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SECRETARY'S BUREAU

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Box 3265  
Harrisburg, PA 17105-3265

May 18, 2011

**RE: Joint Motion of Chairman Robert F. Powelson and Vice Chair John F. Coleman at Docket # I-2011-2237952, Request for Comments**

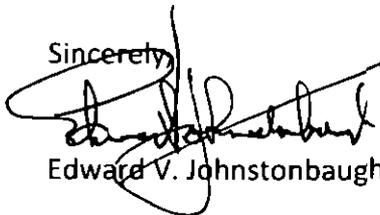
Dear Secretary Chiavetta:

As administrator of a statewide Alternative Energy Credit aggregation group I appreciate this opportunity to provide input on the above referenced subject with the attached response (original and 15 copies) to the questions that are part of the motion.

The passage and enactment of the Alternative Energy Portfolio Standards act of 2004, Act 35 of 2007, and Act 129 of 2008 each establish numerous strategic links and responsibilities to and of the Electric Distribution Utilities in the Commonwealth. Large investments of both State grant funds and private investments have been made based on the assumption that these links and responsibilities were sacrosanct. In the Commission's current investigation of the state of the competitive retail electric market, on behalf of our members, I respectfully request that the rules and regulations that impact the Alternative Energy Credit marketplace be left unaltered and the links and responsibilities here to for relegated to the EDCs be left as is. Failure to do so will ultimately break the trust and inflict a blow to the Alternative Energy Credit market resulting in a serious setback if not a knockout punch.

I remain available at the convenience of the Commissioners and Commission staff to discuss this matter in greater detail.

Sincerely,



Edward V. Johnstonbaugh, Administrator

## Comments in Response to the Investigation of Pennsylvania's Retail Electric Market

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

The retail electric generation market across the Commonwealth has been fully engaged for less than six months. In Electric Distribution Company (EDC) service territories where rate caps have expired in preceding years competition is providing choice as the law had anticipated. In EDC service territories where rate caps have recently expired the market needs time to develop.

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 market? To the extent barriers exist, do they vary by customer class.

No, there are no barriers per se, what is lacking is adequate time without overbearing market distortions. For the competitive retail market to reach equilibrium the market must be left to find its way. Even the threat of the introduction of market distorting policies will retard the development of self regulating market forces.

3. What are the economic and managerial costs associated with electric distribution companies (EDCs) fulfilling the default service role? Are EDCs accurately passing those costs along to default service customers? Do default service rates include and 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?

EDCs in the Commonwealth, having been granted exclusive franchise rights, monopoly status, and a guaranteed Rate of Return assume certain business

obligations in exchange for this preferential status. This historic “quid pro quo” with the Commission was in no manner obviated by the law deregulating the market or any of the subsequent modifications to the law or rules and regulations implemented to enact the law. With a clearly defined obligation to fulfill the default service provider role each EDC has a responsibility to its ratepayers and shareholders to recover or defer as a regulatory asset all costs associated with the provision of such service. With the amount of time that has passed (more than a decade) since almost all EDCs have filed a top to bottom rate case and the absence of a rate case queue at the present time, an assumption can be made that the EDCs are over collecting, or are due sizable recoveries from deferred assets. There is also the possibility that they are waiting out the “changing of the guard” at the Commission in anticipation of more favorable treatment down the road.

It is therefore, in light of these many unknowns, time for an expedited rate inquiry for all EDCs across all customer classes to allow the current balance of accounts to be tried up. Doing so would clear the slate of deferred regulatory assets and assure that rate payers are only paying costs that are correctly allocated.

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

As is often the case with attempts to “fix” markets the resulting “unintended consequence” is a retardation or ultimate destruction of the market. The competitive retail market in the Commonwealth has spent more than twelve years shedding itself of protective measures meant to create a transitioning market. These protections were enacted after well thought out, deliberate proceedings like this one. Those who participated in those proceedings over a decade ago aren’t surprised that they are once again cobbling together comments in attempt to try and stem off a recurrence of over reach of market protection.

Whatever the motivation is to unburden the EDCs in the Commonwealth of the statutory obligations of default service provider, contemplating a market where default supply is the responsibility of the “low bidder”, one must first ignore all of the obligations linked by law that binds the EDC’s to the current market design. In exchange for the assumption of obligations, EDC’s enjoy and profit from monopoly status, guaranteed franchise territories and a regulation stipulated Rate of Return (ROR). Absent any filed or pending rate cases within the Commonwealth that would indicate the need for rate adjustments to rebalance the cost of these obligations and correct a subpar ROR, as of this writing there are none. Modified and new obligations such as Time-of–Use rates and Smart Metering requirements have been specifically assigned to the EDC’s, by law (Act 129), with the guarantee of full cost recovery. There are no third party non-regulated entities that can undertake such responsibilities as they would have to do so without the guarantees and protections from financial losses the EDCs have been granted.

If the EDCs where to be relieved of any single responsibility there would also be a need for the revocation or diminishment of one or more of these guarantees or protections to maintain market balance. This may require the opening of the various negotiated EDC restructuring settlements to insure that a quid pro quo exchange is equitable.

5. Should default service continue in its present 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?

Default service must be maintained to insure retail electric market stability, integrity of credit markets and distribution network reliability. Over the course of the past decade the Pennsylvania market had one specific registered EGS named Utility.com that defaulted on its retail supply obligation. A review of the history of this fiasco, the losses absorbed by the

EDCs and the steps that had to be taken to clean up the resultant mess will answer the question (with exclamation point) about whether or not EDC sourced default supply is prudent.

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 the EDC, what mechanisms could be employed to transition the default service role away from the EDC and onto competitive Electric Generation Suppliers (EGS)? Are different approaches appropriate for different customer classes? What criteria should be used to ensure that EGSs are qualified to assume default service role and maintain reliable service?

Once again this question has been asked and answered in recent Pennsylvania history. At the end of the day the EDC's have and maintain confidential customer historic records. They own, install and maintain millions of meters needed to conduct their business, and settle month in month out financial activities. The volume of information that comprises the sum total of these business activities cannot here be quantified. In the current business model the EDCs, under scrutiny of the Commission, competitively bid the majority of the default supply requirements. To the extent possible the playing field between EDC affiliates and non-affiliate EGSs has been leveled. EDCs backstop these activities with their ability to cover over/under supply on both a short term and long term basis.

Heaped on top of default supply are other activities that fit hand in glove with this obligation. Examples of these activities are Net Metering of alternative energy, Smart Metering, Real Time Pricing and Time-of-Use rates. Other activities include administration of LIHEAP and LIURP programs. A number of these responsibilities have yet to be launched. Any

attempt to off load or shift these EDC obligations won't improve the competitive market instead a market retraction or abandonment by EGSs is more likely.

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?

The early design of the Pennsylvania competitive electric market design included in the restructuring settlements of the major utilities a component that was known as Competitive Default Supply or CDS. The design of CDS segmented blocks (20% of residential accounts) of randomly chosen non-shopping residential customers and solicited bids from EGSs to supply these loads. The only utility to successfully bid CDS was PECO. Over the course of the subsidized supply contract the successful bidder (NewEnergy) eventually defaulted on the agreement and customers reverted to PECO as Provider of Last Resort (PLR). The CDS design allowed randomly selected customers to opt out. Customers who opted out were replaced by new random selections. CDS failed statewide because the rate caps provided too little "head room" for an EGS to carve out a profit. Because of market immaturity at the time the CDS requirement for all EDCs with more than 100,000 customers was quietly shelved and remains so to this date

Today with rate caps removed reviving CDS, which is still on the books as a restructuring settlement requirement, may be worth another look.

8. What modifications are needed to the existing default service model to remove any inherent procurement (or other cost) advantages for the utility?

Any inherent advantage an EDC has over and EGS results from a secure credit standing in the industry resulting from the guaranteed Rate of Return and monopoly standing. That advantage cuts two ways as the EDC lives under the scrutiny of regulators who administer a very restrictive and overbearing procurement process that requires “insurance fees”. There are others with oversight responsibilities such as the Office of Consumer Advocate that drive up costs. Depending on how one weights the pros and cons, the perceived advantages are likely neutralized by the many regulatory barriers.

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.

It is time to assume a holding pattern instead of introducing new market distortions. Spend the next five years letting the market develop while conducting a review of requirements that are already on the books such as Competitive Default Supply and Competitive Metering Services. Implementing these improvements will be time well spent.

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

The legislation already exists; it is still in the process of being fully enacted.

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

Metering was also deregulated by the original enabling legislation. Competitive Metering Providers were intended to be able to compete with EDCs for the provision of these services. The rules and the Electronic Data Interfaces to permit competitive metering services were also shelved about a decade ago. Complete and implement this portion of the Commissions mandate and Smart Metering Plans will have to compete and won't be a barrier of any kind.

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