BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RULEMAKING RE ELECTRIC DISTRIBUTION COMPANIES' OBLIGATION TO SERVE RETAIL CUSTOMERS AT THE CONCLUSION OF THE TRANSITION PERIOD PURSUANT TO 66 PA C.S. § 2807(e)(2)	:	**DOCKET NO. L-00040169**

COMMENTS OF INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA, DUQUESNE INDUSTRIAL INTERVENORS, MET-ED INDUSTRIAL USERS GROUP, PENELEC INDUSTRIAL CUSTOMER ALLIANCE, PENN POWER USERS GROUP, PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP, PP&L INDUSTRIAL CUSTOMER ALLIANCE, AND WEST PENN POWER INDUSTRIAL INTERVENORS

David M. Kleppinger
Derrick Price Williamson
Vasiliki Karandrikas
McNEES WALLACE & NURICK LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000
(717) 237-5300 (fax)

Counsel to Industrial Energy Consumers of Pennsylvania, Duquesne Industrial Intervenors, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group, Philadelphia Area Industrial Energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Intervenors

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TABLE OF CONTENTS

I. INTRODUCTION

At its Public Meeting on February 8, 2007, the Pennsylvania Public Utility Commission ("PUC" or "Commission") adopted an Advance Notice of Final Rulemaking Order ("Rulemaking Order") in the above-captioned proceeding. Pursuant to Section 2807(e)(2) of the Electricity Generation Customer Choice and Competition Act ("Competition Act"), the Commission initiated this rulemaking proceeding to promulgate regulations defining the obligation of electric distribution companies ("EDCs") to serve electric retail customers at the conclusion of the restructuring transition periods. The Rulemaking Order sets forth proposed "provider-of-last-resort" ("POLR") regulations that have been revised to reflect comments received during the second public comment period that concluded on April 7, 2006. The Commission seeks public comment on the Rulemaking Order.

The Industrial Energy Consumers of Pennsylvania ("IECPA"), Duquesne Industrial Intervenors ("DII"), Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), PP&L Industrial Customer Alliance ("PPLICA"), and West Penn Power Industrial Intervenors ("WPPII") (hereinafter, "IECPA, et al.") respectfully submit these comments. IECPA, et al., are ad hoc groups of large commercial and industrial ("C&I") customers receiving service from almost all EDCs in Pennsylvania. Because IECPA, et al. members use substantial volumes of electricity in their manufacturing and operational processes, electric costs represent a sizeable component of overall operating costs.

This proceeding represents one facet of the Commission's "comprehensive strategy for addressing retail rates in the context of expiring rate caps."[1] Given the direct and substantial impact that the expiration of rate caps will have on the cost of operating their respective manufacturing and production facilities, IECPA, et al. submit these Comments in order to highlight areas of particular concern to large C&I customers.[2] As detailed more fully herein, IECPA, et al. respectfully request that the Commission ensure that the final POLR regulations: (1) include a long-term (i.e., one year or longer), fixed-price default service pricing option; (2) preserve the use of declining block rates and demand charges; (3) ensure that transmission service and charges remain unbundled as required under Section 2804(3) of the Public Utility Code; (4) confirm that congestion is included in the wholesale suppliers' bids and will not be subject to reconciliation in the Price-to-Compare ("PTC"); (5) eliminate the current proposal for the Default Service Provider ("DSP") to include as part of its default service program a schedule identifying a customers' load sizes or their contract expiration dates; (6) enable DSPs to perform their duty to provide POLR serve at the lowest reasonable long-term costs by permitting them to enter into long-term contracts; (7) provide the public with timely notice and a meaningful opportunity to review periodic rate changes; and (8) confirm that the requirement to treat customers returning to default service as a "new applicant" does not require the customer to execute a new service agreement or permit the default service providers to impose additional credit or other requirements on the customer that would not have been required if the customer had remained on default service.

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[1] See Default Service and Retail Electric Markets, Docket No. L-00070183, p. 2 (Proposed Policy Statement) (entered Feb. 8, 2007).

II. COMMENTS

A. Default Service Rate Design Should Include a Mandatory Long-Term Fixed-Rate Option for Large C&I Customers.

The Rulemaking Order revises Sections 54.187(b), (c), and (d) by eliminating the language mandating fixed-rate options and hourly rates for certain customer classes. See Rulemaking Order, p. 17. In lieu of these fixed-rate options and hourly rates, the Rulemaking Order proposes that each customer will have a single rate option (i.e., PTC) that would be adjusted periodically.[3] Id. at 19. With respect to large C&I customers, the Rulemaking Order provides default service rates: "shall be adjusted on a monthly basis, or more frequently, for all customer classes with a registered peak load of equal to or greater than 500 kW...." See Section 54.187(j). In addition, revisions to Section 54.187(c) also eliminate "declining blocks" as well as demand charges from rate schedules. See Rulemaking Order, p. 17. Finally, the Rulemaking Order attempts to provide additional guidance on the allocation of cost elements through modifications to Section 54.187(d). See id.

The revisions to Section 54.187 set forth in the Rulemaking Order do not comport with the letter and spirit of the Competition Act. Accordingly, the PUC should modify the proposed POLR regulations and provide the clarification discussed below.

1. A PTC Adjusted on a Monthly (or More Frequent) Basis Generally Does Not Satisfy C&I Customers' Business Planning Needs.

From a C&I customer perspective, a default service rate that fluctuates on a monthly basis, or more frequently, is impractical, unreasonable, and, in some cases, infeasible. Many C&I customers have load profiles or production/manufacturing processes that prevent the

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(continued footnote)

[2] Contemporaneous with these Comments, IECPA, et al. are filing Comments in the Proposed Policy Statement proceeding at Docket No. L-00070183.

utilization of a monthly pricing option. Moreover, not all C&I customers have the sophistication and resources to administer such an option efficiently. A rate that fluctuates on a monthly basis (or more frequently) is volatile and, as such, unpredictable. Due to its volatile and unpredictable nature, such a pricing option introduces significant uncertainty to customers' business planning and budgeting processes. As the costs of doing business in the Commonwealth continue to escalate, the pressure on Pennsylvania industry to remain competitive at home and abroad intensifies. A key component of C&I customers' respective strategies for maintaining and enhancing their competitive posture is energy cost management. The effective implementation of an energy cost management strategy, however, depends on C&I customers' ability to budget for anticipated future needs (e.g., capital investment, production, and staffing levels) and develop the means by which to fulfill those needs during their annual business planning cycles.

The usefulness of a business plan, however, depends on the underlying inputs. For energy-intensive C&I customers, a critical business plan input is anticipated energy costs. A monthly PTC, however, does not provide C&I customers with the level of certainty regarding energy costs necessary to plan for the future, even in the short-term. A default service rate that is constantly in flux is at odds with the typical C&I customer's annual business planning cycle. As a result, a monthly PTC will only frustrate C&I customers' efforts to manage energy costs, the success of which is integral to preserving and enhancing their competitiveness in the national and international marketplace. Accordingly, a POLR plan that only offers a monthly default service rate cannot meet the business needs of Pennsylvania's large C&I customers.

(continued footnote)

[3] See Section 54.187(b) ("Except for rates consistent with 54.187(f), each default service customer shall be offered a single rate option, which shall be identified as the PTC.").

To be clear, IECPA, et al. do not oppose the monthly PTC as one default service option; however, it should not be the only default service option. Such a rate may be a desirable option under certain circumstances. For example, a monthly fixed PTC may be a useful option for a customer that is in between long-term contracts. Under this scenario, the customer could use the monthly PTC as a bridge between competitive supply contracts in the event that it does not complete the contracting process with a new supplier in sufficient time to ensure that the new supplier begins service as of the termination date of the prior contract. A monthly pricing option may also be useful when market conditions at the time a customer is entering into the new contract are inflating competitive offers, which may become more moderate in the short-term, thereby resulting in lower rates for the customer's next competitive supply contract. Finally, depending on the design of the monthly rate, customers with operations that can withstand monthly electric price changes, or that can modify consumption in response to those changes, may view this default service option as a viable, least-cost procurement strategy. Notwithstanding the potential utility of a monthly PTC, a long-term, fixed-price option must accompany any monthly default pricing option.

2. The Competition Act Supports Approval of Long-Term, Fixed-Price Options for C&I Customers.

The proposed regulations are designed to implement Section 2807(e)(3) of the Competition Act. Section 2807(e)(3) defines the post-transition obligation to serve as follows:

> If a customer contracts for electric energy and it is not delivered or if a customer does not choose an alternative electric generation supplier, the electric distribution company or commission-approved alternative supplier shall acquire electric energy at prevailing market prices to serve that customer and shall recover fully all reasonable costs.

See 66 Pa. C.S. § 2807(e)(3). Providing large C&I customers with a long-term, fixed-rate option is consistent with the Competition Act if the energy is acquired at prevailing market prices and the DSP recovers fully all reasonable costs. Multiple products exist in the wholesale market with differing duration and price stability. Each product has its own "prevailing market price" at a given time. By using the plural term "prevailing market prices" in Section 2807(e)(3), the General Assembly clearly expressed its desire for the Commission to adopt default service regulations that provide multiple products, such as a long-term fixed-rate for large C&I customers.

The Competition Act also recognizes EDCs' ability to develop and implement rates that will specifically address customers' needs. Under Section 2806(h), the Commission has the authority to "approve flexible pricing and flexible rates, including negotiated, contract-based tariffs designed to meet the specific needs of a utility customer and to address competitive alternatives." See 66 Pa. C.S. § 2806(h). As discussed above, large C&I customers need long-term price certainty in order to manage energy costs. The lack of a long-term, fixed-price option will undermine C&I customers' cost management efforts and, consequently, place them at competitive disadvantage vis-à-vis industry rivals located in lower-cost jurisdictions. In light of the Competition Act's intent to permit negotiated tariffs in order to meet the needs of a specific utility customer, requiring DSPs to offer a long-term, fixed-price option is consistent with the Competition Act.

The Commission's Proposed Policy Statement allows a DSP to propose an annual (or longer) fixed-rate option for large C&I customers. See Proposed Policy Statement, §

69.1805(3).[4] Although IECPA, et al. appreciate the Commission's recognition of its prior arguments by including this as a permissive default service offering, to meet the goals of the Competition Act it should be a mandatory default service offering. An overarching objective of the Competition Act is to "benefit all classes of customers and to protect this Commonwealth's ability to compete in the national and international marketplace for industry and jobs." 66 Pa. C.S. § 2802(7). As the General Assembly determined in passing the Competition Act, the "cost of electricity is an important factor in decisions made by businesses concerning locating, expanding, and retaining facilities in this Commonwealth." Id. § 2802(6). On the eve of the expiration of transitional rate caps, which will expose Pennsylvania customers to the brunt of market forces, Pennsylvania's capability to realize the objectives of the Competition Act is of paramount importance. To protect the Commonwealth's ability to retain existing and entice new business and industry, and in light of the General Assembly's recognition that a key to realizing this objective is linked to the cost of electricity, the Commission should mandate that DSPs provide a long-term, fixed-price default service option; otherwise, large C&I customers will be severely disadvantaged in their ability to compete in the national and international market place for industry and jobs. Such an outcome clearly contravenes the intent of the Competition Act.

The Competition Act requires that electric service should be available to all customers on reasonable terms and conditions. See 66 Pa. C.S. § 2802(9). A PTC that is "adjusted on a monthly basis, or more frequently" for large customers is not reasonable, because it subjects such customers to arbitrary price increases, which can detrimentally affect load usage. Moreover,

[4] This aspect of the Proposed Policy Statement appears to conflict with Section 54.187(b) of the proposed regulations, which states: "Except for rates available consistent with 54.187(F) [use of automatic adjustment clause] each default service customer shall be offered a single rate option, which shall be identified as the PTC." Even if the long-term fixed rate continues to be optional, the regulations must be modified to reflect the permissive authorization consistent with the Proposed Policy Statement.

frequent adjustments, which are largely driven by unpredictable locational marginal prices ("LMP") resulting from a flawed wholesale market design that is highly sensitive to steep and volatile natural gas prices, may also result in higher than expected prices. Because large customers utilize significant amounts of electricity, this can result in significant budget expenditures. As discussed supra, this level of price volatility undermines a company's business planning procedures. If large customers are unable to specifically determine and plan for budgetary expenses, their ability to manage energy costs and, thus, optimize production/manufacturing processes will likely be compromised. Thus, a POLR pricing strategy that undermines large customers' ability to do business in the Commonwealth is directly inconsistent with the Competition Act, which recognizes that electric service is "essential...to orderly economic development." 66 Pa. C.S. § 2802(9).

The intent of the Competition Act is to provide a DSP that is a competitive alternative to the marketplace. See 66 Pa. C.S. § 2806(h). If POLR regulations do not require DSPs to offer a long-term, fixed-price option for large customers, such customers would be forced into the competitive market in order to obtain fixed-price options and, consequently, the DSP will not be a competitive alternative. Under this scenario, electric generation suppliers ("EGSs") will have the opportunity to raise their fixed prices significantly above what the market would otherwise bear merely because EGSs would control the universe of fixed-price options and, consequently, could exercise considerable leverage vis-à-vis customers seeking such options. As a result, large customers would be subject to unjust and unreasonable rates from EGSs as a direct result of the lack of a fixed-price option for POLR rates.

Artificially boosting shopping levels by such means is not consistent with true competition or success under the Competition Act. Mandating that DSPs offer a long-term,

fixed-price option for large C&I customers will ensure that DSPs represent a competitive alternative in the post-restructuring marketplace. Moreover, such a long-term, fixed-price option can act as a benchmark that will discipline the prices that EGSs can demand in the market. Accordingly, the DSP must be required to offer at least one long-term, fixed-priced option for large C&I customers.

Finally, under the Public Utility Code and Commission regulations, different classes of customers can be treated differently as long as the disparate treatment is not unduly discriminatory. See 66 Pa. C.S. § 1304. Requiring large customers on default service to receive a default service rate that is "adjusted on a monthly basis, or more frequently" would discriminate against this customer class by subjecting only these customers to price volatility, arbitrary price increases, and artificial market prices.[5] Although some customers may opt for a monthly PTC, many large C&I customers have inadequate resources to cope with this type of pricing methodology and engage in manufacturing/production processes that are not compatible with a monthly PTC. Accordingly, all customers must be offered at least one long-term, fixed-price PORL option; no customer should be forced to pay prices that fluctuate on a monthly basis or even more frequently.

B. The Commission Should Authorize the Use of Declining Block Rates and Demand Charges To Encourage Efficiency.

In order to provide "incentives for conservation" and to "reflect the actual cost of energy," the Commission revised Section 54.187(c) by eliminating "declining blocks" and demand charges from rate schedules.[6] See Rulemaking Order, p. 17. Implicit in the

[5] The Commission proposes quarterly adjustments for smaller customers. See §§ 54.187(h) & (i).
[6] Similarly, the Proposed Policy Statement re-affirms this and provides that demand charges should be removed. In the Comments filed contemporaneously in that proceeding, IECPA, et al. also express opposition to the elimination of demand charges and declining block rates.

Commission's rationale for these revisions is the presumption that declining block rates and demand charges impede conservation and prevent customers from seeing accurate price signals. As discussed below, this presumption is erroneous. The use of declining block rates and demand charges promotes efficiency, a goal that is not mutually exclusive with conservation. Moreover, these tools also ensure that customers realize accurate price signals, in light of the fact that the actual costs incurred by a load-serving entity ("LSE") to serve its customers include both energy and demand components.

The PJM Interconnection, L.L.C. ("PJM") wholesale market structure includes charges that are assessed on demand (i.e., MW or kW) and energy (i.e., MWh or kWh) bases. For example, capacity and transmission[7] are assessed on a demand basis, while energy and most ancillary services are assessed on an energy basis. To provide customers with proper signals regarding the need to minimize their peak demand during PJM peak periods, retail rates must reflect both an energy and a demand component.

For example, assume that the owner of a hypothetical large office building determined that it could use 5% fewer kWh of electricity by cycling its air conditioning unit on and off during peak days and that the building's demand increased by 50% each time the air conditioner cycled back on. This dramatic demand increase would not occur if the air conditioner were operating on a constant basis to produce the same internal temperature. Under this scenario, the building owner's conservation strategy may not further the PUC's efficiency goals. If the retail rate design were to include a demand charge that reflected the demand impact of the cycling, then the building owner would have an incentive to efficiently use electricity and avoid drastic

[7] IECPA, et al. explain in Section II.C why transmission should not be included in the PTC.

demand spikes. If the retail rate design reflects only an energy charge, then the appropriate price signal is not conveyed to the customer.

Similarly, using a demand charge and declining block structure encourages large C&I customers to operate manufacturing facilities at a higher load factor (i.e., more efficiently) to result in lower realized per kWh costs. In other words, as a customer's efficiency (i.e., load factor) increases, the cost of serving that customer decreases. A pricing structure that fails to recognize this efficiency benefit will result in unjust and unreasonable rates. Thus, declining block rates and demand charges must not be eliminated, as these rate design components best reflect the cost differences and efficiencies attributable to high-load factor customers.

If rates are set based on cost of service, customers will receive proper and efficient price signals that will guide their consumption. Such rates do not either discourage or encourage conservation, but rather encourage efficient and economic use of energy. While it is true that, all else being equal, higher kWh rates will result in lower consumption (and thus "conservation"), it does not follow that this is an optimal outcome. If off-peak energy, for example, is lower cost than on-peak energy, efficiency is not promoted by raising the off-peak rate, simply to discourage usage. If rates are based on cost, including cost-based fixed charges where justified, customers will face prices that are consistent with the costs of providing each component of electric service and, consequently, make rational consumption decisions. Thus, if declining block rates or demand charges are cost justified, then such rate designs are appropriate and do not represent an impediment to conservation. The Commission should authorize demand charges and declining block rate structures for default service.

C. For Larger EDCs, Transmission and Ancillary Services Costs Should Be Separately Stated from the PTC Consistent with the Underlying Demand and Energy Components of These Costs.

Section 54.187(d) provides that the PTC "shall be designed to recover all default service costs, including generation, transmission and other default service cost elements, incurred in serving the average member of a customer class." See § 54.187(d). This is contrary to the unbundling requirement in the Competition Act and should be revised. In addition, the Commission must ensure that unbundled retail transmission rates are developed based on cost of service principles.

The General Assembly specifically mandated that the rate elements must be unbundled and introduced a new standard to evaluate retail transmission rates. The Competition Act "establish[es] standards and procedures in order to create direct access by retail customers to the competitive market for the generation of electricity...." 66 Pa. C.S. § 2802(12). Section 2804 sets forth the "interdependent standards" that "shall govern" the Commission's "regulation of the restructured electric utility industry." Id. § 2804 (emphasis added). Section 2804(3) provides that the Commission "shall require the unbundling of electric utility services, tariffs and customer bills to separate the charges for generation, transmission and distribution." Id. § 2804(3) (emphasis added). Section 2804(6) further provides:

> Consistent with the provision of section 2806, the commission shall require that a public utility that owns or operates jurisdictional transmission and distribution facilities shall provide transmission and distribution service to all retail electric customers in their service territory and to electric cooperative corporations and electric generation suppliers, affiliated or nonaffiliated, on rates, terms of access and conditions that are comparable to the utility's own use of its system.

Id. § 2804(6) (emphasis added). The Commission's PTC proposal does not properly give effect to the General Assembly's legislative intent. To effectuate the legislative intent underlying the

statutory standards in Section 2804, the Commission must separate the charges for transmission from the charges for generation and adopt a retail transmission charge that accurately tracks the manner in which an LSE is assessed transmission and ancillary services charges by PJM, as discussed below. Modifying the PTC to remove the transmission and ancillary services costs will not only realize the mandates of the Competition Act, but also comport with practices already in place in the Met-Ed, Penelec, PPL and Duquesne service areas.[8] Any service that previously was unbundled as part of a restructuring proceeding, distribution base rate proceeding, or default service proceeding should remain unbundled.

Furthermore, POLR regulations should specify that retail transmission and ancillary service rules will be developed on a cost of service basis. The Commonwealth Court recently confirmed that the Competition Act requires the Commission to separately review and establish rates for each of the unbundled services on a stand-alone basis, with cost of service acting as the "polestar" for this determination. See Lloyd v. Pa. Pub. Util. Comm'n, 904 A.2d 1010, 1020 (Pa. Commw. Ct. 2006). Retail rate design is a critical link between Pennsylvania's retail market and the wholesale market administered by PJM. Successfully linking wholesale issues to retail rate design issues is a key to realizing the Competition Act's competition and reliability objectives. Thus, to the extent possible, policies between wholesale and retail markets should be coordinated in order to maximize market efficiencies and, thus, capture the potential benefits of competitive electric markets for consumers.

The Commonwealth Court'd decision in Lloyd, as well as sound principles of cost causation and rate making, require the PUC to allocate and establish rates to recover transmission and ancillary services costs from retail ratepayers in a manner that mirrors PJM's

[8] IECPA, et al. recognize that the unbundling and allocation proposal may not be appropriate for very small EDCs.

allocation methodology and billing procedures. See Lloyd v. Pa. Pub. Util. Comm'n, 904 A.2d 1010 (Pa. Commw. Ct. 2006); see also 66 Pa. C.S. § 2804(6). First, the allocation of transmission and ancillary services costs among rate schedules must recognize that many of these costs are demand-related and should use a demand allocator similar to the one used by PJM to assess transmission charges. This allocation is required to avoid interclass shifting of cost responsibility. Second, for customers with interval metering, a retail transmission rate should be developed with demand and energy components to mirror PJM charges. This is necessary to avoid intraclass cost shifting. If the Commission follows these two principles, customers will pay the identical transmission costs irrespective of whether the customer purchases its generation supply from an EDC or EGS. See 66 Pa. C.S. § 2804(6) (requiring customers' transmission rates to be comparable to the utility's own use of its system).

In order to deliver generation from generating plants to the distribution system to which their generation customers are connected, LSEs operating in the Commonwealth must secure transmission and ancillary services from PJM. The rates that an LSE pays for these services are established by PJM and approved by the Federal Energy Regulatory Commission ("FERC"). Network Transmission Charges are the costs that an LSE incurs as a user and purchaser of transmission services from PJM for its POLR customers. Network Transmission Charges are incurred on a demand (i.e., kW) basis. Ancillary Services Charges relate to charges for "services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation" of the transmission system. Whether ancillary service charges are incurred on a demand or energy (i.e., kWh) basis depends on the particular service. Thus, an LSE's transmission and ancillary services costs are incurred on both a demand and energy basis, based on contribution to the coincident peaks of PJM and annual kWh usage.

As revised, Section 54.187(c) has the effect of removing the use of demand-based charges to recover default service costs, some of which are demand-based, such as transmission and certain ancillary services. In other words, although the basis for an LSE's transmission and ancillary services costs is readily identifiable, revised Section 54.187(c) limits LSEs to recovering all default service costs on an energy-only (i.e., kWh) basis. Such a proposal will result in an unjust and unreasonable allocation of an LSE's transmission and ancillary services costs, particularly with respect to large C&I customers. A properly designed PTC must appropriately distinguish between energy- and demand- based components. A separate charge (on a demand and energy basis) must be used to recover transmission and ancillary service costs. By eliminating the use of a demand-based rate component (e.g., declining block rates, demand charges) to recover demand-based default service costs, the Commission's proposal contravenes sound principles of cost causation and rate making and establishes a disconnect between PJM's wholesale market and Pennsylvania's retail market. It would likewise result in unjust and unreasonable rates.

D. Congestion Must Be Included in the Wholesale Generation Product Price and Excluded from Reconciliation through the PTC.

As proposed, the PTC will be designed to recover generation, transmission[9], and the other default service cost elements. See § 54.187(d). At the DSP's option, the PTC may be subject to reconciliation "to recover all prudently incurred non-alternative energy default costs." See § 54.187(f). Although the Commission recently denied a Petition for Reconsideration regarding whether congestion is a generation charge or a transmission charge, it is widely expected that this

[9] As set forth in Section II.C, IECPA et al. object to including transmission in the PTC.

issue will be appealed to the Commonwealth Court.[10] IECPA, et al. fully support the arguments raised by MEIUG and PICA that congestion is a generation charge. Regardless of the classification, however, the Commission should amend the proposed regulations to clearly confirm that congestion risks (and costs) will be borne by the wholesale supplier and that congestion expenses cannot be recovered through the PTC.

If congestion charges are included in the PTC, as opposed to in the winning supplier's bid, this may result in a DSP accepting non-economic bids over the course of its competitive procurement program due to transmission constraints across the PJM region. Another undesirable consequence would be that a DSP would not be able to offer a genuine fixed-price service, given that the costs flowed through the PTC as a result of the location of the purchased generation could fluctuate considerably, thereby having a significant impact on customer bills. Accordingly, IECPA, et al. request that the Commission include this clarification in its final order in this proceeding.

E. The Commission Should Clarify That the Distribution Rate Should Be Reduced in an Amount Equal to any Default Service Costs That Are Reallocated to the Default Service Rate.

According to the Rulemaking Order, a DSP may use an automatic adjustment clause to recover energy default service costs, but is required to use an automatic adjustment clause to recover costs related to implementation of the Energy Portfolio Standards Act of 2004. IECPA, et al. support the Commission's elimination of the very detailed description of the rate mechanisms and costs that should be recovered through the generation charges. The Commission's revision provides clarity and will facilitate the implementation of final POLR regulations by eliminating the potential for error.

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[10] See Pa. Pub. Util. Comm'n, et al. v. Metropolitan Edison Co. and Pa. Elec. Co.; Docket Nos. R-00061366 et al. (cont'd footnote)

The Rulemaking Order also attempts to provide additional guidance on the allocation of cost elements. See Rulemaking Order, p. 17. The Rulemaking Order provides that any default service costs should not be recovered through the distribution rate. Id. Moreover, distribution costs may not be recovered twice as a result of any reallocation that occurs as a result of this rulemaking. Id. Specifically, Section 54.187(d) provides, in relevant part:

> An EDC's default service costs shall not be recovered through the distribution rate. Costs currently recovered through the distribution rate, which are reallocated to the default service rate, shall not be recovered through the distribution rate.

The Commission's intention in this provision appears to be that customers' distribution rates should be reduced in an amount equal to any default service costs that are reallocated to the default service rate in order to ensure that such costs are not recovered through an EDC's default service rates. The language in Section 54.187(d), however, does not go far enough in providing the necessary degree of clarification. To that end, IECPA, et al. request that the Commission further clarify Section 54.187(d) by adding language indicating that distribution rates must be reduced on a dollar-for-dollar basis to reflect any costs reallocated to the default service rate.

F. Long-Term Bilateral Contracts with Affiliates Should Be Permitted Default Service Procurement Options.

In the Rulemaking Order, the Commission encourages DSPs to "acquire a portfolio of generation supply products." Rulemaking Order, p. 19. Rather than procuring all generation at one time for the duration of the default service program, the Commission explains that DSPs should consider a "mix of fixed-term and spot market energy purchases, laddered contracts, and the use of both supply and demand resources." Id. at 19-20. IECPA, et al. support the Commission's decision to encourage DSPs to utilize a "portfolio approach" for procuring default

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(continued footnote)
(filed Jan. 26, 2007).

service. This approach is consistent with the Competition Act's intention to permit DSPs to maintain a well-equipped "toolbox" of instruments to procure supply from a variety of sources in order to offer electricity to customers at just and reasonable rates.

According to the proposed regulations, a DSP's procurement plan "should be designed to acquire electric generation supply at prevailing market prices to meet the DSP's anticipated default service obligation at the lowest reasonable long-term cost." See § 54.186(b)(1). Notwithstanding the goal of securing default service at the "lowest reasonable long-term cost" to customers, the Commission inappropriately restricts DSPs from using long-term bilateral contracts with affiliates to procure electricity for POLR customers. See Rulemaking Order, n.4; id. at 14-15. This restriction is fundamentally at odds with the goal set forth in Section 54.186(b)(1).

As a threshold matter, the Competition Act does not prohibit a DSP from entering into long-term contracts or contracts with affiliates. A long-term contract satisfies Section 2807(e)(3) as long as it reflects the prevailing market price for similar contracts of like character and duration at the time of execution. The Commission has the power to review any affiliated interest agreement under Chapter 21 of the Public Utility Code to ensure that ratepayers are not disadvantaged. See 66 Pa. C.S. §§ 2101-2106. FERC also has a process to review contracts between FERC-regulated utilities and their affiliates. Because many affiliates of EDCs in Pennsylvania continue to own lower fuel cost, highly depreciated generation facilities in PJM, negotiating a long-term, bilateral contract based on the affiliate generator's actual costs may produce the lowest reasonable rates for customers. The Pennsylvania consumers who have paid the stranded costs associated with this generation should not be deprived of this option.

The Rulemaking Order and Proposed Policy Statement, however, vacillate between implementing procurement strategies designed to mute the impact of market movements (such as laddering and the portfolio approach) and the clear goal of exposing customers to market forces to encourage conservation and EGS entry. In doing so, the PUC has inappropriately eliminated one element of a balanced portfolio approach that could benefit customers; i.e., allowing the DSP to enter into long-term bilateral contracts with affiliated generation owners. As FERC has recognized, "in markets that are competitive, a combination of long-term contracts and adequate demand response provide[s] the best way to limit exposure to price risk in spot energy markets." See Midwest Indep. Transmission Sys. Operator, Inc., 102 FERC ¶ 61,280 at P 58 (2003). To ensure that DSPs are able to obtain electricity for POLR customers at just and reasonable rates, DSPs must be permitted to include the use of long-term contracts with affiliates in their procurement toolbox.

G. The Commission Must Provide Customers with Due Process and a Meaningful Opportunity To Be Heard In the Context of PTC Reconciliation Proceedings.

Revised Section 54.184(f) outlines the standards for tariff filings resulting from the Commission's decision to require regular adjustments of the PTC. See Rulemaking Order, p. 24. Under this section, DSPs are required to submit tariff supplements proposing adjustments to the PTC on a quarterly or monthly basis, as applicable. See § 54.184(f). DSPs must provide written notice of their filings upon Office of Consumer Advocate ("OCA"), Office of Small Business Advocate ("OSBA"), Office of Trial Staff ("OTS"), EGSs registered in the service territory, and the Regional Transmission Organization ("RTO") in whose control area the DSP is operating. Id.; see also § 54.185(b) (directing the DSP to provide copies to other EGSs upon request). A customer or any of the parties that received notice of the filing will have an opportunity to file

exceptions to the default service tariff. See § 54.184(f). The scope of the exceptions is limited to "whether the DSP has properly implemented the procurement plan" and "accurately calculated rates." Id. Exceptions must be filed within 20 days of the date that the tariffs are filed with the Commission. Id.

According to the Rulemaking Order, the adjustable PTC was modeled, in part, on the PUC's regulations governing natural gas supply costs under Section 1307. See Rulemaking Order, p. 4. As proposed, however, the POLR regulations bear little resemblance to the provision under Section 1307. Pursuant to 1307, purchased gas costs ("PGC") are established on an annual basis, but subject to quarterly adjustments. See 66 Pa. C.S. § 1307(f). The Commission convenes an annual proceeding to review the proposed rates, including procurement practices to ensure the natural gas costs are consistent with a least cost procurement policy. Id. § 1307(f)(3)(v). Likewise, the PGC process provides customer with a meaningful opportunity to be heard. Id. § 1307(f)(4)

If the Commission's goal is to model the PTC after the PGC, then the Commission should reconsider mandating PTCs that are subject to adjustment on such a frequent basis (i.e., monthly for large customers and quarterly for smaller customers) to alleviate the burden on customers and to observe the principles of administrative efficiency, and to provide due process. Moreover, the Commission must provide customers with equivalent due process rights. Conspicuously absent from this provision is a requirement that the DSP serve its POLR customers with notice of its tariff filings. It is meaningless to provide customers with an opportunity to file exceptions, if the DSP is not required to notify its customers in a timely manner of the tariff filing. At a minimum, any customer that participates in the implementation proceeding or otherwise makes a request should receive timely notice and a copy of the filings.

The Commission should further provide interested parties with additional time to review the filings and the opportunity to be heard in the context of a public hearing. As proposed, the PTC reconciliation proceedings will not afford large C&I customers a meaningful opportunity to review and comment on DSP filings. As discussed supra, the PTC for large customers will be adjusted at least on a monthly basis. By logical extension, this means that customers will receive notices of filings (assuming the Commission adopts IECPA, et al.'s recommendation that DSPs be required to serve their POLR customers) at least on a monthly basis. In addition to the PTC itself being impractical as a pricing option, as discussed above, providing large customers with 20 days to review and comment on DSP filings that they receive each month is unduly burdensome. Twenty days is also insufficient to allow customers a meaningful opportunity to review and, as necessary, oppose these filings.

Finally, the proposed regulations unduly restrict the scope of the exceptions to "whether the DSP has properly implemented the procurement plan" and "accurately calculated rates." The Commission should not unreasonably limit the scope of the exceptions. Customers should be permitted to address not only the DSP's arithmetic, but also any matters related to the substance of the filing and the DSP's use of the PTC rate.

Thus, Section 54.184(f) must be modified to provide customers with equal due process and a meaningful opportunity to be heard in the context of PTC reconciliation proceedings.

H. Default Service Plans Should Not Include Highly Confidential Customer Information.

In the Rulemaking Order, the Commission sets forth revised Section 54.185(d), which identifies the required elements of a DSP's default service program filing. See Rulemaking Order, p. 12. Section 54.185(d)(7) requires a default service program to include a "schedule identifying all generation contracts of greater than 2 years in effect between a DSP, where it is

the incumbent EDC, and retail customers in that service territory." See § 54.185(d)(7). Section 54.185(d)(7) further provides that the schedule "should identify the load size and end date of the contracts." Id. Information pertaining to a customer's load size and contract expiration date is highly confidential and the public disclosure of such information is not critical to the procurement process. Accordingly, IECPA, et al. respectfully request that the Commission delete Section 54.185(d)(7), thereby eliminating the requirement that this highly confidential customer information is disclosed as part of a DSP's default service program.

According to Section 54.185, a DSP must file its default service program with the PUC Secretary and serve copies of such filing upon the OCA, OSBA, OTS, EGSs registered in the service territory (as well as other EGSs upon request), and the RTO in whose control area the DSP is operating. See § 54.185(a) & (b). As part of its default service program, a DSP must include a schedule identifying all generation contracts of greater than 2 years in effect between a DSP, including the load size and end date of the contracts, and retail customers in that service territory. See § 54.185(d)(7).

Customer-specific information, such as load size and contract duration, is highly confidential and commercially sensitive. Providing this information as well as a list of retail customers in a particular service territory would likely enable any inquiring mind to determine a large C&I customer's load size.[11] Based on this information, an industry rival could potentially infer pricing and profit margin figures or glean insight into proprietary and confidential production processes. C&I customers go to great lengths to ensure the confidentiality of this information. Releasing it into the public domain not only thwarts C&I customers' efforts, but also increases the likelihood that it will fall into the hands of a competitor.

It is unclear why this highly confidential customer information is a necessary part of the procurement process. Information about a customer's load size and contract expiration date is not, and should not become, public information as part of a DSP's default service program filing. In fact, protecting the confidentially of such information is consistent with the Competition Act as well as Commission regulations. If, however, the Commission determines that such information is necessary, the Commission should – at a minimum – require such information be subject to confidential treatment.

I. Proper Implementation of Section 54.189(c) Is Necessary To Facilite Shopping in the Post-Restructuring Period.

Section 54.189(c) provides that a "DSP shall treat a customer who leaves an EGS and applies for default service as it would a new applicant for default service." See § 54.189(c). Although this language mirrors Section 2807(e)(4) of the Public Utility Code, additional clarity is required regarding the scope of this obligation.

IECPA, et al. believe that the intention of the General Assembly was to ensure that the DSP could not engage in actions that would unreasonably discourage a customer from accessing competitive supply (or returning to default service). By having the ability to impose onerous requirements when a customer returns from competitive supply service that would not be imposed if the customer had remained on default service, the default service provider may discourage customers from accessing competitive supply at all. A primary example of this would be allowing the default service provider to demand a deposit or otherwise impose onerous creditworthiness requirements on the returning customer. Similarly, a customer should not be required to execute a new service agreement upon returning to default service (unless the

(continued footnote)
[11] For some service territories and facilities with uniquely large loads, the peak load information can be readily tied
(cont'd footnote)

customer has negotiated a rate in exchange for a commitment to remain on default service). Such requirements would have a chilling effect on customers' willingness to enter the market for fear that a return to default service would be costly, time-consuming or otherwise subject to risk and uncertainty. Moreover, such requirements would disregard the prior service relationship between a customer and the EDC. Thus, in order to facilitate shopping in the post-restructuring period, the Commission should clarify that customers may switch between POLR providers and EGSs without being subject to onerous and unnecessary requirements.

(continued footnote)
to a specific customer.

III. CONCLUSION

WHEREFORE, Industrial Energy Consumers of Pennsylvania ("IECPA"), Duquesne Industrial Intervenors ("DII"), Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), PP&L Industrial Customer Alliance ("PPLICA"), and West Penn Power Industrial Intervenors ("WPPII") respectfully request that the Pennsylvania Public Utility Commission modify the POLR regulations consistent with the Comments set forth herein.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By Vasiliki Karandrikas

David M. Kleppinger (Attorney I.D. #32091)
Derrick Price Williamson (Attorney I.D. # 69274)
Vasiliki Karandrikas (Attorney I.D. #89711)
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300

Counsel to Industrial Energy Consumers of Pennsylvania, Duquesne Industrial Intervenors, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group, Philadelphia Area Industrial Energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Intervenors

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