

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Provider of Last Resort (POLR) : Docket No. M-00041792  
Roundtable :

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COMMENTS OF  
PENNSYLVANIA AFL-CIO UTILITY CAUCUS

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The Pennsylvania AFL-CIO Utility Caucus (Caucus) submits these Comments to assist the Pennsylvania Public Utility Commission (Commission) in developing policies, regulations, and procedures concerning the provision of Provider of Last Resort (POLR) electric service. The Caucus will limit its comments to the provision of POLR service for residential and small commercial customers. Default service to large customers appears to involve very different issues that the Caucus will not address at this time.

About the Caucus

The Caucus is comprised of representatives from local labor unions that are affiliated with Communications Workers of America, International Brotherhood of Electrical Workers, United Steelworkers Union, and Utility Workers Union of America. The local unions that are members of the Caucus have members who are employed by electricity generation companies, electric distribution utilities, municipally owned electric distribution systems, rural electric cooperatives, natural gas distribution utilities, natural gas pipeline companies, telecommunications utilities, and water utilities. In addition, of course, the locals' members are consumers of utility services throughout the Commonwealth.

For example, within the electricity industry, Caucus members' employers include electric distribution utilities (Duquesne, FirstEnergy, PPL, and UGI) and electricity generation companies (AmerGen, Edison Mission, FirstEnergy, Mirant, PPL, Reliant, and WPS). Thus, rather than representing any particular segment of the electricity industry, the Caucus has developed a position on POLR issues that it believes fairly represents the varied interests of its members.

#### Definition and Scope of POLR Service

POLR service for residential and small commercial customers should be defined precisely as it is in the Electricity Generation Customer Choice and Competition Act (Choice Act): the acquisition of “electric energy at prevailing market prices” to serve customers who “contract[] for electric energy and it is not delivered” and customers who “do[] not choose an alternative electric generation supplier.” 66 Pa. C.S. § 2807(e)(3).

Importantly, this means that POLR service solely involves the acquisition of electric energy. It does not include any customer care, billing, metering, meter reading, or other functions. This is consistent with the Choice Act which requires EDCs to be responsible for billing and all customer service functions. 66 Pa. C.S. § 2807(c) and (d). It also is consistent with the restructuring orders entered by the Commission which do not unbundle billing, metering, and customer care functions for residential and small commercial customers.

#### Qualifications for POLR Provider

Given the current state of the energy supply markets, and particularly the dearth of companies with experience serving large numbers of small customers, the Caucus recommends that the responsibility for POLR service remain with electric distribution

companies (EDCs). That is, each EDC should be responsible for procuring adequate, reliable sources of energy to provide POLR service to its residential and small commercial customers.

The Commission has heard from many other parties, including energy suppliers and marketers, essentially all of whom believe that only the EDC is capable of serving as the ultimate “backstop” – that is, the true provider of last resort. Only the EDC can ensure that the customer remains connected to the distribution network and continues to receive electricity without interruption, regardless of any problems experienced by the customer’s generation supplier. At the present time, therefore, the Caucus recommends that each EDC should be the POLR for all residential and small commercial customers connected to the EDC’s distribution system.

#### POLR Service Models

The Caucus believes that EDCs should be given maximum flexibility in procuring energy to serve POLR customers, subject to some basic “rules of the road” that would be established by the Commission. That is, rather than directing exactly how an EDC should procure POLR energy, the Commission instead should establish basic rules that must be followed, as discussed below. This would avoid the problem of attempting to “carve in stone” any particular procedure several years before most EDCs would need to use that procedure.

For example, four or five years ago, the “state of the art” in competitive POLR service was the standard offer service procurements in Maine and Rhode Island. Those are one-year procurements by customer class. Experience over the last several years has

shown those procurements to result in volatile price changes for small customer service, with prices moving up or down each year by several percentage points.

Learning from their experience, more recent POLR procurement models in New Jersey and Maryland use staggered multi-year procurement methods (an auction in New Jersey; requests for proposals in Maryland). This process has removed some of the year-to-year price volatility, but they have been in place for only a relatively short period of time.

Obviously, we have no idea what the impacts of the New Jersey and Maryland models will be over an extended period of time. For example, we do not know if those approaches will be sufficient to encourage the construction of new, cost-efficient generation over the long term. Moreover, we have no way of knowing what additional processes might be developed during the next four or five years that might make the New Jersey and Maryland procedures look just as flawed as the Maine and Rhode Island procedures appear to be today.

In particular, the Caucus believes that it may become increasingly important for the POLR provider to own (or have under long-term contract) some physical, generation assets. Such assets might not be used to provide a large percentage of the POLR obligation, but could be used to provide a physical hedge against price volatility in the market.

It is common for large users of a commodity (e.g., airlines purchasing fuel, food processors purchasing grain, etc.) to use a combination of physical inventories, futures, options, and bilateral contracts of varying terms to minimize price volatility and lock in a guaranteed supply at a price that is suitable for their business model. Obviously, it is not

possible to store electricity to provide a physical inventory, but the same effect can be obtained through the ownership of a generating plant.

The Caucus is not suggesting that asset ownership – or an equivalent long-term contract – must be part of each EDC’s POLR procurement strategy; only that it is an option that should be available to EDCs who believe it would be a prudent part of their POLR procurement process. Similarly, the Caucus does not believe that the Commission should mandate any particular procurement method – auctions, requests for proposals, privately negotiated contracts, options, and other methods all can be part of a prudent procurement strategy.

Importantly, there is nothing in the Choice Act that requires POLR procurements to be limited to the spot market or short-term contracts. The statute only says that the POLR provider “shall acquire electric energy at prevailing market prices.” 66 Pa. C.S. § 2807(e)(3). The Act does not define the market as being a spot or short-term market. Indeed, defining “prevailing market prices” as being short-term prices would be directly contrary to the ultimate goal of the Choice Act which is to provide safe and reliable electric service at the lowest reasonable price.

#### Terms and Conditions of POLR Service

Rather than attempting to specify exactly how each EDC should procure POLR energy, the Caucus instead would urge the Commission to adopt a series of rules that are designed to ensure a fair procurement process and the provision of reasonable service to POLR customers. Among these rules should be the following:

- ◆ Standard wholesale contract terms and conditions. The Commission may adopt EEI’s standard contract or some other industry standard. It would help ensure a fair and robust procurement process if both EDCs and potential generation

suppliers know that the same contract terms and conditions will apply everywhere in Pennsylvania.

- ◆ Financial security requirements. The Commission should adopt standard financial security requirements that ensure that EDCs, suppliers, the Commonwealth (for its collection of taxes), and consumers will be protected in the event of a default by an EDC or POLR supplier. The Caucus will leave it to the interested parties to recommend the appropriate amount and form of such security, but the requirements should be standardized throughout the Commonwealth, so that everyone involved in the POLR markets receives (and provides) the same level of protection.
- ◆ Transactions with affiliates. Each EDC should be subject to the same rules regarding transactions with affiliated generation or marketing companies. The Caucus does not believe that such transactions should be prohibited, but it understands the need for regulations to ensure that unaffiliated companies are not placed at a competitive disadvantage. Indeed, as a practical matter, if an EDC has a generation affiliate, it is likely that the affiliate owns most of the local generation that would be able to most cost-effectively serve the EDC's load centers. Prohibiting such affiliates from providing POLR energy to the EDC, then, only would serve to increase the cost of POLR service to consumers.
- ◆ Switching rules. The same switching rules should apply for all EDCs. It appears to the Caucus that there is no reason to restrict POLR customers' ability to switch to an alternate supplier, except for normal restrictions (such as having a change coincide with a meter-reading date).
- ◆ Cost recovery. Each EDC should use the same cost-recovery mechanism for POLR costs (see below for a more detailed discussion of cost recovery).

#### Full Recovery of Reasonable Costs and Reconciliation of POLR Rates

It appears to the Caucus that reconciling POLR costs would be inconsistent with the development of a competitive market for electricity supply. Customers must know the actual cost of POLR service so they can compare it to options offered by competitive suppliers. If the POLR price is subject to reconciliation, then customers will have no way of making informed choices, and suppliers will not be able to make economically viable offers to customers.

Moreover, the Choice Act does not require guaranteed cost recovery of POLR costs. Instead, the statute states that the POLR "shall recover fully all reasonable costs."

66 Pa. C.S. § 2807(e)(3). There is a difference between “full” cost recovery and “guaranteed” (or reconcilable) cost recovery. Indeed, each time a utility receives a base rate increase, the increase is based on the full recovery of reasonably and prudently incurred costs. Such an increase, of course, is not reconcilable and does not guarantee the utility that it will recover each and every dollar spent. The Caucus submits, however, that setting rates based on the best information available to the Commission qualifies as full cost recovery.

Implementing POLR Rules

The Caucus submits that the Commission should begin the formal rulemaking process within the next few months. This process would be to establish regulations for the “standard” issues discussed above (among others); not to specify the particular procurement method that each EDC must use.

Respectfully submitted,

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