSTED ~~increased~~, depending on developments in retail and wholesale energy markets TO ENSURE LEAST COST TO CUSTOMERS.

(3)  *Nonresidential customers with greater than 500 kW in maximum registered peak load.* Hourly priced or monthly-priced service should be available to these customers. The DSP may propose a fixed-price option for the Commission’s consideration.

#### § 69.1806. Alternative energy portfolio standard compliance.

 In procuring electric generation supply for default service customers, the DSP shall comply with the Alternative Energy Portfolio Standards Act (73 P. S. §§  1648.1—1648.8) ~~and the amendments provided under the Act of October 15, 2008 (P.L. 1592, No. 129) (Act 129)~~AND RELATED PROVISIONS OF ACT 129, OCTOBER 15, 2008, P.L. 1592, NO. 129 CODIFIED AT 66 PA.C.S. § 2814 (RELATING TO ADDITIONAL ALTERNATIVE ENERGY SOURCES). [The Commission’s default service regulations neither prohibit nor mandate the use of long-term contracts to satisfy the alternative energy portfolio standards obligation. In satisfying this obligation, a DSP’s procurement strategy should reflect the incurrence of reasonable costs. ]

\* \* \* \* \*

**§ 69.1809. Interim price adjustments and cost reconciliation.**

1. Consistent with the default service regulations, default service rates and correspondingly the PTC, SHALL BE ADJUSTED NO MORE FREQUENTLY THAN ON A QUARTERLY BASIS FOR RESIDENTIAL AND SMALL BUSINESS CUSTOMERS ~~will be adjusted on a regular basis~~ to reflect changes in and ensure the recovery of reasonable costs resulting from changes in wholesale energy prices or other costs from the introduction of new, differently priced energy supply products to the DSP’s portfolio, and to correct the under and over collection of costs. This PTC adjustment may be driven by changes in spot market prices, the use of laddered contracts, the use of seasonal rate design, and the like.

\* \* \* \* \*