

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PROVIDER OF LAST RESORT
(POLR) ROUNDTABLE** :
: **DOCKET NO. M-00041792**

**REPLY COMMENTS OF
PECO ENERGY COMPANY
AND EXELON GENERATION COMPANY, LLC**

I. INTRODUCTION

PECO Energy Company (“PECO”) and Exelon Generation Company, LLC (“ExGen”) (collectively “Exelon”) jointly submit these Reply Comments in response to the various comments filed, presentations made and questions posed at the five Provider of Last Resort (“POLR”) Roundtable Meetings convened by the Pennsylvania Public Utility Commission (“Commission”) between April 8, 2004 and June 2, 2004.

When the Commission launched this initiative, it explained that the purpose of the POLR Roundtables was “to provide a forum for the discussion of issues related to POLR service in Pennsylvania” (March 18, 2004 Secretarial Letter). Exelon commends the Commission for taking this critically important first step and believes that the Roundtables were extremely productive in exploring many of the questions that will need to be addressed. Every major stakeholder group - - regulators, incumbent utilities, retail marketers, wholesale suppliers and consumer representatives - - took full advantage of the opportunity provided to share its views with the Commission and with one another.

As a consequence, the groundwork was laid for what no doubt will be - - and must be - - an ongoing regulatory dialogue on a broad range of difficult issues.

In Comments filed on April 14, 2004 and May 12, 2004, respectively (which Comments are incorporated herein by reference), PECO and ExGen proposed that the Commission utilize the Roundtables - - and the anticipated rulemaking to follow - - to (1) identify, and hopefully build consensus around, a set of common principles and (2) establish a two-step adjudicatory filing and approval process for individual utility POLR plans. PECO and ExGen further urged the Commission not to tie its hands, and thereby limit the options available to future POLRs, by prescribing, at this time, the use of a single energy procurement model to the exclusion of all others.

The past several months have validated Exelon's recommended approach. To be sure, the Roundtables demonstrated convincingly that the issues surrounding POLR service are considerably more complex and multi-faceted than may have first been assumed. Moreover, and as the experience of other jurisdictions has shown, the implementation of POLR service is a dynamic and constantly evolving process. Indeed, and as several parties pointed out, a model that works well today may make little or no sense six years from now when virtually all of the larger electric distribution companies ("EDCs") reach the end of their rate-capped transition periods.

That is not to say that the Commission should put all of this off to another day. To the contrary, the provision of safe and reliable electric service in the post-transition era may prove to be the most significant undertaking and the greatest challenge that the Commission confronts for many years. It is, therefore, both appropriate and necessary

that the Commission begin now to plan for the future by constructing an overall framework - - i.e., some “rules of the road” - - to guide the preparation and filing of individual utility POLR plans. These Reply Comments and the attachments hereto are offered with that goal in mind.

II. GENERAL OBSERVATIONS

Over forty different entities actively participated in the POLR Roundtables. On certain core issues (e.g., the designation of the incumbent EDC as POLR), there was substantial, if not unanimous, agreement. Not surprisingly, on various other issues, widely-divergent views were expressed. Moreover, a review of POLR Orders issued by other state regulatory commissions suggests that a number of potentially important legal, operational and procedural issues have not yet been addressed. In short, Exelon submits that while substantial progress has been made in fleshing out the parties’ principal concerns, much more work remains to be done.

To assist the Commission and its Staff navigate the future course of this proceeding, Exelon has prepared, and has attached as Appendix “A,” a list of issues that it believes ultimately will need to be resolved. Appendix A borrows heavily from the excellent preliminary list of issues published by the Commission, but also endeavors to capture additional issues identified by the Roundtable participants and/or gleaned from the experience of other states. The list does not purport to be comprehensive, but rather illustrative of the task at hand.

In Sections III and IV of these Reply Comments, Exelon will describe and discuss the common principles that it believes emerge from its issues list. For present purposes,

Exelon offers three observations of a more general nature. First, many of the questions posed cannot be answered based on the record presently available to the Commission. Nor, for that matter, is there any reason why all such questions must be decided with finality in the context of industry-wide rulemaking. As is probably self-evident, the devil will be in the details and the details will not be known, with any degree of reasonable assurance, until utility-specific POLR plans can be developed and scrutinized through the regulatory process.

Second, many of the issues set forth in Appendix A are inextricably intertwined and cannot (or at least should not) be resolved in isolation. For example, much time and attention have been devoted to concerns over “switching rules” and the propriety of “retail adders.” However, those issues cannot be decided until more fundamental matters are addressed, such as the definition of POLR service and the identification of permissible procurement models. Even then, the answer may well vary from company to company.

Finally, numerous terms and phrases emerged from the Roundtables that either were not sufficiently defined or appeared to mean different things to different parties. Thus, several participants spoke of “plain vanilla” POLR service, but never explained precisely what they had in mind. Similarly, various terms were used to describe the costs that transform wholesale purchased power costs into a POLR rate - - “retail adder,” “risk premium,” “margin,” “return” etc. Any proposed rules and regulations should include a set of defined terms to minimize the risk of parties speaking at cross-purposes.

III. COMMON POLR PRINCIPLES

As previously described in PECO's and ExGen's Roundtable comments, Exelon developed a set of common POLR principles that it believes should be included in any proposed regulations issued by the Commission. They include:

1. The EDC is the ultimate POLR provider.
2. POLR service should be based upon a wholesale POLR provider model.
3. The POLR provider should be compensated for the risk of providing POLR service, fully recover all reasonable costs, and such cost components need to be clearly identified.
4. There must be at least one POLR offering for each rate class. However, the POLR provider has the option to offer additional POLR services.
5. Wholesale POLR generation supplies should be acquired at market-determined prices that include all of the services that comprise POLR service.
6. EDC affiliates should not be excluded from participating.
7. The interval between a wholesale price offer and a definitive agreement must be limited to a few days.
8. Wholesale suppliers that provide generation for POLR Load must be financially viable.
9. The EDC should not be required to shoulder the cost of defaults by wholesale generation suppliers.

10. There is no free call option on an EDC affiliate's generation supply.
11. Switching rules are necessary to help mitigate volumetric and seasonal price risk and their associated supply costs.
12. A clear set of relevant defined terms should be developed to ensure consistent use of terminology by all parties.

IV. SPECIFIC COMMENTS

As noted by several participants, POLR issues may, for the most part, be grouped under three broad headings: (1) the scope of POLR service; (2) the procurement of generation; and (3) POLR pricing and tariff rules, including full cost recovery. Exelon has adhered to that format in the issues list attached as Appendix A and, in the Comments that follow, highlighting some additional common principles that it believes should be incorporated into any proposed rules and regulations issued by the Commission.

A. Scope Of POLR Service

The scope of POLR service may appropriately be broken down into two core issues. First, the Commission must determine what POLR service encompasses and what it does not. Then, having defined POLR service, the Commission must decide what entity or entities are best positioned to provide it.

1. Definition Of POLR Service

Significantly divergent views have been expressed regarding the definition of POLR service. Some participants have argued in favor of a "plain vanilla" approach. Others contend that POLR service should be made so "ugly" as to force customers to

seek out alternative electric generation suppliers (“EGSs”). Still others would utilize POLR service to advance various societal goals, such as the promotion of renewable resources, demand side response programs and low-income customer assistance.

Exelon respectfully submits that the language of the Electric Competition Act dictates a narrow construction: “[T]he electric distribution company or commission-approved alternative supplier shall acquire electric energy at prevailing market prices to serve that customer and shall recover fully all reasonable costs” (66 Pa. C.S. §2807(e)(3)). Exelon believes that this statutory mandate is satisfied as long as each customer class is provided a POLR option that complies with the “prevailing market prices” standard. This does not mean that POLRs should be precluded from proposing, or the Commission from approving, multiple POLR products. However, that decision should be left to the discretion of the individual POLR.

Exelon believes that renewable portfolio standards (“RPS”), demand side response (“DSR”) and universal service are important and desirable initiatives, which Exelon fully supports. However, RPS, DSR and universal service should not be made an integral part of the POLR service offerings that POLRs are required to make. In fact, the Electric Competition Act strongly suggests otherwise by directing that universal service and energy conservation costs be recovered through “nonbypassable, competitively-neutral cost-recovery mechanisms” (66 Pa. C.S. §2804(9)).¹ In any event, if RPS, DSR and universal service were to be made a part of POLR service, an EDC’s rates must

¹ The Act defines universal service and energy conservation broadly to include, *inter alia*, customer assistance programs, the application of renewable resources and consumer education (66 Pa. C.S. §2803).

provide for full and current recovery of all associated costs. Moreover, any RPS requirement should be imposed across the board to POLRs and EGSs alike.

Finally, Exelon urges the Commission not to adopt a “one size fits all” POLR model in the regulations. Instead, providers should be allowed - - perhaps even encouraged - - to develop, and submit for the Commission’s consideration, POLR plans that reflect “prevailing market prices” and take into account EDC-specific circumstances.

2. Designation Of POLR

Even though far-ranging differences were voiced over the definition of POLR service, there was virtual unanimity among the Roundtable participants that the incumbent EDC should be designated the POLR for its certificated service territory.² Exelon agrees (*see* PECO Comments, pp. 8-11) and further notes that a number of difficult issues would have to be resolved were the Commission to consider relying on non-EDCs to provide this critically important service (Appendix A, pp. 3-4).³ Indeed, as the OCA pointed out (Comments, p. 9), the designation of alternative POLRs (recognizing that the EDC will always have to function as the ultimate backstop) would produce no efficiencies or other apparent benefits and could create “potentially serious risks.”

² A handful of parties, primarily retail marketers, contend that POLR service should be competitively bid.

³ E.g. if a non-EDC is designated the POLR: (1) does it become a “public utility” subject to the requirements of the Public Utility Code; (2) what safeguards are needed to protect end-use customers, if the non-EDC fails to perform; (3) does the EDC still need to stand ready to “back-up” the non-EDC POLR and, if so, how does the EDC recover its costs?

Several parties have proposed that incumbent EDCs be designated POLRs now and that the issue be revisited as the end of the transition period nears. Leaving this issue unresolved until the 2009-2010 time frame, however, could foster uncertainty and compromise an EDC's long-term planning efforts. For those reasons, the Commission should, by regulation, put EDCs on notice that they (1) will continue to serve as POLRs at the conclusion of their respective transition periods and (2) will be expected to file comprehensive plans explaining how they intend to satisfy their POLR responsibilities at least twelve months in advance of those dates (*see* discussion of two-phase process set forth in ExGen's Comments at pp. 11-14).

B. Procurement Of Generation

As previously explained (PECO Comments, pp. 11-12), Exelon supports a wholesale POLR model in which the EDC, as POLR, procures its energy requirements from suppliers in the wholesale market. In addition, Exelon believes that the Commission can best facilitate that process by allowing POLRs to develop their own procurement strategies, and not by establishing hard and fast rules that all POLRs must follow.

1. Roles Of The Commission And The POLR

The Electric Competition Act only directs the Commission to ensure that POLRs "acquire electric energy at prevailing market prices." Beyond that, the Act is silent. In light of this somewhat limited grant of authority, and because there are numerous ways by which the "prevailing market prices" standard could be satisfied, the Commission should proceed cautiously and should refrain from dictating one approach for wholesale

energy procurement. Instead, the Commission should focus its efforts on developing a robust process for the submission, evaluation and approval of individual EDC POLR plans.

2. Procurement Models

Various POLR supply procurement strategies were supported during the Roundtable process, ranging from the New Jersey Model (a multi-round descending clock auction) to the Maryland Model (an RFP approach) to the Connecticut/Montana Model (an EDC Portfolio Management system).⁴ As discussed in ExGen’s comments (pp. 8-11), conceptually at least, each wholesale full requirements procurement model has its strengths and weaknesses in terms of relative price transparency, risk allocation and need for regulatory oversight. On a more practical level, none of these models has been tested over time, having been implemented only very recently, and each, it appears, is constantly being retuned.

Exelon urges the Commission to resist the temptation to simply follow the lead of another jurisdiction by adopting, in regulations, for example, the New Jersey Model or the Maryland Model. In this regard, it bears noting that the New Jersey Model was the product of a lengthy collaborative process that spanned over a year. In fact, the auction model and procedures that were adopted in late 2002 were not imposed by the New Jersey Board of Public Utilities (“BPU”), but rather were adopted by the BPU upon the joint recommendation of various stakeholder groups. Similarly, the Maryland Public

⁴ Additional POLR approaches have been taken by Maine, Massachusetts, Rhode Island and Texas, among others.

Service Commission did not dictate the use of an RFP process, but instead approved a series of settlement agreements, negotiated over many months, that empowered Maryland's EDCs to develop and submit utility-specific bid plans.

Consistent with its overall position that the Commission should not prescribe a specific procurement strategy, Exelon believes that there can be no justification for imposing limits on the amount or percentage of total POLR load that any individual supplier, including an affiliate, should be permitted to provide. Indeed, such limitations may remove desirable generation from POLR service. In like fashion, while the Commission may wish to encourage POLRs to acquire a mix of generation, it should not specify that certain percentages of that supply portfolio be obtained from specific resources or be of a particular contractual duration. Indeed, the imposition of restrictions on how a POLR acquires needed energy would seem to be at odds with the legislatively-imposed "prevailing market prices" standard.

Finally, Exelon must comment briefly on the OCA's recommendation that the Commission consider an "EDC Portfolio Management Model" purportedly adopted in Connecticut and Montana. On the surface, this approach would appear to give POLRs substantial discretion in assembling a portfolio of generation from different supply sources. However, based on its review of Connecticut's and Montana's statutes and regulations, Exelon is concerned that, in actual practice, this "model" seemingly reverts to the discredited Integrated Resource Planning programs of the 1980s, complete with substantial regulatory intervention and the pursuit of non-market-related societal goals. In fact, the OCA's Comments would seem to confirm as much: "The procurement plan or portfolio should emphasize diversity of resources, a variety of contract terms, and any

other state-mandated or Commission-mandated public policy requirements” (p. 10). Exelon respectfully submits that such reliance on centralized command-and-control planning and regulation is what the Electric Competition Act rejected.

3. Contingencies

Depending upon which wholesale procurement model or models are authorized, certain safeguards will need to be put in place to protect POLRs and their customers against the prospect of wholesale bid undersubscription, volumetric and/or migration risk, and supplier default. Such safeguards should include, at a minimum, reasonable credit requirements for wholesale suppliers and well-defined mechanisms by which POLRs can timely recover any additional costs incurred in covering supply deficiencies created by bid shortfalls or the failure of a supplier to deliver contracted-for power. Exelon further notes, in this regard, that the imposition of so-called “reciprocal” credit provisions, as proposed by several Roundtable participants, would seem to be unnecessary and likely to drive up the cost of POLR service.⁵

⁵ Such bilateral credit requirements were considered and rejected in other states.

C. POLR Pricing and Tariff Rules

1. Components Of The Price Charged For POLR

As noted previously, the Electric Competitive Act states that a POLR “shall acquire electric energy at prevailing market prices . . . and shall recover fully all reasonable costs” (66 Pa. C.S. §2807(e)(3)). Virtually all of those who submitted comments on the subject of POLR pricing acknowledged that (1) a POLR provider will incur a variety of costs to provide POLR service in addition to the cost of acquiring a wholesale generation supply and (2) the POLR should be permitted to recover all of those reasonably incurred costs. While the list of recoverable costs differed somewhat from party to party, a core list of the costs a POLR would likely incur can be extracted from the comments filed to date. Section III. A. of Appendix A sets forth the major cost categories, gleaned from the Roundtable comments, which should be considered for inclusion.

However, the parties’ positions diverged markedly on whether the price charged for POLR service should include more than the POLR’s specifically identified costs. Retail marketers contended that the POLR price should be increased by an administratively determined “add-on,” unrelated to any costs incurred by the POLR supplier, for the purpose of creating “headroom” beneath the POLR price that would make their competitive service offerings appear more attractive by comparison.⁶

⁶ Trying to parse the various comments filed on this issue is particularly difficult because of the lack of uniform terminology. For example, the phrase “retail add-on” was used by different parties to mean, alternatively: (1) an element of the POLR retail price that would recover specific and identifiable costs incurred to provide POLR service; (2) a non-cost-based add-on to the POLR price to create

Additionally, other parties, principally EDCs, stated that the POLR price should include a component, in the nature of a “risk premium,” to reflect the risks inherent in bearing the POLR obligation.

Exelon believes that the price of POLR service should be sufficient to permit an EDC to recover all of its identifiable, incremental costs to provide POLR service. In addition, in the context of each EDC’s POLR plan filing, the Commission needs to carefully assess the nature and magnitude of the risks that attend the POLR obligation the EDC will bear, based on the procurement methods the EDC chooses to adopt. From such an assessment, the Commission should address how the EDC should be compensated, by means of a “risk premium” or otherwise, for the POLR risks it will face.

2. Cost Allocation And Rate Design

As evidenced by the issues identified in Section III. B. of Appendix A, cost allocation and rate design pose some of the most technically challenging questions for the implementation of POLR pricing, such as: (1) should existing cost of service allocation methods be employed or new ones developed; (2) should all of the EDC’s existing rate schedules be retained or should they be redesigned; and (3) should POLR offerings provide for separate demand and energy charges? Perhaps for that reason, this area received the least comment from parties in the course of the Roundtable discussions. Exelon submits that the issues of cost allocation and rate design require considerably

“headroom;” and (3) **any** increment above the POLR’s cost to obtain a wholesale generation supply, whether from (1), (2), a combination of both or otherwise.

more attention. And, because these issues are fact-sensitive and company-specific, they are best resolved in the context of individual EDC proceedings.

The one question that engendered considerable debate in this area is whether POLR service should be a fixed-price or variable-price offering. In Exelon's view, a fixed-price POLR rate that reflects "prevailing market prices" for a full-requirements product and includes, *inter alia*, compensation for POLR risk and competitive procurement costs, is needed for residential and small commercial customers to provide some measure of price stability. For these customer groups, an EDC should be permitted, but not required, to offer variable price service as well. For large commercial and industrial customers, which are more sophisticated and have more competitive options available to them, the nature and pricing of POLR service can differ. For such customers, PECO advocates a tariffed spot market hourly price POLR option and believes separate capacity (demand) and energy components should continue to be built into any variable pricing option. A fixed price POLR option would only be available through a contract between the EDC and the customer, not by tariff.

3. Cost Recovery/Reconciliation

Reconciliation of POLR costs and revenues was proposed by some parties as the appropriate way to ensure that a POLR recovers all of its reasonably incurred costs. However, other parties objected to reconciliation because it makes after-the-fact adjustments for historical cost variances and, therefore, might have an adverse impact on the competitive retail market. Exelon believes that, as a general rule, other than in the case of supplier default, reconciliation is not necessary. This is particularly true if, as Exelon expects, the supply of wholesale generation to meet POLR load is obtained

through full requirements contracts, and the EDC's pricing and rate design properly reflect all its risk and supply costs.

4. Switching Rules

Exelon firmly believes that reasonable "switching" rules must be adopted. The precise nature of those rules can and should be worked out in the proceedings to consider each EDC's POLR plan. However, as the OCA properly recognized, failing to adopt reasonable switching rules will simply create an unwarranted and unfair subsidy running from non-switching POLR customers to those that "game" seasonal or other temporal differences between the EDC's POLR rates and the rates of competitive suppliers.

V. FUTURE STEPS

As explained in Section I, *supra*, and in the Comments of PECO and ExGen, any rulemaking the Commission may hereafter initiate should be used to: (1) develop a set of common principles to guide the development of EDCs' POLR plans; and (2) establish a regulatory process for the submission, evaluation and approval of such plans. Within the framework of that regulatory process, each EDC should be permitted to propose a POLR plan tailored to its circumstances and needs. Specific POLR plan requirements should not be dictated by regulations. Indeed, because of the need to comply with legal formalities to amend or revoke regulations, to do so would make it difficult to respond to evolving conditions in the wholesale and retail electricity markets or to incorporate "lessons learned" into the POLR supply procurement process.⁷ The need to maintain a

⁷ The Commonwealth Documents Law (45 P.S. §1102 *et seq.*) requires notice and opportunity for comment before regulations may be adopted or amended. The Regulatory Review Act (71 P.S. §§745.1-745.15) requires adopted or amended

flexible regulatory response is particularly significant because, for the vast majority of Pennsylvania electric customers, the post-transition period will not commence until 2009 or later.⁸

Because there are many procurement methods that will yield the market price for the various kinds of electric generation products a POLR may obtain, the Commission should not make a before-the-fact regulatory prescription of a particular procurement method (e.g., a state-wide auction, competitive RFPs, etc.). Such a premature regulatory determination would be contrary to the best interests of the POLR, retail customers, generation suppliers, and the competitive market for electricity. Instead, the Commission must maintain the authority and discretion to incorporate structural changes in a prompt and efficient manner. Prescriptive regulations would make that impossible. Rather, the Commission should adopt a two-stage adjudicatory process for (1) the submission, evaluation and approval of EDC-proposed POLR plans; and (2) the monitoring of the implementation of such approved plans as dictated by the procurement model(s) applied.

The general parameters and components of the two-stage process that Exelon proposes were outlined in PECO's (pp. 7-8) and ExGen's (pp. 11-14) Comments and, therefore, will not be repeated here. However, as an aid to the Commission, Exelon has

regulations to be reviewed and approved by the Independent Regulatory Review Commission and standing committees of the Pennsylvania House of Representatives and Senate. As the Commission is well aware, compliance with the Commonwealth Documents Law and the Regulatory Review Act requires considerable time.

⁸ In fact, assuming the Commission approves the Administrative Law Judge's decision on the Duquesne POLR III settlement, approximately 97% of

prepared proposed filing requirements, attached as Appendix “B,” which are designed to provide a uniform basis for the presentation and evaluation of EDC POLR plans.

Exelon appreciates the opportunity to participate in the Roundtables and provide Comments. We look forward to continuing to work with the PUC and the other stakeholders on these critical issues.

Pennsylvania customers will not enter the post-transition period until 2009 or later.

APPENDIX “A”

ISSUE LIST

I. SCOPE OF POLR SERVICE

A. Definition Of POLR Service

1. If POLR is a competitive option available to all customers who choose it, should POLRs be permitted to promote that service without restriction?
2. Is POLR service a single product or multiple (e.g., fixed, variable price) products?
3. Does the Commission have the statutory authority to require that more than one form of POLR service be offered?
4. If the Commission has the authority to require that more than one form of POLR service be offered, should it exercise that authority or, alternatively, leave it to the POLR provider to decide whether to offer multiple POLR products?
5. Should the type of POLR service required and/or permitted be uniform throughout Pennsylvania or should it be tailored to take into account individual POLR circumstances?
6. What procedural mechanisms and/or filing requirements should be put in place to allow the Commission and interested parties to review and comment upon individual POLR plans?
7. Does the nature of POLR service vary by customer class and, if so, how?
8. Does POLR service include customer care functions (e.g., metering, billing, customer lists, Chapter 56 compliance) or are such functions distribution-related services that have been assigned to the incumbent EDCs by statute (66 Pa. C.S. §§ 2807(c) and (d))?
9. If POLR service includes customer care functions, can and/or should energy supply and customer care be bifurcated?

10. Does POLR service include the procurement of transmission service or is transmission service part of a bundled wholesale energy supply product?
11. Does POLR service include Renewable Portfolio Standard (RPS) requirements or should it be left to EDCs and EGSs to decide whether to offer a competitive renewable service option?
12. If POLR service includes RPS requirements, does the Commission have the authority to mandate compliance with specific RPSs and, if so, should it exercise that authority?
13. If POLRs are required to comply with specific RPSs, should not those same requirements be imposed on EGSs?
14. If EDCs are required to comply with RPSs, how should the attendant costs be recovered?
15. Does POLR service include Demand Side Response requirements or should it be left to EDCs and EGSs to decide whether to offer demand side response programs?
16. Does POLR service include Universal Service functions or are such functions distribution-related services that have been assigned to the incumbent EDCs by statute (66 Pa. C.S. §§2804 (8) and (9))?

B. Designation Of POLR

1. Should a single entity be designated the POLR for an entire certificated service territory or, alternatively, can and/or should multiple POLRs be designated?
2. If a single entity is to be responsible for POLR service in a given certificated area, should the incumbent EDC be designated the POLR or should other entities be permitted to compete for that designation?
3. If an incumbent EDC is designated the POLR, should the EDC be permitted to petition the Commission to assign its POLR responsibility to another entity that would prefer to be the POLR?
4. Should the Commission decide, now, who the POLR(s) will be at the end of each EDC's transition period or should that determination be deferred until a point closer to the termination of each EDC's transition period?

5. Should the POLR designations be for an indefinite term or a fixed (e.g., five years) term?
6. If non-EDCs are permitted to compete for POLR service, what eligibility and/or operating criteria should such non-EDCs be required to satisfy?
7. If a non-EDC is designated the POLR, does the non-EDC become a “public utility” and thereby subject to all of the requirements of 66 Pa. C.S. §§101 *et seq.*?
8. If a non-EDC is designated the POLR and fails to perform, what safeguards need to be put in place to ensure that end-use customers continue to receive safe and reliable service?
9. If a non-EDC is designated the POLR, what safeguards need to be put in place to ensure that the incumbent utility is provided a reasonable opportunity to recover any resulting “stranded” costs?
10. If a non-EDC is designated the POLR, what RTO rules/requirements, if any, would be implicated?
11. If POLR service includes customer care functions, can and should such functions be competitively bid (i.e. can there be one POLR for energy supply and another for customer care)?

II. PROCUREMENT OF GENERATION

A. Roles Of The Commission And The POLR

1. Does the Commission have the authority under the Electric Competition Act to prescribe the terms and conditions by which a POLR “acquires electric energy at prevailing market prices”?
2. Does that authority include the right to mandate compliance with specific Renewable Portfolio Standards?
3. If the Electric Competition Act is construed to grant the Commission the authority to prescribe the terms and conditions of wholesale energy procurement, is the exercise of such authority preempted, in whole or in part, by the Federal Power Act?
4. If the Commission may lawfully prescribe the terms and conditions of wholesale energy procurement, should the Commission exercise such authority or leave such procurement decisions to the POLR?

5. How is committed supply (e.g., self-generation, QF contracts) to be treated for POLR supply and pricing purposes?

B. Procurement Models

1. What procurement model(s), if any, should the Commission adopt and/or authorize (e.g., Commission-supervised auction, RFPs, bi-lateral agreements)?
2. Should all POLRs be required to implement and/or participate in the same procurement model(s)?
3. **What restrictions/guidelines, if any, should the Commission impose on the procurement of energy? Should there be limits on the length of terms (i.e., no more than 3-5 years)?**
 - a. Should there be limits on the percentage of energy acquired through spot market purchases?
 - b. Should POLRs be required to acquire energy on a staggered term basis (e.g., 40% of 3-year duration, 30% of 2-year duration)?
 - c. Should POLRs and/or EGSs be required to acquire a minimum amount/percentage of renewable energy?
 - d. Should there be limits on the amount/percentage of energy that any one wholesale supplier may provide?
 - e. Should the Commission impose contract term requirements to ensure that all contracts expire concurrently with any retail price terms? Do the contract terms have to completely align with the product pricing to the extent that pricing is locked in for a multi-year period? For example, can an EDC partially source a 2-year fixed price product with a 3-year contract?
 - f. Should supply diversity be mandated to any extent?
 - g. Is it necessary to acquire supply separately for each POLR customer class? For example, should POLRs be required to acquire and keep separate supplies for residential and non-residential customer classes?
4. What restrictions/guidelines, if any, should the Commission impose on potential wholesale suppliers?

- a. What minimum qualifications should apply and how should those qualifications be documented?
 - b. Should suppliers in bankruptcy proceedings be allowed to participate and, if so, under what conditions?
 - c. What type and amount of credit support should potential wholesale suppliers be required to advance (e.g., unsecured credit, collateral, “mark to market” adjustments)?
 - d. Should “reciprocal” credit arrangements be imposed on POLRs or would such requirements simply drive up the cost of POLR service to end-use customers?
 - e. Should there be any limits on the extent to which affiliated wholesale suppliers may participate? Are existing Code of Conduct rules sufficient or do they need to be modified?
5. If an auction or RFP is to be utilized, what procedures/rules need to be put in place in advance?
- a. How often and by whom (i.e., state-wide or individual POLR) will such auctions or RFPs be conducted?
 - b. What steps need to be taken to coordinate the timing of auctions and/or RFPs on both an intrastate and interstate/regional basis?
 - c. Should POLR supply agreements be aligned with the PJM planning year?
 - d. What information will potential wholesale suppliers be provided in advance (e.g., aggregate or individual customer historic load data, load forecasts, system losses)?
 - e. What information will potential wholesale suppliers be required to submit?
 - f. What procedures should be adopted to ensure that the information exchanged in accordance with subparts (d) and (e), *supra*, is accorded appropriate protection from public disclosure?
 - g. For how long must wholesale supplier bids be held open?
 - h. How will wholesale supplier bids be evaluated and by whom?

- i. Can the POLR/Commission reject bids and, if so, on what grounds (*see* Maryland’s “Price Anomaly Threshold”)?
 - j. What mechanisms need to be established to review progress and consider modifications to the procurement rules?
 - k. What mechanisms need to be put in place to accommodate the nature of the RTO and its ongoing refinement of market rules and products?
 - l. What level of approval will the Commission exercise over the wholesale procurement results? Can the Commission reject wholesale procurement results and, if so, under what circumstances? What happens should the Commission reject those results?
- 6. If a POLR acquires all or some of its energy requirements through bilateral contracts, how will the Commission determine whether the resulting purchased power costs are reasonable in amount and in conformance with the “prevailing market prices” standard?
 - 7. What standardized forms, if any, need to be developed (e.g., model auction or RFP documents, a full requirements service agreement)?
 - 8. Will Commission certification/approval of auction, RFP and/or bilateral contract results constitute a finding that the POLR’s wholesale energy costs are reasonable, prudently incurred and in accordance with the “prevailing market prices” standard?

C. Contingencies: Wholesale Bid Shortfall, Volumetric Risk And Default

- 1. What procedures should be put in place to address the contingency that auctions and/or RFPs fail to generate sufficient wholesale supply offers?
- 2. Should volumetric and/or migration risk be assumed by the wholesale supplier as part of the bidding process (i.e. built into the offered price) or does a specific adjustment mechanism need to be implemented (*see* Maryland’s “Volumetric Risk Mechanism”)?
- 3. What safeguards should be put in place to mitigate the risk of supplier default?

- a. Should other wholesale suppliers be offered the opportunity to make up the lost generation on the same terms and conditions as the defaulting provider?
- b. Should the lost generation be rebid?
- c. Should the POLR be required to make up the lost generation through spot market purchases?
- d. How will the POLR recover any additional costs incurred (or return any savings realized) by going to the market to cover the deficiency created by a supplier default (e.g., contemporaneous POLR price change, end of period reconciliation)?

III. POLR PRICING AND TARIFF RULES

A. Components Of The Price Charged For POLR

- 1. In addition to the costs incurred by an EDC to obtain energy, capacity and transmission service to serve its POLR load, what costs will be incurred by an EDC to provide POLR service (“Additional Costs”) and will such Additional Costs include any, or all, of the costs in the following categories: congestion, balancing/load shaping, migration risk, weather-related risk, line losses, non-transmission ancillary services, scheduling and administrative costs, credit quality/credit assurance, customer education, taxes, acquisition and portfolio management and technical/data exchange?
- 2. Which of the Additional Costs would become costs to obtain energy, capacity and transmission service (e.g., balancing/load shaping, migration risk, weather-related risk) and be reflected in the wholesale supplier’s price to the EDC if a “full requirements” contract is used to obtain generation supply?
- 3. How can each Additional Cost be identified and quantified?
- 4. Should the price an EDC charges for POLR service include a “risk premium” for any risks placed upon the EDC as a consequence of its POLR obligations? If so, then:

- a. How can the nature and magnitude of such risks be determined?
 - b. How can a “premium” commensurate to such risks be determined?
5. Should the price of POLR service be increased by the inclusion of an “adder,” unrelated to either Additional Costs or any “risk premium,” for the purpose of providing “headroom” beneath the POLR price that will make the prices charged by EGSs more attractive by comparison?
- a. Does the Commission have the authority to direct or approve the inclusion of such an “adder” considering that 66 Pa. C.S. §2807(e)(3) provides that EDCs must “acquire electric energy at prevailing market prices” and “recover fully all reasonable costs?” (Emphasis added.)
 - b. If the Commission were to decide that such an “adder” can and should be imposed, how would it be quantified?

B. Cost Allocation And Rate Design

1. How should each component of the EDC’s cost to provide POLR service (energy, capacity, transmission, Additional Costs and risk premium, if any) be allocated among rate classes or rate schedules to determine the price(s) the EDC will charge for POLR service?
- a. Should the existing class cost of service allocation methodology be employed or a different allocation method be developed?
 - b. How, if at all, could the EDC’s method of procuring generation supply affect the cost allocation(e.g., if a separate auction, RFP or contract were employed for each major class of customers)?
2. What changes, if any, should be made in the design of each EDC’s rates and rate schedules in connection with the implementation of post-transition POLR service?

- a. Should all of the EDC's existing rate schedules be retained with the only modification being to remove energy and capacity costs and insert the applicable POLR price(s)?
 - b. Alternatively, should an EDC's rate schedules be redesigned in connection with the introduction of post-transition POLR service?
 - c. If an EDC's rate schedules are to be redesigned, should they be limited to one rate offering for each rate class or could the EDC offer different rate schedules within each class of service?
3. Should the EDC offer both variable-price and fixed-price POLR service for each rate class?
 - a. If a fixed-price option must be available for each rate class, what are the minimum and maximum periods for which the price can be fixed (quarterly, biannual, annual)?
 - b. If a variable-price option must be available for each rate class, over what intervals would the price vary (e.g., hourly, monthly, seasonally, on/off peak)?
 - c. For some customer classes, such as large commercial and industrial customers, should variable-price POLR rates be the only option?
 - d. How will the determination be made between "small" and "large" commercial customers when evaluating which price options are to be available for POLR customers? Should segmentation be based on kW, kWh or some other measure?
 4. Should POLR rate offerings provide for separate demand and energy charges to the extent existing metering permits?
 5. Should customers be permitted to elect to have a two-part (demand/energy) rate if they bear the cost of demand meters necessary to accommodate such a rate?
 6. Is Universal Service a part of POLR service in view of the requirement of 66 Pa. C.S. §2805 (9) that Universal Service "shall be funded in each electric distribution territory by non bypassable, competitively-neutral cost-recovery mechanisms that fully recover the costs of universal service"?

7. Should generation needed to serve an EDC's Universal Service requirements be obtained in the same manner the EDC obtains generation to serve its POLR load?
8. Will Universal Service rates be "indexed" to the unbundled generation component of non-Universal Service rates, such that they will vary with changes in the price charged for POLR service?
9. Should an EDC be required to offer Demand Side Response (DSR) options as a part of POLR service?
10. How, if at all, would DSR be integrated with the EDC's procurement of energy and capacity for POLR load?
11. If EDCs are required to offer DSR as part of POLR service, how should the attendant costs be recovered and from whom?

C. Cost Recovery/Reconciliation

1. Should some form of reconciliation be adopted to "true up" the costs incurred by an EDC to provide POLR service with the revenues recovered from POLR rates? If a reconciliation method is adopted:
 - a. What should be the reconciliation period?
 - b. How should the costs subject to reconciliation be determined and measured? (If an EDC enters into "full requirements" contracts to obtain generation to serve its POLR load, what variances, if any, could occur that would require reconciliation?)
 - c. Should over and under collections be refunded and recouped on an annual basis or maintained in a balancing account?
 - d. How should customers leaving or returning to POLR service be treated for purposes of refund/recoupment?
2. Would reconciliation adversely affect the development of the competitive retail electricity market?
3. If reconciliation were adopted, how would a customer ascertain his or her "price to compare"? (Is the "price to compare" still a valid concept in the post-transition period?)

D. Switching Rules

1. Are switching rules necessary to avoid improper “gaming” of POLR service (i.e., switching to a fixed-price POLR offering to get the benefit of an “average” price during a high-cost, on-peak period)?
2. What types of switching rules should be considered (e.g., requiring returning customers to remain on POLR for at least one year or requiring returning customers to receive service only under variable-price rates, “opt-out” fees)?
3. Should switching rules vary by customer class (e.g., would switching rules be necessary if only variable price (“seasonal” or on-peak/off-peak) POLR service were available to certain customers)?
4. If unrestricted switching were permitted, would it raise the cost of POLR service for all POLR customers?
5. What limitations, if any, on the establishment of switching rules are imposed by 66 Pa. C.S. §2807(e)(4), which provides that, when a customer returns to the EDC for generation service, the EDC “shall treat that customer exactly as it would any new applicant for energy service”?

APPENDIX “B”

PROPOSED FILING REQUIREMENTS FOR EDC POLR PLANS

I. INTRODUCTION AND OVERVIEW

By its Order entered (date) at (Docket No.), the Commission has mandated that each public utility providing service within the Commonwealth as an Electric Distribution Company (“EDC”) submit a plan setting forth in detail how it will fulfill its obligation as the Provider of Last Resort (“POLR”), under Section 2807(e)(2) and (3) of the Public Utility Code (66 Pa. C.S. §2807(e)(2) and (3)), to “acquire electric energy at prevailing market prices” to serve customers that “[contract] for electric energy and it is not delivered” or “[do] not choose an alternative electric generation supplier” (hereafter, the “POLR Plan”). Pursuant to that Order, the Commission has adopted these filing requirements, which specify the minimum requirements for the contents of each POLR Plan and the issues that must be addressed.

These filing requirements provide uniform guidelines for the development of POLR Plans that delineate how each EDC proposes to meet its POLR obligation including, *inter alia*, how it will obtain the electric generation supplies necessary to serve POLR customers; how costs will be recovered; how the price for POLR service is to be determined for each customer class and/or rate schedule; and the revisions, if any, to its tariff(s) necessary to implement its POLR Plan.

Because these filing requirements specify only the minimum requirements that must be met by an EDC, nothing contained herein will prohibit an EDC from submitting

additional information, as it deems relevant. Moreover, the promulgation of these filing requirements neither prohibits nor limits the rights of parties to a proceeding before the Commission on the EDC POLR Plans to seek and obtain discovery from the respective EDC to the fullest extent permitted by the Commission's regulations at 52 Pa. Code Chapter 5, Subchapter D. In addition, the Commission reserves the right to amend, amplify, clarify or enlarge these filing requirements from time to time, as it deems appropriate.

II. TIME FOR FILING AND FORMAL REQUIREMENTS

For those EDCs that have completed their transition period and their recovery of competitive transition charges, the time for filing an updated POLR Plan shall be established by separate Commission order. Those EDCs that have not completed their transition period shall be required to submit a POLR Plan and supporting data that comply with the terms of these filing requirements [not less than 12 months prior to the end of each EDC's transition period] or [in accordance with the schedule attached as Appendix A.]

All information shall be submitted in paper format and in computer readable format. Text data shall be supplied in Microsoft Word Version 6.1 or be fully translatable into that file format. Data submitted in spreadsheet form shall be supplied in Microsoft Excel Version 5.0 in a manner that can be used by the Commission or a party.

III. POLR PLAN COMPONENTS AND SUPPORTING INFORMATION

A. Summary Of Filing; Testimony And Exhibits; Witnesses

1. Provide a narrative summary, not to exceed five pages of double-spaced text of standard typeface, of the EDC's POLR Plan and accompanying supporting information.
2. All direct statements and accompanying exhibits and schedules that form the direct case in support of the EDC's POLR Plan must be submitted with the POLR Plan.
3. Provide an index of all statements, exhibits, schedules and other material that comprise the direct case in support of the EDC's POLR Plan.
4. Identify all of the EDC's proposed witnesses, *i.e.*, such information should, at a minimum, give the name, business address, telephone number, employer, title and job description for each witness. In addition, for each witness, list the subject(s) he or she will address and identify, by title and pre-marked numeric designation, all statements, exhibits, schedules or other material being sponsored by such witness.

B. Procurement Of Generation

1. Provide a detailed description of the manner in which electric generation will be obtained by the EDC to meet its POLR supply obligation and its rationale for the proposed approach.
2. If the EDC proposes to employ either an auction or RFP to obtain any portion of its POLR generation supply, then it shall submit all of the following:
 - a. Detailed step-by-step rules for how the auction or RFP is to be conducted. The rules shall be in the form of a procedure manual setting forth the mechanics and timelines for the conduct of the auction or RFP such that the manual can be used (i) by the Commission or a third-party administrator to conduct an auction or RFP, evaluate bids/proposals and determine the successful bids/proposals by relevant, objective standards; and (ii) by bidders or those responding to an RFP to prepare and submit conforming bids/proposals without the need for any further information to be supplied by the EDC, the Commission or the third-party administrator.
 - b. Detailed, objectively determinable bidder/RFP participant qualifications. The EDC must specify all documentation that must be submitted by the bidder/participant to meet the qualification standards.

- c. A detailed description of the minimum credit support that the EDC will require each bidder/participant to provide to be considered as an eligible supplier.
- d. A form contract that the EDC will require successful bidders/participants to execute. If the contract form differs from the Edison Electric Institute (“EEI”) Master Contract, then a redlined version shall also be submitted showing all changes from the EEI Master Contract.
- e. Bid forms that will be used for the auction.
- f. Uniform proposal forms for the RFP.
- g. The length of the contracts for which the EDC will seek bids or issue an RFP and a detailed explanation of the reasons why such contract lengths were selected. At a minimum, the EDC must address how the contract length(s) will affect POLR customer price volatility, the development of the competitive retail market and the impact of the auction/solicitation on the wholesale market.
- h. How the auction/solicitation will be coordinated with PJM and with the timing and methods of procurement of other EDCs in Pennsylvania and neighboring states and among common Regional Transmission Organizations (“RTOs”).
- i. Describe how each tranche or percentage of full requirements load is to be selected and quantified.
- j. Does the EDC propose “load caps”? If so, explain fully how they are to be determined and why the EDC believes they are necessary.
- k. Describe the EDC’s contingency plan if the EDC’s auction/solicitation produces bids for less than all of the EDC’s load (i.e., “under subscription”).
- l. Explain whether there will be separate bidding/solicitation by customer class or between large and small usage customers. Does the EDC propose to obtain energy, capacity, ancillary services and network transmission for all customers or obtain only capacity, ancillary services and network transmission for large use customers, with energy to be obtained and priced to the customer at the hourly cost? Explain fully the reasons for the alternative the EDC has selected.

3. If the EDC proposes to employ one or more bilateral contracts to obtain any portion of its POLR generation supply, then it shall submit all of the following:
 - a. Detailed, objectively determinable qualifications that must be satisfied for a party to be deemed eligible as a qualified supplier, and which provide a fair opportunity for all participants and comply with applicable FERC standards. The EDC must specify all documentation that must be submitted to meet the qualification standards.
 - b. A detailed description of the minimum credit support that the EDC shall require a party to provide to be considered as an eligible supplier.
 - c. A form contract or, in the alternative, a term sheet, setting forth the EDC's position as to what a party must provide to be considered eligible for further consideration or negotiations leading to a final supply contract.
 - d. The length of the contracts the EDC will seek to negotiate and a detailed explanation of why such contract lengths were selected.
 - e. If a bilateral contract may be entered, state the procedures the EDC proposes to assess the reasonableness of the price negotiated by the parties and how they comply with applicable FERC standards. (This information may be submitted subject to a Protective Order if it contains proprietary or market sensitive information.)
4. If a method other than one of those identified above is proposed by the EDC, the EDC shall provide a detailed description of such method and shall provide the same information identified in 2. and 3. above, to the extent relevant to the method proposed. If the EDC proposes the use of an index to set the POLR rate, then such index shall be identified and appropriate index data shall be supplied.
5. State whether and to what extent the EDC envisions a role for the Commission in monitoring and overseeing any competitive procurement process selected by the EDC. If so, set forth in detail the role the EDC believes the Commission should play and the statutory basis for the Commission's authority to so act. In addition, state whether the EDC envisions the Commission approving the results of any procurement method employed by the EDC. If so, state the form such approval should take, the process

for reviewing the results of the procurement method and the timeline for approval.

C. Components Of The POLR Retail Price

1. The EDC shall identify all of the costs, in addition to energy delivered to the EDC's Load Zone, capacity and transmission, that should be included in the price of POLR retail service. The Commission expects the EDC to address, at a minimum, each of the following cost categories:
 - a. Congestion.
 - b. Balancing/Load Shaping.
 - c. Migration Risk.
 - d. Load Uncertainty/Weather-Related Risk.
 - e. Line Losses (Transmission And Distribution).
 - f. Non-Transmission Ancillary Services.
 - g. Scheduling And Administrative Costs.
 - h. Credit.
 - i. Customer Education.
 - j. Environmental Costs, As Applicable.
 - k. Taxes.
 - l. Acquisition Management.
 - m. Working Capital.
 - n. Administrative And General.
 - o. Technical/Data Exchange Costs.
 - p. Premium For Assumption of POLR Risks.
2. For each cost category that the EDC determines should be reflected in the price of POLR retail service, provide the methodology the EDC proposes to use to quantify such cost and to allocate or assign such cost to each customer class, rate schedule or category of service.

D. Supplier Default

1. Provide the detailed contingency plan the EDC intends to implement in the event of the default, in whole or part, of an EDC's generation supplier. (This information may be submitted subject to a Protective Order if it contains proprietary or market sensitive information.)
2. Identify and describe in detail the method, if any, the EDC proposes to recover any additional costs incurred from covering the supply deficiency caused by a supplier default.

E. Retail Tariff Issues

1. Identify and describe in detail any changes in rate structure and rate design that the EDC proposes be made as part of, or in conjunction with, its POLR Plan.
2. Will fixed price and/or variable price products be offered to some or all classes of customers? State the reasons for the EDC's decisions and provide detailed information, methodologies and all formulas and assumptions used in designing the associated rates.
3. Does the EDC propose any tariff or rate provisions to address customers switching between POLR and competitive service? If so, set forth in detail the rules or rate mechanism the EDC proposes and explain (a) why it believes such provisions are necessary; and (b) why the provisions it proposes represent a reasonable mechanism for addressing whatever problem the EDC perceives.
4. Provide a full and complete draft tariff setting forth in redline all of the changes the EDC proposes to make to its current tariff.
5. Explain how, if at all, universal service programs will need to be modified?

F. Renewable Portfolio Standards; Demand Side Response

1. Describe the "green" power offerings, if any, that the EDC will make.
2. Describe the Demand Side Response offerings, if any, that the EDC will make.

3. Describe the proposed cost recovery mechanism for any such offerings.

G. Customer Education

1. Provide a detailed plan for educating customers on the choices they face at the end of the EDC transition period. At a minimum, the customer education plan should explain what the end of rate caps means to the customer, what POLR service entails, the choices the customer may have in the competitive marketplace, where the customer can go to get more information and the communications methods that the EDC believes would be most effective in accomplishing the customer education goal.

H. Technical/Data Exchange Issues

1. Identify and describe all technical issues for Customer Information Systems (“CIS”) and any other applicable data exchange requirements that may be presented by the POLR Plan proposed by the EDC.
2. Identify the role the EDC believes the Commission could play in helping to resolve such issues (e.g., the EDI Working Group instituted as part of electric restructuring).

I. Corporate

1. Provide a complete and current corporate organizational chart that identifies the ultimate parent of the EDC and all affiliated companies.
2. Identify all affiliates of the EDC that are engaged in the business of generation, generation supply, generation marketing (wholesale or retail) or providing generation/transmission risk management.
3. For each affiliate identified in response to 2., above, set forth the amount of generation owned or controlled by such affiliate and the state(s) in which such generation is located.

J. RTO

1. Identify the RTO of which the EDC is a part.

2. Identify and explain (a) how the RTO determines who is a Load Serving Entity (“LSEs”); (b) the rights and obligations of LSEs, with specific reference to how those rules would affect the EDC and the wholesale suppliers providing full requirements service to meet the EDC’s POLR load; (c) how, and by whom, transmission rights may be acquired; and (e) any other rules that the EDC believes may be relevant in assessing its POLR Plan and in particular its proposed generation procurement method.

K. QFs And Must Run Generation

1. Identify all Qualifying Facilities (“QFs”) or other “must run” generation with which the EDC has a contract to purchase generation. Provide the capacity under contract, the location and type of generation represented by each.
2. Explain in detail how the EDC plans to handle such generation for purposes of meeting its POLR load and how the price of such generation should be reflected in the POLR price or otherwise.

L. Filing And Service; Customer Notice

1. Nine copies of the POLR Plan and all supporting information must be filed with the Secretary of the Commission.
2. Two copies of the POLR Plan and all supporting information must be served upon the Commission’s Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate.
3. Notice of the filing of the POLR Plan shall be provided to all of the EDC’s customers via bill insert in substantially the form attached as Appendix B. The method and timing of the insertion of the bill insert shall be the same as for the insertion of bill insert notices for rate changes.
4. Copies of the POLR Plan shall also be made available for inspection at the business office of the EDC and on the Company’s website.