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**
DEFAULT SERVICE AND RETAIL ELECTRIC MARKETS	:	**DOCKET NO. L-00070183**

REPLY 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

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I. INTRODUCTION

On February 8, 2007, the Pennsylvania Public Utility Commission ("PUC" or "Commission") adopted a Proposed Policy Statement ("Policy Statement") regarding default service. In a companion order, the Commission adopted an Advance Notice of Final Rulemaking Order ("Rulemaking Order") that sets forth regulations defining the obligation of electric distribution companies ("EDCs") to serve electric retail customers at the conclusion of the restructuring transition periods, pursuant to Section 2807(e)(2) of the Electricity Generation Customer Choice and Competition Act ("Competition Act"). Whereas the Rulemaking Order sets forth regulations governing the "default service" framework, the Policy Statement proposes "initial guidelines" that will be applied to the first set of default service programs following the expiration of the generation rate caps and will be subject to re-evaluation prior to the submission of subsequent default service programs. See Policy Statement, p. 2.

The Commission invited public comment on the Policy Statement and Rulemaking Order. To that end, 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.") submitted comments in both proceedings to highlight particular areas of concern to large commercial and industrial ("C&I") customers.[1] Pursuant to the schedule set forth in the Rulemaking Order and Policy

[1] IECPA, et al. filed Comments at Docket Nos. L-00040169 and L-00070183 on March 2, 2007. Given the substantial degree of overlap between the two proceedings and the large number of parties that submitted one set of comments at both dockets, IECPA, et al. respond to the issues raised in these comments in the instant Reply Comments.

Statement, IECPA, et al. submit these Reply Comments. IECPA, et al. welcome this opportunity to respond to Comments filed by other stakeholders.[2] As discussed more fully herein: (1) hourly or monthly pricing should not be the only default service price option for large C&I customers; (2) a mandatory, long-term pricing option for large C&I customers is necessary to meet the goals of the Competition Act; (3) the Commission must permit default service providers ("DSPs") to use long-term contracts to procure all forms of supply; (4) the Commission should preserve declining block rates and demand charges as rate design tools; (5) the Commission should reject proposals to implement a decoupling mechanism or a system benefits charge ("SBC") as beyond the proper scope of these proceedings; (6) the Commission should reject Duquesne Light Company's ("Duquesne") proposal to delay effectiveness of the final regulations until 2011; and (7) the Commission should clarify that any rate mitigation proposal that results in rate increases prior to the end of the generation rate caps can be implemented only through mutual renegotiation of restructuring settlement agreements that are still in effect.

II. REPLY COMMENTS

As the rulemaking on provider-of-last-resort ("POLR") obligations proceeding draws to a close, it is important that the Commission remain mindful of the legislative intent underlying the Competition Act. As the General Assembly properly noted, the "cost of electricity is an important factor in decisions made by businesses concerning locating, expanding, and retaining facilities in this Commonwealth." 66 Pa. C.S. § 2802(6). An important objective in transitioning to greater competition was to "benefit all classes of customers and to protect this Commonwealth's ability to compete in the national and international marketplace for industry

[2] IECPA et al.'s Reply Comments will not respond to every argument contained in all of the parties' Comments, but only those issues necessitating additional response or emphasis. To the extent that IECPA, et al. do not respond to an argument, this should not be construed as agreement with any party's position.

and jobs." Id. § 2802(7) (emphasis added). As discussed below and detailed in previous comments, proposals to move large C&I customers to hourly or monthly pricing, to prohibit DSPs from providing long-term, fixed-priced options to large C&I customers, and to restrict DSPs' ability to use long-term contracts to procure supply at the lowest reasonable long-term cost to consumers plainly thwart the Competition Act's economic development objective. Proposals by other parties to create additional surcharges and delay implementation of the final regulations in the Duquesne service territory similarly do not advance this central goal of the Competition Act.

Statutory phrases must not be construed in isolation; statutes must be read as a whole. Reading a statute in its entirety entails assigning meaning to all words in the statute so that no provision therein is rendered mere surplusage.[3] In interpreting Section 2807, the Commission must give effect to the General Assembly's clear intention to preserve and promote economic development in promulgating the Competition Act.[4] The provisions establishing POLR service are but one component of the Competition Act.[5]

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[3] When interpreting legislation, one must construe statutory language so as to "give effect to all of its provisions." 1 Pa. C.S. § 1921; see also Cabot Blvd. Transp. Dev. Ordinance No. 02-12 v. Falls Twp., 863 A.2d 1264 (Pa. Commw. Ct. 2004).

[4] "The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly." 1 Pa. C.S. § 1921.

[5] Moreover, "[w]hen construing one section of a statute, courts must read that section not by itself, but with reference to, and in light of, the other sections because there is a presumption that in drafting the statute, the General Assembly intended the entire statute to be effective." Commonwealth v. Lopez, 663 A.2d 746, 748 (Pa. Super. 1995).

A. Hourly or Monthly Pricing Should Not Be the Only Default Service Price Option for Large C&I Customers – POLR Regulations Must Require One Fixed-Price Option.

In lieu of fixed-rate options or hourly rates, the Rulemaking Order proposes that each customer will have a single rate option (i.e., price-to-compare or "PTC") that would be adjusted periodically. See Rulemaking Order, p. 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 Rulemaking Order, § 54.187(j). Several commenters, namely retail marketers, opposed this proposal, arguing that large C&I customers should be subject to hourly real-time pricing for POLR service.[6]

As previously explained in IECPA, et al.'s various sets of Comments and Reply Comments, some large C&I customers may desire an hourly or monthly priced rate, and both are appropriate POLR options to provide to customers; however, many large C&I customers have load profiles and/or production processes preventing utilization of hourly or monthly pricing mechanisms. Hourly prices are tied to natural gas, which means that the prices will likely be high and volatile. Energy-intensive businesses simply cannot remain competitive in the global marketplace under these circumstances. Hourly prices devastate energy intensive businesses, erode jobs, and inhibit the capital investment required to keep businesses competitive. Requiring spot market pricing for large customers subjects these customers to arbitrary price increases and prices so volatile that they frustrate the effective budgeting required for large C&I customers to

[6] See National Energy Marketers Association ("NEMA") Comments, Docket No. L-00040169, p. 3; Hess Corporation ("Hess") Comments, Docket Nos. L-00040169 and M-00072009, p. 4; Direct Energy Services, LLC ("Direct Energy") Comments, Docket Nos. L-00040169 and M-00072009, p. 10; Retail Energy Supply Association ("RESA") Comments, Docket Nos. L-00040169 and M-00072009, p. 3; Strategic Energy Comments, Docket Nos. L-00040169 and L-00070183, p. 7; Reliant Energy, Inc. ("Reliant") Comments, Docket Nos. M-00072009 et al., p. 8; and PPL Electric Utilities Corporation ("PPL") Comments, Docket No. L-00040169, p. 15.

compete for investment capital. If larger customers are unable to specifically determine and plan for these budgetary expenses, the overall production process for these customers may be hindered. A POLR pricing strategy that compromises large customers' ability to do business is directly contrary to the Competition Act. See 66 Pa. C.S. § 2802(7). Accordingly, all customers must be offered at least one fixed-price POLR option; no customer should have hourly or monthly prices for service as the only option from the EDC. See Comments of IECPA, et al., Docket No. L-00040169, pp. 22-26 (Apr. 27, 2005); Reply Comments of IECPA, et al., Docket No. L-00040169, pp. 8-11 (June 27, 2005); Comments of IECPA, et al., Docket Nos. M-00051865 and L-00040169, pp. 17-20 (Mar. 8, 2006); Comments of IECPA, et al., Docket No. L-00040169, p. 5 (Mar. 2, 2007); Comments of IECPA, et al., Docket No. L-00070183, p. 7-11; see also Reply Comments of Industrial Customers, Docket No. M-00061957, pp. 7-10 (July 20, 2006); U.S. Steel Corporation Comments, Docket No. M-00072009, p. 4 (Mar. 2, 2007); and U.S. Steel Corporation Comments, Docket No. L-00040169, p. 5 (Mar. 2, 2007).

B. A Mandatory, Long-Term Pricing Option for Large C&I Customers Is Necessary To Meet the Goals of the Competition Act.

The Commission's Policy Statement allows a DSP to propose an annual (or longer) fixed-rate option for large C&I customers. See Policy Statement, § 69.1805(3).[7] Parties argue that large C&I customers should not have a fixed-price option. See, e.g., Comments of Strategic Energy, Docket Nos. L-00040169 and L-00070183, p. 7. As stated in the March 2nd Comments,

[7] As previously noted, this aspect of the 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 Policy Statement.

IECPA, et al. appreciate the Commission's recognition of customers' prior arguments by including this as a permissive default service offering, but such a default service offers must be mandatory to meet the goals of the Competition Act. See Comments of IECPA, et al., Docket No. L-00040169, pp. 3-9 (Mar. 2, 2007); Comments of IECPA, et al., Docket No. L-00070183, pp. 7-11 (Mar. 2, 2007); see also Comments of IECPA et al., pp. 22-26 (Apr. 27, 2005); Reply Comments of IECPA, et al., pp. 8-11 (June 27, 2005); U.S. Steel Corporation Comments, Docket No. M-00072009, p. 4.

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. 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. The Competition Act permits negotiated tariffs in order to meet the needs of a specific utility customer, and requiring DSPs to offer a long-term, fixed-price option is consistent with the Competition Act.

C. The Commission Must Permit DSPs To Use Long-Term Contracts To Procure All Types of Supply.

According to Section 69.1805, long-term contracts "should only be used where necessary and required for DSP compliance with alternative energy requirements, and should be restricted

to covering a relatively small portion of the default service load." See Policy Statement, § 69.1805. A number of commenters support the Commission's proposal to limit the use of long-term contracts or urge the Commission to prohibit absolutely the use of long-term contracts.[8] Citizens for Pennsylvania's Future ("PennFuture") argues that long-term contracts should be permitted only for alternative resources.

As IECPA, et al. have previously argued, the Competition Act permits DSPs to utilize all available market tools in procuring default service supply, including long-term contracting.[9] To meet the goal in the regulations of ensuring that the POLR price reflects the lowest reasonable cost, the ability to enter into long-term contracts must extend to all types of generation resources. Under the Competition Act, a DSP need only "acquire electric energy at prevailing market prices to serve the customer." 66 Pa. C.S. § 2807(e)(3). In order to obtain electricity at prevailing market prices, the DSP need only demonstrate that the price indicated in a long-term contract is the prevailing market price for similar contracts of like character and duration at the time of execution. Thus, as long as the price of the long-term contract reflects the prevailing prices for the acquired product at the time of acquisition, the contract meets the requirements of the Competition Act. See IECPA, et al. Comments, Docket No. L-00040169, pp. 17-19 (Mar. 2, 2007); IECPA, et al. Comments, Docket No. L-00070183, pp. 4-5 (Mar. 2, 2007); see also IECPA, et al. Comments, pp. 12-15 (Mar. 8, 2006); see also IECPA, et al. Reply Comments, pp. 6-11 (Apr. 7, 2006).

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[8] See, e.g., Direct Energy Comments, Docket Nos. L-00040169 and M-00072009, pp. 5-8; Strategic Energy Comments, Docket Nos. L-00040169 and L-00070183, pp. 5-8; and Reliant Comments, Docket Nos. M-00072009 et al., pp. 10-12.

[9] See also U.S. Steel Corporation Comments, Docket No. L-00040169, p. 4; Duquesne Comments, Docket Nos. L-00040169 and L-00070183, pp. 8-14; and PPL Comments, Docket No. M-00072009, p. 7 (supporting DSPs' use of bilateral contracts to procure default service supply).

D. The Commission Should Preserve Declining Block Rates and Demand Charges As Rate Design Tools.

In order to provide "incentives for conservation" and to "reflect the actual cost of energy," the Commission abolished "declining blocks" and demand charges. See Rulemaking Order, p. 17; see also Policy Statement, p. 8. Several parties expressed support for the Commission's action, which was based on the mistaken belief that the use of declining block rates and demand charges undermine conservation.[10] As previously explained, 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. 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. 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. See Comments of IECPA, et al., Docket No. L-00040169, pp. 9-12 (Mar. 2, 2007); Comments of IECPA, et al., Docket No. L-00070183, pp. 11-13 (Mar. 2, 2007).

[10] See, e.g., Duquesne Comments, Docket Nos. L-00040169 and L-00070183, p. 24; Office of Small Business Advocate ("OSBA") Comments, Docket Nos. L-00040169 and M-00072009, p. 8-9; Constellation Energy Group Companies ("Constellation") Comments, Docket Nos. M-00072009, p. 2; Dominion Retail, Inc. ("Dominion") Comments, Docket Nos. L-00040169 and L-00070183, p. 6; and PennFuture Comments, Docket No. M-00072009, p. 1.

E. Proposals To Implement a Decoupling Mechanism or System Benefits Charge Are Not Within the Proper Scope of This Proceeding.

PennFuture recommends that rate design should incorporate a decoupling mechanism. See PennFuture Comments, Docket No. M-00072009, p. 1. PennFuture also recommends that the Commission mandate an SBC on all electricity sold in the state to fund energy efficiency programs. See id. at 3. As a threshold matter, these issues are not within the proper scope of this proceeding. More importantly, both proposals are flawed and unnecessary.

Pursuant to the Commission's Proposed Rulemaking Order, the focus of this proceeding is to define POLR obligations to serve to retail customers at the conclusion of each EDC's transition period. Mechanisms for funding energy conservation programs such as an SBC, or to compensate EDCs for implementing undefined energy efficiency programs, such as revenue decoupling, are not related to the EDCs' POLR obligations and do not fall within the purview of the Proposed Rulemaking Order.

In addition, there is no evidence that decoupling or an SBC is necessary. The concerns raised by decoupling proponents are better addressed by implementing correct cost allocations and rate designs that reflect the actual costs to serve each customer class. Furthermore, it is not clear that a decoupling mechanism can be designed to capture only the revenue losses attributable to energy conservation programs, as PennFuture suggests. Regardless, compensating utilities for "lost revenues" is bad policy (it provides no incentive to customers to curtail usage),[11] and it may well be beyond the Commission's legal power to award them. See, e.g., Pa. Industrial Energy Coalition v. Pa. P.U.C., 653 A.2d 1336, 1353 (Pa. Commw. Ct. 1995).

[11] As a matter of course, large C&I customers already engage in demand-side management, energy conservation, and energy efficiency in order to reduce production costs and optimize production. Requiring these same customers to compensate EDCs for revenues "lost" as a result of engaging in common sense, cost-saving business measures would be non-sensical and decidedly anti-business.

Similarly, implementing an SBC to create a "slush fund" for unidentified future energy efficiency projects is not appropriate under the Commonwealth Court's decision in Lloyd v. Pa. P.U.C., 904 A.2d 1010 (Pa. Commw. Ct. 2006). Contrary to PennFuture's implication, the Lloyd decision did not authorize a surcharge for energy efficiency; it simply upheld the Commission's decision that the actual projects to be funded for a limited additional time (i.e., 2 years) through PPL's distribution revenue requirement produced sufficient benefits to justify customer funding. No such showing exists at this rulemaking docket to justify a similar conclusion.

Finally, it is at best unclear whether the Commission has the legal authority under the Public Utility Code to implement a decoupling mechanism or a surcharge for this purpose. Both proposals constitute single-issue rulemaking, which is prohibited. See Pa. Industrial Energy Coalition v. Pa. P.U.C., 653 A.2d at 1350. In addition, both proposals increase costs to customers, which is contrary to the goals of the Competition Act. Finally, because PennFuture's SBC is charged on a cents per kWh basis, it disproportionately harms large C&I customers, especially in comparison to the limited benefit to this class, and, as such, is an unduly discriminatory, regressive energy tax. For these reasons, and a multitude of other reasons, any proposal to implement a decoupling mechanism or an SBC should be rejected.

F. The Final Regulations and Policy Statement Should Apply Immediately in all Areas Where Rate Caps Have Expired, Especially for Large C&I Customers in Duquesne's Service Territory.

Duquesne suggests that the final regulations and policy statement should apply starting in 2011. See Duquesne Comments, Docket Nos. L-00040169 and L-00070183, p. 4. This suggestion is highly inappropriate, especially for large C&I customers in Duquesne's service territory.

As the Commission is aware, Duquesne currently is providing service under its second post-rate cap POLR plan. On January 25, 2007, Duquesne submitted its third plan to address the period from January 1, 2008 through December 31, 2010. See Petition of Duquesne Light Company for Approval of Default Service Plan For the Period January 1, 2008 Through December 31, 2010, Docket No. R-00072247. Duquesne entered into a wholesale contract for fixed-price service for its Residential and Small Commercial customer plans, but not for its large C&I plan. Due to the previously-executed contracts for the Residential and Small Commercial customer plans, the parties are litigating the filing on an expedited basis. While customers in the remainder of the Commonwealth continued to be under the shelter of rate caps, the large C&I customers in the Duquesne territory have served as guinea pigs for the Commission regarding default service policies. Now that the Commission has concluded its experiment and is prepared to establish the statewide default service rules that contemplate default service options for large C&I customers with more price stability than the hourly-priced service that Duquesne proposes, the Commission must require immediate compliance by Duquesne. The large C&I customers in Duquesne's service territory have been unfairly disadvantaged for too long and this should not continue. Duquesne's proposal to delay effectiveness of the regulations and policy statement until 2011 must be rejected.[12]

[12] At Docket No. P-00072247, Duquesne also requested for its default service plan to be grandfathered from complying with the regulations. Expending the parties' and the Commission's resources debating the design of the large C&I default service plan at Docket No. P-00072247 is wasteful until the regulations and policy statement are finalized. As a result, on March 12, 2007, DII filed a Motion to Sever and Postpone Consideration of Large Commercial and Industrial Default Service Plan, which remains pending before the Administrative Law Judge. To resolve any further ambiguity regarding this issue, IECPA, et al. request that the Commission explicitly confirm in its final orders at these dockets that Duquesne will be required to implement the regulations and policy statement upon effectiveness at least for its large C&I customers.

G. Any Rate Mitigation Proposals Must Be Consistent with Restructuring Settlement Agreements That Remain in Effect.

To avoid rate shock attributable to the expiration of rate caps, Allegheny Power ("Allegheny") advocates a "ramp up" approach, whereby the Commission builds a "ramp" over the price cap expiration point, gradually increasing prices both before and after the cap expiration date. See Allegheny Comments, Docket Nos. M-00072009 et al., pp. 13-14. Allegheny claims that it proposed this approach in Maryland. Allegheny contends that ratepayers will "get to – but never have to pay more than – the market price." Id. at 13.

In outlining its proposal, Allegheny fails to address how this complies with the rate caps under the Competition Act and the number of PUC-approved restructuring settlement agreements that exist. Any changes to the rates that were established in those settlements must be accomplished through mutual renegotiation and must occur only in exchange for appropriate benefits for the original signatories to those settlements (as was the case with West Penn Power in their second "securitization" proceeding). Therefore, IECPA, et al. respectfully submit that the Commission clarify that any mitigation proposal must be consistent with restructuring settlement agreements that remain in effect.

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 and Policy Statement consistent with the previously submitted Comments and these Reply Comments.

Respectfully submitted,

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