



## OFFICE OF CONSUMER ADVOCATE

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June 15, 2006

James J. McNulty  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17105-3265

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

Dear Secretary McNulty:

Enclosed for filing, please find an original and fifteen (15) copies of the  
Comments of the Office of Consumer Advocate, in the above-referenced proceeding.

Sincerely,

A handwritten signature in cursive script that reads "Tanya J. McCloskey".

Tanya J. McCloskey  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 50044

Enclosure

cc: Chairman Wendell F. Holland  
Vice Chairman James H. Cawley  
Commissioner Bill Shane  
Commissioner Kim Pizzingrilli  
Commissioner Terrance J. Fitzpatrick  
Shane Rooney (via electronic mail)

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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COMMENTS OF THE  
OFFICE OF CONSUMER ADVOCATE

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Dated: June 15, 2006

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Appendix A: AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE CONCERNING THE OVERSIGHT OF PUBLIC UTILITIES THAT DISTRIBUTED AND SUPPLY ELECTRICITY TO RETAIL ELECTRIC CUSTOMERS IN THE STATE (75 Del. Laws 242 (2005))

Appendix B: CHAPTER 677 H.P. 1439 - L.D. 2041 AN ACT TO ENHANCE MAINE’S ENERGY INDEPENDENCE AND SECURITY (2005 Me. Laws 677)

Appendix C: NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS (NARUC) RESOLUTION ON PORTFOLIO MANAGEMENT

## I. INTRODUCTION

The Office of Consumer Advocate (OCA) commends the Commission for opening this proceeding at this time. The questions raised in the Motion by Commissioner Fitzpatrick and the Statement by Commissioner Shane are exactly the right questions that need to be addressed by the Commission. More importantly, now is the right time to address these issues – not when the generation rate caps that protect millions of Pennsylvania electricity consumers are about to expire. As stated by Commissioner Fitzpatrick in his Motion, Pennsylvania is in the position of having some additional time to address these issues and “these choices will not get easier by waiting until the reality of higher prices is upon us.”

The OCA also agrees with the Statement of Commissioner Shane, however, that this proceeding should not be cast solely as an investigation into how Pennsylvania consumers can prepare for an inevitable onslaught of extraordinary price increases at the end of this decade. Rather, we should also be looking at the means that are available to Pennsylvania policymakers and electricity suppliers to avoid the types of price spikes that have been experienced in other states and here, in Pike County.

This look needs to encompass not only what Pennsylvania can do as to retail electric service but must also look at the wholesale energy markets and what steps are necessary to ensure that the wholesale markets provide prices that are reasonable. As the Motion and Statement recognize, the impact of locational marginal prices, transmission congestion, and now the Reliability Pricing Model, can have a significant impact on the prices paid by Pennsylvania retail consumers.

With respect to retail electric service, the primary means that OCA would propose to prevent or ameliorate the potential harms of extraordinary electricity price spikes is to provide our electric distribution companies (EDCs) with the ability to secure a portfolio of resources to serve their default customers at stable rates. Our EDCs should not rely on one-time wholesale auctions or RFPs in which consumers are exposed to the risk of catastrophic results such as those that were seen in Pike County. Rather, the EDCs should begin now to develop a portfolio of resources – obtained through competitive wholesale markets – to serve their customers beginning in 2010 and 2011 when their generation rate caps come off. This portfolio of resources may include long-term and short-term contracts; supply-side and demand-side resources; renewable and non-renewable resources; as well as spot market supplies. As long as all of these resources are obtained through competitive wholesale procurement processes – which may include auctions, RFPs, and arms’ length negotiations – it is the OCA’s view that the statutory requirement that the default service supplier “acquire electric energy at prevailing market prices” will be met. 66 Pa.C.S. §2807(e)(3).

If the Commission concludes, however, that the development of stable, reasonable default service rates through the use of a portfolio of resources is inconsistent with the “prevailing market prices” standard in the Pennsylvania electric restructuring law, then the OCA would urge the General Assembly to amend that law in order to make such a strategy permissible. The OCA shares the concern of Commissioner Shane, who questioned “whether it is reasonable public policy to make default service ‘ugly’ simply to encourage fixed price offers from competitive Electric Generation Suppliers.” By permitting our EDCs to secure a portfolio of resources, Pennsylvania can still secure the benefit of wholesale market competition, while

also creating the possibility of continuing to offer retail customers a stable and more reasonably priced default generation service.

The OCA would note in this context that in response to the recent 59% overall rate increase resulting from a wholesale bidding process by its predominant electric distribution company – Delmarva – the Delaware legislature has passed and the Delaware Governor has signed into law, a requirement that, in the future, Delmarva must provide “Standard Offer Service” by acquiring “sufficient, efficient and reliable resources over time to meet its customers’ needs at a minimal cost.” See, 75 Del. Laws 242 (2005) at Section 1007(c)(1). The list of resources through which such service can be provided in the Delaware statute includes: “Demand-Side Management Programs, long-term purchased power contracts, short-term purchased power contracts, self-generation, procurement through wholesale market by RFP, spot market purchases, etc.” 75 Del. Laws 242 (2005)(attached hereto as Appendix A).

Similarly, the Maine Legislature recently amended its restructuring law to “incorporate cost-effective demand response and energy efficiency into the supply of standard-offer service” and also to allow the Maine Commission to “establish various standard-offer service contract lengths and terms” for the purpose of “providing over a reasonable time period the lowest price for standard-offer service.” 2005 Me. Laws 677 (attached hereto as Appendix B).

Several neighboring state commissions are also re-evaluating the procurement of resources to meet the default service obligation. New Jersey recently announced that it will open a review of its Basic Generation Service (BGS) auction process in light of the auction results from February 2006. In the Matter of the Provisions of Basic Generation Service for the Period Beginning June 1, 2007, N.J. Docket No. EO06020119 (Order of March 24, 2006). The

Maryland Public Service Commission has also opened two investigations concerning Standard Offer Service. One investigation will focus on the upcoming bids to provide service for the residential load of Delmarva and Pepco and consider whether the previously established policies, bid products and schedules should be reconsidered. In the Matter of Competitive Selection of Electricity Supplier/Standard Offer or Default Service, Maryland Case No. 9064. The second investigation, entitled In the Matter of the Optimal Structure of the Electric Industry in Maryland, will consider these issues more globally and appears to have opened the door for proposals for potential statutory changes. In the Matter of the Optimal Structure of the Electric Industry in Maryland, Maryland Case No. 9063.

The National Association of Regulatory Utility Commissioners (NARUC) also recognized in 2003 the importance of a portfolio management approach to default service. A Resolution on Portfolio Management adopted by the NARUC Board of Directors on November 18, 2003 provided:

**WHEREAS**, a variety of techniques, collectively known as *portfolio management*, can help utility regulators to ensure that regulated electricity services are provided in a manner that manages risks, enhances reliability, and improves the performance of wholesale and retail markets; and

**WHEREAS**, portfolio management is wholly consistent with efforts to create competitive wholesale electric markets and offers a structured approach for assembling a diverse mix of short- and long-term energy resources to serve retail customers at regulated rates, via traditional power supplies as well as energy efficiency, distributed generation, demand response, and renewable energy resources; and

**WHEREAS**, retail electric customers receiving regulated service can be protected from volatile energy markets by load-serving electric utilities that engage in prudent portfolio management practices; and

After considering these and other clauses, NARUC resolved as follows:

**RESOLVED**, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened in its November 2003 Annual Convention in Atlanta, Georgia, encourages state regulatory commissions to explore portfolio management techniques that may be applicable to their particular circumstances, under either traditional or restructured markets, and to adopt appropriate regulatory policies to facilitate effective implementation of portfolio management practices by regulated utilities; and be it further

**RESOLVED**, that NARUC explore opportunities to develop a research, training, and outreach program on portfolio management to serve the needs of state commissions and to further develop the regulatory community's knowledge about resource management practices to minimize risk and improve system reliability and market performance.

NARUC Resolution on Portfolio Management, November 18, 2003 (attached hereto as Appendix C).

The OCA recognizes that developing a portfolio of resources will not necessarily produce lower rates. A portfolio of very expensive resources will be a very expensive portfolio. A portfolio approach, however, will almost certainly reduce volatility and rate shock over time. If the portfolio includes long-term contracts, this approach will also make it much more likely that new resources will be built to meet those contracts. In this Commission's recent request for supplemental comments regarding the advisability of long-term contracts to satisfy the requirements of the new Alternative Energy Portfolio Standards (AEPS), there was virtually universal agreement among developers that the ability to enter long-term contracts was critical if not essential for the success of such development. See Comments at Docket Nos. M-00051865, L-00040169. As stated by US Windforce, a leading wind energy developer:

[C]urrent market conditions do require utilities to be able to enter into long-term contracts in order to initiate the development of alternative energy projects, and more specifically in our case, wind power generation projects. Without long-term commitments for the power offtake, the necessary capital for project development

simply isn't available, or at least isn't affordable, because the risks to the equity investor are significantly higher. Investors usually are not willing to make the necessary capital investment on a merchant project, meaning building a project where prices received for the energy and green attributes are realized through the spot or short term market.

\* \* \*

If an EGS or EDC is only able to procure the energy/attributes under short term contracts, the equity investors will have to be willing to invest in merchant projects or other credit worthy wholesale marketers will have to take the merchant risk (be willing to step up to offer a project owner long-term contracts), or else the projects will not get built. If the projects are not built, the project development capital will wither. If this occurs, there is a reasonable probability the mandated AEPS requirements will outstrip available supply of alternative energy and significantly drive up the price of energy and attributes available to the end user. This will serve to both defeat the purpose of the AEPS and lead to price volatility for energy and attributes.

US Windforce Comments of March 8, 2006 at 1-2 (M-00051865, L-000040169).

Similarly, a major demand-side resource provider, Conservation Services Group (CSG), wrote that:

CSG urges the PUC to give Default Service Providers the tools to adopt a comprehensive portfolio management strategy including an appropriate balance of long term contracts, short term contracts and current year contracts. Combining the security of long term contracts with the competitive price advantage of short term and current year contracts results in a comprehensive portfolio that provides the following: hedging value to protect consumers; due diligence of price discovery; and access to markets that increases generator confidence.

Conservation Services Group Comments of March 8, 2006 at 2 (M-00051865, L-000040169).

Allowing our EDCs the flexibility to secure a portfolio of resources over time enables those companies to secure the optimal mix of resources and allows them to procure the needed resources at the most economical times, rather than being tied into a prescribed date, such

as occurred in the Pike County case when the bid was issued on the day on which post-Katrina and Rita natural gas prices hit their absolute peak. As Commissioner Shane noted in his Statement, at least in New Jersey, the reliance on annual auctions has been moderated by the use of a laddered three-year bid approach. But even that method will still produce sub-optimal results if the utilities are tied in each contract year to a prescribed date on which to acquire resources, without being able to take into account changes in wholesale market conditions, and without being able to determine if another mix of resources would more appropriately meet the needs of its customers.

No rational investor would try to meet his or her investment needs by picking a single stock and putting all of their money into that stock on a pre-selected date once each year. Rather a rational investor would secure a portfolio of investments, depending on their particular needs.

Similarly, it is inconceivable – at least to the OCA – that this Commission would allow a natural gas distribution company to meet its least cost gas procurement requirement by purchasing all of its natural gas supplies through a single bid or RFP held once each year, particularly if the NGDC blindly went forward with such an auction on the very day that a catastrophic weather event had caused natural gas prices to reach an all-time record high.

It is not clear why Pennsylvania should allow – let alone require – its electric distribution companies to “roll the dice” each year through a single wholesale supply auction or bid, especially when we have seen the results of such a process in Pike County and in our neighboring states. Such a process also ignores the wide array of short-term and long-term, renewable and non-renewable, supply-side and demand-side resources that can be available on a competitive basis to our EDCs.

The job of our EDCs should not simply be to serve as a passive conduit that merely passes on to its customers the cost of one-year power contracts that happen to be available on the pre-subscribed date of an annual bid process. Rather, EDCs should actively utilize the array of competitive wholesale markets to acquire a stable, reasonably priced portfolio of resources to meet the needs of their default service customers. To the extent that competitive EGSs can secure a lower cost, or cleaner, or otherwise more valuable set of resources and thereby can attract retail customers away from the EDCs, that is all the better. The goal of electric restructuring, however, was not to force retail customers to switch suppliers; rather, in OCA's view, it was to provide customers with reliable service at reasonable prices from competitively acquired resources, including resources that are acquired by their incumbent electric distribution company as part of its default service.

The second issue that must be addressed in this proceeding is the functioning of the wholesale markets. Without a fully functioning, workably competitive wholesale market that produces prices that can form the basis for just and reasonable rates for retail consumers, Pennsylvania's restructuring efforts will be for naught. As noted earlier, a portfolio of very expensive resources will still be very expensive and can result in price shock and unaffordable bills for customers -- residential, commercial and industrial alike. At this time, the prices being produced in the PJM wholesale markets have increased dramatically, primarily in response to increases in the price of natural gas, which often fuels the generating units on the margin that set the market clearing price. At the time of the Pennsylvania electric restructuring cases, it was generally anticipated that energy market clearing prices at this time would be in the range of \$30 to \$35 per megawatt hour, or 3 to 3.5 cents per kilowatt hour, and it was those prices that were used to establish stranded costs as well as our EDC shopping credits and prices to compare. In

fact, however, the overall average energy market clearing price in PJM in 2005 was over \$58 per mwh, and the average price in the Eastern portion of PJM in which most Pennsylvania utilities operate was nearly \$65 per MWh. More importantly, the wholesale bids that produced the dramatic price spikes in Maryland, Delaware, and New Jersey were nearly all above \$100 per MWh. Clearly, the increase in natural gas prices are being reflected in the PJM market clearing prices, and these prices – along with substantial risk premiums – are being reflected in the wholesale auction and RFP prices that are being obtained by default service providers in our neighboring states.

In the face of these developments, the question of what the Commission should do is a complex one. What the Commission should not do, however, is to simply terminate or phase out the generation rate caps prematurely in an attempt to “smooth” the transition to higher prices for customers. A deal was struck, stranded costs were awarded and are being recovered, and the transition that was designed as part of the restructuring process should continue. Pennsylvania consumers would lose literally billions of dollars if utilities are permitted to break their rate caps prematurely and then still charge full market rates in 2010. In his Motion, however, Commissioner Fitzpatrick presents an alternative proposal that attempts to retain the benefit of the bargain for most customers, while allowing for increases in rates over a period of time to smooth the transition to higher market prices. Under this proposal, any increases in generation rates allowed during the remainder of the transition period would have to be repaid with interest to the utility’s customers after the rate cap period ends. Any type of deferral or phase-in proposal like this one carries the risk of inter-generational inequities among customers who might come and go from a utility service territory over time, and it would sacrifice the near-term economic benefits of lower rates during the rate cap period. The proposal put forward by

Commissioner Fitzpatrick, though, would not produce an unfair permanent windfall for utilities and a permanent unfair burden on consumers as a whole over time.

In summary, the OCA would urge the Commission to implement default service regulations as soon as possible that call for each Pennsylvania EDC to meet its default service obligation through the use of a portfolio of resources – supply side and demand side; renewable and non-renewable; short term and long term – that is designed to deliver reliable service at stable, affordable rates to customers over the long term. The resources should be acquired over time using a variety of competitive procurement processes. If the Commission concludes that this type of resource portfolio approach is impermissible under the “prevailing market prices” standard of the Pennsylvania electric restructuring law, the OCA would respectfully urge the General Assembly to amend the law to permit and indeed mandate such an approach.

The Commission, and all stakeholders, should also continue efforts to address the operation and structure of the PJM markets to ensure that those markets can provide wholesale prices and products that can form the basis for just and reasonable retail rates.

## II. RESPONSES TO SPECIFIC COMMISSION QUESTIONS AND TOPICS

In this section, the OCA will provide some specific responses to the topics and questions specifically posed by the Commission in its Order (Investigation Order) and by Commissioner Fitzpatrick in his Motion and Commissioner Shane in his Statement.

### 1. Educate Consumers

Consumer education is vital, both in order to prepare customers for the impact of potentially higher electric bills and, more importantly from OCA's perspective, to educate customers as to what they can do to avoid or mitigate the impact of higher electricity prices on their bill. Consumers should learn that the cheapest kilowatt hour is the one that isn't used, and that there are many conservation measures that they can take at little or no cost that can keep their monthly bills down, even if the price per kilowatt hour for generation on those bills increases. Low-income and payment-troubled customers also need to be educated about the programs that are available to them both to conserve energy and to pay the bills for the electricity that they do use.

The Commission has proposed as a component of an education program that customers be informed on a regular basis of the level of wholesale energy prices and how their electric bills would be affected if those prices prevailed at the time the generation rate cap expired. The OCA agrees that consumers must be informed of any impending price increases well before they take effect. One of the many negative lessons learned from the Pike County experience was the impact of a sudden increase with little notice, not just on households, but on organizations like school districts who had budgeted for a school year's expenses for electricity only to find out midway through the school year that their budget was wildly inadequate.

At this time, however, there is limited benefit to educating customers about wholesale prices that may go up and down many times between now and 2010. Such educational efforts would be more effective when we get closer to the point at which rate caps are to expire and we have a better handle on what the impact will be in each service territory. That impact also will vary substantially among companies, depending on their current default service prices. Allegheny Power residential customers, for example, currently pay an average price to compare of 4.286 cents per kwh, while PECO residential customers pay an average price to compare of 6.7 cents per kwh. Those customers also pay much different stranded cost charges. An increase in generation rates in 2011 to a level that might appear to be a modest increase to PECO customers might appear enormous on a percentage basis to an Allegheny Power customer.

What would be most beneficial, from OCA's perspective, would be for our EDCs to begin as soon as possible to assemble the portfolio of resources that they will utilize to provide default service when their rate cap expires. If such a portfolio approach is utilized, the EDC should begin to have a better idea about the costs of its portfolio and how those costs will translate into rates as the EDC nears the end of its rate cap period. Based on the cost of the elements of the portfolio acquired prior to the end of the rate cap period, the EDC should begin to inform and educate consumers as to what level of price for generation service they may expect to see when the rate cap expires. Such education efforts by each EDC, coordinated through the Commission, closer to the end of the rate cap period would be more useful.

Finally, the OCA would note that for some of our smaller EDCs, such as Penn Power and UGI, we no longer have the luxury of time to wait to educate customers. For those companies and others who are approaching the imminent end of their current rate caps or POLR

plans, it is necessary to begin the education process as soon as the approximate projected rate increases are known.

2. Encourage Conservation

If the recent price spikes in the mid-Atlantic states have taught us anything, it is the value of conservation and energy efficiency to the customer as a means of meeting our energy needs. The cost of a compact fluorescent light bulb does not change when the PJM spot market clearing price skyrockets either because of a storm in the Gulf of Mexico or the latest threats of a conflagration in the Middle East. The benefits of an energy efficient refrigerator were already significant before the recent electric price run-up, but those benefits become ever more clear when customers see 50% to 75% increases in the unit price of electricity. Additionally, kilowatthours that do not have to be generated will save valuable natural resources and reduce the environmental impacts of electricity generation.

The OCA submits that conservation and energy efficiency must therefore be a fundamental part of the resource portfolio assembled by each Pennsylvania EDC, as well as a part of the protection against price increases available to every customer. The General Assembly already recognized the value of conservation and energy efficiency by including them as “Tier Two” resources that can be used by both EDCs and EGSs to meet their alternative energy portfolio standard requirements. To the extent that reliable demand side resources can be obtained on a less costly basis than supply side resources, they should be included in every utility’s general resource portfolio, and not just be limited to a means of meeting the AEPS requirements. In today’s high electricity price environment, it is possible that large scale energy efficiency programs will be far less costly than the price of a wholesale generation contract.

In the OCA's view, energy efficiency and energy conservation programs should be available to all customer classes. For residential customers, the Commission's consideration of the Low Income Usage Reduction Programs (LIURP) will be critical. The Commission must ensure that the LIURP programs are appropriately funded and being administered in the most efficient and cost-effective manner. As electric prices increase, the ability of a low income home to reduce energy usage will be critical to achieving an affordable monthly bill.

The Commission notes in its Investigation Order that it welcomes comments on "how price signals or changes in rate design can be implemented that would more effectively encourage conservation" by consumers. Investigation Order at 4-5. The OCA urges caution when discussing "price signals" and "changes in rate design" as these phrases may have different meanings to different market participants, and may entail a different level of effort for each customer class.

Turning first to changes in residential rate design, the existing rate designs of the EDCs were developed many years ago and retain vestiges of the industry structure at the time, particularly related to the construction of large nuclear plants and the promotion of electric heating. Some Pennsylvania EDCs have a declining block rate design for residential customer service, for heating, and in some cases non-heating residential customers. Under a declining block rate structure, the per kilowatthour charge decreases as more energy is used. Many of the reasons supporting these declining block rate structures no longer exist. The OCA submits that EDCs with declining block rate structures for residential customer service should gradually phase out these declining block structures following the conclusion of their rate caps.

As to sending better price signals to residential customers, the OCA would first note that there is a fundamental difference between giving residential customers an incentive to “do the right thing” and punishing residential customers for doing something that they have little ability to control. It is one thing to send a real time price signal to the energy manager at a major industrial facility to allow that facility to reduce production in order to obtain a substantial rate reduction; it is another thing to send a residential customer a bill at the end of a summer month that includes a 25 cent per kwh charge for air conditioning usage resulting from high locational marginal prices at their PJM node. Some residential electricity usage is discretionary; some is not. For an elderly person who needs air conditioning for health purposes, there is a limit to the benefit that can be provided by a price signal regarding the high cost of energy on a summer afternoon.

With that caveat, the OCA supports the development of voluntary, as opposed to mandatory, residential time of use programs. For many households, the ability to control their energy bills based on their time of use can be a valuable resource.<sup>1</sup> As further discussed in the next section on reducing peak demand, the Pennsylvania Rural Electric Association (PREA) member companies have had great success with their voluntary load control program for residential water heating customers. These types of programs benefit both the customer and the utility and should be a part of every EDCs resource portfolio.

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<sup>1</sup> As the experimental time-of-use program at Puget Sound Energy in Washington State found out, many households do not have enough discretionary usage that can be reduced or shifted to produce a benefit to the customer. Puget Sound Energy placed about 270,000 customers on a time-of-use pilot program with information and education as to how to shift usage to lower priced time periods. After implementing the steps, almost 90% of the customers saw their bills increase as a result of the program. Customers left the program in large numbers and the program was eventually abandoned. It was reported that the average customer shifted only about 14 kilowatthours per month to the off-peak period, about 5% of their monthly usage. This was not enough of a shift to provide any savings or benefit to the customer. *See, Program Leaves Puget Sound, Wash., Energy Users Feeling Burned*, The Seattle Times (October 24, 2002 and *PSE ‘Time-of-Use’ Energy Customers Quitting In Doves*, The Seattle Times (November 1, 2002).

Another change in rate design discussed in the Commission's Order is the suggestion that seasonal rates (*i.e.*, summer and winter rates) be developed. The OCA remains concerned about the introduction of seasonal rates for all residential customers. As the OCA discussed in its Comments of April 27, 2005, a move to seasonal rates can have significant consequences for residential customers and raises many public policy issues that must be considered. As with any change in rate design, there will be "winners" and "losers" depending on the customer's usage. The losses, though, may be significant, particularly for the elderly, disabled and poor. For example, an elderly customer on fixed income who needs increased energy use for air conditioning in the summer months due to health-related problems could be seriously harmed by a move to seasonal rates. As their bill increases due to the need for essential air conditioning, the customer may become payment troubled and face termination. Much information with respect to the impact of such a rate design change on residential customers is needed before such a change can be implemented. If any change is contemplated, a thorough review of Customer Assistance Programs and LIURP programs would be needed to determine if they are appropriately structured and funded to address the impact of seasonal rates on the bill of low income, elderly and disabled customers.

Encouraging conservation, phasing out rate designs that encourage increased usage, and providing voluntary rate options to customers that allow them to manage their discretionary usage will be important steps for each EDC to pursue for their on-going default service at the end of the rate cap period. Each of these steps will better equip the EDC and customers to address rising prices.

### 3. Reduce Peak Demand For Electricity

In its Investigation Order, the Commission notes that policies that reduce demand during peak usage periods, such as hot afternoons, help to reduce price spikes in the wholesale energy market and reduce overall energy prices. Investigation Order at 5. The Commission identifies as a problem for the wholesale market the fact that consumers who pay average prices do not have sufficient incentive to reduce demand as wholesale prices increase. The Commission suggests several strategies in response to these conclusions to encourage demand response. Among the strategies identified by the Commission for consideration are adopting hourly pricing for large customers, establishing monthly or seasonal default service rates, establishing time-of-day rates, and encouraging the installation of thermostats to automatically reduce usage during the peak period. The Commission also suggests that infrastructure changes, such as implementing advanced meter technologies be examined. Investigation Order at 5-6. The OCA has discussed some of these programs in Section II.2 relating to conservation programs.

The OCA is in agreement with the Commission that programs that reduce peak usage, such as on hot afternoons, will help to reduce price spikes, and will mitigate hourly prices on those hot afternoons if such demand response can be delivered. It is important to note that the impact of these programs is on the system peak, such as the 45 or so hours when prices exceeded \$200 per MWh in 2005.<sup>2</sup> While this has the impact of mitigating market prices in these peak hours when demand response is delivered, the driving force behind much of dramatic price increase in PJM wholesale energy prices is that natural gas fired units are on the margin and

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<sup>2</sup> See, *2005 State of the Market Report* by the PJM Market Monitoring Unit issued March 8, 2006 at page 384 for the frequency distribution by hours of PJM LMP.

setting prices more than 25% or so of the hours of the year, not just at times of system peak.<sup>3</sup> To move natural gas off of the margin in a significant number of hours suggests the need for more widespread energy conservation to reduce usage in all hours and for support of alternative energy resources through long-term contracts that are able to be dispatched into the grid at a lower cost than natural gas.

That is not to say that demand response programs for residential customers designed to reduce peak usage should not be identified and included in the portfolio of resources that make up default service as a key element of the portfolio. As noted, reducing demand on hot summer days and at other times of the peak will reduce price volatility, contain the high peak prices, and mitigate the risk of high peak prices, all of which can significantly reduce the cost to serve customers. As discussed in Section II.2 above regarding conservation, the introduction of voluntary time-of-day rates for residential customers with the ability to shift usage to other periods should be pursued. Utilities with residential time-of-day rate schedules that are undersubscribed should re-evaluate to determine whether the introduction of alternative time-of-day rate schedules is warranted.<sup>4</sup>

The OCA also strongly suggests that for residential customers, the Commission direct the EDCs, either individually or together, to evaluate the costs and benefits of introducing voluntary residential demand management programs based on the control of air conditioning and electric water heating units in residential customers' homes. Residential air conditioning control programs and residential water heater control programs have been in use for many years. A water heater control program implemented by the members of the Pennsylvania Rural Electric

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<sup>3</sup> See, *2005 State of the Market Report* by the PJM Market Monitoring Unit issued March 8, 2006 at page 86 for type of fuel used by marginal units.

<sup>4</sup> Existing time-of-day rate schedules will need to remain available for current customers until the end of the rate cap period.

Cooperative Association can provide peak load reduction to the PJM system. The equipment in use by the rural cooperatives allows the water heater to be cycled on and off at appropriate intervals to provide the level of demand reduction needed by PJM. Similar programs related to air conditioning have been implemented in other states in which residential customers are paid a monthly credit in return for allowing their utility to cycle the air conditioning units for a specified time period during summer on-peak periods.

As technology continues to develop, programs to reduce peak usage may become more cost-effective to implement for a broader array of customers. For residential customers, it may be possible to deliver programs without significant, costly investment in new meter technology. EDCs in Pennsylvania have already begun the process of upgrading or installing new meter technology where it has been cost-effective for the EDC to do so. Such installations began even while the distribution rate caps were in effect as the EDCs determined that there would be a net benefit to the utility for making such an investment. Advanced meters also serve a valuable function in terms of providing the utility with important real-time information such as the exact extent of outages.

The OCA fully agrees with the Commission that cost-effective programs for reducing peak usage should be designed and implemented for all customer classes. The programs should be voluntary, for customers that are able to shift usage and realize a benefit that may exceed any cost associated with the program.

4. Consider Alternatives For Avoiding Abrupt, Large Price Increases

As set forth above, the OCA submits that one way to avoid or at least mitigate abrupt large rate increases is to require our EDCs to engage in portfolio management – that is to

acquire a portfolio of resources in the competitive markets over a period of time to serve their default customers on a least cost basis.

As noted in the Commission Order, however, another way to avoid sudden, abrupt retail price increases is to “phase-in higher energy costs over a period of a few years.” Investigation Order at 6. It is true that phasing in higher rates prior to the end of the rate cap could reduce rate shock, but the OCA strenuously submits that the answer to higher prices in 2011 is not to raise prices for millions of Pennsylvania consumers in 2007, 2008, 2009, and 2010. The cost of such a violation of the rate caps could be literally billions of dollars that would simply be taken from Pennsylvania residential, commercial, and industrial consumers, and transferred to the shareholders of the generation affiliates of the utilities that are currently obligated to serve their customers at agreed upon rates. Those agreed upon rates, in turn, were based on the customers’ inviolate agreement to pay approximately \$12 billion to \$13 billion in stranded costs so that these utilities would be made whole and not face losses due to market competition.

These rate caps represent an extraordinary value to Pennsylvania consumers and the Pennsylvania economy as a whole. To the extent that our rate caps continue to provide prices that are below current short-term wholesale market prices, and to the extent that most of our EDCs entered into long-term contracts to meet their rate cap obligations at a time when market conditions were more favorable, that is a competitive and social benefit to Pennsylvania – not shared by our Mid-Atlantic and New England neighbors. This is not a benefit that Pennsylvania should give up lightly simply in order to avoid the shock of a large percentage increase in 2011 – especially if customers are being asked to pay the same high market-based prices in 2011 anyway.

The proposal contained in the Commission Order and in Commissioner Fitzpatrick's Motion is not the wholly one-sided approach described above. Under the proposal set forth in the Motion, any increases paid above the rate cap in the early years would be paid back to consumers, dollar for dollar, with interest, in the years after the rate cap expires. Any type of deferral or phase-in creates inter-generational inequities among customers who might come and go from a utility service territory over time, and it would sacrifice the near-term economic benefits of lower rates during the rate cap period. The proposal to pay back customers for every penny collected above the rate cap, with interest, however, would not impose a permanent unfair burden on ratepayers as a whole over time and would not provide an unfair permanent windfall to utilities or their generation affiliates.

Clearly, the OCA's view is that keeping the current rate caps in effect while our EDCs begin to assemble a portfolio of resources intended to serve customers at reasonable default rates beginning in 2010 or 2011 when their rate caps expire is a more reasonable approach and is the approach consistent with the Restructuring Settlements and the Restructuring Act. It must be recalled that the whole reason for stranded cost recovery was that the utilities feared that they would lose money due to the enormous **reductions** in generation prices that were anticipated to result from competition. Pursuant to the statute and in a series of ensuing settlements, the customers agreed to pay those stranded costs in exchange for the promise that during the period in which those stranded costs were being recovered they would not have to pay even higher market-based generation costs.

There are exceptions to the rate cap provisions designed to protect utilities from certain circumstances that are beyond their control – but if the caps can be prematurely eliminated simply in order to avoid “rate shock” because of higher expected market prices at the end of the cap period, then those caps are literally meaningless.

The way for Pennsylvania utilities to avoid rate shock in 2011 is to take steps now at both the wholesale and retail level to secure a portfolio of resources at the lowest reasonable cost in the wholesale markets. That process should begin as soon as the Commission issues its default service regulations – hopefully in 2006 or early 2007 – and should not wait until the end of the rate cap period is upon us. As our EDCs begin to line up resources, in advance of the rate cap termination date, the Commission will be in a position to see what steps, if any, must be taken in order to avoid rate shock.

5. Review Issues Concerning Programs To Assist Low-Income Customers

In its Investigation Order and in Commissioner Fitzpatrick’s Motion, the Commission notes that: “As electricity costs increase, the adequacy of universal service and energy conservation programs must be evaluated.” Investigation Order at 8. The OCA agrees. An electricity rate increase that may be an annoyance for some customers can be a financial disaster for others, who are trying desperately to decide how to pay all of their monthly bills on a limited income. Pennsylvania utilities and their ratepayers have responded to this problem in the past through the development of universal service programs, such as Customer Assistance Programs (CAPs) that are now effectively mandated as a result of the Electric Restructuring Act of 1996.

The OCA also agrees, however, with the Commission's observation that, in evaluating our universal service programs, "the Commission must consider the interests of both the beneficiaries of these programs and those who pay for them," and that this is "a particular concern with regard to customers of modest means who are not beneficiaries of these programs." Investigation Order at 8.

Clearly, there is not a great difference in the financial circumstances of a family living at 149% of poverty as compared to a family of the same size living at 151% of poverty. Yet, the first family would qualify for participation in a CAP program where their electric (or natural gas) bill would be based on an affordable percentage of their income, while the second family would pay the full utility bill, including a portion of the bill designed to compensate the utility for the discount to the first family. This concern is exacerbated when there is a spike in prices that increases the differential between the actual bill and the "affordable" percentage bill that is paid by the eligible CAP customers.

The answer to this concern, in the OCA's view, however, is not to reduce the size or scope of our universal service programs. Indeed, as suggested in the Commission's Order, the need for robust programs to keep low-income and payment-troubled customers connected to their utility system is greater than ever. The solution, the OCA submits, is to broaden the funding of our universal service programs.

Currently, most Pennsylvania utilities allocate the costs of their universal service programs solely within the residential customer class. The OCA has advocated that such costs should be spread among all customer classes. See, OCA Comments of January 30, 2006 (Docket No. M-00051923). More to the point here, however, is the reference contained in the Commission Order regarding the need "to communicate with the General Assembly regarding

supplemental LIHEAP funding or other forms of assistance for low-income customers.” Investigation Order at 8.

As the Commission is well aware, the General Assembly and Governor decided in the past winter to establish a modest supplemental funding for low-income energy assistance on a one-time basis. The OCA respectfully submits that this one-time funding should be made permanent and should become a substantial basis of support for low-income energy consumers. As a state-funded program, this would assist not just customers of regulated utilities, but also consumers who utilize unregulated fuels such as heating oil and propane. As customers are better able to pay the cost of heating, even with unregulated fuels, more household dollars are able to be put to paying the electric bill. Additionally, a broad-based state-funded assistance program that results in direct assistance with the electric bill will reduce the gap between the affordable CAP bill that the customer pays and the tariffed rate bills that all other customers must pay.

The OCA would be pleased to work with the Commission, the Energy Association of Pennsylvania, and all other interested parties in supporting greater broad-based, state-funded energy assistance programs.

#### 6. Review Interplay With The Wholesale Energy Markets

As the Commission notes in its Order, the retail competitive electric markets are inextricably linked to the wholesale energy markets. Order at 8. If the wholesale energy markets are not able to deliver the products needed for the retail competitive electric markets at prices that can form the basis of just and reasonable rates, then the retail competitive markets will inevitably fail. The OCA is seriously concerned with the wholesale energy market structures and

rules, as is the Commission, and continues its efforts at PJM and FERC to develop appropriate market structures and rules.

The recent prices received in auctions and requests for proposals in PJM, as well as in the New York ISO and the New England ISO region have raised serious questions about the ability of these wholesale markets to meet the essential electricity needs of customers at reasonable prices. It is now clear that the use of the single market clearing price structure, which bases market price paid to all generators on the most expensive generator operating, carries with it significant risks for consumers, and significant costs to consumers. As natural gas fueled generation set the market clearing price in PJM more than 25% of the hours of the year during 2005, the price of electricity has become increasingly sensitive to both international and weather-related situations.<sup>5</sup> These prices are paid not just to the high fuel cost units operating at the margin, but also to the low fuel cost coal and nuclear units, most of whose capital costs already have been recovered through depreciation and/or stranded costs.

What is worse, from the OCA perspective, is that even the high (\$50 to \$60 per mwh) average market clearing prices provided by the PJM hourly market in 2005 paled in comparison to the winning wholesale bids that caused retail generation rates to skyrocket in Maryland and Delaware (and to a lesser extent in New Jersey). These bids all seemed to be in the \$100 per mwh range, substantially above the bids seen in those states in earlier years. There appears to be a substantial risk premium being built into these load-following contracts that cannot be explained by the actual average increase in PJM market clearing prices.

Even worse yet, we are told that the high energy market clearing prices being received in PJM are still not enough to give generators the incentive needed to build new power

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<sup>5</sup> See, *2005 State of the Market Report* by the PJM Market Monitoring Unit issued March 8, 2006 at page 86 for type of fuel used by marginal units.

plants. While the single market clearing price structure, combined with locational marginal prices in constrained areas, was supposed to send the “price signals” for generation construction, PJM has now concluded that robust investment in generation construction in the proper locations is not occurring. PJM is now trying to introduce a new model, the Reliability Pricing Model, or RPM, to stimulate further construction. The OCA, along with many other end use stakeholders in PJM, have raised serious concerns about RPM and the impact it will have of increasing prices even further for consumers. To the OCA, it seems unlikely that paying even more to existing generation units, is likely to get more generation built in PJM, especially in locations where it has, historically, been difficult to construct generation due to a variety reasons, including environmental, fuel transportation limitations, and the like.

The OCA encourages the Commission to continue its participation at FERC and PJM on these critical issues. Additionally, and as important, the OCA submits that in light of the developments at PJM, it will be vital for the Commission to put in place retail policies for default service that will mitigate any volatility related to these wholesale market structures and will facilitate the construction of the needed generation resources for Pennsylvania consumers at reasonable prices. The Commission retains the obligation to assure reliable and affordable electric service and its retail policies should be designed to ensure the provisions of reliable and affordable service. These retail needs should drive the development of the wholesale products and services, not the other way around.

As the OCA has set forth throughout these Comments, and all of its Comments on meeting the default service obligation, the best way for the Commission to meet its obligation is to require each EDC to acquire a portfolio of resources, including long term contracts that will facilitate generation construction. Most importantly, the Commission should not rely on single

day short-term auction for 100% of an EDC's supply or request for proposal processes that take place on a single day. As the wholesale markets become more and more susceptible to disruption from world events or weather, and wholesale providers include higher and higher risk premiums into their bids, such structures will inevitably lead to higher and higher prices for consumers.

In OCA's view, the way to get needed new construction, both renewable and non-renewable, is to permit our EDCs to enter into long-term contracts as part of the portfolio of resources to serve their default customers. The OCA submits that the many problems resulting from the over-reliance on short-term markets will not be overcome by the artificial incentive of a set of short-term capacity payments in the RPM model. The better approach is to take a longer-view resource portfolio approach as set forth by the OCA in these comments.

7. Long-Term Contracts With Innovative Facilities

In his Statement, Commissioner Shane asks for comment on the use of multi-year contracts for default service supply, particularly as a means of providing incentive for innovative base load facilities. As discussed in the OCA's Comments and Reply Comments in response to the Commission's questions regarding the relationship between the Alternative Energy Portfolio Standards Act (AEPS Act) and the default service regulations, the OCA has consistently been of the view that if alternative energy projects are to receive adequate financing, it will require that they be able to enter long-term contracts for the sale of their energy and credits. See, OCA Comments of March 8, 2006 (M-00051865, L-00040169); OCA Reply Comments of April 7, 2006 (M-00051865, L-00040169). The OCA has also consistently been of the view that an appropriate portfolio of resources necessary to meet the default service obligation reliably and at reasonable and stable rates will need to include long term contracts, whether with alternative

resources or otherwise. See, e.g., OCA Comments of March 8, 2006 (M-00051865, L-00040169). As debate continues within PJM as to an appropriate model for ensuring the construction of resources in PJM needed to provide reliable service to customers, *i.e.*, the Reliability Pricing Model (RPM), the need for default service designs that will encourage and facilitate the necessary construction within PJM becomes even more necessary.

As the commenters in the Commission's investigation into the relationship of the AEPS Act and default service regulations made clear, current market conditions and market structures do not meet the needs of developers to undertake the risk of constructing new generation projects. Many commenters shared the view that the default service regulations must allow for long-term contracting if the projects are to move forward. See, e.g., PPM Energy Comments of March 8, 2006 at 3; PV NOW Comments of March 8, 2006 at 2; US Windforce Comments of March 8, 2006 at 1-2; PennFuture Comments of March 8, 2006 at 3; DTE Energy Comments of March 8, 2006 at 2; PPL Comments of March 8, 2006 at 4; Duquesne Comments of March 8, 2006 at 5; IECPA et al. Comments of March 8, 2006 at 12; and DEP Comments of March 8, 2006 at 2. (All comments at M-00051865, L-00040169)

The developers of alternative projects, in particular, spoke to the need for long term contracts to provide certainty for financing projects and to ensure the lowest cost for alternative energy resources. See, e.g., PPM Energy Comments of March 8, 2006 at 3; PV NOW Comments of March 8, 2006 at 2; US Windforce Comments of March 8, 2006 at 1-2; and DTE Energy Comments of March 8, 2006 at 2. (All comments at M-00051865, L-00040169). The Comments of US Windforce captured the essence of these points as follows:

[C]urrent market conditions do require utilities to be able to enter into long-term contracts in order to initiate the development of alternative energy projects, and more specifically in our case, wind power generation projects. Without long-term commitments for

the power offtake, the necessary capital for project development simply isn't available, or at least isn't affordable, because the risks to the equity investor are significantly higher. Investors usually are not willing to make the necessary capital investment on a merchant project, meaning building a project where prices received for the energy and green attributes are realized through the spot or short term market.

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If an EGS or EDC is only able to procure the energy/attributes under short term contracts, the equity investors will have to be willing to invest in merchant projects or other credit worthy wholesale marketers will have to take the merchant risk (be willing to step up to offer a project owner long-term contracts), or else the projects will not get built. If the projects are not built, the project development capital will wither. If this occurs, there is a reasonable probability the mandated AEPS requirements will outstrip available supply of alternative energy and significantly drive up the price of energy and attributes available to the end user. This will serve to both defeat the purpose of the AEPS and lead to price volatility for energy and attributes.

US Windforce Comments of March 8, 2006 at 1-2 (M-00051865, L-00040169).

The use of long term contracts for alternative energy resources, or other resources, by a default service provider as part of a portfolio of resources to meet its load obligations is necessary to the development of energy resources needed to reliably meet the needs of retail customers in Pennsylvania. The OCA submits that the Commission should allow for long term contracts as one of the purchases a default service provider may make to meet its obligations. These long term contracts, as part of a portfolio of resources, will enable the construction of new facilities needed for reliable service and will provide for more stable and reasonable long term prices for consumers.

8. Transmission And Congestion Relief Incentives

Commissioner Shane poses several questions in his Statement regarding actions that the Commission could take to identify solutions to system congestion that lead to high locational marginal prices, and thereby, to high prices for consumers. The OCA has discussed some of these questions, such as the use of interruptible or demand side management programs, in other sections. Commissioner Shane also questions whether financial incentives could be provided for transmission projects that relieve transmission congestion and lower locational marginal prices.

The OCA encourages the Commission to focus its efforts on working with the PJM Regional Transmission Expansion Planning Protocol to ensure that needed transmission projects are being identified and constructed to relieve congestion. The PJM Regional Transmission Expansion Plan (RTEP) process is an evolving process. Historically, it has been used to plan for transmission construction needed to ensure that PJM meets established reliability criteria. Within the past few years, it has been expanded to identify projects that can cost-effectively reduce congestion, thereby reducing energy costs in the affected portions of the interconnection. The RTEP process is currently under revision so that congestion can be more cost-effectively addressed and so that stakeholders can directly recommend changes to both planning assumptions and the contents of the plan.

The OCA has joined with other parties to encourage PJM to broaden the scope of its analyses and planning. In the OCA's view, PJM's RTEP should provide a comprehensive and integrated plan for transmission construction that most cost-effectively relieves transmission congestion and provides for the operation of the transmission system and the wholesale markets.

The OCA would urge the Commission to continue its active participation in these processes both as the Pennsylvania Commission and through the Organization of PJM States, Inc. (OPSI).<sup>6</sup>

With a coordinated planning process that identifies needed and cost-beneficial transmission projects, the need for additional financial incentives beyond those already provided in the PJM tariffs would be unnecessary. Transmission service remains primarily a monopoly service and transmission owners as public utilities already have an affirmative obligation to provide safe, adequate, efficient and reliable service at just and reasonable rates.

The OCA has joined with the National Association of State Utility Consumer Advocates (NASUCA) to file comments at the Federal Energy Regulatory Commission (FERC) regarding FERC proposals for financial incentives for transmission construction under the Energy Policy Act of 2005 (EPAct 2005). See, NASUCA Comments, Dkt. No. RM06-4-000. As NASUCA argued in those Comments, broad-based incentives are not needed. As shown in the 2005 survey by the Edison Electric Institute (EEI) entitled *EEI Survey of Transmission Investment: Historical and Planned Capital Expenditures (1999-2008)*, by 2006, annual expenditures in transmission investment are expected to reach about \$6 billion per year, \$1 billion more than FERC thought would be adequate. Moreover, the cost of additional widespread incentives, such as return on equity adders, will likely outweigh any benefits to consumers. The cost of the incentives proposed by FERC alone were conservatively estimated by NASUCA to be over \$13 billion over the planning horizon. Further incentives considered by this Commission would simply add to this cost and cause additional harm to consumers.

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<sup>6</sup> The OCA would also note that under the Energy Policy Act of 2005, the Commission retains its critical role in siting decisions regarding transmission line construction in Pennsylvania. The Energy Policy Act of 2005 does place some requirements on the Commission in this regard, such as establishing a time frame for review and final decision about the siting of the line. The Commission may wish to evaluate current procedures or develop procedures that will allow for full and fair participation in this process in the time frames allowed.

As noted, the most effective way to get transmission that is needed and beneficial to the Commonwealth built is to work to develop a PJM RTEP process that evaluates all costs and all benefits of each project and then designates those projects that should move forward. The PJM Open Access Transmission Tariff (OATT) already provides the mechanisms for full and timely recovery of the costs of those projects that are constructed under the PJM RTEP process.

The OCA submits that transmission construction, as part of a comprehensive solution, should be thoroughly considered through the PJM RTEP process. The RTEP process needs to continue to develop so that it can determine the most cost-effective and cost beneficial solutions to relieving congestion and mitigating high market prices. The OCA looks forward to working with the Commission and all stakeholders in this development.

9. “Ugly” Default Service

In his Statement, Commissioner Shane questions whether it is reasonable public policy to make default service “ugly” simply to encourage fixed price offers from competitive EGSs. As the OCA has stated throughout the discussions regarding the design of POLR service, models that produce volatile prices or simply increase prices in an attempt to force a retail market should not be adopted. In its first set of Comments in 2004, the OCA explained what POLR service should *not* be in Pennsylvania. The OCA stated:

As important as what POLR service should be in Pennsylvania is the question of what POLR service should *not* be. POLR service should not be the most expensive, “ugly” service available to customers; it should not be designed to try to force residential customers into the retail competitive market; it should not be simply a backstop or safety net service; and it should not be subjected to volatile, short term prices.

OCA Comments (M-00041792) of May 26, 2004 at 19 (emphasis in original).

Retail choice for residential customers has been slow to develop in Pennsylvania and in all other states that have attempted to implement retail choice. Even in Texas, the state with the most shopping by customers, while residential rates have increased by approximately 90% since 2002, only about 30% of the residential customers have chosen an alternative supplier. *See, Report Cards on Retail Competition, Summary of Performance Measures* at [www.puc.state.tx.us/electric/reports/RptCard/index.cfm](http://www.puc.state.tx.us/electric/reports/RptCard/index.cfm) and *Average Annual Rate Comparisons* at [www.puc.state.tx.us/electric/rates/RESrate.cfm](http://www.puc.state.tx.us/electric/rates/RESrate.cfm). The success of electric restructuring, however, cannot be judged by the level of retail shopping by customers. The measure is whether customers are receiving safe and adequate service at reasonable prices. Increasing utility default service rates to excessive levels, just in order to permit competitors to offer a slight discount serves no purpose.

Models that include “retail adders” just make default service more expensive to all customers. Such adders do not foster genuine competition based on efficiencies in service. Artificially raising rates turns the notion of competitive markets on its head. The intent of the Act was never to create artificial competition through such subsidies at the expense of consumers. The intent of the Act was to give all customers access to competitive generation markets, either through default service or an alternative provider that could serve more efficiently than the default service provider, or offer a value added service.

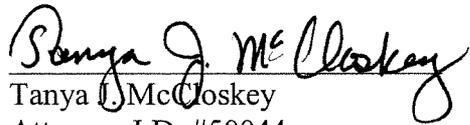
The use of retail adders and frequent upward price adjustments is particularly burdensome for low income customers. Many low income customers will not be attractive to EGSs, no matter how expensive default service becomes. It would be ironic indeed if the result of the Act was to impose additional costs on those least able to pay and least able to choose.

As the Commission considers the possibility for dramatic price increases at the end of the rate cap period based on current trends in market price, the OCA urges the Commission to steer away from proposals that would raise the prices any further merely as a means of “encouraging” switching. The goal of the Commission, and of the EDCs, should be to provide reliable service at the lowest reasonable prices. This goal is best achieved through purchasing of a portfolio of products from the competitive wholesale markets that will allow for the provision of reliable service at reasonable and stable rates.

### III. CONCLUSION

The OCA thanks the Commission for this opportunity to comment on this matter of utmost importance for Pennsylvania electricity consumers. The actions this Commission takes in the next several years can determine whether the restructuring of Pennsylvania's electric industry continues on a path that is in the public interest, or whether it crashes into chaos like California in 2001 and Maryland in 2006. Unfortunately, our own residents and businesses in Pike County already have seen the results of a flawed transition process. The OCA looks forward to working with the Commission and all interested parties in bringing about a more reasonable and beneficial result for the 4.7 million customers who are currently protected by rate caps until the end of this decade.

Respectfully Submitted,



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89068





SPONSOR: Rep. Valihura & Sen. Adams, & Rep. Spence, & Rep. Smith, & Rep. Lee, & Rep. Gilligan, & Rep. VanSant, & Sen. McDowell, & Sen. DeLuca, & Sen. Still, & Sen. Sorenson

HOUSE OF REPRESENTATIVES

143rd GENERAL ASSEMBLY

HOUSE BILL NO. 6  
AS AMENDED BY  
HOUSE AMENDMENT NO. 1  
AND  
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE CONCERNING THE OVERSIGHT OF PUBLIC UTILITIES THAT DISTRIBUTED AND SUPPLY ELECTRICITY TO RETAIL ELECTRIC CUSTOMERS IN THE STATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. This Act shall be known as the "Electric Utility Retail Customer Supply Act of 2006".

Section 2. Amend §1001, Title 26 of the Delaware Code, by adding the following definitions in the appropriate alphabetical sequence and renumbering the Section as necessary:

"Returning Customer Service" means the electric supply service offered to customers with a peak monthly load of 1000 kW or more, which have left Standard Offer Service as of April 30, 2007 and later decide to receive electric supply service from their Electric Distribution Company. For purposes of determining customers eligible for Returning Customer Service, peak monthly load shall be measured by the Electric Distribution Company's separate customer account, not by facility or service location or by customer, in aggregate or otherwise.

"Demand-side management" means cost effective energy efficiency programs that are designed to reduce customers' electricity consumption, especially during peak periods.

"Integrated resource planning" means the planning process of an Electric Distribution Company that systematically evaluates all available supply options, including but not limited to: generation, transmission and Demand-Side Management programs, during the planning period to ensure that the Electric Distribution Company acquires sufficient and reliable resources over time that meet their customers' needs at a minimal cost.

Further Amend §1001 of Title 26 of the Delaware Code by changing the definition of “standard offer service supplier” by striking all of the words after the word “means” and inserting in lieu thereof: “the electric distribution company serving within its certificated service territory.”

Section 3. Amend §1002, Title 26 of the Delaware Code, by adding a new subsection as follows:

“(a)(4) On or after May 1, 2006, it is the policy of the State that Electric Distribution Companies subject to the oversight of the Commission and as part of their obligation to be Standard Offer Service Suppliers shall engage in Integrated Resource Planning for the purpose of evaluating and diversifying their electric supply options, efficiently and at the lowest cost to their customers.”

Section 4. Amend §1003, Title 26 of the Delaware Code, by striking it in its entirety and replacing it with the following:

“§1003. Retail competition

General Rule. – Except as otherwise expressly provided for in this chapter, on and after May 1, 2006 the generation, supply and sale of electricity, including all related facilities and assets, used to serve Standard Offer Service and Returning Customer Service, shall be treated as a public utility service or function. Customers of Electric Distribution Companies in this state shall continue to have the opportunity, but not the obligation, to purchase electricity from their choice of electric suppliers as expressly provided for in this Chapter.”

Section 5. Amend §1006, Title 26 of the Delaware Code, by striking it in its entirety and replacing it with the following:

“§1006. Rates for customers

(a) Rates for customers within DP&L’s service territory.

(1) DP&L is required to offer both Standard Offer Service and Returning Customer Service, except that Returning Customer Service shall only apply to customers meeting the definitional load characteristics for such service. Customers on Returning Customer Service may return to Standard Offer Service after receiving Returning Customer Service for a minimum of 12 consecutive months.

(2) After May 1, 2006, rates for customers taking Standard Offer Service shall be adjusted in accordance with Chapter 1, Subchapter 3 of this Title. This Act shall not have any effect on contractual arrangements between the Standard Offer Service Supplier and successful bidders entered into as a result of the recently conducted bidding process for Standard Offer Service in PSC Docket No. 04-391. Any rates derived from that process shall be determined by the Commission pursuant to that docket, except as permitted in subsection (a)(3) of this Section.

(3) With respect to rate increases for Standard Offer Service to be effective on May 1, 2006, residential and small commercial customers of DP&L, depending on rate classification, shall have the ability to opt out of the following rate deferral plan:

Date	Rate % Increase
5/1/2006	15%
1/1/2007	25%
6/1/2007	19%
1/1/2008	True-up/Balance

The limitations on rate increases specified in this Section shall be accomplished by applying appropriate credits/charges per kwh to customer bills. The same credits/charges per kwh shall be applied regardless of whether the customer is receiving Standard Offer Service or purchasing electricity from an electric supplier.

a. A customer not opting out of the deferral plan will be placed on a non-by-passable tariff, under which the customer will be responsible for all of his/her incurred deferral amounts including carrying costs of the plan.

b. Customers will have from April 1, 2006 to April 28, 2006 to affirmatively opt out of this plan.

c. Upon completion of the deferral plan, customers on the plan will be returned to their original rate classification, subject to any past due amounts owed while on the plan. The "True-up/Balance" to be instituted on 1/1/2008 shall provide for equal monthly installment amounts designed to recover all deferral amounts by each customer by not later than 6/1/2009, as well as the full Standard Offer Service charges and all other tariff charges then in effect.

d. Except as otherwise provided for in this Act, customers enrolled in the deferral plan will be able to purchase electricity from an electric supplier and will continue to receive the same credits/charges specified in this Section.

e. If determined to be in the public interest, the Commission shall have the authority after January 1, 2007 to adjust the deferral plan to take advantage of any downward movement of Standard Offer Service rates.

(4) Rates for customers on Returning Customer Service shall be based on the regional spot market plus DP&L's reasonable costs of procuring such supply for this group of customers.

(5) In addition to the Standard Offer Service price or the alternative electric supplier's supply price, each customer shall pay the separate applicable rates for transmission, ancillary, distribution, nuclear decommissioning and other services. Such rates shall not include any generation or electric supply costs.

(6) Customers who obtain transmission and/or ancillary services directly from the PJM independent system operator or from their electric supplier shall receive a credit against DP&L's retail delivery rates equal to the then-applicable

Federal Energy Regulatory Commission equivalent retail transmission and/or ancillary services rates paid by that customer or its electric supplier.

(b) Rates for customers within the DEC service territory.

(1) DEC is required to offer both Standard Offer Service and Returning Customer Service, except that Returning Customer Service shall only apply to customers meeting the definitional load characteristics for such service.

(2) After May 1, 2006, rates for customers taking Standard Offer Service shall be adjusted in accordance with Chapter 1, Subchapter 3 of this Title.

(3) Rates for customers on Returning Customer Service shall be based on the regional spot market plus DEC's reasonable costs of procuring such supply for this group of customers.

(4) In addition to the standard offer service price or the alternative electric supplier's supply price, each customer shall pay the separate applicable rates for transmission, ancillary, distribution, nuclear decommissioning and other services. Such rates shall not include any generation or electric supply costs.

(5) Customers who obtain transmission and/or ancillary services directly from the PJM independent system operator or from their electric supplier shall receive a credit against DEC's retail delivery rates equal to the then-applicable Federal Energy Regulatory Commission equivalent retail transmission and/or ancillary services rates paid by that customer or its electric supplier."

Section 6. Amend § 1007, Title 26 of the Delaware Code, by striking it in its entirety and replacing it with the following:

"§1007. Standard Offer Service and Returning Customer Service Supplier Obligation

(a) All Electric Distribution Companies subject to the jurisdiction of the Commission shall be the Standard Offer Service Supplier and Returning Customer Service Supplier in their distribution service territories. Customers on Returning Customer Service may return to Standard Offer Service after receiving Returning Customer Service for a minimum of 12 consecutive months.

(b) Subject to the approval of the Commission, the Standard Offer Service Provider to meet its electric supply requirements shall have the ability to:

(1) enter into short- and long-term contracts for the procurement of power necessary to serve its customers;

(2) own and operate facilities for the generation of electric power;

(3) build generation and transmission facilities (subject to any other requirements in any other section of the

Delaware Code regarding siting, etc.)

- (4) make investments in Demand-Side resources, and
- (5) take any other Commission-approved action to diversify their retail load.

In order to take such action, DP&L as a Standard Offer Service Supplier must file an application with the Commission or have had such action approved as part of its Integrated Resource Plan pursuant to subsection (c). If DP&L as a Standard Offer Service Supplier files an application under this subsection, then the Commission shall hold an evidentiary hearing on DP&L's request and shall approve the request if the Commission finds that such action is in the public interest. If the Commission approves such a request, the Commission shall review all reasonable incurred costs of the contracts, facilities or programs in accordance with Chapter 1, Subchapter 3 of this Title. Costs from these projects which have been approved by the Commission shall be included in Standard Offer Service rates.

(c)(1) DP&L is required to conduct Integrated Resource Planning. On December 1, 2006, and on the anniversary date of the first filing date of every other year thereafter (i.e., 2008, 2010 et seq.), DP&L shall file with the Commission, the Controller General, the Director of the Office of Management and Budget and the Energy Office an Integrated Resource Plan ("IRP"). In its IRP, DP&L shall systematically evaluate all available supply options during a ten (10)-year planning period in order to acquire sufficient, efficient and reliable resources over time to meet its customers' needs at a minimal cost. The IRP shall set forth DP&L's supply and demand forecast for the next ten (10)-year period, and shall set forth the resource mix with which DP&L proposes to meet its supply obligations for that ten-year period (i.e., Demand-Side Management Programs, long-term purchased power contracts, short-term purchased power contracts, self generation, procurement through wholesale market by RFP, spot market purchases, etc.).

1. As part of its IRP process, DP&L shall not rely exclusively on any particular resource or purchase procurement process. In its IRP, DP&L shall explore in detail all reasonable short- and long-term procurement or Demand-Side Management strategies, even if a particular strategy is ultimately not recommended by the Company. At least 30 percent of the resource mix of DP&L shall be purchases made through the regional wholesale market via a bid procurement or auction process held by DP&L. Such process shall be overseen by the Commission subject to the procurement process approved in PSC Docket #04-391 as may be modified by future Commission action.

2. In developing the IRP, DP&L may consider the economic and environmental value of:

- (i) resources that utilize new or innovative baseload technologies (such as coal gasification);
- (ii) resources that provide short- or long-term environmental benefits to the citizens of this State (such as renewable resources like wind and solar power);
- (iii) facilities that have existing fuel and transmission infrastructure;

- (iv) facilities that utilize existing brownfield or industrial sites;
- (v) resources that promote fuel diversity;
- (vi) resources or facilities that support or improve reliability; or
- (vii) resources that encourage price stability.

The IRP must investigate all potential opportunities for a more diverse supply at the lowest reasonable cost.

3. The Commission shall have the authority to promulgate any rules and regulations it deems necessary to accomplish the development of IRPs by DP&L. Commencing in 2009, DP&L shall submit a report to the Commission, the Governor and the General Assembly detailing their progress in implementing their IRPs.

4. The costs that DP&L incurs in developing and submitting their IRPs shall be included and recovered in DP&L's distribution rates.

(c)(2) The DEC shall annually prepare a 10-year plan detailing its energy supply requirements and planned procurement strategies to meet forecasted demand. Said plan shall be submitted to the PSC, Controller General's Office and Office of Management and Budget. Said plan shall be filed by January 31, 2007 and January 31st of each subsequent year thereafter.

(d) As part of the initial IRP process, to immediately attempt to stabilize the long-term outlook for Standard Offer Supply in the DP&L service territory, DP&L shall file on or before August 1, 2006 a proposal to obtain long-term contracts. The application shall contain a proposed form of request for proposals ("RFP") for the construction of new generation resources within Delaware for the purpose of serving its customers taking Standard offer Service. Such proposed RFP shall include a proposed form of output contract which shall include capacity and energy and may include ancillary electric products and environmental attributes between the electric distribution company and developers of new generation facilities, which contract shall have a term of no less than ten (10) years and no more than twenty-five (25) years. Such RFP shall also set forth proposed selection criteria based on the cost-effectiveness of the project in producing energy price stability, reductions in environmental impact, benefits of adopting new and emerging technology, siting feasibility and terms and conditions concerning the sale of energy output from such facilities.

(1) The Commission and Energy Office may approve or modify the elements of the RFP prior to its issuance. The Commission and Energy Office shall ensure that each RFP elicits and recognizes the value of: a. proposals that utilize new or innovative baseload technologies, b. proposals that provide long-term environmental benefits to the state, c. proposals that have existing fuel and transmission infrastructure, d. proposals that promote fuel diversity, e. proposals that support or

improve reliability, and f. proposals that utilize existing brownfield or industrial sites. Such RFP shall be issued no later than November 1, 2006. Proposals will be due no later than December 22, 2006.

(2) DP&L shall publish such request for proposals in one or more newspapers or periodicals with general circulation, as selected by the Commission, and shall post such request for proposals on its web site. The Commission the Director of the Office of Management and Budget, the Controller General and the Energy Office shall retain the services of an independent third-party entity with expertise in the area of energy procurement at the expense of DP&L to oversee the development of the request for proposals and to assist them in their review of proposals pursuant to subpart (d)(3) of this section. Public service companies shall be eligible to participate in such RFP process through unregulated affiliated companies that meet the Commission's criteria to ensure that such affiliates are sufficiently financially and functionally separate from the regulated utility operations to prevent subsidization of the generation project by the regulated operations and to eliminate any other advantages from the affiliation with regulated operations.

(3) The Commission, the Director of the Office of Management and Budget, the Controller General and the Energy Office shall, on or before February 28, 2007 evaluate such proposals and may determine to approve one or more of such proposals that result in the greatest long-term system benefits, including those identified in subpart (1), in the most cost-effective manner. Once one or more of the contracts have been finalized and approved by the Commission, the Director of the Office of Management and Budget, the Controller General and the Energy Office, then DP&L shall enter into such contract(s).”.

(e) Electric Distribution Companies are required to provide Returning Customer Service to qualifying returning customers.

Section 7. Amend §1008, Title 26 of the Delaware Code, to re-designate the first paragraph as subsection (a) and to add a second subsection ‘(b)’ to provide as follows:

“(b)(1) The Commission is hereby granted the authority to require DP&L subject to its jurisdiction to develop and implement Demand-Side Management programs designed to reduce overall electricity consumption by its customers and/or to reduce usage by customers during peak periods, such as time of use rates, advanced metering infrastructure, central air-conditioning and hot water heating cycling off and on programs, interruptible rates, etc. However, in no such instance shall electric distribution companies subject to the Commission's jurisdiction be authorized to implement peak time billing. Upon development of such Demand-Side Management program(s), DP&L shall file such program(s) with the Commission for the Commission's review and approval.

a. The costs that DP&L incurs in developing and implementing their Demand-Side Management programs, as well as the costs incurred by DP&L in administering all Demand-Side Management programs approved for implementation by the Commission, shall be included and recovered in DP&L's distribution rates.

b. Within sixty days of enactment of this Act, the Commission shall open a docket to evaluate the desirability, feasibility and cost effectiveness of requiring advanced metering technology, including time of use metering to be utilized throughout or selectively in the service territories of DP&L. The Commission may require that such a technology be deployed in a cost effective manner after such evaluation has been made and hearings have been held. As part of the evaluation, the Commission shall review all customer pricing implications of any particular metering technology investigated. The Commission shall not authorize such technology to be deployed in a manner that permits 30-day peak demand billing except as approved by the General Assembly.

c. The Commission shall have the authority to promulgate any rules and regulations it deems necessary to accomplish the development and implementation of Demand-Side Management Programs by DP&L.

(b)(2) DEC shall, at a minimum, maintain its current efforts in providing Demand-Side management programs. DEC shall report on its Demand-Side Management efforts to the PSC, Controller General and Director of the Office of Management and Budget by January 31, 2007 and January 31st of each subsequent year thereafter."

Section 8. Amend §1010, Title 26 of the Delaware Code, by striking said section in its entirety and inserting in lieu thereof the following:

"§1010 Electric distribution companies' obligation to serve customers.

(a) The Standard Offer Service Supplier shall provide Standard Offer Service which is safe, efficient, adequate and reliable. The Commission may take appropriate actions to ensure that the standard offer service supplier provides such safe, adequate, efficient and reliable standard offer service.

(b) The Commission shall promulgate rules and regulations governing the amount of notice that a customer who desires to return to the Standard Offer Service Supplier must provide, the minimum amount of time that a customer must take service from a Standard Offer Service Supplier, and the amount of charges that may be assessed against a customer who leaves the standard offer service supplier and later returns to the Standard Offer Service Supplier, including the appropriate retail market price, which may be higher than the standard offer service price.

(c) After hearing and a determination that it is in the public interest, the Commission is authorized to restrict retail competition and/or add a non-by-passable charge to protect the customers of the Electric Distribution Company receiving Standard Offer Service. The General Assembly recognizes that Electric Distribution Companies are now required

to provide Standard Offer Service to many customers who may not have the opportunity to choose their own Electric Supplier. Consequently, it is necessary to protect these customers from substantial migration away from Standard Offer Service, whereupon they may be forced to share too great a share of the cost of the fixed assets that are necessary to serve them as required by this Act.”

Section 9. Amend §1012, Title 26 of the Delaware Code, to delete the last sentence in subsection (b) which begins “All electric suppliers” and ends “telemarketing to solicit customers,” and insert in lieu thereof the following: “Electric suppliers shall not solicit customers by means of telemarketing where such telemarketing is prohibited by applicable laws and regulations.”

Section 10. This Act shall become effective upon its enactment into law.

Section 11. The provisions of this Act are severable. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act which shall be given effect without the invalid provision or application.

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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**APPENDIX B**

CHAPTER 677  
H.P. 1439 - L.D. 2041

AN ACT TO ENHANCE MAINE'S ENERGY  
INDEPENDENCE AND SECURITY  
(2005 Me. Laws 677)

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**CHAPTER 677**

**H.P. 1439 - L.D. 2041**

**An Act To Enhance Maine's Energy Independence and Security**

**Be it enacted by the People of the State of Maine as follows:**

**PART A**

**Sec. A-1. 36 MRSA §3203, sub-§1-A** is enacted to read:

1-A. **Special biodiesel rate.** Notwithstanding subsection 1, the rate for distillates containing 2% or more of biodiesel fuel by volume is 20¢ per gallon. This subsection is repealed 90 days after the adjournment of the First Regular Session of the 123rd Legislature.

**Sec. A-2. Study group.** The Department of the Secretary of State, Bureau of Motor Vehicles shall convene a study group consisting of the Bureau of Motor Vehicles; Office of Energy Independence and Security; the Department of Transportation; and the Department of Administrative and Financial Services, Bureau of Revenue Services. The study group shall consider the revenue impacts of a differential tax on biodiesel, the impacts on tax administration and compliance and alternatives to a differential tax including a refund process.

By March 15, 2007, the Department of the Secretary of State, Bureau of Motor Vehicles shall report the findings and recommendations of the study group, including any necessary implementing legislation, to the joint standing committee of the

Legislature having jurisdiction over utilities matters and the joint standing committee of the Legislature having jurisdiction over transportation matters. Either the joint standing committee of the Legislature having jurisdiction over utilities matters or the joint standing committee of the Legislature having jurisdiction over transportation matters, after consultation between the committees, may report out legislation on the subject matter of the report to the First Regular Session of the 123rd Legislature.

**Sec. A-3. Transfer from General Fund to Highway Fund.** The State Controller shall transfer \$20,000 from the General Fund unappropriated surplus to the Highway Fund unappropriated surplus no later than June 30, 2007.

## PART B

**Sec. B-1. 35-A MRSA §3212, sub-§4-A,** as enacted by PL 2003, c. 665, §2, is repealed.

**Sec. B-2. 35-A MRSA §3212, sub-§§4-B and 4-C** are enacted to read:

**4-B. Demand response and energy efficiency.** The commission may incorporate cost-effective demand response and energy efficiency into the supply of standard-offer service. The commission shall encourage entities based in this State that are not otherwise either a standard-offer service provider or its affiliate to participate in supplying cost-effective demand response or energy efficiency pursuant to this subsection.

**4-C. Authority to establish various contract lengths and terms.** For the purpose of providing over a reasonable time period the lowest price for standard-offer service to residential and small commercial customers, the commission, with respect to residential and small commercial standard-offer service, may, in addition to incorporating cost-effective demand response and energy efficiency pursuant to subsection 4-B and to the extent authorized in section 3210-C, incorporating the energy portion of any contracts entered into pursuant to section 3210-C, establish various standard-offer service contract lengths and terms.

**Sec. B-3. Review of authority to establish various contract lengths and terms.** By January 15, 2008, the Public Utilities Commission shall report to the joint standing committee of the Legislature having jurisdiction over utilities matters on its use of the authority granted under the Maine Revised Statutes, Title 35-A, section 3212, subsection 4-C to establish various

standard-offer service contract lengths and terms for residential

and small commercial standard-offer service. The joint standing committee of the Legislature having jurisdiction over utilities matters may report out legislation to the Second Regular Session of the 123rd Legislature on the subject matter of Title 35-A, section 3212, subsection 4-C.

**Sec. B-4. Demand response programs.** The Public Utilities Commission, pursuant to the Maine Revised Statutes, Title 35-A, section 3211-A, shall consider developing one or more demand response programs for medium nonresidential customers.

**PART C**

**Sec. C-1. 35-A MRSA §§3210-C and 3210-D** are enacted to read:

**§3210-C. Capacity resource adequacy**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Capacity resource" means any renewable capacity resource, nonrenewable capacity resource or new interruptible, demand response or energy efficiency capacity resource.

B. "Interruptible, demand response or energy efficiency capacity resource" means a resource that has demand response, interruptible or energy efficiency capacity recognized by the commission.

C. "New" as applied to any capacity resource means a capacity resource that:

- (1) Has an in-service date after September 1, 2005;
- (2) Was added to an existing facility after September 1, 2005;
- (3) For at least 2 years was not operated or was not recognized by the New England independent system operator as a capacity resource and, after September 1, 2005, resumed operation or was recognized by the New England independent system operator as a capacity resource; or
- (4) Was refurbished after September 1, 2005 and is operating beyond its previous useful life or is

employing an alternate technology that significantly increases the efficiency of the generation process.

D. "Nonrenewable capacity resource" means an electric generation resource other than a renewable capacity resource.

E. "Renewable capacity resource" means a renewable resource, as defined in section 3210, subsection 2, paragraph C, except "renewable capacity resource" does not include:

(1) A generator fueled by municipal solid waste in conjunction with recycling; or

(2) A hydroelectric generator unless it meets all state and federal fish passage requirements.

**2. Policy.** It is the policy of this State:

A. That the share of new renewable capacity resources as a percentage of the total capacity resources in this State on December 31, 2007 increase by 10% by 2017 and that, to the extent possible, the increase occur in uniform annual increments;

B. To reduce electric prices and price volatility for the State's electricity consumers and to reduce greenhouse gas emissions from the electricity generation sector; and

C. To develop new capacity resources to reduce demand or increase capacity so as to mitigate the effects of any regional or federal capacity resource mandates.

**3. Commission authority.** The commission may direct large investor-owned transmission and distribution utilities to enter into long-term contracts for:

A. Capacity resources; and

B. Any available energy associated with capacity resources contracted under paragraph A:

(1) To the extent necessary to fulfill the policy of subsection 2, paragraph A; or

(2) If the commission determines appropriate for purposes of supplying standard-offer service pursuant to section 3212. If contracts are entered into pursuant to this subparagraph, the contracts must be

treated as standard-offer service contracts pursuant to section 3212.

The commission may direct large investor-owned transmission and distribution utilities to enter into contracts under this subsection only as agents for their customers and only in accordance with this section. To the greatest extent possible, the commission shall develop procedures having the same legal and financial effect as the procedures used for standard-offer service pursuant to section 3212 for large investor-owned transmission and distribution utilities.

The commission may enter into contracts for interruptible, demand response or energy efficiency capacity resources.

Capacity resources contracted under this subsection may not exceed the amount necessary to ensure the reliability of the electric grid of this State or to lower customer costs as determined by the commission pursuant to rules adopted under subsection 10.

Unless the commission determines the public interest requires otherwise, a capacity resource may not be contracted under this subsection unless the commission determines that the capacity resource is recognized as a capacity resource for purposes of any regional or federal capacity requirements.

**4. Priority of capacity resources.** In selecting capacity resources for contracting pursuant to subsection 3, the commission shall apply the following standards.

A. The commission shall select capacity resources that are competitive and the lowest price when compared to other available offers for capacity resources of the same or similar contract duration. The commission shall consider the cost of the capacity and the cost of related energy. The commission shall, by rules adopted pursuant to subsection 10, establish a methodology for calculating and considering the cost of related energy for capacity-only offers.

B. Among capacity resources meeting the standard in paragraph A, the commission shall choose among capacity resources in the following order of priority:

(1) New interruptible, demand response or energy efficiency capacity resources located in this State;

(2) New renewable capacity resources located in this State;

(3) New capacity resources with no net emission of greenhouse gases;

(4) New nonrenewable capacity resources located in this State. The commission shall give preference to new nonrenewable capacity resources with no net emission of greenhouse gases;

(5) Capacity resources that enhance the reliability of the electric grid of this State. The commission shall give preference to capacity resources with no net emission of greenhouse gases; and

(6) Other capacity resources.

5. Contract term. A contract entered into pursuant to subsection 3 may not be for more than 10 years, unless the commission finds a contract for a longer term to be prudent.

6. Competitive solicitation process and contract negotiation. For purposes of selecting potential capacity resources for contracting pursuant to subsection 3, the commission shall conduct a competitive solicitation no less often than every 3 years if the commission determines that the likely benefits to ratepayers resulting from any contracts entered into as a result of the solicitation process will exceed the likely costs. Following review of bids, the commission may negotiate with one or more potential suppliers. When only one bid has been offered, the commission shall ensure that negotiations are based on full project cost disclosure by the potential supplier. The commission shall negotiate contracts that are commercially reasonable and that commit all parties to commercially reasonable behavior.

7. Disposition of resources. A large investor-owned transmission and distribution utility shall sell capacity resources purchased pursuant to subsection 3 or take other action relative to such capacity resources as directed by the commission.

8. Cost recovery. The commission shall ensure that a large investor-owned transmission and distribution utility recovers in rates all costs of contracts entered into pursuant to subsection 3, including but not limited to any impacts on the utility's costs of capital. A price differential existing at any time during the term of the contract between the contract price and the prevailing market price at which the capacity resource is sold must be reflected in rates and may not be deemed to be imprudent.

9. Contract payments. Contracts for capacity and related

energy entered into pursuant to this section must provide that payments will be made only after contracted amounts of capacity and related energy have been provided.

10. Rules. The commission shall adopt rules to implement this section. In adopting rules, the commission shall consider the financial implications of this section on large investor-owned transmission and distribution utilities. Rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. The commission may not enter into or direct any large investor-owned transmission and distribution utility to enter into any contract pursuant to this section until rules are finally adopted under this subsection.

**§3210-D. Resource plan**

The commission shall adopt by rule a long-term plan for electric resource adequacy for this State to ensure grid reliability and the provision or availability of electricity to consumers at the lowest cost.

After final adoption of rules under this section, the commission shall take any necessary action within its authority under this Title to support achievement of the objectives of the plan.

Rules adopted under this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. C-2. 37-B MRSA §742, sub-§2, ¶B,** as amended by PL 2001, c. 353, §5, is further amended to read:

B. Upon the issuance of an energy emergency proclamation and after consulting with the Executive Department, State Planning Office, the Governor may exercise all the powers granted in this chapter, except as specifically limited by paragraph C. The powers of the Governor include, without limitation, the authority to:

- (1) Establish and implement programs, controls, standards, priorities and quotas for the allocation, conservation and consumption of energy resources;
- (2) Regulate the hours and days during which nonresidential buildings may be open and the temperatures at which they may be maintained;
- (3) Regulate the use of gasoline and diesel-powered land vehicles, watercraft and aircraft;

- (4) After consulting, when appropriate, with the New England governors and upon the recommendations of the Maine Public Utilities Commission, regulate the generation, distribution and consumption of electricity;
- (5) Establish temporary state and local boards and agencies;
- (6) Establish and implement programs and agreements for the purposes of coordinating the emergency energy response of the State with those of the Federal Government and of other states and localities;
- (7) Temporarily suspend truck weight and size regulations, but not in conflict with federal regulations; ~~and~~
- (8) Regulate the storage, distribution and consumption of home heating oil; and
- (9) If the energy emergency was caused by a lack of electric grid reliability in this State resulting from insufficient capacity resources, take appropriate action, in consultation with the Public Utilities Commission, to procure sufficient capacity resources including generation capacity and interruptible, demand response or energy efficiency capacity resources.

**Sec. C-3. Public Utilities Commission resource plan.** The Public Utilities Commission shall adopt the resource plan required under the Maine Revised Statutes, Title 35-A, section 3210-D in accordance with the following schedule.

**1. Outline and strategy.** By March 1, 2007, the commission shall establish an outline or procurement strategy for the resource plan and provide the outline or procurement strategy to the joint standing committee of the Legislature having jurisdiction over utilities matters for its review and comment.

**2. Final resource plan.** By March 1, 2008, the commission shall submit to the Legislature provisionally adopted rules establishing the resource plan.

## PART D

### Sec. D-1. Maine Energy Council.

1. **Council established.** The Maine Energy Council, referred to in this section as "the council," is established to evaluate matters affecting electricity supply and costs to consumers in this State and to provide recommendations to the Governor, the Public Utilities Commission, other appropriate state agencies and the Legislature regarding these matters.

2. **Membership.** The council consists of 17 members. Appointing authorities shall seek to ensure representation of all areas of the State. Members are appointed as follows:

A. Two members of the Senate, appointed by the President of the Senate, one of whom must be a member of the political party holding the largest number of seats in the Senate and one of whom must be a member of the political party holding the 2nd-largest number of seats in the Senate;

B. Two members of the House of Representatives, appointed by the Speaker of the House of Representatives, one of whom must be a member of the political party holding the largest number of seats in the House and one of whom must be a member of the political party holding the 2nd-largest number of seats in the House;

C. The chair of the Public Utilities Commission or the chair's designee;

D. The Public Advocate or the Public Advocate's designee;

E. The Commissioner of Environmental Protection or the commissioner's designee;

F. One member representing the Governor's office, appointed by the Governor; and

G. Nine persons appointed by the Governor, including:

(1) One member from the University of Maine System who has expertise in energy issues;

(2) One member representing electricity generators with a capacity in excess of 100 megawatts;

(3) One member representing electricity generators that rely on renewable energy resources;

(4) One member representing competitive electricity providers;

(5) One member representing residential users of electricity;

(6) One member representing large industrial users of electricity;

(7) One member representing small commercial users of electricity;

(8) One member representing investor-owned transmission and distribution utilities; and

(9) One member representing consumer-owned transmission and distribution utilities.

The Governor shall request a list of names from organizations or entities identified in paragraph G from which to make appointments.

**3. Chairs.** The first-named Senate member and the first-named House member serve as cochairs of the council.

**4. Appointments; convening of council.** All appointments must be made no later than 30 days following the effective date of this Act. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. Within 15 days after appointment of all members, the chairs shall call and convene the first meeting of the council.

**5. Compensation.** The legislative members of the council are entitled to receive the legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2, and reimbursement for travel and other necessary expenses related to their attendance at authorized meetings of the council. Public members not otherwise compensated by their employers or other entities that they represent are entitled to receive reimbursement of necessary expenses and, upon a demonstration of financial hardship, a per diem equal to the legislative per diem for their attendance at authorized meetings of the council.

**6. Staffing.** The staff of the Public Utilities Commission shall, within existing resources, provide assistance to the council in carrying out its functions and duties.

**7. Duties.** The council shall:

A. Advise the Governor, the Public Utilities Commission, other appropriate state agencies and the Legislature on matters affecting electricity supply and costs to consumers in this State;

B. As resources permit, undertake studies, develop findings and make recommendations to the Governor and to the joint standing committee of the Legislature having jurisdiction over utilities matters on issues affecting electricity supply or costs to consumers in this State; and

C. Undertake an examination of the feasibility and appropriate means of studying the impacts of electric industry restructuring in this State.

**8. Authority.** As resources permit, the council may:

A. Conduct public hearings, conferences, workshops and other meetings to obtain information about and discuss and publicize the needs of and solutions to issues facing electricity consumers in this State; and

B. At the request of the joint standing committee of the Legislature having jurisdiction over utilities matters, examine specific issues affecting electricity consumers in this State.

**9. Report.** No later than January 15, 2007, the council shall submit a report that includes its findings and recommendations, including suggested legislation, for presentation to the joint standing committee of the Legislature having jurisdiction over utilities matters and the Legislative Council. The council is not authorized to introduce legislation. Following receipt and review of the report, the joint standing committee of the Legislature having jurisdiction over utilities matters may report out a bill to the First Regular Session of the 123rd Legislature.

**10. Extension.** If the council requires a limited extension of time to complete its study and make its report, it may apply to the Legislative Council, which may grant an extension.

**11. Council budget.** The chairs of the council, with assistance from the council staff, shall administer the council's budget. Within 10 days after its first meeting, the council shall present a work plan and proposed budget to the Legislative Council for its approval. The council may not incur expenses that would result in the council's exceeding its approved budget. Upon request from the council, the Executive Director of the Legislative Council shall promptly provide the council chairs and staff with a status report on the council budget, expenditures incurred and paid and available funds.



## ***Resolution on Portfolio Management***

**WHEREAS**, state regulators of electric utilities today face numerous challenges, including corporate bankruptcies, market failure, exercise of market power, volatile markets for wholesale power and natural gas, and an uncertain investment climate for energy facilities; and

**WHEREAS**, today's retail electricity markets are characterized by a variety of market structures ranging from traditional vertically integrated utilities to retail competition; and

**WHEREAS**, state utility regulators continue to oversee the procurement of electricity resources to serve all or a majority of retail customers who continue to receive service under regulated retail rates; and

**WHEREAS**, a variety of techniques, collectively known as *portfolio management*, can help utility regulators to ensure that regulated electricity services are provided in a manner that manages risks, enhances reliability, and improves the performance of wholesale and retail markets; and

**WHEREAS**, portfolio management is wholly consistent with efforts to create competitive wholesale electric markets and offers a structured approach for assembling a diverse mix of short- and long-term energy resources to serve retail customers at regulated rates, via traditional power supplies as well as energy efficiency, distributed generation, demand response, and renewable energy resources; and

**WHEREAS**, retail electric customers receiving regulated service can be protected from volatile energy markets by load-serving electric utilities that engage in prudent portfolio management practices; and

**WHEREAS**, fourteen environmental and consumer organizations and the National Commission on Energy Policy, have called for portfolio management for residential and small business customers to be overseen by state utility regulators; now therefore be it

**RESOLVED**, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened in its November 2003 Annual Convention in Atlanta, Georgia, encourages state regulatory commissions to explore portfolio management techniques that may be applicable to their particular circumstances, under either traditional or restructured markets, and to adopt appropriate regulatory policies to facilitate effective implementation of portfolio management practices by regulated utilities; and be it further

**RESOLVED**, that NARUC explore opportunities to develop a research, training, and outreach program on portfolio management to serve the needs of state commissions and to further develop the regulatory community's knowledge about resource management practices to minimize risk and improve system reliability and market performance.

*Sponsored by the Committee on Energy Resources and the Environment  
Adopted by NARUC Board of Directors November 18, 2003*