**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held April 28, 2011

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

Tyrone J. Christy, Dissenting

Wayne E. Gardner

James H. Cawley

# Investigation of Pennsylvania’s I-2011-2237952

Retail Electricity Market

# 

# ORDER

In 1996, Pennsylvania emerged as a national leader in electricity policy and passed the Electricity Generation Customer Choice and Competition Act (Competition Act).[[1]](#footnote-1) At that time, the Legislature stated that “[e]lectric service is essential to the health and well-being of residents, to public safety and to orderly economic development, and electric service should be available to all customers on reasonable terms and conditions.”[[2]](#footnote-2) The Legislature further recognized that “[t]he cost of electricity is an important factor in decisions made by businesses concerning locating, expanding and retaining facilities in this Commonwealth.”[[3]](#footnote-3)

Those words remain as true today as when the Competition Act was passed. In the time since the passage of the Competition Act, though, the marketplace has evolved. As this Commission has stated before, one of the great challenges for regulators is remaining fully informed and current with the industries and markets they regulate. With that challenge before the Commission, it was stated in the context of the FirstEnergy – Allegheny Power merger that a statewide investigation would be conducted “with the goal of making recommendations for improvements to ensure that a properly functioning and workable competitive retail electricity market exists in the state.”[[4]](#footnote-4) This Order follows through on that directive and initiates the investigation into Pennsylvania’s retail electricity market.

The investigation will proceed in two distinct phases. The first phase is designed to assess the status of the current retail market and explore what changes need to be made to allow customers to best realize the benefits of competition. At the conclusion of this first phase, the Commission will initiate the second phase to examine and address how to best resolve the issues raised and implement the prudent changes identified based upon our review of the comments received during the initial phase.

To that end, interested parties are directed to answer the following questions, with responses due June 3, 2011:

1.    What is the present status of competition for retail electric generation for customers, by class and service territory, and for alternative suppliers?

2. Does the existing retail market design in Pennsylvania present barriers that prevent customers from obtaining and suppliers from offering the benefits of a fully workable and competitive retail market?  To the extent barriers exist, do they vary by customer class?  
  
3. What are the economic and managerial costs associated with electric distribution companies (EDCs) fulfilling the default service role?[[5]](#footnote-5) Are the EDCs accurately passing those costs along to default service customers? Do default service rates include any elements that are not cost-based? Is an examination of distribution rates needed to ensure proper cost allocation? Are there barriers to competition as a result of having EDCs provide default service?

4. Are there unintended consequences associated with EDCs providing default service, and related products, such as time-of-use rates?

5.    Should default service continue in its current form?  Does default service impede competition or otherwise prevent customers from choosing electricity products and services tailored to their individual needs?  Does default service provide an advantage to the incumbent EDC and/or its generation affiliate(s)?  
  
6.    Can/should the default service role be fulfilled by an entity, or group of entities, other than the EDC? If the default service role should be filled by an entity other than an EDC, what mechanisms could be employed to transition the default service role away from the EDC and onto competitive electric generation suppliers (EGSs)?  Are different approaches appropriate for different customer classes? What criteria should be used to ensure that EGSs are qualified to assume the default service role and maintain reliable service?  
  
7.    How can Pennsylvania's electric default service model be improved to remove barriers to achieve a properly functioning and robust competitive retail electricity market? Are there additional market design changes that should be implemented to eliminate the status quo bias benefit for default service?  
  
8.    What modifications are needed to the existing default service model to remove any inherent procurement (or other cost) advantages for the utility?

9. What changes, to Regulations or otherwise, can the Commission implement on its own under the existing default service paradigm to improve the current state of competition in Pennsylvania?

10.    What legislative changes, including changes to the current default service model, should be made that would better support a fully workable and competitive retail market?

11. Are there, or could there be, potential barriers being created by the implementation of the EDC Smart Meter plans?

Upon receipt and review of comments from all interested parties, the Commission will initiate the second phase of the investigation by organizing working groups to be headed by the Commission’s Office of Competitive Market Oversight. These working groups will be tasked with studying how best to address and resolve the issues identified by the Commission as being most relevant to improving the current retail electricity market. Upon conclusion of the investigation, the working groups shall provide recommendations outlining specific courses of action to be taken by the Commission to improve the retail electricity market.

The Commission will hold two *en banc* hearings, one for each stage of the investigation, to allow invited parties the opportunity to discuss the topics raised in this proceeding. The first *en banc* hearing is now scheduled for June 8, 2011. The Commission will schedule a subsequent *en banc* hearing upon launching the second phase of the investigation.

Parties who wish to request the opportunity to testify at the June 8 *en banc* hearing should contact the Office of Competitive Market Oversight by May 13, 2011, at [ra-ocmo@state.pa.us](mailto:ra-ocmo@state.pa.us) or 717-783-5331, and provide the name of the person and organization who wishes to testify, along with a brief description of the issues on which testimony would be provided. After that date, the Commission will issue invitations to those who will be given the opportunity to provide testimony at the *en banc* hearing. Parties who are not selected to testify are still requested to submit written comments, which will be given the same weight as the comments of those parties who are selected to testify.

**Conclusion**

Based on the foregoing discussion, and pursuant to our authority in Sections 501 and 2811 of the Public Utility Code, 66 Pa. C.S. §§ 501 and 2811, we will direct the initiation of the Investigation of Pennsylvania’s Retail Electric Market; **THEREFORE,**

**IT IS ORDERED:**

1. That the Secretary shall establish an investigation docket at I-2011-2237952, consistent with this Order.

2. That this Order shall be served on all jurisdictional Electric Distribution Companies, all licensed Electric Generation Suppliers, the Office of Consumer Advocate, the Office of Small Business Advocate, the Energy Association of Pennsylvania and the Retail Energy Supply Association.

3. That comments filed in response to this Order are due no later than June 3, 2011. Interested parties may submit written comments, an original and 5 copies, to the Secretary, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265. Comments may also be filed electronically through the Commission e-File System. A copy of the comments shall be submitted to the Office of Competitive Market Oversight at [ra-OCMO@state.pa.us](mailto:ra-OCMO@state.pa.us). No reply comments shall be permitted.

4. That the contact persons for the first phase of this Investigation are Assistant Counsel Patricia Krise Burket, 717-787-3464, and Assistant Counsel H. Kirk House, 717‑772-8495. Inquiries regarding the initiation of this Investigation may also be e‑mailed to the Commission’s Office of Competitive Markets Oversight at [ra‑OCMO@state.pa.us](mailto:raOCMO@state.pa.us).

5. That a copy of this Order shall be posted on the Commission’s website at the Office of Competitive Markets Oversight web page: [www.puc.state.pa.us/electric/electric\_CompetitiveMarketOversight.aspx](file:///C:\Documents%20and%20Settings\kmoury\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\IBF85KD4\www.puc.state.pa.us\electric\electric_CompetitiveMarketOversight.aspx)

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: April 28, 2011

ORDER ENTERED: April 29, 2011

1. 66 Pa. C.S. §§ 2801 – 2812. Act 129 of 2008 subsequently amended Chapter 28 of the Public Utility Code and added Sections 2813 – 2815. [↑](#footnote-ref-1)
2. 66 Pa. C.S. § 2802(9). [↑](#footnote-ref-2)
3. 66 Pa. C.S. § 2802(6). [↑](#footnote-ref-3)
4. *Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Company and Trans-Allegheny Interstate Line Company*, Docket Nos. A-2010-2176520 and A-2010-2176732 (Order entered March 8, 2011), at 46. [↑](#footnote-ref-4)
5. *See generally* 52 Pa. Code §§ 54.182 and 54.184. [↑](#footnote-ref-5)