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December 10, 2012

Rosemary Chiavetta, Esq., Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

**Re: INVESTIGATION OF PENNSYLVANIA'S RETAIL ELECTRICITY MARKET:
END STATE OF DEFAULT SERVICE (Docket No. I-2011-2237952)**

Dear Secretary Chiavetta:

Enclosed for filing please the Comments of the Energy Association of Pennsylvania filed to the Tentative Order in the above-referenced docket.

Sincerely,

A handwritten signature in blue ink that reads "Terrance J. Fitzpatrick".

Terrance J. Fitzpatrick
President and CEO

CC: Robert F. Powelson, Chairman
John F. Coleman, Vice Chairman
Pamela A. Witmer, Commissioner
Wayne E. Gardner, Commissioner
James H. Cawley, Commissioner
Ra-RMI@pa.gov (via electronic mail)
Megan Good (via electronic mail to megagood@pa.gov)
Kirk House (via electronic mail to hhouse@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation of Pennsylvania's	:	I-2011-2237952
Retail Electricity Market	:	
End State of Default Service	:	

**COMMENTS OF THE
ENERGY ASSOCIATION OF PENNSYLVANIA
TO THE TENTATIVE ORDER ENTERED NOVEMBER 8, 2012**

I. Introduction

On November 8, 2012, the Commission entered a Tentative Order in the above-captioned investigation of Pennsylvania's retail electricity market. The purpose of the Tentative Order was to issue for public comment the end state default service model proposed by the Office of Competitive Market Oversight (OCMO). The Energy Association of Pennsylvania (EAP) respectfully submits these comments to the Tentative Order on behalf of the following electric distribution company (EDC) members.¹

II. As the Commission recognized, the current law must be amended to authorize quarterly procurement for default service to residential and small commercial and industrial customers.

In phase two of this investigation, the Commission has examined whether changes should be made to the current model under which EDCs provide default supply service to residential and small commercial and industrial customers. This has included considering

¹ Citizens' Electric Company; Duquesne Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; Pennsylvania Power Company; PPL Electric Utilities; UGI Utilities, Inc.-Electric Division; Wellsboro Electric Company; and West Penn Power Company.

whether default service should continue to be provided by EDCs, and, if EDCs continue in this role, how they should procure electricity to provide default service.

The Commission has now tentatively concluded that EDCs should remain in the role of default service providers (DSP), subject to the existing statutory and regulatory standards for naming an alternative DSP. However, the Commission has also concluded that it should seek a legislative amendment so that the default service product for residential and small commercial / industrial customers would be more reflective of current market conditions.

Specifically, the Commission proposes to seek legislation that would authorize it to institute quarterly auctions to procure tranches of full requirements, load-following contracts. This would replace the current approach under Act 129 of 2008, which requires EDCs to procure a “prudent mix” of spot market, short-term, and long-term contracts designed to ensure “adequate and reliable service” and to produce the “least cost over time.”² The Commission reasons that this policy change to shorter term procurements is necessary to establish a retail market that is sustainable in the long-run, because it believes that if wholesale electricity prices rise, EGSs may exit the retail market rather than attempt to compete with EDC default service prices that do not timely reflect changes in wholesale prices.

EAP is neutral on this proposed policy change. EAP has asserted consistently throughout this proceeding that continuing to provide default service under the current model is not critical to the business interests of EDCs, because EDCs generally do not earn any profit for providing this service. EAP will defer to the General Assembly to determine the appropriate balance between policies that rely on market forces and regulation, and will cooperate with policymakers and provide information on the ramifications of different policies.

While EAP is neutral on the policy issue, it supports the Commission’s decision to seek a legislative amendment to effectuate its proposed policy change. The Commission concluded

² See, 66 Pa.C.S. §2807 (e)(3.2), (3.4).

early in this proceeding that there were flaws in the retail electricity market,³ and it has focused on intermediate and long-term policies that would improve the competitiveness of the market by attracting more EGSs and EGS product offerings. As currently written, however, the Competition Act reflects a balance between reliance on market forces and reliance on regulation. The Act 129 amendments to the Competition Act, enacted four years ago, tipped the scales toward greater reliance on regulation, particularly by mandating that default service procurement include a “prudent mix” of spot market, short term contracts, and long term contracts. The Act states that this prudent mix should be designed to produce the “least cost over time,” but the Commission has also recognized that it was designed to produce a measure of price stability for customers.⁴

Act 129 was enacted in 2008 against a backdrop of rising wholesale electricity prices, the upcoming expiration of generation rate caps in most of Pennsylvania and concern over the potential impact on consumers, and an increased emphasis on regulatory mechanisms following the collapse of financial markets that contributed to the national economic recession. In the four years since enactment of Act 129, we have witnessed a change in market conditions, characterized by lower wholesale electricity prices, initially because of the recession, but more recently due to the influx of natural gas supplies from the Marcellus shale.

While wholesale market conditions have improved from a consumer perspective, it is essential for policymakers to consider the ramifications of proposed policies under a variety of market conditions. Experience shows that, in the long-term, energy markets do not remain static. The impact of the Marcellus shale cited above is a good illustration of a change in market conditions that can lead to lower prices. The impact of Hurricanes Katrina and Rita in 2005 is an example of an event that can raise wholesale electricity prices.

³ *Investigation of Pennsylvania’s Retail Electricity Market*, PA PUC Docket No. I-2011-2237952 (entered July 28, 2011).

⁴ *Implementation of Act 129: Default Service and Retail Electric Markets*; Docket No. L-2009-2095604 (Final Order entered October 4, 2011), p. 25.

Under a quarterly procurement strategy, if conditions change and wholesale electricity prices rise quickly in the future, customers on default service will see their bills rise more quickly than they would under the procurement strategy in Act 129. However, customers' bills will also drop more quickly if wholesale prices come down again. Some may argue that default service customers should be shielded from this potential price volatility. But it may also be argued that customers are free to seek more stable prices from EGSs in the retail market, and that customers that choose to remain on default service can adjust to greater volatility in their electricity prices just as they do for other energy prices, such as gasoline.

Finally, while this may be viewed as a legislative drafting issue, the Commission should consider pursuing legislation that provides some flexibility rather than "hardwiring" a quarterly procurement approach into the statute. In general, the Public Utility Code is crafted in broad language to provide the Commission with the ability to adjust its policies to changing circumstances, which is one of the reasons that independent regulatory agencies were formed in the first place. Inserting prescriptive language into the statute removes this discretion and requires passage of new legislation to adjust to changing circumstances.

In summary, EAP is neutral on the change in default service procurement proposed by the Commission, and looks forward to participating in legislative deliberations on this policy.

III. The Commission should resolve numerous issues regarding impacts on customers and how EDCs would recover their implementation costs before deciding to move forward with supplier consolidated billing.

The Tentative Order proposes that the Office of Competitive Market Oversight (OCMO) provide a recommendation to the Commission by July 1, 2013 on how to make "supplier consolidated billing" (SCB) – a billing option under which an EGS presents a single bill to customers for both the EGS's generation charges and the EDC's distribution charges – available to EGSs and third parties. By way of background, the Tentative Order (p. 25) notes that SCB was established in some of the restructuring settlement agreements in the 1990s, but

it was never utilized. The Tentative Order (pp. 26-27) also notes numerous areas of disagreement between EDCs and EGSs on how SCB should work, recognizes that EGSs disagree among themselves on how the cost of implementing SCB should be apportioned among them, and states that consumer representatives object to recovery of implementation costs from residential customers.

As noted in the Tentative Order, there are many issues that would have to be resolved before SCB could be implemented without compromising consumer protections, customer service, and low income programs. These matters should be resolved before any decision to proceed with SCB is made. In addition, the Commission should consider and decide in advance how EDCs would fully recover their billing costs if SCB is implemented.

IV. If the Commission “strongly encourages” EGSs to provide energy efficiency options to customers, it should support a legislative amendment that would eliminate penalties on EDCs for not being able to attract sufficient customer participation to achieve mandated usage reduction targets.

The Tentative Order states that the Commission supports the requirement in Act 129 that EDCs provide energy efficiency and conservation programs to customers. In addition, the Tentative Order provides that the Commission “strongly encourages” EGSs to voluntarily offer energy efficiency options to their customers. (Tentative Order, pp. 32-34) In this instance, the Commission’s support for both a government mandate and additional market options for customers imposes additional risk on EDCs.

Act 129 subjects EDCs to the threat of civil penalties if they cannot entice a sufficient number of customers – some of whom only take distribution service from the EDC, and purchase electricity supplies from an EGS – to participate in their energy efficiency and conservation programs. Customer participation in EDC energy efficiency and conservation programs is essential to achieve the energy and demand reduction mandates established by the Act. It is the savings achieved through customers

participating in EDC sponsored measures that counts toward satisfying the mandates. And, even now, those deemed savings recognized in the Technical Reference Manual can be a “moving target” as the Commission revises its estimates of savings after EDCs establish budgets and begin implementation of their programs. For these reasons, EDCs have a legitimate concern over actions by the Commission that could place additional hurdles on the EDCs’ path to compliance with energy efficiency and demand reduction mandates.

If the Commission decides to encourage EGSs to offer energy efficiency options in the retail market, EAP requests that the Commission consider the impact this could have on EDCs. To the extent the Commission succeeds in encouraging EGSs to provide these services, this success increases the risk of failure by EDCs in achieving compliance with Act 129 mandates. Accordingly, if the Commission encourages EGSs to offer energy efficiency options to customers, it should also support a legislative amendment that would eliminate penalties on EDCs for not being able to attract sufficient customer participation to meet mandated usage and demand reduction targets.

V. The Commission should not unnecessarily increase alternative energy mandates.

In section VI of the Tentative Order, the Commission poses a number of questions regarding future procurement of alternative energy credits (AECs). Generally, these questions relate to whether the Commission should establish separate rules for EDCs to file plans with the Commission to procure AECs using a variety of contract lengths. EAP is concerned that the policy proposed by the Commission could unnecessarily increase alternative energy mandates.

The AEPS Act of 2004 requires that sales of electricity in the Commonwealth be comprised of energy from two tiers of alternative energy sources pursuant to a schedule

that ramps up to a total requirement of 18 percent of electricity sold in the Commonwealth by 2021.⁵ The AEPS Act specifically places the obligation to meet these requirements on individual EDCs and EGSs that supply electricity to customers.⁶ EDCs and EGSs meet their obligations under the Act by purchasing alternative energy credits (AECs).⁷

While the AEPS Act mandates the amount of AECs that EDCs and EGSs must purchase, it does not mandate the types of contracts they must enter into to meet the requirements. The proposal to require EDCs to file AEPS procurement plans and to require a mix of contract lengths appears designed to compel future long-term AEPS contracts. This proposal is not authorized by the AEPS Act. It is also inconsistent with the Commission's Statement of Policy on solar projects, which encourages but does not compel EDCs to enter into long-term contracts for solar renewable energy credits (SRECs)⁸

There are sufficient alternative energy resources available for EDCs and EGSs to meet their obligations under the AEPS Act without mandating future long-term contracts. In particular, there appears to be an over-supply of SRECs. This indicates that AEPS is working and that it is unnecessary to compel long-term contracts. In addition, mandating EDCs to sign long-term contracts shifts investment risks from project developers to customers, which is contrary to the purpose of the Electricity Generation Customer Choice and Competition Act.⁹

For the above reasons, the Commission should not compel EDCs to file procurement plans requiring a mix of contract lengths for AECs.

⁵ 73 P.S. § 1648.3.

⁶ 73 P.S. § 1648.3 (a) (2). *See also*, 73 P.S. § 1648.3 (e) (4) (i) ("An electric distribution company or electric generation supplier shall comply with the applicable requirements of this section by purchasing sufficient alternative energy credits and submitting documentation of compliance to the program administrator.")

⁷ 73 P.S. §§ 1648.2 (definition of "alternative energy credit"), 1648.3 (e) (4) (i).

⁸ 52 Pa. Code §§69.2903, 69.2904.

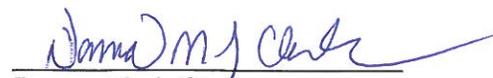
⁹ 66 Pa. C.S. §2801, et.seq.

VI. Conclusion

EAP respectfully requests that the Commission consider these comments in its Final Order in this proceeding.

Respectfully submitted,


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